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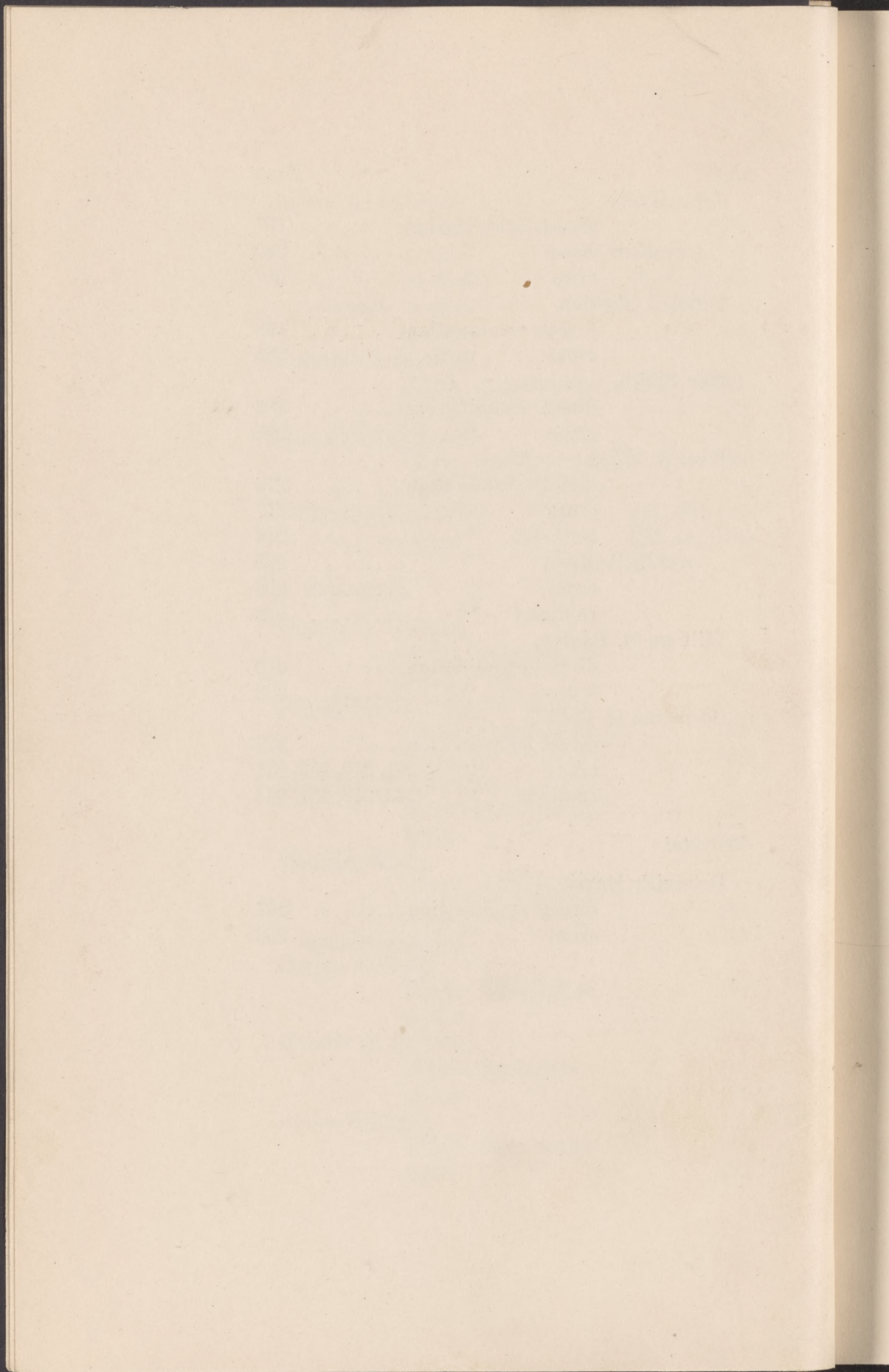
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Notice of Appeal.

NOTICE OF APPEAL.

Filed August 16, 1925.

New Jersey Supreme Court

HUDSON COUNTY.

DOMINICK MARTIN, individually and as administrator of the goods, chattels and credits of Mario Martin, deceased, <i>Plaintiff,</i>	}	<i>Action at Law. Notice of Appeal.</i>	10
<i>vs.</i>			20
THE STUDEBAKER CORPORATION, a corporation, <i>Defendant.</i>			

To McCarter & English, Esqs., attorneys of defendant.

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

Dated, August 11, 1925.

COLLINS & CORBIN,
Attorneys of Plaintiff. 30

Service acknowledged August 13, 1925.

McCARTER & ENGLISH,
Attys. of Defendant.

Grounds of Appeal.

GROUNDS OF APPEAL.

Filed August 20, 1925.

New Jersey Court of Errors and Appeals

10	DOMINICK MARTIN, individually and as administrator of the goods, chattels and credits of Mario Martin, deceased, <i>Plaintiff-Appellant,</i>	} <i>On Appeal.</i> <i>Grounds of</i> <i>Appeal.</i>
	<i>vs.</i>	
	THE STUDEBAKER CORPORATION, a corporation, <i>Defendant-Respondent.</i>	

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The appellant states the following grounds of appeal:

1. The Trial Court erroneously charged the jury as follows:

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“But if on the contrary you find that the accident was caused by a defective wheel breaking while the car was driven at a reasonable rate of speed, then you have to go a step further and determine whether the defendant is liable for that defective condition of the wheel which broke. There was no contractual relationship between the plaintiff and this defendant. He did not buy this automobile from the defendant, but from a Mr. Brower, an automobile dealer, but the plaintiff contends that the accident was due to the negligence of this defendant in the manufacture of this automobile. He sets out the negligence in the complaint as

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Grounds of Appeal.

follows: 'The defendant was negligent and careless in the manufacture of said automobile and failed to use due care in its construction and in testing the same and the materials of which it was made, such automobile was constructed for the purpose of running at considerable speed on ordinary highways and to render the same safe and suitable for such purpose and safe for the ordinary purposes of its use, it was necessary that good, strong and proper material should be used in its wheels, and that the materials used in the wheels should be sufficiently inspected and tested to see that they were strong and durable and safe. The defendant negligently put wheels upon said automobile that was purchased by the plaintiff the spokes of which were inferior, unsuitable and constructed of unsafe timber that did not and could not stand the strain of ordinary use to which said automobile was put and for which it was made and intended to be put, but such material was not sound, but was brittle or brash and without sufficient strength to properly run and sustain the weight of said automobile.'

That is the claim that the plaintiff makes against this defendant. Now, the first question which you have to consider in determining the liability of this defendant is the duty the law casts on the manufacturer of an automobile. An automobile is not inherently dangerous if properly made, but if it is defective or insufficiently constructed, it becomes dangerous to the life and limb of persons riding in it. The danger of injury to a person riding in an automobile from

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Grounds of Appeal.

10 defects in material or construction is so great that there is impressed upon the manufacturer of this class of vehicle the duty of using reasonable care in their construction so that they will be reasonably safe, not under all circumstances and conditions, but when used with proper care. You see, the duty is to use reasonable care in their construction so that they will be reasonably safe, not under all circumstances and conditions, but when they are used with proper care. A manufacturer of automobiles will be charged with notice of the unsafe condition in a machine if the construction is so faulty that a person engaged in its manufacture could not fail to observe it. When the defect is due to the unsound condition of one of its parts which was purchased by the manufacturer of the automobile from a reputable concern and was used by such manufacturer in ignorance of its defective condition after a reasonable testing, he is relieved of the responsibility which would have been imputed to him; that is, to the manufacturer, if he had actually manufactured the defective part in question."

20
30 2. The Trial Court erroneously charged the jury as follows:

40 "Now, in the present case the defendant purchased the wheels used in the manufacture of this particular kind of automobiles from the Kelsey Wheel Company. The defendant did not manufacture the wheels, but they purchased them from an outside company. It was the duty of this concern to inspect these wheels with reasonable care before attaching them to their auto-

Grounds of Appeal.

mobiles to see that they were reasonably safe for the uses for which they were intended. An inspection must be a reasonable inspection, not an unreasonable one. Their duty is to use reasonable care in making the inspection of these wheels before they attach them to the automobiles which they were to sell. This defendant did not select the wood from which these wheels were made. He did not make the wheels, but purchased them ready for use, and when the defendant received them they were covered with a priming coat of paint. That fact would not relieve them from the duty of making a reasonable inspection. The fact that the defendant bought the wheels of the automobile from a reputable manufacturer does not absolve the defendant from his duty of inspection. It was not merely a dealer in automobiles, it was a manufacturer of automobiles. It was responsible for the finished product, and it was not at liberty to put the finished product on the market without subjecting the component parts, including the wheels, to ordinary and simple tests. The obligation to inspect must vary with the nature of the thing to be inspected, and the more probable the danger the greater the need of caution."

3. The Trial Court erroneously charged the jury as follows:

"If you believe the testimony of the defendant, not only were the wheels inspected after they were received at their plant, but they employed three men to inspect the wheels while they were being manufactured at the plant of the Kelsey

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Grounds of Appeal.

10 Wheel Company. You have heard from the witnesses that have been on the stand the manner in which those wheels were tested while they were being manufactured by the Kelsey Wheel Company and you have heard how the defendant inspected them after they came to the plant in Detroit. If the defendant had no notice that the wheels purchased were defective and used reasonable care to inspect the wheels so purchased and used, and the wheel company was a reputable concern, there would be no liability on the part of the defendant even if the accident was caused by a defective wheel and not by careless driving. You see, the liability of the company depended upon its failure to reasonably inspect these wheels which they purchased.”

20

4. The Trial Court erroneously charged the jury as follows:

30 “This defendant cannot be held liable for any negligence on the part of the wheel company, so if you should find that the wheel in question was made by this wheel company of defective or improper wood and broke by reason of such defect, this defendant would not be liable for the negligence of the wheel company. The wheel company would have to be responsible for its own negligence unless the defendant knew of the defect or could have discovered it by reasonable and proper inspection of the wheel before it attached it to the automobile. It is not contended that this company had anything to do with the purchase of the raw material out of which these wheels were constructed. The material was

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Grounds of Appeal.

purchased by the wheel company. If you find from the evidence that the plaintiff has by a preponderance of the evidence established that this defendant was negligent and that such negligence was the proximate cause of this accident, then the plaintiff can recover and there will have to be two verdicts, one for Dominick individually and the other for Dominick as administrator of his deceased son.” 10

5. The Trial Court erroneously charged the jury as follows:

“If you reach the conclusion that the accident was caused by a defective wheel but it does not satisfy you that the defendant failed to use reasonable care in inspecting the wheels of this automobile before the automobile was placed on the market, then there can be no recovery by the plaintiff. If you find that the accident was caused by a defective wheel and that the defendant was guilty of negligence in failing to properly inspect the wheel placed on this automobile, then there can be a recovery by the plaintiff and you should assess the damages of the father in the way and manner which I have indicated, and the damages of the father as administrator of the son in the way and manner in which I have indicated.” 20 30

6. The Trial Court erroneously refused to charge plaintiff's request No. 2 as follows:

“Beyond all question, the nature of an automobile gives warning of probable danger if its construction is defective. This automobile was designed to go at considerable speed. Unless its wheels were sound 40

Grounds of Appeal.

10 and strong, injury was almost certain. It was as much a thing of danger as a defective engine for a railroad. The defendant knew the danger or should have known the danger. It knew also that the car would be used by persons other than the buyer. This was apparent from its size. There were seats for two persons. It was apparent, also, from the fact that the buyer was a dealer in cars who bought to resell and in this instance sold the car to the plaintiff. The maker of this car, the defendant, supplied it for the use of purchasers from the dealer. The dealer did not buy the car for his own use but merely as a middleman to sell it to the ultimate user. The defendant was therefore under a duty to the plaintiff in this case to use reasonable care to provide the car with wheels which were sound and strong and which would stand the ordinary stress and strain and usage of similar automobile wheels on similar cars.

20

7. The Trial Court erroneously refused to charge plaintiff's request No. 3 as follows:

30 "The duty which the defendant, the manufacturer of the automobile, owed to the plaintiff can be stated by the rule that one who puts on the market an imminently dangerous article owes a public duty to all who may use it to exercise reasonable care in proportion to the peril involved, and liability in a case of this kind arises out of that duty which the law imposes to use due care in doing acts which in their nature are dangerous to the lives of others."

40

Complaint.

8. The Trial Court erroneously charged the defendant's request No. 2 as follows:

"The general rule is that a manufacturer is not liable to third persons, who have no contractual relations with it, for negligence in the manufacture of an article in question, in the absence of wilful injury or fraud on the part of the manufacturer, and that one who is not a party to a contract cannot sue in respect to a breach of duty arising out of the contract." 10

Dated, August 14, 1925.

COLLINS & CORBIN,
Attorneys of Appellant.

Service of a copy acknowledged August 18, 1925. 20

McCARTER & ENGLISH,
Attorneys of Respondent.

COMPLAINT.

Filed February 8, 1924.

The plaintiff, for complaint herein, says that: 30

FIRST COUNT.

1. At all the times hereinafter mentioned defendant was a corporation of the State of New Jersey, with its principal office at 15 Exchange Place, Jersey City, Hudson County, New Jersey.

2. The defendant was organized, among other things, for the purpose of manufacturing and selling automobiles and was on June 25, 1923, and had been for a long time previous to that 40

Complaint.

date and has ever since been engaged in such business of manufacturing and selling automobiles.

3. Heretofore and before the commencement of this action, and in or about the year 1923, the defendant sold and delivered to Charles R. Brower, an automobile dealer, doing business in the City of Schenectady, New York, and also a duly authorized sales agent of the defendant, an automobile made by said defendant known as a Studebaker roadster Special Six, engine No. 58957 and serial No. 3067210, and thereafter on or about June 25, 1923, said Charles R. Brower sold and delivered said automobile to plaintiff, and plaintiff thereupon became the lawful owner and holder of the same.

4. Said automobile was manufactured by the defendant for the purpose of the sale thereof to any person or firm or corporation, who might buy the same, and with the intent and purpose of having same operated and used by any person who should purchase the same and into whose hands it should come no matter through how many intermediate dealers it should pass.

5. The defendant was negligent and careless in the manufacture of the said automobile and failed to use due care in its construction and in testing the same and the materials of which it was made up. Said automobile was constructed for the purpose of running at considerable speed upon ordinary highways and to render the same safe and suitable for such purpose and safe for the ordinary purposes of its use, it was necessary that good, strong and proper materials should be used in its wheels and that the materials used in the wheels should be suf-

Complaint.

ficiently inspected and tested to show that they were strong, durable and safe. The defendant negligently put wheels upon said automobile thus purchased by plaintiff, the spokes of which were inferior and unsuitable, and constructed of unsafe timber and that would not and could not stand the strain of the ordinary uses to which said automobile was put and for which it was made and intended to be put, but which material was not sound but was brittle, or brash, and had not sufficient strength to properly run and sustain said automobile. 10

6. On or about the 31st day of July, 1923, about 5:15 A. M., plaintiff was lawfully operating said Studebaker automobile in a southerly direction on the state highway between Hudson and Poughkeepsie, New York, at a point about thirty-one miles from Poughkeepsie. 20

7. On or about the 31st day of July, 1923, at about 5:15 A. M., while plaintiff was so lawfully operating said Studebaker automobile carefully and without any fault or negligence on his part, at a point on the state highway between Hudson and Poughkeepsie, New York, about thirty-one miles from Poughkeepsie, the spokes of one of the wheels of said automobile thus made by the defendant and thereafter, as aforesaid, purchased by plaintiff, gave way and broke and the automobile was let down and overturned because of such breaking of said spokes; and plaintiff, who was lawfully operating said automobile, received the injuries complained of herein, and said automobile was destroyed and damaged to plaintiff's damage \$2,500. 30

8. By reason of the defendant's negligence aforesaid, plaintiff suffered great bodily injury. 40

Complaint.

10 He sustained permanent injuries in and about his head, body and limbs. He became and still continues to be sick, sore and disabled. He has been and will be obliged to spend considerable sums of money for medicine and medical attendance. Plaintiff has been and will for a considerable time to come be incapacitated from carrying on his usual occupation and work. His earning power has been greatly diminished. Plaintiff was otherwise injured permanently, externally and internally to his damage in the sum of \$15,000.

Plaintiff demands on this count the sum of \$15,000 damages.

SECOND COUNT.

20 1. Plaintiff reiterates paragraphs 1 to 7, inclusive, of the First Count.

30 2. On or about the 31st day of July, 1923, about 5:15 A. M., plaintiff's intestate was lawfully riding as a passenger in said Studebaker automobile, which was being lawfully operated by Dominick Martin in a southerly direction between Hudson and Poughkeepsie, New York, at a point about thirty-one miles from Poughkeepsie.

40 3. On or about the 31st day of July, 1923, at about 5:15 A. M., while Dominick Martin was so lawfully operating said Studebaker automobile carefully and without any fault or negligence on his part or on the part of plaintiff's intestate, at a point on the state highway between Hudson and Poughkeepsie, New York, about thirty-one miles from Poughkeepsie, the spokes of one of the wheels of said automobile thus made by the defendant and thereafter, as

Complaint.

aforesaid, purchased by Dominick Martin, gave way and broke and the automobile was let down and overturned because of such breaking of said spokes. Plaintiff's intestate, who was lawfully riding in said automobile at the special instance and request of Dominick Martin, sustained injuries by reason of being thrown from said automobile, which injuries resulted in his death. 10

4. Said Mario Martin died intestate.

5. After the death of said Mario Martin, letters of administration upon his estate were duly issued to the plaintiff herein by the Schenectady County Surrogate, who had jurisdiction in the premises, and plaintiff accepted said position and duly qualified as such and before the commencement of this action became and still is the administrator of the estate of Mario Martin, deceased. An exemplified copy of said letters of administration has been filed in the office of the Register of the Prerogative Court of the State of New Jersey, as provided by law. 20

6. Said Mario Martin, deceased, left him surviving his father, the plaintiff herein, and other next of kin, who have suffered great pecuniary loss by reason of his death. 30

Plaintiff demands on this count the sum of \$50,000 damages.

COLLINS & CORBIN,
Attorneys of Plaintiff.

*Amendment to Complaint.***AMENDMENT TO COMPLAINT**

Filed March 25, 1924.

The plaintiff in this action hereby amends his complaint by alleging the following:

10 1. He is a resident of the City and County of Schenectady, State of New York.

2. The deceased, Mario Martin, of whose estate he is administrator, was, at the time of his death, a resident of Schenectady County, State of New York.

The second count of the complaint is amended by alleging the following which is to be contained in a new paragraph numbered 7:

20 7. This cause of action is based on the so-called Death Act of the State of New York, which is also known as the "Decedent Estate Law." Article 5 of that law bears the heading, "Action for Causing Death of Decedent"; sections 130 to 134, inclusive, prescribe the terms under which such an action as that herein contained may be brought, and two copies of said sections 130 to 134, inclusive, of said law are hereto annexed and made a part hereof, marked
30 "A." This cause of action was commenced within two years after the death of the plaintiff's intestate.

COLLINS & CORBIN,
Attorneys of Plaintiff.

Amendment to Complaint.

"A."

#130. Action by executor or administrator for negligence or wrongful act or default causing death of decedent. The executor or administrator duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, of a decedent who has left him or her surviving a husband, wife, or next of kin, may maintain an action to recover damages for a wrongful act, neglect or default, by which the decedent's death was caused, against a natural person who, or a corporation which, would have been liable to an action in favor of the decedent by reason thereof if death had not ensued. Such an action must be commenced within two years after the decedent's death. When the husband, wife or next of kin, do not participate in the estate of decedent, under a will appointing an executor, other than such husband, wife or next of kin, who refuses to bring such action, then such husband, wife or next of kin shall be entitled to have an administrator appointed for the purpose of prosecuting such action for their benefit.

#131. Trial and burden of proof of contributory negligence. On the trial of an action to recover damages for causing death the contributory negligence of the person killed shall be a defense, to be pleaded and proven by the defendant.

#132. Amount of recovery. The damages awarded to the plaintiff may be such a sum as the jury upon a writ of inquiry, or upon a trial, or where issues of fact are tried without a jury, the court of the referee, deems to be a fair and just compensation for the pecuniary injuries,

Amendment to Complaint.

10 resulting from the decedent's death, to the person or persons, for whose benefit the action is brought. If the decedent leaves surviving a father and a mother, the death of such father prior to the verdict shall not affect the amount of damages recoverable. When final judgment for the plaintiff is rendered, the clerk must add to the sum so awarded, interest thereupon from the decedent's death, and include it in the judgment. The inquisition, verdict, report or decision, may specify the day from which interest is to be computed; if it omits so to do, the day may be determined by the clerk, upon affidavits.

20 #133. Distribution of damages recovered. The damages recovered in an action, as prescribed in this article, or obtained through settlement without action, are exclusively for the benefit of the decedent's husband or wife, and next of kin; and, when they are collected, they must be distributed by the plaintiff, or representative, as if they were unbequeathed assets, left in his hands, after payment of all debts, and expenses of administration; subject, however, to the following provisions, to wit:

30 1. In case the decedent shall have left him surviving a wife or a husband, but no children, the damages recovered shall be for the sole benefit of such wife or husband.

2. In case the decedent leaves neither husband, wife, nor issue, but leaves a mother, and a father who has abandoned him, or who has left the maintenance and support of their child to the mother, the damages or recovery shall be for the sole benefit of such mother.

Amendment to Complaint.

3. In case the decedent leaves no husband or wife, issue or father, or having left a father entitled to recovery, who dies prior to the recovery or verdict, the damages or recovery shall be for the sole benefit of the mother if then living.

The reasonable expenses of the action, or settlement, the reasonable funeral expenses of the decedent, and the commissions of the plaintiff or representative, upon the residue may be fixed by the surrogate, upon notice, given in such a manner and to such persons, as the surrogate deems proper or upon the judicial settlement of the account of the plaintiff, or representative, and may be deducted from the recovery. 10

#134. Next of kin defined. The term "next of kin," as used in the last three sections of this article includes all those entitled under the provisions of law relating to the distribution of personal property, to share in the unbequeathed assets of a decedent, after payment of debts and expenses, other than a surviving husband or wife, except if decedent leaves surviving a father and mother but no widow, child or descendant, it shall mean both the father and the mother. 20 30

We consent to filing of above.

McCARTER & ENGLISH,
Attorneys of Defendant.

March 21, 1924.

Answer.

ANSWER.

Filed April 3, 1923.

The answer of The Studebaker Corporation, a corporation of the State of New Jersey, the defendant above named, to the complaint heretofore filed against it herein, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It admits paragraph 1 of the first count of the complaint.
2. It has no knowledge of paragraph 1 of the first count of the amendment to the complaint, and leaves the plaintiff to make proof thereof.
- 20 3. It admits paragraph 2 of the first count of the complaint.
4. It has no knowledge of paragraph 2 of the amendment to the complaint and leaves the plaintiff to make proof thereof.
5. It denies paragraphs 3, 4, 5, 6, 7 and 8 of the first count of the complaint.

SECOND DEFENSE TO FIRST COUNT.

- 30 It denies that it was guilty of the negligence charged against it in the said complaint.

THIRD DEFENSE TO FIRST COUNT.

It denies that it was guilty of any negligence whatsoever.

FOURTH DEFENSE TO FIRST COUNT.

- 40 The accident in question was due entirely to the negligence of the plaintiff, Dominick Martin,

Answer.

in that he was operating his automobile at an illegal and excessive rate of speed, in a careless manner, and otherwise unlawfully, as the result of which the accident happened; wherefore, this defendant denies that it is under any liability to the plaintiff whatsoever.

FIRST DEFENSE TO SECOND COUNT.

10

1. It repeats its answers to paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count in answer to paragraph 1 of this count.

2. It denies paragraphs 2 and 3.

3. It has no knowledge of the allegations contained in paragraphs 4, 5, 6 and 7 and leaves the plaintiff to make proof thereof, except as to 7 where it admits that the cause of action was commenced within two years after June 25, 1923.

20

SECOND DEFENSE TO SECOND COUNT.

It repeats the second defense to the first count, and makes it the second defense to this count.

THIRD DEFENSE TO SECOND COUNT.

It repeats the third defense to the first count, and makes it the third defense to this count.

30

FOURTH DEFENSE TO SECOND COUNT.

The accident resulting in the death of the said Mario Martin was due entirely to the negligent and careless driving of the automobile in which he was riding at the time of the accident, on behalf of his father, Dominick Martin, who, was then operating the same at an illegal and excessive rate of speed, and otherwise unlawfully, as the result of which the accident hap-

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Reply—Postea.

pened; wherefore, this defendant denies that it is under any liability to the plaintiff whatsoever.

McCARTER & ENGLISH,
Attorneys of Defendant.

10

REPLY.

Filed April 4, 1924.

Plaintiff for reply says that:

He denies the allegations of the second, third and fourth defenses to each count.

COLLINS & CORBIN,
Attorneys of Defendant.

20

POSTEA.

Filed March 25, 1925.

This case was tried before the Honorable Willard W. Cutler, with a jury, at the December Term on March 3, 4, and 5, 1925, at the Hudson Circuit.

30

The jury rendered a general verdict in favor of the defendant and against the plaintiff.

WILLARD W. CUTLER,
Judge, &c.

Signed: March 23, 1925.

40

Rule for Judgment—Judgment.

RULE FOR JUDGMENT.

Filed March 25, 1925.

Costs— It is ordered that judgment be and
 \$68.10 hereby is entered in favor of defend-
 ant and against the plaintiff with
 costs to be taxed *nisi*. 10

Entered March 25, 1925. On motion of

McCARTER & ENGLISH,
 Attorneys.

JUDGMENT.

Entered March 25, 1925.

Costs— Judgment entered this twenty-fifth day of
 \$68.10 March, A. D. nineteen hundred and
 twenty-five in favor of defendant
 and against the plaintiff for the sum
 of sixty-eight dollars and ten cents
 costs. 20

WM. S. GUMMERE,
C. J.

30

Opening.

HUDSON COUNTY SUPREME COURT.

DOMINICK MARTIN, et al.,

vs.

THE STUDEBAKER, a corporation.

10

Before HON. WILLARD W. CUTLER, J., and a jury.

Jersey City, N. J., March 3, 1925.

Appearances.

Collins & Corbin, by Mr. Markley, for the plaintiff.

McCarter & English, by Mr. Studer, for the defendant.

20

Mr. Markley: Mr. Studer has agreed that the law annexed to my complaint is the law of the State of New York.

Mr. Studer: That is so.

Mr. Markley: And it is also agreed, I think, that the wheel we produced is the wheel, without proving where it has been ever since the accident.

Mr. Studer: Yes; part of a wheel.

30

Mr. Markley: Of course. We do not contend it is all, it is part of the wheel.

Now I offer in evidence the certificate of Thomas F. Martin, Secretary of State, with regard to the letters of administration granted to Dominick Martin, on the estate of Mario Martin, filed on the 28th day of January, 1924.

(Marked Exhibit P. 1.)

40

Charles R. Brower, direct.

CHARLES R. BROWER, sworn.

Direct examination by Mr. Markley.

Q Where is your place of business? A 1034 Eastern avenue, the Service Station, and 113 State street, the salesroom, Schenectady.

Q Are you the Charles R. Brower Motor Sales Company of that address? A C. R. Brower Motor Sales. 10

Q That is the name of the company? A Yes, sir.

Q Did you sell this Studebaker roadster 1923 model? A Yes, sir.

Q Serial number 306740, engine number 58957, to Mr. Dominick Martin? A That is right.

Q And is it the order for the car? A Yes, sir. 20

Q I believe the price paid was \$1,390? A Yes, that is the price there.

Q When did you make delivery of that car, do you remember? A It was somewhere near June 5th, but it was in the garage a few days before it went out.

Q It went out about July 1st as a matter of fact, didn't it? A Somewhere near June 25th I think; I am not positive about that, but it was right along in there. 30

Mr. Markley: That is all.

Mr. Studer: No questions.

(Witness excused.)

Walter A. Fullerton, direct.

WALTER A. FULLERTON, sworn.

Direct examination by Mr. Markley.

Q Where do you reside? A Saratoga Springs.

10 Q What is your profession? A Attorney.

Q Of what bar? A The New York bar.

Q Attorney and counsellor of the New York bar? A I am.

Q And how long have you been such? A Since 1910.

Q Are you a member of any firm? A Yes, Leary & Fullerton.

Q And your offices are where? A Saratoga and Schenectady.

20 Q Now, then, are you familiar with the law of New York as to what may be recovered under the New York death act where a person is killed as the result of a wrongful act of another? A I am.

30 Q Will you please tell the jury what may be recovered? A The pecuniary value of the life of the young man. In addition to that there can be recovered the funeral expenses which have been paid as a result of his death. Do you desire that I enlarge upon the pecuniary value?

40 Q Yes, I wish you would. A The pecuniary value is measured by all the possible benefit which might accrue to the father from the life of the son. They can take into consideration the fact that the father is entitled to the earnings of the son during the period of minority. You can take into consideration that the father may be benefited by the advice which the son may later give him. Also that the son owes the duty to the father to support him in case it

Walter A. Fullerton, direct.

may be needed; a duty which can be compelled by law; also that there is a possibility that the father may inherit from the son. In fact, the age of the son and what the son has done and what his earning powers are or are likely to be, is all taken into consideration, and from those facts the jury under proper instruction from the Court fixes the value of the life. 10

Q Now, then, I give you a reference to the official report of the New York Court of Appeals on the case of McPherson *v.* Motor Company, 217 New York, 382; 111 N. E. 1050, and the case in 1916 C, 440, L. R. A., 1916 S, 696, and ask you to look at that case and tell me by what court it was decided? A That case was decided by the Court of Appeals which is the court of last resort in the State of New York. 20

Q And can you say as a lawyer of the State of New York whether that is still the law of the State of New York? A It is.

The Court: When was it cited?

The Witness: 1916, your Honor.

Mr. Markley: I offer the law of the State of New York. 30

Mr. Studer: Objected to as immaterial.

The Court: It may be admitted.

Mr. Studer: Exception.

(Marked Exhibit P. 2.)

The Court: What page have you reference to?

Mr. Markley: This is 217, page 382.

Walter A. Fullerton, cross—re-direct.

Cross examination by Mr. Studer.

Q Where a son is under twenty-one years of age the father must support the boy until he is of age? A If the son requires it, I think that is so.

10 Q And the pecuniary value of the life is measured largely by the earnings of the boy at the time of his death, is that not so? A Not necessarily.

Q It figures? A Not at all.

Q Not at all? A I can, if you desire me, quote you a decision on that, 63 Appellant Division.

Mr. Studer: I move to strike that out.

20 The Court: Strike it out.

Mr. Studer: That is all.

Re-direct examination by Mr. Markley.

Q That decision you refer to is what decision? A It is the Morris case, 51 Appellant Division, reported on retrial, 63 Appellant Division.

30 Q I hand you what I believe to be the official report? A 63 Appellant Division is the one gives the particular condition that I refer to. I refer to page 514, 51 Appellant Division.

Q What is that case? A That is the Morris case, *Morris v. The Metropolitan Street Railway Company*. I also refer to the last paragraph on page 53 of the same case as it is reported in 63 Appellant Division, 78, pages 83 and 84.

40 The Court: That still stands as the law of New York?

Walter A. Fullerton, cross.

The Witness: Yes, sir.

The Court: No modifications?

The Witness: No modifications.

Mr. Markley. I offer this in evidence.

Mr. Suder: I object to the offer.

The Court: I am going to admit it. 10

Mr. Studer: Exception.

(Marked in evidence Exhibit P. 4.)

The Court: In your testimony you referred to the father; is the mother entitled to anything in this act?

The Witness: The father and the mother are entitled to whatever may be recovered. The statute was amended in 1921 to include the mother as well as the father. I inadvertently did not mention the mother, but you will see the statute was amended in 1919. 20

Mr. Markley: I wish to put on the record that this Exhibit P. 3 is the official report of the appellant case reporter of the Supreme Court of the State of New York; likewise that Exhibit P. 4 is the official report of the decision of the appellant division of the Supreme Court of the State of New York. 30

Cross examination by Mr. Studer.

Q There is a higher court than the Appellant Division, is there not? A There is.

Q The Court of Appeals? A There is.

Q And those decisions do not appear here?
A The decisions of the Court of Appeals are reported in the Court of Appeals book. 40

Dominick Martin, direct.

Q They are not reported in this book, are they? A No.

Mr. Studer: That is all.

(Witness excused.)

10

DOMINICK MARTIN, sworn.

Direct examination by Mr. Markley.

Q Where do you live? A 816 Congress street, Schenectady.

Q How old are you? A Forty-eight.

Q This Mario Martin, was he your son? A Yes, sir.

20 Q How old was he when he was killed on July 31, 1923? A Seventeen.

The Court: When was he seventeen?

The Witness: Well, pretty nearly finished seventeen, because he was born on July 4th, I think he would complete seventeen in July.

Q He was just seventeen? A Yes, sir.

30 Q On July 4th? A Yes, finishing it.

Q Was he your only child? A No, I got eight.

Q Eight including him? A Yes, including him.

Q Was your wife living at the time? A Yes, sir.

Q What was her name? A Carolina Martin.

40 Q Did she live with you at the time? A Yes, sir.

Dominick Martin, direct.

Q Did Mario live with you? A Yes, sir.

Q And these other children also lived together in the one family? A Yes, sir.

Q Now, then, how old was your wife at the time? A Thirty-nine.

Q Were you in good health then? A Me?

Q Yes. A Yes.

10

Q Are you in good health now? A Well, yes.

Q Was your wife in good health on July 31, 1923? A No, she was sick.

Q What was the matter with her? A She had cancer.

Mr. Studer: I object.

The Court: I think you may prove she was in bad health.

20

Q What was the matter with her? A She had cancer.

Q Has she died since? A She died a couple of months later.

Q How was Mario, what kind of a boy was he? A He was a strong and healthy boy.

Q In July, 1923? A Never was sick in his life.

Q Was he a strong boy? A A strong boy, yes, sir.

30

Q Was he healthy? A Healthy, yes.

Q What business were you in at the time? A At the time I was in the real estate business.

Q Now then, on July 31, 1923, in the morning, early in the morning, what did you do if anything? A Well, I was starting at two o'clock from home to get to New York and get to the Roosevelt Hospital at 59th street.

40

Dominick Martin, direct.

Q Which hospital? A The Roosevelt Hospital.

Q At the Roosevelt Hospital, 59th street, New York City? A Yes, sir.

Q And you got up at two o'clock in the morning? A Two o'clock in the morning.

10 Q What did you get up so early for? A My wife was awfully sick and I wanted to get to New York and meet the doctor about nine or ten o'clock and get home the same day.

Q What doctor were you going to see in New York? A Dr. Taylor.

Q At the hospital? A Yes, he is the one.

Q Did anybody get up to go with you? A My boy.

Q That is Mario? A Yes, sir.

Q The seventeen-year-old boy? A Yes, sir.

20 Q Well, how did you go, by train or by automobile? A I go by automobile.

Q Whose automobile? A My automobile.

Q What kind of an automobile was it? A It was a Studebaker special six.

Q Open or closed? A Open.

Q A roadster or a touring car? A A roadster.

Q How many seats? A Two.

30 Q Where did you buy this car? A I bought it at the Studebaker garage, from a man named Charles Brower.

Q Is that the man who was just on the witness stand, Charles Brower? A Yes, sir.

Q When did you get it, when was it delivered to you? A Well, I bought the car on the 25th of June and I got the car five or six days later.

Q Then you got it about the first of July? A About the first or second of July.

Dominick Martin, direct.

Q What did you pay for it? A I paid \$1,370 and for the bumper and some extras, \$20.

Q Making \$1,390? A Yes, sir.

Q Was it new when you bought it? A Yes, sir.

Q It was not second hand? A No, sir.

Q Was that about July 1, 1923? A Yes, 10
sir.

Q So that you had this car about a month when the accident happened? A Yes, sir.

Q Had you driven it during that month yourself? A Yes.

Q Did you drive it on that day? A Yes, I drove it.

Q Did you have another car before that? A Yes, I had a sedan before.

Q How long have you been driving an automobile? A About five years. 20

Q Who drove the car from Schenectady on July 31st down to where the accident happened, who was driving? A From Schenectady to the place where the accident happened?

Q Yes. A Me.

Q Does your son drive it? A No, he cannot drive it.

Q Did he ever drive it? 30

Mr. Studer: I object as immaterial to what the son did.

The Court: Yes, I sustain the objection, he was not driving it that day.

Q How far was it from your home in Schenectady down to the point where the accident happened? A Well, I figure—I didn't measure the road, but I figure around fifty-seven or fifty-eight miles. 40

Dominick Martin, direct.

Q What time did you start out? A Two o'clock in the morning.

Q And about what time did the accident happen? A Well, around five; five or ten minutes after five, something like that.

Q Shortly after five o'clock? A Yes, sir.

10 Q Now then, as you were going along the road, what road were you on just before the accident happened? A A macadam road.

Q Was that the Albany Post Road? A Well, Albany, New York.

Q Is it what is known as the Post Road? A I do not understand the Post Road, what it means.

Q You do not know the name of the road? A No, sir.

20 Q It is made of macadam, you say? A Yes, sir.

Q About how wide a road is it? A Well, I didn't measure it but it looked to me pretty nearly thirty feet.

Q Twenty-eight or thirty feet? A Yes, sir.

Q That is, the macadam? A Yes.

30 Q Then on the edges, the side of the macadam, there is a dirt shoulder? A Well, the macadam in the middle and at the side you have a place maybe three or four feet, pretty solid road.

Q Three or four feet on each side? A Yes, but not macadam.

Q A dirt road? A A dry road, I don't know what you call it.

40 Q Now, how fast were you going just before the accident, for a couple of miles let's say, about how fast? A Well, I figure about twenty-five miles an hour.

Dominick Martin, direct.

Q And where were you driving, on the center of the road or on the side? A Well, I was on the center of the road.

Q How was it, light or dark or how? A It was between light and dark but it was more light than dark.

Q You say it was between light and dark? A 10
Yes, sir.

Q Was it raining or what kind of weather was it? A Oh, it was dry.

Q Clear? A Clear, yes.

Q Well, now, just tell the jury in your own words just how the accident happened, will you? A Yes.

Q Speak out loud and slowly so that they can understand you. A I was driving about twenty-five miles an hour. I started from Schenectady about two o'clock. Passed Hudson, about eleven miles down, I was going about twenty-five miles an hour. 20

Q You say you passed Hudson? A Passed Hudson, yes.

Q How far past Hudson were you? A About eleven miles, and I was in the middle of the road and I saw a car coming in front of me seventy or one hundred feet away, and I started to give him room to pass. He got past and as soon as he passed me, half a minute or so, I tried to get to the middle of the road again, then I heard a big noise in the back, at the left rear wheel, and as soon as I turned my head to see it, the car went down, then I tried to save myself and I put on the brakes. After I put on the brakes the car slid over like that, and after one turn it skipped over and went toward the fence. 30

Q Did your car strike this other car at all? A No, sir. 40

Dominick Martin, direct.

Q Was that car gone when your accident happened? A Yes, the car is gone.

Q What was the first thing you knew that anything was wrong? A Well, the first thing I knew, I figured right away there was something wrong with the wheel in the back because I heard a big crack like of wood, a big noise, and I started to look at it but right away as soon as I turned my head the car went down.

10

Q Which side? A On the left side, so as soon as I see that I put on the brakes right away to try to save myself, but the car is turned around and skipped over, and went toward the fence to the right.

Q You say your car turned around? A Yes, sir.

Q Facing toward Hudson? A Yes, sir.

20

Q Then it turned over? A Yes, sir.

Q You said it was the rear wheel? A The rear wheel, yes.

Q On the left side or the right side? A The left side, yes.

Q And you say it went down, I understood you to say? A Yes.

Q How do you know it went down? A Well, you can feel it when your car is going down on one side, if you are in an automobile and the car goes down on one side, right away you feel it.

30

Q Did you hear anything? A I heard this big noise.

Q What kind of a noise was it? A A noise something like when you break something, wood, like that.

Q Like breaking wood? A Yes, sir.

Q Now, which brake did you apply? A Well, I put the brake on.

40

Dominick Martin, direct.

Q Your foot brake? A Yes, sir.

Q When you put the foot brake on what happened? A What happened? At the same time it turned over and tipped to the right side.

Q That is to the right side of the road, it turned over to your right side of the road? A Yes, sir.

Q What happened to you? A Well, what happened to me? When I got out— 10

Mr. Markley: I withdraw that for a moment.

Q Had you struck anything before your left side fell down? A Nothing.

Q Had you struck any bump in the road? A Nothing at all.

Q What kind of a pavement was it, good pavement or bad pavement? A It was smooth like this court here, it was a macadam road. 20

Q What were you doing when the accident happened, were you on your right side or in the center of the road? A I was on the right side, but I got up—when this thing happened I was in the center of the road.

Q Had you pulled back to the center of the road? A Yes, sir.

Q Were you on a curve? A No, I was just in the center of the road when that thing happened. 30

Q All right, is there a curve in the road near that place where this happened? A Just a little curve.

Q Were you up to the curve when it happened? A Yes, sir.

Q Just up to the curve or where? A Well, you know starting in the curve and I get in to the curve. 40

Dominick Martin, direct.

Q Just at the curve? A Yes, sir.

Q Is it level there or does it slope down a little? A Slopes down a little.

Q Well, now then, you say your car turned around and turned over; what happened to you then? A What happened to me then? When
10 I lost my consciousness, and when I got up from the ground I looked for my boy and I seen him—

Q That is when you came back to consciousness again where were you, in the car or on the ground? A I was on the ground.

Q What was your condition? A Well, my condition, I cannot see anything that time but after that—

Q Did you have any injuries, were you hurt? A Oh, sure.

20 Q What was the matter with you? A I had my tooth broken, I had a couple of big cuts in my lip here and here.

Q Your finger? A Yes, I had this finger broken.

Q Your thumb? A Yes.

Q On your right hand? A Yes, sir.

Q Were you bleeding? A Sure, I was bleeding.

30 Q And did you bleed much or just a little bit or how? A Well, I cannot say very well, but I was bleeding.

Q Well now, where was your boy? A Well, my boy, as soon as I got up from the ground, I see him get up at the same time and come in front of me, trying to get to me. When we reached together, I see my boy has one eye off, about two inches off.

40 Q That is, his eye was out of his head? A Yes, sir.

Dominick Martin, direct.

Q Anything the matter with his head? A He had a big hole here.

Q What did you do with him? A Well, I tried to take him and push him to one side and I put him on the blanket there.

Q Your boy walked toward you with his eye out and a hole in his head? A Yes, I grabbed him and took him this way, put him on the blanket and laid him down and rushed for some help. 10

Q Did you take him to the hospital? A Sure.

Q At Hudson? A Yes.

Q Did he die there? A He died as soon as he reached there.

Mr. Markley: I believe there is no dispute that he died as a result of the injuries that he received in this accident? 20

Mr. Studer: No.

Q Now, when you went over to your car,— I think you said you got a blanket to put on your boy? A Yes, sir.

Q Where was this blanket? A It was in the car yet.

Q Was it still in the car after the accident? A Yes, sir. 30

Q Did you go over to your car to get it? A The car and the boy, we were pretty nearly to the car. I grabbed the blanket and I laid him down on the blanket in the field.

Q All right, did you see the rear wheel on your car then? A Yes, sir.

Q The left rear wheel? A The left, yes.

Q What did you see was the matter with it then? A Well, I see the rear wheel, there is 40

Dominick Martin, direct.

nothing to it, all the spokes was smashed, and I see what they call the felly.

Q The metal felly? A Yes, the felly, the rim was in the middle of the road and I see the tire was in the field, the tire and the rim.

10 Q That is the rim and the tire were in the field? A The rim and the tire were in the field.

Q Was the tire busted? A No, sir.

Q Was there air still in the tire? A Yes, there was air and everything.

Q Anything the matter with the felly, the steel felly, was that damaged? A No, there was no damage but there was no spokes.

Q The spokes were out of it but—

20 Mr. Studer: Don't lead him, I object.
The Court: Don't lead.

A There was nothing the matter with the felly.

Q Nothing the matter with the felly? A It was all right, it was in the road, but there were no spokes in it.

Q Were there any spokes in the felly? A No.

30 Q Is this what you mean by the metal felly? A Yes, sir.

Q This is the metal felly that was on your car? A Yes, sir.

Q And where do the spokes fit in? A Here (indicating).

Q In these holes? A Yes, sir.

40 Q Was there anything the matter with this metal felly, was it broken or anything? A That you can see, it is not broken.

Dominick Martin, direct.

The Court: Is this the same felly?

The Witness: Yes, sir.

Recess until two P. M.

Two o'clock, P. M. 10

DOMINICK MARTIN, resumed.

Direct examination (continued) by Mr. Markley.

Q This is the same metal felly which was on the left rear wheel of your car? A Yes, sir.

Q And that was the car you purchased from Mr. Brower? A Yes, sir.

Q In June of 1923? A June 25, 1923. 20

Q Is that the only Studebaker roadster you had at the time?

Mr. Studer: I object.

The Court: I don't see what difference it makes how many he had.

Q Well, is this a part of that rear wheel? A Yes, sir.

Mr. Studer: Have you offered the felly? 30

Mr. Markley: I offer the felly now.

(Marked P. 5.)

Mr. Markley: I also offer the hub and brake drum and some shattered pieces of wood.

(Marked Exhibit P. 6.)

Mr. Markley: Is it agreed that they are the spokes?

Mr. Studer: Parts of the spokes. 40

Dominick Martin, direct.

Q Now, then, did you personally get any treatment, medical treatment or assistance, at the Hudson Hospital? A Yes, with a farmer.

Q How did you and your son— A Why, I hired a farmer to take me and my son to the hospital; he had a Ford, and he took me and my
10 boy to the hospital.

Q How did he take you there? A With a Ford.

Q With a Ford car? A Yes, sir.

Q When you went to the hospital what did they do, if anything, for you? A Well, in the first place the doctor came to me and says—

Mr. Studer: One minute.

Q Not what he said, what did he do to you?
20 A Well, he took three stitches.

Q Where? A One here and two here.

Q One in your lip? A Yes, sir.

Q And two in your chin? A Yes, sir.

Q Did you have any pain? A Sure, I had.

Q Where? A Here; I had pain here from the steering wheel.

Q You are now pointing to your left side?
30 A Yes, sir.

Q How long did that pain you? A Well, it pained me—it must have been for four or five weeks after.

Q What about your thumb; did they do anything for your thumb? A I had this thumb broken; I cannot lift it up at all.

Q Can you move it? A I can move it down, but I cannot move it up.

Q Can you bend your thumb this way? A
40 I can bend it, but I cannot bend it back.

Dominick Martin, direct.

Q Did you have any doctor after you left the hospital? A Yes, I had a doctor in Schenectady.

Q At the hospital, or did you go home? A I went home.

Q Now then, did you see a doctor at Schenectady? A Yes, in Schenectady.

Q What doctor? A Dr. Verratti. 10

Q What did he do for you? A He gave me treatment, he put hot water here and a pack and liniment.

Q Were you confined in bed or were you up and around? A I was in bed for a couple of days.

Q Then you were up and around? A Up and around, yes.

Q How much was your doctor's bill? A Well, I paid him \$50. 20

Q Did you have any other expenses? A Well, I had in Hudson.

Q In the hospital; who took care of that? A The undertaker.

Q Did you have any funeral expenses? A Yes, I had funeral expenses.

Q How much did they amount to?

Mr. Studer: I object to that. 30

The Court: As it appears now under the New York statute, he may recover for the funeral expenses; I must let that go in.

Mr. Studer: Exception.

Q How much did your funeral expenses amount to? A \$492.

Q After you left the hospital did you go back to where the accident happened? A Yes, sir. 40

Dominick Martin, direct.

Q Did you have anybody go there with you?

A I had the coroner and a fellow named Benny Lupi.

Q Benny Lupi, is he here? A Yes, sir.

Q Did you see your car there when you went back? A Yes, sir.

10 Q Where was the car when you went back?

Mr. Studer: I object unless it was where he left it; it is immaterial as to where it was at that time.

The Court: I think that point is well taken.

Mr. Markley: I won't press it.

20 Q Was the car in the same place when you went back there from the hospital as it was when you left to go to the hospital? A Yes, in the same place.

Q At what time of day did you go back to the place of the accident? A Well, I cannot say the exact time it was, but it was around nine o'clock.

Q Nine o'clock? A Yes, sir.

Q The morning or the evening? A The morning; it was around nine o'clock.

30 Q Where was your car then? A My car was between the field and the fence.

Q What kind of a fence was that, do you know? A Well, it was one of these wire fences, a farmer's fence that they use in the country.

Q How high? A I think it was about three and a half or four feet high, something like that.

40 Q And where was your car with respect to that fence? A Well, it was inside, on the fence.

Dominick Martin, direct.

Q Right on the fence? A Yes, sir.

Q Now, then, Mario, your son who was killed, you said he was seventeen years old, I believe?

A Yes.

Q Did he go to school? A Yes.

Q What school did he go to? A He goes to high school. 10

Q Schenectady High School? A Yes, sir.

Q How long had he been going to high school? A Pretty nearly four years—that was the last three months and he would have graduated.

Q What did he do, if anything; did he do any work? A Well, he helped me around the house, anything I got to do.

Q Did he help you in your business at all? A Yes, he did. 20

Q I think you said you are in the real estate business? A Yes; he collected rents for me and made out receipts for me, because I cannot write English.

Q A little louder, please. A He done everything for me, I cannot write English; he done all that kind of work.

Q He helped you collect rents? A Yes, and made receipts. 30

Q Made out receipts? A Yes; he helped me when I was building my garage, when I got to put up a fence he was helping me all the time.

Q This accident happened in July; was he going to school in July? A No, sir.

Q Was that vacation time? A Yes, sir.

Q Did he make any money in any other way besides helping you in your business? A He did; he was a musician; he had been getting lessons since he was seven years old. 40

Dominick Martin, direct.

Q What did he play? A The piano and violin.

Q How long had he been taking lessons? A About ten years.

Q What kind of lessons did he take? A Violin and piano.

10 Q Who was the professor, do you know?

Mr. Studor: I object, as immaterial.

The Court: I think he may show what the boy was, all about him; I don't suppose it makes very much difference whom he took lessons from.

20 Mr. Markley: Except that it is corroborative of the fact that he was taking lessons, and how often he took them would show what he could do. It is corroborative of the point that he was a musician.

The Court: I will allow the question.

Mr. Studer: Exception.

Q Who was the professor? A Professor Concord, from Schenectady.

Q How many lessons did he take a week?

A Two.

30 Q Did you pay for those lessons? A Yes, sir.

Q How much were they?

Mr. Studer: I object.

The Court: Why?

Mr. Studer: It is immaterial what he paid for lessons for the boy, I think.

The Court: They would be a matter of expense to be deducted. Proceed.

40

Dominick Martin, cross.

Q How much did you pay for those lessons?

A First two years I paid one dollar a lesson, and after two years he charged me \$2.

Q Two dollars a lesson? A Yes, sir.

Q And how many lessons did you son take a week? A Two a week.

Q Now, then, you say he made some money playing as a musician? A Yes, sir. 10

Q How much did he make? A Well, sometimes he don't make more than \$10 a week, sometimes \$15; it depends upon what there was he had in a week.

Q How much did he average, do you know? A Well, he averaged about \$13 to \$15, anyway.

Q A week? A Yes, sir.

Q What did he do with the money? A Well, he give his money to me. 20

Q After the accident, did you see the metal rim on which the rubber tire was? A Yes, there was the rubber tire and the rim all together.

Q Was the rubber tire blown out? A No, sir.

Q Was it still inflated? Was there air still in the tire? A The air was still there. 30

Mr. Markley: Cross examine.

Cross examination by Mr. Studer.

Q Where is the rim; you did not bring that here, too, did you? A The rim on the car; they used the rim on the car.

Q Will you answer the question; where is the rim? You have not got the rim here today, have you? 40

Dominick Martin, cross.

Mr. Markley: He said it was on the car.

A The rim on the car.

Q Did you bring it here today? A No, I got it on the car.

10 Q You put it back on the car? A Yes, it was put back on the car because it was not damaged at all, that rim.

Q No damage to the rim? A No, sir.

Q What is your right name? A My name?

Q Yes. A My right name?

Q It is not Martin, is it? A Dominick Martini, but they call me Martin.

Q Your name is not Martin, it is Martino? A Martini.

Q Where were you born, in Italy? A In Italy, yes, sir.

20 Q How long have you been in the real estate business? A I have been in the real estate business about six years, about seven years.

Q What kind of business do you carry on? A Buying houses and selling.

Q In Schenectady? A Schenectady, yes, sir.

Q Where is your office? A My office? In my own home.

30 Q Where is your home? A 816 Concord street.

Q Have you any other business? A No, sir.

Q Now then, what day did this accident happen? A It was the 31st of July.

Q The 31st of July? A Yes, sir.

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

Q You are sure it was not August 2nd? A No, it was the 31st of July.

40 Q Have you any way to remember that, to fix the date? A I remember it was the 31st of July.

Dominick Martin, cross.

Q Is your recollection about that as clear as it is on the other facts on this case? A Well, I did not write anything down, but it happened to me, and I know it.

Q What time did you leave your home? A What time? Two o'clock.

Q How do you know it was two o'clock? A 10
Because I see the watch.

Q What watch? A I see the watch in my home when I leave.

Q You looked at the clock? A Yes, sir.

Q Was that standard time or daylight time? A Well, was the time of Schenectady; what Schenectady use at that time, I don't know.

Q Don't you know what it was; don't you know whether Schenectady went on daylight saving time or standard time? A Well, they got 20
one hour ahead.

Q Then it was two o'clock daylight saving time? A Yes, sir.

Q Is that right? A Was two o'clock and one hour more, because one hour—

Q Was it three o'clock daylight saving time that you left home? A Yes.

Q Then your clock said three o'clock, didn't it? A No, two o'clock. 30

Q Then did you keep your watch on daylight saving time or standard time? A I kept my watch like anybody else in Schenectady.

Q Well, how did anybody else in Schenectady keep it, daylight or standard time? A I don't know; I could not tell you that.

Q How far was it from Schenectady to Livingston, where this accident happened? A Well, it looked to me to be about fifty or fifty-seven miles. 40

Dominick Martin, cross.

Q Fifty-seven or fifty-eight miles? A Something like that.

Q Did you have to pass through any towns on the way? A I passed Hudson and Albany.

Q Did you go through Albany? A Yes, I passed Albany first.

10 Q You went through Albany? A Yes, sir.

Q How far was it from Albany to Hudson? A About thirty miles.

Q And from Schenectady to Albany, about thirty? A About sixteen.

Q Then eleven miles from Hudson to Livingston, where this accident happened? A Yes, sir.

Q Had you any appointment in New York? A Well, I didn't have any appointment, but I go to see this Dr. Taylor.

20 Q You just got up at two o'clock in the morning and started out to see Dr. Taylor? A Yes, sir.

Q Did you take your wife with you, too? A Why, I cannot take my wife; she is lying in bed.

Mr. Studer: I move to strike that out.

Q Did you take your wife with you? A No.

Q You took your son? A Yes, my boy.

30 Q You were just going to go to New York as fast as you could to see Dr. Taylor, is that it?

A I didn't have to go fast; I wanted to reach there about nine o'clock to see Dr. Taylor and come back.

Q To get there at nine o'clock? A Yes, sir.

Q How far is it from Schenectady to New York? A I don't know; I think it is about 160 miles.

40 Q And you had 110 miles to go, is that right? A Well, 110 miles or 115 miles; something like that.

Dominick Martin, cross.

Q What is his first name, Dr. Taylor? A W. S. Taylor, I think it is; we can find that out.

Q Had he ever treated your wife; he had never been up there, had he? A Mr. Taylor?

Q Yes; Dr. Taylor. A Well, he was in the hospital when I went down to get my wife back, and he told me—

Q Never mind what he told you; had he ever treated your wife before? A Yes. 10

Q How long had he treated her? A For three or four months.

Q What were you going to do, just go down to talk to him about your wife's condition? A She was at the hospital.

Q Where was your wife? Was she at the hospital? A At that time she was home, but before that she was in the hospital, about a month or two months before. 20

Q And he had treated her at the hospital? A Yes, sir.

Q How long? A About three or four months.

Q Then you took her back to Schenectady? A Took her back to Schenectady and brought her back to New York again.

Q Then back to Schenectady again? A Then back to Schenectady.

Q She was there when you started that day to go to New York? A She was home when this thing happened. 30

Q And you were going down to talk to this Dr. Taylor in New York? A Yes, sir.

Q Had you ever telephoned to him? A No, I never did.

Q Did you ever telephone from Schenectady to New York? A We have a telephone.

Q You can get into communication with a man by telephone quicker than you can by com- 40

Dominick Martin, cross.

ing by automobile from Schenectady to New York? A Yes.

Q And your purpose, you say, was to get into immediate communication with Dr. Taylor, wasn't it? A Yes, sir.

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

10 Q All right. When had you bought this automobile? A The 25th of June, 1923.

Q And you had not gotten delivery, you say, for several days after? A I went to take the automobile about the 4th or the 2nd of July.

Q The 4th or the 2nd of July? A Yes, sir.

Q Or the 1st or the 2nd of July? A Yes, sir.

Q Now, then, before you had delivery of the car, before you took delivery of the car, you had
20 the rear baggage compartment of that particular automobile lowered a few inches, didn't you? A What?

Q You had the rear baggage compartment of your automobile lowered at Mr. Brower's garage before you took delivery of the car, didn't you? A I tell him to fix the car, you know—

Q And that is what you told him to do, to lower the rear baggage compartment, didn't you?

30 A I told him to put on a bumper—

Q What did you tell him about lowering the baggage compartment? A Put on a windshield—

Q Never mind about the windshield; what did you tell him about the rear baggage compartment? Did you tell him to lower it or didn't you? A I told him to lower it because, you know, it was too small.

Q You wanted a deeper baggage compartment? A Not very deep, but I wanted it a little
40 more deeper, yes.

Dominick Martin, cross.

Q How deep did you want it? A About two inches more.

Q What were you going to put in there? A Because sometimes you got a tire to bring home, so I could put it in there, and everything else.

Q So that you wanted to put more things in the back, is that it? A Put more things into the back, and you got space. 10

Q You bought this car, and before you even used it you had the back compartment lowered, made deeper, so that you could put things in the back, for which you wanted to buy a car— A Yes.

Q —and use it? A Yes.

Q You had some heavy sedan springs put on the car, too, before you took delivery, didn't you? A Well, what I want to have, I want to have good springs on the car. 20

Q So that you could carry a heavy load in the back of the car? A You can carry anything you want when you got a strong car.

Q What? A You can carry anything you want when you got a strong car.

Q So that when you have good heavy sedan springs, then you can carry a good, heavy load? A Yes.

Q How far had you driven that automobile that month you had it? A About 3,000 miles. 30

Q It might have been more, mightn't it? A Well, it might have been more or less, but about 3,000 miles.

Q I show you a paper and ask you if that is your signature? A Yes, sir.

Q That is the signature of Dominick Martin, isn't it? A Yes, sir.

Q Do you remember answering some questions put to you in writing by me; do you re- 40

Dominick Martin, cross.

member going in to see Mr. Fullerton in his office and going over these papers? A Yes, sir.

Q And answering these questions, these interrogatories, and swearing to them before A. W. Pitkin, a notary public, on July 28, 1924; you remember that? A Yes.

10 Q And you swore to this, didn't you: "Dominick Martin, being duly sworn, says he is the plaintiff, read the answers to the interrogatories and knows them to be true," and you signed your name, didn't you? A Yes, sir.

Q And you remember being asked this question in those questions: "How far had you driven the automobile prior to the accident?" You remember that? A Yes, sir.

20 Q And you remember you said, "The automobile had only been driven between four and five thousand miles," don't you? A Three or four thousand miles.

Q You don't know whether you went three or four thousand miles or five thousand miles or more than that, do you? A Well, I know I went about 3,000 miles.

30 Q Why did you swear then that you went between four and five thousand miles last August, or last July? A Where is it?

Q This is your signature, isn't it, Dominick Martin? A To you?

Q Do you remember being called there before Mr. Pitkin, a notary public up in Schenectady, last July 28, 1924? A I don't know; I don't remember that.

Q You don't remember whether you swore or not? A Mr. Pitkin was home, but I don't remember that.

40 Q Who is Mr. Pitkin? A The lawyer.

Dominick Martin, cross.

Q And you went to Mr. Pitkin's office? A Maybe he came to my home.

Q Maybe he came to you and maybe you went to him? A Yes, sir.

Q But the two of you got together, didn't you? A Yes, I think so.

Q And you swore to something? A Well, I think so. 10

Q Now, which is true; did you go between three and four thousand miles or between four and five thousand miles? A It is true between three and four thousand miles, not more than that.

Q From the 4th of July to the 31st of July? A Yes, sir.

Q In the real estate business, do you cover all this ground in your automobile? A Well, I went to New York about four or five times. 20

Q You use this car in your business—you just used the car in your business? A I used the car to go to my wife in the hospital; I went to see my wife in the hospital and I came back; I go to see my wife two times a week sometimes.

Q 150 miles to New York? A 160 miles.

Q Now, then, what time of day was it that this accident happened? A Well, it was around five o'clock. 30

Q You are sure of that, daylight savings or standard? A Well, it was the same time I had on my watch in the automobile; it was the same time in the automobile watch.

Q You had a watch in the automobile? A Yes.

Q A clock? A Yes, sir.

Q You had your lights on? A Yes.

Q And I suppose you were driving along the road looking down at your watch and your 40

Dominick Martin, cross.

speedometer, were you? A No, I never used the light to see the speedometer.

Q Then you only used the light to tell the time by the clock, is that it? A Sometimes if I stop, you know, I want to see what time it is, and I light the light and see it.

10 Q Did you look at that clock just before this accident? A No, I looked after.

Q And you did not look at your speedometer at all, did you? A What?

Q You did not look at your speedometer at all, did you? A Well, I didn't look at the speedometer, no.

Q Now, you said you had been traveling at the rate of twenty-five miles an hour; is that right? A Yes, sir.

20 Q For at least an hour or maybe two hours before? A Yes.

Q For one or two hours before you had been driving at twenty-five miles an hour? A Yes, sir.

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

Q Were you familiar with this road? A What?

30 Q Did you know the road? A I don't understand.

Q Had you ever been over it before? A I knew the road, sure.

Q And you knew it was a down grade, didn't you? A Well, a little hill.

Q And it was a down grade, wasn't it? A I do not understand.

Q Don't you know what "down" means? A Yes.

40 Q Well, wasn't it down grade? A It was not very steep.

Dominick Martin, cross.

Q But it was a down grade? A Yes.

Q And there was a curve to the left, wasn't there? A Yes, a little curve.

Q Now, then, you said something about putting on your brakes; where did you put on your brakes? A Where?

Q Do you know where Stickles farm is? A I don't know where any farm is, but I can see by the picture; I recognize everything. 10

Q I show you a picture and ask you if that represents the condition as it was at that time; do you recognize that? A I recognize the condition.

Q Now, then, is it as it was at the time of the accident—do you recognize that?

Mr. Studer: Can we agree on this, Mr. Markley? 20

Mr. Markley: I will agree to your using it. You may put it in evidence now, if you wish, and save time.

Mr. Studer: Then I will offer these in evidence.

(Pictures marked in evidence Exhibits D. 1, 2, 3, 4 and 5.)

Q Now, Mr. Martin, there was nothing the matter with your brakes, was there; your brakes were all right, weren't they? A Well— 30

Q Well, were they? A Those brakes, I cannot say if they were all right or not, because something happened to them.

Q You had been to Brower's garage the day before, had you not? A A day or two before; I don't remember pretty good, but I was there.

Q And Ralph Perletti checked over your car? A I told him to see the car. 40

Dominick Martin, cross.

Q Never mind what you told him; he did look over your car? A He looked over the car and he told me—

Q Never mind what he told you; he had done some work on your car, hadn't he? A No work at all.

10 Q Didn't Ralph Perletti do any work on your car? A No work at all.

Q The day before that happened? A He don't have to work, no, sir.

Q Perletti examined the wheels to see if they were true, didn't he? A He examined the brakes.

Q And the brakes? A And he said everything was all right.

20 Q All right. Now, then, within how short a space could you stop your automobile under those conditions, going at thirty-five miles an hour? A Well, it might require ten or fifteen feet.

Q How far away from you was this other automobile when you first saw it? A Well, I was about eighty to one hundred feet away.

Q It was coming north? A He was coming in front of me.

30 Q You were going in a southerly direction, weren't you? A I go to New York.

Q You were going in a southerly direction? A I don't know myself, but I can say I go to New York, and that car came in front of me going toward Hudson.

Mr. Studer: Can we agree on this direction? It is a fact.

Mr. Markley: Yes, of course.

40 Q You were going south and this car was going north.

Dominick Martin, cross.

Mr. Markley: That is right.

Q And you saw him about one hundred feet away? A Yes, sir.

Q I show you a photograph which has been marked Exhibit D. 1 and ask you if you can show on there where you were when you first saw this other automobile? A I was over here. 10

Q Put a "P" there in ink, where you first saw the automobile. A Maybe around here.

Q That is, you were on the road under that letter "P"? A Yes.

Mr. Markley: This photograph, for the benefit of the Court and the jury, D. 1, is looking northerly, showing the ditch. That is the direction from which Mr. Martin was coming. 20

Mr. Studer: That is right.

Q Can you indicate on there where you automobile was when it came to a stop finally at the fence? A My automobile was around here.

Q Put an "X" there. A All right.

Q Is it not a fact that two fence posts were knocked down by the impact? A A couple of posts was knocked down.

Q Yes? A Yes, two posts was knocked down. 30

Q Do you know how far it is from this fence to the road, that is, to the side, the shoulder—put a mark on this photograph, an "X," at the west edge of the shoulder. A All right.

Q Do you know how far that is? A About twenty feet.

Q Now, then, what part of your automobile was off the road? A Well, that automobile was break here. 40

Dominick Martin, cross.

Q Mark that "P. 1." That is where you were when you put the brakes on? A Yes.

Q Now, then, you did not stop until you got to this point "X" on Exhibit D. 1; is that right?

A Explain to me better; I cannot speak very good English.

10 Q "P. 1," you say, is where you first applied your brakes; is that right? A I heard the noise and I applied the brakes and the car turned over, twisted over, and went down that way.

Q You have marked on here a point "P" where you were when you first saw the other automobile? A Yes.

Q Were there any lights on the other automobile? A No.

Q He was coming fast, wasn't he? A No, he did not come very fast.

20 Q Did he cause you any confusion at all? A No.

Q How far past you had he gone when you heard this noise on your wheel? A As soon as he was passed about ten or fifteen second, maybe, I heard the noise.

Q Then you went from the point "P. 1" to this point "X"? A Yes.

30 Q And you were only going at the rate of twenty-five miles an hour, you say? A Yes, sir.

Q Were you going slower than that, after the man passed you? A I think I did, a little slower.

Q Do you think you got down to twenty miles an hour? A What?

Q Do you think you decreased you speed when this man passed you? A No.

Q Did you increase it? A No.

40 Q Just stayed going twenty-five miles an hour? A It might have been less.

Dominick Martin, cross.

Q Then at what speed were you going at the time you applied your brakes? A Because, you know when—

Q No, no. What speed were you going at when you applied your brakes, about twenty miles an hour? A When I applied the brakes?

Q Yes. A Maybe twenty. 10

Q Maybe less? A No, twenty or twenty-five.

Q Now I show you another photograph, which is Exhibit D. 2. A Yes.

Q D. 2 is looking westerly, the camera on the westerly edge of the macadam. That shows, does it not, the fence over which your car was straddling when it came to a stop? A The road?

Q No, off the road, on that photograph—this is the edge of the road here and the left lower corner is the edge of the road and this is the fence on the westerly side of the road? A I cannot see anything about this photograph. 20

Q We will show you the other three; then you can find it for yourself. I show you Exhibit D. 3; that is looking southerly on the road, the camera in the center of the road. Do you recognize that? A Yes, sir. 30

Q That indicates the direction in which you were going? A Yes, sir.

Q You see down here in the lower foreground a large United States tire sign, do you not? A Yes, sir.

Q And farther, to the right of that, there is another sign by a tree; do you see that? A Yes, sir.

Q Then there is a telegraph post; do you see that? A Yes, sir. 40

Dominick Martin, cross.

Q Now, then, your car came to a stop by the corner of the telegraph pole, did it not? A I didn't touch the telegraph pole.

Q Between the two? A Yes, sir.

10 Q This picture D. 3 shows the Luckey-Platt Company sign against the tree on the side of the road where your car came to a stop? A I cannot figure that, but I recognize this.

Q And Exhibit D. 4 shows the camera ten paces southerly from the road looking to the west. This is the camera there, showing the right hand of the road where your car came to a stop? A Yes.

Q Will you indicate on Exhibit D. 4 with an "X" where your car was when it came to a stop? A The car, I think, was right here.

20 Q Now, then, somebody came and helped you take your son to the Hudson Hospital; is that so? A Yes, sir.

Q Drove you over in a Ford? A Yes, sir.

Q What time did you get to the hospital, do you know? A Well, we got to the Hudson Hospital at six o'clock.

Q And how long were you at the hospital? A How long was I at the hospital?

Q Yes. A About two hours.

30 Q You had a talk there, you say, with the coroner, Mr. Finley? A Yes, sir.

Mr. Studer: Is Mr. Finley in court? Stand up, please.

Q Is that the gentleman? A Yes, sir.

Q And he went back to the scene of the accident with you? A Yes, he took me there.

40 Q He took a long statement from you as to what had happened; you told him what hap-

Dominick Martin, cross.

pened, didn't you? A No, he asked me what happened.

Q He asked you questions and you gave him answers to those questions, didn't you? A Yes, sir.

Q Now, then, how long did you stay at the scene of the accident after you got back with the coroner? A Maybe we were there about ten minutes. 10

Q Had you left some man who lived in the neighborhood in charge of your things? A No; I told the farmer there to take care of them.

Q You told the farmer to take care of your things, to keep them intact, as they were? A Yes.

Q Do you know who that farmer was? A I cannot remember who the farmer was; there were three or four there. 20

Q They came right down to the accident after it happened, didn't they? A I see only one.

Q Then they came later, the other men? A Maybe they were there later; I don't know.

Q What did you have with you in your automobile, anything else? A Nothing.

Q You had a revolver, didn't you? A Yes, sir.

Q What did you have that for? A For my protection. 30

Q Did you have a permit to protect yourself, to carry the revolver? A Yes, sir.

Q Have you got it with you? A Yes, sir.

Q Have you got the permit with you that you had that time? A Sure; I got it a long time.

Q When did you get it? A The permit?

Q Yes. A I got it every year.

Q Well, when did you get it for 1923? A I got it some part in November. 40

Dominick Martin, cross.

Q In November, 1923? A Yes, sir.

Q Is that right? A Yes, sir.

Q This accident, you say, happened on July 31, 1923? A Well, I renewed the license.

Q Did you have a license to carry a revolver?

A I got a license and I had a license.

10 Q One minute. Did you have a license to carry a revolver on July 31, 1923? A Yes, sir.

Q Have you got it with you? A I got it with me?

Q The one you had for carrying the revolver at the time? A I had one, but every time when you change your permit you give the old one in and get a new one—

20 Q Then, did you show your license to the coroner at the time? A I don't know if I showed it to him or not, but he asked me about the gun and I said I had a right to have a gun; I have a license.

Q Did you show him the license then? A I don't remember.

Q You don't remember? A No.

Q Do you need a license in the real estate business to carry a gun? A They gave it to me.

30 Q In Schenectady? A Yes, sir.

Q Were you going to send Mario to college? A Yes.

Q What college? A I don't know; some musical institution.

Q Some college of music? A Yes, sir.

Q Did Mario play in any band? A He played a piano in a band.

40 Q In an orchestra or just around little social entertainments? A They get together and go to play at private parties.

Dominick Martin, cross.

Q Mario and one or two others? A A couple of others.

Q Did the doctor send you a bill for treating you? A Treating me?

Q Yes. Did the doctor send you a bill for treating you? A Yes.

Q The doctor from Schenectady? A Yes. 10

Q What is his name? A Bertola.

Q Have you that bill with you? A You mean with me?

Q Yes. A No, I have not.

Q You knew this suit was pending and you came down here to testify, didn't you? A Yes.

Q And you knew you had a claim for personal injuries, didn't you? A Yes.

Q And you knew you claimed you had expenses because of those personal injuries? A Yes, sir. 20

Q Yet you did not bring your bill from the doctor to show he treated you? A I forgot about it.

Q You forgot about it, did you? A Yes.

Q And you did not bring the doctor down? A I don't want to go to that big expense.

Q But you brought other men from Schenectady, but you did not bring the doctor? A Well, the doctor don't go— 30

Q Yes or no? A No.

Q Now, then, you went back to the scene of the accident on or about August 11th, didn't you? A What?

Q You went back to the scene of the accident about August 11th, didn't you? A Yes.

Q And you rode back from Schenectady in another automobile? A Yes.

Q And after that you went right on with your business, whatever it was, did you? A I 40

Dominick Martin, re-direct.

did not have no business; I was a couple of days in bed.

Q After August 11th? A After the 11th?

Q Yes. A I don't work at all.

Q Until when? A For about three or four weeks.

10 Q Was the doctor treating you all this time?

A Treating me once a day.

Q Once a day? A Yes.

Mr. Studer: That is all.

Re-direct examination by Mr. Markley.

Q How long were you going to send your son Mario to college or the musical institution? A
20 Maybe another year.

Q You say you have a permit to carry a revolver now? A Yes.

Q Have you it with you? A Yes.

Mr. Studer: I object as immaterial, what he has now.

The Court: Yes, it is immaterial.

Mr. Markley: It is just leading up. Let
30 me see it, please.

Mr. Studer: I object.

The Court: It is immaterial.

Q Did you have a permit at the time of the accident? A Yes.

Q And what became of that permit; what did you do with it when you got your new permit?
A When you go there, when you finish one
40 year, you got to have your permit renewed, he gets the old one and gives you the new one.

Dominick Martin, re-cross.

Mr. Markley: That is all.

Mr. Studer: I overlooked one thing.

Mr. Markley: Go ahead.

Re-cross examination by Mr. Studer.

Q I think you said your car turned back in the direction from which you had come; when you stopped you were facing back towards Schenectady; is that right? A Yes. 10

Q And I think you said something about it turning over? A Half twisted over.

Q Did it turn completely over at that time?

A I think it did; I cannot say, one or two, because I was in the car.

Q I understood you to say the car turned over completely either once or twice? A Slipped over; I went in this direction (indicating). 20

Q To your right? A I went to this direction.

Q To your right? A The minute I put the brake on the car goes like that, coming this way.

Q Facing back in the direction in which it came? A Yes, it twisted over.

Q Went over completely, once over; is that right? A Yes.

Q When it was found—when you finally came to a stop, straddling this wire fence, your four wheels were on the ground, were they? A Yes. 30

Q And your four wheels had left the ground, the car turned over and landed on the ground again? A Might be two times.

Q It might have gone twice? A Yes.

Q And turned back to the direction from which you had come? A Yes.

Mr. Studer: That is all.

(Witness excused.) 40

Benny Lupi, direct.

BENNY LUPI, sworn.

Direct examination by Mr. Markley.

Q Where do you live? A Schenectady, N. Y.

Q How old are you? A Twenty-eight.

10 Q Are you related to Dominick Martin? A
No, sir.

Q Do you know Dominick Martin? A I know him as a friend.

Q How long have you known Dominick? A About two or three years or so.

Q Are you married to any member of his family? A No, sir.

Q You are not related by marriage? A No, sir.

20 Q On the day of this accident, July 31, 1923, how did you hear about it? A Why, I was working nights, and about quarter after six there was a telephone for me.

Q What did you do after you got the telephone message? A I was called to go after him.

Mr. Studer: One minute—

30 Q You cannot tell what was said, but after that when did you do? A After that?

Q Yes. A I took the car and go after him.

Q Where did you go in the car? A Up to Hudson.

Q Did you meet Dominick Martin there? A I met Dominick Martin outside the hospital sitting down on the grass; outside the hospital door.

40 Q Where was Dominick when you saw him first? A Sitting down on the grass outside the door.

Benny Lupi, direct.

Q What was he doing? A Well, he was crying—I don't know what he was doing.

Q He was crying? A Yes; he had blood on his face and coat.

Q His coat had blood on it? A Yes, sir.

Q How about his shirt? A His shirt, too, and he had a cut here and here that I seen. 10

Q Then you saw a cut on his lip? A Yes, sir.

Q And a cut on his chin? A Yes, sir.

Q Did he have anything on it? A Well, he had stitches on it, he had a handkerchief on it, but I don't know what else.

Q You do not know if he had anything else on it? A He said he had pain in his chest and pain in his arm—

Mr. Studer: I move to strike out what he said. 20

The Court: Yes, that may be stricken out.

Q What did you do after you got there and met Dominick Martin; what did you do after that? A I asked him—

Q You cannot tell us what you said; what did you do? A I go to see him. 30

Q What did you do then? A Well, I go to try to help him.

Q After you tried to help him, did you go anywhere in your car? A Not in my car; I go in another car.

Q Whose car? A The coroner's car and—

Q Did you go in the coroner's car, too? A Yes, the three men, me, Mr. Martin and the coroner.

Q Andbody else go? A No. 40

Benny Lupi, direct.

Q Just you three? A Yes, sir.

Q Now, where did you go? A Go to see the accident.

Q You went along to the accident? A Yes, sir.

10 Q All right; when you got to the accident did you see Mr. Martin's car? A Yes, sir.

Q Where was it? A It was between the road and on top of a fence.

Q It was on the fence? A Yes.

Q Did you see the tire, the rear tire? A Well, I see the tire, the rear tire.

Q Which tire was it? A The rear tire, the left side.

Q Was there any air in it? A Yes, sir.

Q Was it blown out? A No, sir.

20 Q Was the tire on the rim? A Yes, sir.

Q Did you see the felloe, the metal felloe in which the spokes go? A Yes, sir.

Q Was it in this shape then? A Yes, sir.

Q Where was the other tire with the demountable rim? A Up on the side of the car.

Q And where was the inside of the wheel, this part? A On the side of the car.

Q What did you do after you saw that? A Well, after that I looked to see how he come.

30 Q Did you see the road? A Yes.

Q What did you see on the road, if anything?

A I seen on the road some pieces of the spokes.

Q Did you see them along the road? A Yes, right along the middle of the road.

Q What else did you see? A And I see some holes there, about an inch hole like about that, six or seven holes like this, where this wheel run, I don't know what you call them.

40 Q Six or seven holes? A Yes, right in the middle of the road.

Benny Lupi, cross.

Q Is that where you saw these spokes? A Yes, sir.

Q Was there a mark on the road? A Yes, sir.

Q Was that mark where the spokes were—

Mr. Studer: Don't lead him.

10

Q Where were the spokes with respect to the marks on the road? A On the left side, right in the center of the road.

Q Where were those spokes with reference to the marks, the holes? A Right on the road.

Q The same place? A Right along, within about six or seven feet.

Q Six or seven feet long? A Yes.

Q So that there was a mark there for six or seven feet? A A few marks, a few scratches. 20

Q A few marks and a few scratches? A Yes, sir.

Q And that is where the spokes were, too? A Yes, sir.

Mr. Markley: Cross examine.

Cross examination by Mr. Studer.

Q How old are you? A Twenty-eight. 30

Q Where do you live? A Schenectady.

Q Do you work in Schenectady? A Yes, sir.

Q Where? A General Electric Company.

Q What do you do for the General Electric Company? A In the varnish plant.

Q Were you born in this country or Italy? A Italy.

Q How long have you been in this country?

A About nine years. 40

Benny Lupi, cross.

Q How long have you known Dominick Martin? A About three years, just I know him as a friend.

Q You know Dominick as a friend for three years? A Yes, sir.

10 Q Did you know Mario as a friend for three years? A Mario I see a few time, I see the boy but he is going to school, I never see him all the time, I go to work.

Q How long do you know Mr. Mario? A About the same time as I know his father.

Q About three years? A About three years.

Q You work at night? A Yes, sir.

Q You got a telephone call? A Just when I went home.

20 Q In your house? A Yes, sir.

Q At night? A In the morning.

Q Well now, which was it? A Six o'clock, about quarter after six.

Q 6:15? A About 6:15.

Q Where was your house? A I live on Cottage street in Schenectady.

Q Were you getting up? A I was going to bed, I was working nights and I just came home from work.

30 Q Just came in from your work? A Yes, sir.

Q At six o'clock? A Yes, quarter after six.

Q Quarter after six? A I came in, I stopped six o'clock and I came home about quarter after six.

Q In Schenectady? A Yes, Schenectady.

Q That is fifty-eight or sixty miles from Livingston where this accident happened, is that right? A About fifty-six or fifty-seven miles.

40 Q Or fifty-two miles? A I am not sure.

Benny Lupi, cross.

Q And at 6:15 you got the telephone message? A Yes, sir.

Q What time did you get the hospital in Hudson? A At the hospital in Hudson about half-past eight.

Q Was that daylight time or standard time?

A Daylight time I guess.

Q Your factory worked on daylight saving time, didn't they? A Yes, sir.

Q So on standard time you got there at 7:30, is that right? A I think so.

Q And you saw Mr. Dominick Martin sitting outside in front of the hospital? A Yes, sir.

Q Anybody with him? A No.

Q Just sitting on the steps of the hospital holding his head? A Sitting on the grass outside the door.

Q Holding his head? A Yes, sir.

Q And you talked with him how long? A About five minutes.

Q Then the coroner came? A Then the coroner came.

Q And you and the coroner went back to the scene of the accident? A Yes, sir.

Q Was the coroner with you all the time you were there, when you made this investigation? A Yes, sir.

Q Did he walk along with you? A Yes, he walked along with me; I walked along and he walked along.

Q And you and he were close together? A Close, together.

Q You say the fellow was alongside of the automobile? A Yes, sir.

Q The left side or the right side? A The right side going towards Schenectady, because the car was turned towards Schenectady.

Benny Lupi, cross.

Q So that the fellow was on the— A On the right-hand side of the car.

Q On the easterly side of the car, is that right, and the wheel was there on the right side by the fellow? A Yes, on the right side just the same.

10 Q And the tire was folded against the rim, was it? A Yes, the tire on the rim.

Q Held together with heavy lugs? A Yes.

Q Mr. Markley: What is the date of this photograph, Mr. Studer?

Mr. Studer: September 5, 1923.

Q I show you Exhibit D. 2, which is a picture of the place and ask you if you recognize it—that is the westerly side of the road showing
20 the wire fence near which or over which this automobile was straddled; do you recognize that? A Right on top of this fence.

Q The automobile you say was on top of that fence which appears in the middle foreground of that picture? A This fence was knocked down.

Q Now in the foreground of this picture there appears to be a little rut, do you see that? A
30 I see it, not very much, just a little.

Q And there is, as a matter of fact, a little bank there about a foot and a half high? A I don't think that is just right.

Q About a foot and a half? A I don't think very much.

Q Well, will you say about a foot and a half? A A foot and a half, I couldn't measure it anyway.

Q And that extended there for several feet, didn't it, or for some distance? A About six
40 or seven feet, I didn't measure.

James M. Delaney, direct.

Q You did not measure it but that is about approximate? A I think so.

(Witness excused.)

JAMES M. DELANEY, sworn.

10

Direct examination by Mr. Markley.

Q Where do you live? A Schenectady.

Q How long have you lived there? A Fourteen years.

Q How old are you? A Thirty-seven years.

Q What business are you in? A Garage business.

Q How long have you been in the garage business? A Altogether about eighteen years. 20

Q You mean you have a business of your own? A Yes, sir.

Q Do you repair cars in your business? A Yes, sir.

Q Sell cars? A Yes, sir.

Q New cars? A Yes, sir.

Q What kind? A Hudson and Chevrolet.

Q Do you sell used cars there? A Yes, sir.

Q What kind? A Whatever we have to take in in trade for new cars. 30

Q You sell second-hand cars? A Yes, sir.

Q How long have you been in that business? A Selling?

Q Buying and selling and repairing? A Six or seven years.

Q Do you do body work? A Yes, sir.

Q Wheel work? A Yes, to some extent.

Q Now then, do you know Mr. Martin prior to this accident July 31, 1923? A Just in a 40

James M. Delaney, direct.

business way; he used to stop there at the place once in a while and get gas and oil.

Q How long a time has he come to you for gas and oil? A The past six or eight months.

Q Did you see the car of Mr. Martin after the accident? A Why, yes, when they brought it into the shop.

10 Q About when was that, as near as you can fix it? A About what time?

Q About what time, what month? A I do not know, it was a fore part of September.

Q September? A The fore part of August, I think.

Q The fore part of August or the fore part of September—I do not quite understand you.

A I think it was the first part of August, some-
20 time between the 1st and the 10th of August.

Q The 1st or 10th of August, 1923? A Yes, 1923; it is hard to keep track of all of them.

Q Are you also a carpenter? A Yes, sir.

Q How long have you been a carpenter? A Why, I worked carpentry business probably three and one-half or four years ago.

Q For who? A Well, for a contractor.

Q Well, when you saw this car you said it was brought into your place of business at
30 Schenectady? A Yes, into the garage on State street.

Q Did you see the wheel, the broken left rear wheel? A No, not at that time.

Q Where did you see that? A I saw that down at Mr. Leary's office one day.

Q At the office of Leary & Fullerton? A Yes, they were collecting a bill for me and one of the boys in the office showed it to me.

Q At the law office of Mr. Leary? A Yes,
40 sir.

James M. Delaney, cross.

Q Where? A State street.

Q In Schenectady? A Yes, sir.

Q Had you seen the car before the accident?

A Why yes, as it used to stop out in front of the place for gas, in a casual way.

Q How long before July 31st did you see this car, how many days? A Why, it was, I would say, four or five days, might have been six days. 10

Q Now then, having actually seen the car before the accident, can you tell me what the second-hand value of the car was?

Mr. Studer: If you know.

Q Yes, if you know? A Before the accident? 20

Mr. Studer: At this point may I ask him some questions on that?

The Court: Yes.

Cross examination by Mr. Studer.

Q Do you buy and sell second-hand Studebaker automobiles? A Studebakers?

Q Yes. A Why certainly, they take them in trade; we do not buy anything. 30

Q Was there at that time a standard schedule of values on second-hand cars? A Why, there is at all times, if the dealer complies with them.

Q Have you got it? A In the shop?

Q With you here? A No.

Q That would be the best way to prove the market value at the time? A Why no, not necessarily; we used our own judgment as to the values of them. 40

James M. Delaney, cross.

Q But you had not bought and sold any at the time? A Why, along through there, I might not have on that particular day.

Q Did you buy any second-hand Studebakers of that model and made, then or thereabouts?

A You mean did we take any in trade at that time? 10

Q Bought or in trade? A I never bought any outright; we used to take them in trade and make an allowance on them; that would be under the selling price.

Q Under the selling price? A Under the selling price.

Q You mean you allow as little as you can when you make a trade because you want as much cash as you can get? A Not necessarily, but you are not going to take in a car on trade and lose money or money on it or you would go bankrupt. 20

Mr. Studer: I don't think he is qualified to give the value of the Studebaker at the time.

Mr. Markley: I think he is qualified.

Mr. Studer: He does not say that he knows anything about how far the car had gone, or that he knows anything about its mechanism. 30

The Court: How do you fix the value of this car?

The Witness: You mean how did I consider it?

The Court: I mean how did you get at the value.

The Witness: Figured the car in the condition it was at the time and what was the general market selling price. 40

James M. Delaney, re-direct.

Q You would have to run it, wouldn't you?

A Not necessarily, the car was practically new.

Q I don't care whether it was practically new, you would have to know the condition of a car in order to fix its value second-hand? A No, not in a car as new as that; I would not be fussy about whether I ran it or not, if it was only a month old. 10

Q No matter who had been running it during that month? A No, the outside appearance would tell the condition of the car.

Q You mean the outside appearance would tell you how the inside of the motor was, is that what you want the jury to believe? A Yes, in a car of that age; that is, as it affects a resale.

Q How long have you been in the garage business? A How long have I been in the garage business? 20

Q At the time? A My own, or altogether?

Q At the time how long had you been in that particular kind of business, trading in cars for Chevrolets? A About six or seven years.

The Court: I think that is an element that may be considered as to the value of the car.

Mr. Studer: Exception. 30

Re-direct examination by Mr. Markley.

Q Do you know the sales value of the car new? A Yes.

Q What is it? A Around \$1,300, I guess, for that model.

Q And what would you say the car was worth after a month's use? A The car ought to be worth \$1,250. 40

James M. Delaney, re-direct.

Q Now then, you saw it after the accident when it was brought into your place? A About the 1st of August.

Q Between the 1st and 10th? A Yes, sir.

Q What was the car then worth as you saw it? A Well, there are two angles to that case.

10 Q After the accident? A To a garage that could use the car for parts or renewing the car, probably it would be worth about \$400, but to be bought on the market or to try to sell it to a customer it would probably be hard to get \$300 for it.

Q Now then, did you look at the wood of this wheel which I have here? A I saw it at Fullerton & Leary's office.

20 Mr. Studer: Just yes or no.

A In a casual way.

Q Will you look at it now for me?

Mr. Studer: I object; he is not qualified to give any opinion, expert evidence, as to the fibrous condition or other condition of this wood.

30 Q Have you worked on wooden automobile wheels?

Mr. Studer: You yourself?

A Have I? Yes, I worked in the shop.

Q As a carpenter did you have occasion to test woods and look at woods? A Yes, in building wagons and sleighs.

40 Q Now then, I ask you to look at this wood for me and—you say you have looked at it al-

James M. Delaney, cross.

ready? A Yes, in a casual way down at the office.

Q Did you look at it in the anteroom the other day with me? A No, just looked at it—I didn't cut it or anything like that.

Q What have you to say as to the fibres of this wood?

10

Mr. Studer: I object.

The Court: You may cross examine him if you desire.

Cross examination by Mr. Studer.

Q When was it you saw this wood for the first time? A I saw it—the car was still in my shop. Probably two weeks, it might have been three weeks after the accident.

20

Q The car was still in your shop? A Yes, sir.

Q Then why did you say you first saw the wheel in Leary & Fullerton's office? A I did; I still say so.

Q Then which is it, was it in your shop or in the office of Leary & Fullerton? A In the office of Leary & Fullerton; the wheel was never in my shop.

30

Q Well, this is the only wheel we are concerned about in this particular question. A I answered the question.

Q Well, answer this question: When did you first see the wheel? A About two or three weeks after the accident.

Q At the lawyer's office? A At the lawyer's office.

Q Did you go there to make an examination of it? A No, they had a little case for me, they were collecting a bill for me.

40

James M. Delaney, cross.

Q Against Mr. Martin? A No, Mr. Martin paid me cash.

Q And you just had occasion to look at it because your attention was called to it by one of the clerks? A One of the boys in there, yes.

10 Q When did you quit building wagons? A When did I quit building wagons?

Q Yes. A Over ten years ago.

Q And you built one wagon? A No, we probably built—I don't know, maybe a dozen, twelve wagons, five or six sleighs.

Q Built the wagons? A Built the wagons, built wheels, built sleighs, too.

Q Built the wheels for the wagons? A Yes, sir, everything but the hubs.

Q Use them yourself? A We used most of them—at least the contractor did.

20 Q Did you put the spokes in the hubs, too? A Yes, we did; we put on the felloe, the felloe bands, the contractor and myself.

Q Who was the contractor? A A fellow by the name of *Austin W. Breslin*.

Q Did you work for him? A With him.

Q Were you partners? A No.

Q Did he hire you? A No.

Q You hired him? A No.

30 Q Well, what were you, an independent contractor? A No; he was the contractor, I was there and I worked with him.

Q With him? A Yes.

Q With the contractor? A Yes, sir.

Q Were you a partner in this shop? A No, sir, he was a friend of the family and I lived a short distance from him.

Q You never made an automobile wheel, did you? A Not complete, no.

40 Q You never went into the process or examined the process of making an automobile

James M. Delaney, re-direct.

wheel in any competent wheel manufacturer's factory, did you? A No.

Mr. Studer: I don't think he is qualified as competent on the building of a wheel.

Mr. Markley: He is competent; he has made wheels and built wagons and repaired 10 wheels.

The Witness: You use the same wood in making wagons and sleighs as you use in automobile spokes.

Mr. Studer: I move to strike that out.

Mr. Markley: Then I will ask him—

Re-direct examination by Mr. Markley.

Q Does the same wood go into wheels— 20

Mr. Studer: That is very leading.

Mr. Markley: Let me finish the question.

Q Is the same kind of wood use in making wheels for automobiles that is used in sleighs and wagons?

Mr. Studer: I object. 30

A Yes, sir.

Q Have you repaired automobile wheels? A Yes, sir.

Q Have you made spokes for automobile wheels? A We have not shaped them, but we have refinished them as we got them in the rough, and installed them.

Q You have repaired right in your own shop automobile wheels? A Yes, sir. 40

James M. Delaney, re-direct.

Mr. Markley: I think he is qualified now.

Mr. Studer: He is not a wheelwright.

Mr. Markley: Having actually done the work himself right in his own shop for years and in addition being a carpenter I think I have qualified him to testify as to the wood.

10 The Court: How long were you at the wheelwright business?

The Witness: At the wagon business?

The Court: Yes.

The Witness: Off and on about three years.

The Court: What do you mean by off and on?

20 The Witness: Wagons and sleighs; I didn't work steadily, I used to work at short time during my vacations.

The Court: It was not your regular business?

The Witness: No, it was at times, in an off-hand way.

The Court: In an off-hand way?

The Witness: Yes.

The Court: I don't think he is qualified.

30 Mr. Markley: One more question.

Re-direct examination by Mr. Markley.

Q How long have you maintained your shop at Schenectady?

The Court: Which shop are you speaking of?

40 Mr. Markley: The automobile repair shop.

James M. Delaney, re-direct.

Q How long have you had that? A Why, I have been in business for myself about eight years.

Q And before this were you also in the automobile repair business? A Yes, sir.

Q For other people? A I worked as foreman for the McDonald Garage Company. 10

Q Where? A On State street in Schenectady.

Q And how long were you with that company? A About six years, I believe.

Q Now then, during that time did you do body work on automobiles? A Yes, that is repairing wrecks and so forth.

Q And what are those bodies made of? A Oak and ash.

Q Various kinds of wood? A Mostly oak and ash. 20

The Court: You are speaking of automobile bodies?

The Witness: Yes, sir.

Q Now the wheels; did you during that experience of thirteen years have to do with the repair of automobile wheels? A Yes, quite a little. 30

Q Putting in—

Mr. Studer: Let him tell what he did.

A Inserting spokes in fellies—if a man brought a car in and it had one or two broken spokes, and it was hard to get a wheel, we would get the spokes in the rough and put them in.

Q Would you have to do anything to the spokes before you put them in? A Look them 40

James M. Delaney, re-direct.

over and be sure they were in good shape, good condition.

Q Would you have to determine whether it was a good piece of wood before you put them in? A Yes, sir.

Q Did you put them in the felloe yourself?

10 A The felloe? Put in a portion of the felloe.

Q Would you, before you used those spokes, examine them to see if they were fit for that purpose? A Yes, sir.

Q So that you looked, you personally looked—

Mr. Studer: That is very leading.

Q Did you do the work yourself? A Not all of it, no. I had men working for me and
20 with me, but I have been called in if there was any question they would come to me for reference, naturally, the foreman of the shop.

Q Now then, is that your job now? A Foreman of the shop?

Q Do you still do that particular work? A Yes, I oversee the work in the shop.

30 Mr. Markley: Now, your Honor, I submit that he is qualified to pass upon this wood.

The Court: How many wheels do you suppose you have inspected?

The Witness: Altogether?

The Court: Yes.

The Witness: Well, there were a lot; I could not tell off-hand, it might have been 150 or 200.

40 The Court: I will allow him to testify; he says he has examined 150 or 200 wheels.

James M. Delaney, re-direct.

Mr. Studer: Over a period of how many years?

The Witness: Ten and a half years.

Q Where a wheel needed new spokes you would get new spokes? A Yes, if it needed new spokes or a new felloe, or if the wheel was to be cut down from one size to another. 10

Q Then you would get new spokes? A New spokes, a couple of new spokes or the felloe, whatever was necessary.

Q And you would buy those spokes from a responsible spoke maker? A Yes, sir.

The Court: I think he is qualified to give his opinion as to the condition of the wood. It is question for the jury to say how much credit to give to his testimony. 20

Mr. Studer: Exception.

Re-direct examination by Mr. Markley.

Q What do you say about this wood? A Some of these pieces seem to have dry rot.

Mr. Studer: I think that should be confined to the time he saw them. 30

The Court: Did you examine them at that time?

The Witness: I didn't make any examination outside of a couple of small pieces.

The Court: Before you ask any questions you will have to prove that this wood is in the same condition now as it was at the time of the accident.

Mr. Markley: Well, it is admitted it is the same wheel, the same wood. 40

Dominick Martin, re-direct.

Mr. Studer: I admitted that it was the same wood, but I do not admit that after a year and a half there has not been any change in the wood.

Mr. Markley: I withdraw the witness.
(Witness excused.)

10

DOMINICK MARTIN, recalled.

Re-direct examination by Mr. Markley.

Q Is this wood the same as it was after the accident? A That is the same wood, yes, sir.

Q Does it look the same as it did at that time? A Yes, sir.

20

Mr. Studer: One minute; this man is not competent to say how the wood is, by way of comparison now with a year and a half ago. There are atmospheric conditions that may have worked changes in this wood since that time.

Mr. Markley: Then we would have to have an expert right on the job after an accident happened.

30

The Court: I am going to let him testify.

Q Where was this taken from after the accident? A It was taken from the middle of the road.

Q And where was it taken from the road, do you know? A From the road it was taken to the Hudson Garage.

Q And where after that? A I went and got it from the Hudson Garage and gave it to Mr.
40 Fullerton.

Walter A. Fullerton, direct.

Mr. Markley: Cross examine.

Cross examination by Mr. Studer.

Q And you have not seen it since it was given to Mr. Fullerton? A Sure, since then I didn't see it.

10

Q About a year or fourteen months ago? A About fourteen months ago.

Q So that you do not know whether it is in the same condition now as it was at the time of the accident, do you? A Well, it looks to me as the same condition.

Q You do not know anything about making wheels? A No.

Q You are a real estate man? A I do not know anything about wheels.

20

Q And you don't know anything about this fibrous condition of wood? A No.

Q You simply know that this is some of the wood that you had a year and a half ago? A When I look at it, it was the same.

(Witness excused.)

Mr. Studer: I do not deny that this is the same pieces of wood, but it is not connected up with the condition as it was at the time.

30

WALTER A. FULLERTON, recalled.

Direct examination by Mr. Markley.

Q Did you get this wheel a few days after the accident from Mr. Martin? A Yes, sir.

40

Walter A. Fullerton, cross.

Q And is the wood in the same condition now as it was when you got it?

Mr. Studer: I object.

The Court: He may answer if he knows.

The Witness: It is.

10

Q And what did you do with it after you got it? A I put it right by the books underneath the reports, where it was left in the office that Mr. Leary occupied.

Q And as you see it now, is it in the same condition as when you saw it in your office? A It is.

Mr. Markley: Cross examine.

20

Cross examination by Mr. Studer.

Q You do not mean to say that you can tell the fibrous condition of the wood is the same or not; you simply know that is the same wood, don't you? A I think I can tell.

Q What are you, a wood man? A No, but as a matter of common knowledge that I can tell somewhat about it.

30

Q You have had this wood by your dry law reports for a year and a half, have you? A I will admit the reports are dry, yes.

Q And there has been heat on in your office, too? A Well, the heat happens to be on the other side from that.

Q But the heat permeates all the way through the room up in Schenectady? A Yes.

40

Q And you don't undertake to say that this wood now, having been in your office for a year or more is in the same condition now as it was

Edward A. Markley, direct—cross.

when you received it? A It has been there upwards of a year, yes.

Q Do you say it is in the same condition as to its fibres now as it was on the morning of August 2nd or July 31st, or whatever the date was of the accident, do you, as a lawyer? A I undertook to say that is in the same condition as it was when it came in our office. 10

Q And that you say as a lawyer, and looking at the wood? A I do.

(Witness excused.)

EDWARD A. MARKLEY, sworn.

Mr. Markley: I received this wood by express from my New York associates, Messrs. Leary & Fullerton. I opened the package myself and it is in the identical condition now as when I received it. All that I received is here. 20

Cross examination by Mr. Studer.

Q It is the same wood that you got? A The same wood and it looks the same now as when I got it. I might say also that our offices are not very warm, they do not use enough heat and we are going to move out on that account. 30

Q Of course, you do not undertake to say that this wood is as it was a year ago? You simply know that it is the same wood and that it looks the same as it looked the time you got it?

A I say it is now the same as when I received it.

Q Do you know what effect moisture has on wood? A No, I do not. 40

Cornelius T. Myers, direct.

The Court: When did you receive it?

Mr. Markley: I received it, your Honor, about three or five months ago; I cannot be accurate about that.

(Witness excused.)

10

CORNELIUS T. MYERS, sworn.

Direct examination by Mr. Markley.

Q Where do you live? A Rahway, New Jersey.

Q What is your business? A I am a consulting engineer.

20 Q Did you come to my office at my request a few months ago? A Yes, sir.

Q Did you examine this felloe, this metal felloe and the wood that you see there at that time? A Yes, sir.

Q What did you do with it after you examined it? A I took it to my office.

Q Where? A In Rahway.

30 Q Then what did you do with it after you took it to your office in Rahway? A I made an examination of the spokes.

Q And what did you do after that? A I returned it to you.

Q Where? A In your office.

Q Ten days ago, last Sunday? A I returned it Sunday.

Q And was it in the same condition when you returned it to me as when I gave it to you? A Yes, sir, with one exception.

40 Q What is that? A I cut one of the spokes in two.

Cornelius T. Myers, cross.

Q You cut off one of the spokes? A Yes, sir.

Q Is that the one you cut off? A Yes, sir.

Q Does the fact that time elapses, a year and a half, change the fibre of the wood so as to make it in one instance short fibres and in the other instance long fibres? 10

Mr. Studer: I object. I don't think he is qualified to answer that question.

The Court: He has not told us what knowledge he has of wood.

Mr. Studer: He said he is a consulting engineer.

Mr. Markley: I will reserve that and withdraw him for the present. That is all. 20

Cross examination by Mr. Studer.

Q Where is your office, please? A Rahway, New Jersey.

Q What kind of consulting engineer are you?
A Why, I specialize in automobile work.

Q Specialize in trucks? A Yes.

Mr. Studer: That is all. 30

EDWARD A. MARKLEY, recalled.

Mr. Markley: When this came back to my office last Sunday it remained there until I brought it up to the court house and it has been here for two days.

Mr. Studer: I am not making any objection—I do not question that this is the same 40

James M. Delaney, re-direct.

wood, and you know it. I do not dispute that it is the same wood, but I do think there is a question that the wood is in the same condition now as it was a year and a half ago as regards fibre or other changes, and that is my objection.

10

JAMES M. DELANEY, recalled.

Re-direct examination by Mr. Markley.

Q Can you tell me whether there was any dry rot in that wood at the time you examined it in the office of Leary & Fullerton? A Why, a few of the little pieces I picked up showed dry
20 rot.

Q What do you mean by dry rot? A Dry rot; why, it is a dry, dusty condition.

The Court: Suppose you pick up the piece and show us what you mean by dry rot.

Mr. Studer: If there is anything there that shows it.

30 A Well, here are traces of dry rot on this piece here.

Mr. Studer: Mark that piece, if you please.

(Marked A.)

Q Show us some other pieces? A This piece there; this corner here shows traces of dry rot.

Q That is the piece you speak of when you
40 looked at it in Fullerton & Leary's office? A

James M. Delaney, re-direct.

Yes. I don't know whether those are the two pieces I looked at there, but I have two or three pieces I picked up, that I picked up in the spokes.

Q Suppose I put an "X" on this one. The dry rot you say is here? A In this corner and on the short piece.

10

Mr. Studer: I would like to have it understood that this is under my same objection. I don't think he has been qualified yet regarding wood.

The Court: That objection will be entered to the whole of his testimony.

Mr. Studer: And the Court will grant me an exception.

Q Does the fact that this wood has been in various hands in the last year and a half, since July 31, 1923, change the fibres of the wood so as to long it long fibre or short fibre? A It does not change the fibre of the wood itself if it is kept under proper conditions.

20

Q The fibres remain the same? A The length of the fibres and the grain remains the same.

Q By the fibre you mean the grain; is that it? 30

Mr. Studer: Please don't lead.

Q Is that so? A Yes.

Q Now, then, what have you to say as to the fibre of this wood?

Mr. Studer: Same objection.

The Court: Objection overruled.

Mr. Studer: Same exception.

40

James M. Delaney, re-direct.

A Some of the spokes show a very short fibre.

Q Can you explain a little more what you mean by short fibre? A Yes; this is a short grain. With short fibre we have not got a long interlacing.

10 Q The long fibre has the long interlacing? A Of the wood itself.

Q Of what? A Of the grain of the wood itself.

Q And when you speak of short fibre wood—
A Then you have the short interlacing, that has not got the strength that a long fibre wood has.

The Court: Have you got a piece there that you can pick out and show us with a short fibre?

20 The Witness: With the long and short fibre?

The Court: Yes.

A I don't know; I didn't pay much attention to it.

The Court: You said you found some short fibres.

30 The Witness: He asked me the difference between a short fibre and a long fibre.

The Court: Then if you did not find any short fibres, that has nothing to do with this case.

Mr. Studer: I move to strike out the witness' testimony on that point.

40 Q What have you to say as to the fibres in these spokes that are broken off clean? A This spoke is a short fibre spoke.

James M. Delaney, re-direct.

Q Well, now, can you say that this is a short fibre? A Yes, in which the interlacing is short.

Q The interlacing of the shreds? A The shreds of the wood.

Mr. Markley: Suppose I mark that in some way.

Mr. Studer: Mark it "S. F."

10

Q What have you to say as to the wood itself as to whether it is tenacious, strong, resisting, or whether it is brash and brittle? A Why, outside of what we have picked out, the wood itself runs about the same as the general run of spoke wood will run.

Q What about these little pieces here; can you examine those and tell me what their condition is as to whether they are tenacious and strong or easily pulled apart and brash? A These look very good.

20

Q These look very good? A They will run about the same as the general run of spokes of that class of wood.

Q What would you say about these, do those run long fibre or short fibre or what?

Mr. Studer: Don't you think you ought to indicate what you mean by these?

30

Q Parts of these spokes? A They will run about the same as the rest.

Q What do you mean by the rest?

Mr. Studer: He said the general run of spokes.

A The general run of wood in that particular kind of spokes.

40

James M. Delaney, re-direct.

Q Well, is that short fibre or long fibre? A About medium.

Q It is a medium fibre? A Well, about medium, about the same as the general run comes through; that is this straight grain.

10 The Court: You have not told us yet what kind of wood this is.

The Witness: Hickory.

Q What is meant by checks in the wood? A Checks in the wood?

Q Yes. A Split checks will develop lots of times in curing of wood, especially before it is dried.

20 Q Now, then, where was this fellow when you first saw it, in Leary & Fullerton's office? A That I could not say exactly.

Q It was in the lawyers' office, you know that? A In the office.

Q This thing I hold in my hand is known as the metal fellow? A Yes, sir.

30 Q And can you tell us where the spokes stick in the fellow? A The end of each spoke is inserted in one of these holes—outside out of the small valve hole.

Q What goes outside of the fellow? A The tire rim.

Q You mean the demountable rim? A Yes, sir.

Q And what goes on the demountable rim? A The tire.

40 Q Now, then, did you see the demountable rim with the tire on it? A I saw all the tires, but I could not tell which particular tire was on this rim.

James M. Delaney, re-direct.

Q When the car was brought into your place between the 1st and the 10th of August, I think you said, did it have another wheel on it? A It had a new wheel on it when it came into my place.

Q And you do not know whether the tire and the rim on that wheel was the tire that was on the car at the time of the accident or not? A No, sir. 10

Q When you put spokes in a wheel or repair an automobile wheel, how do you tell whether the wheel has dry rot in it or not or is a strong spoke or not? A The spoke itself will show; you can see it; it is common sense.

Q If it has dry rot you can see it? A Yes, sir.

Q If it has a short fibre, can you see that, too? A Yes. 20

Q If it is brittle or brash you can see that?

Mr. Studer: Nothing was said about brittle or brash.

A Not without making tests.

Mr. Studer: There was no such hypothesis to put to the witness. 30

Mr. Markley: I have not got all my testimony in yet; I cannot put it all in at once.

Q Can you see by ordinary inspection in going over spokes when you are repairing a wheel whether it is brittle or brash or whether it has dry rot in it or has short fibres? A If it has dry rot, yet, you can see it, but as to its being brittle, you have to go into tests to find that out, providing it does not show checks. 40

James M. Delaney, re-direct.

Q What do you mean by checks? A Cracks.

Q Cracks in the wood? A Yes. If it has cracks or splits they are self-evident; you can see them.

Q And just with the naked eye you can see the cracks in the wood, can you? A Yes, sir.

10 Q Is that what is meant by checks? A Yes, sir.

Q And dry rot you can see the same way? A Yes, if it is there to any extent.

Q Now, how about the short fibres; you say you make tests for those? A Yes.

Q What tests would you make for short fibres? A Ordinarily, if you want to make absolutely sure that it has short fibres, you cut it and make tests, but you can tell to a certain extent by the grain of the wood.

20 Q How about testing for brittleness or brashness; how can you test that as to its strength or tenaciousness? A Why, you would have to put it through some kind of a strength test, a weight test for breakage, to see what poundage she would hold up without breaking.

Q You are not employed by Mr. Martin? A No, sir.

30 Q You do not work for him or anything? A Only just the repairs that I did on his car.

Q You made those repairs and sold him gas and oil before this? A Yes, sir.

Mr. Markley: Cross examine.

The Court: We will recess now until 10 A. M.

James M. Delaney, re-direct.

Jersey City, N. J., March 4, 1925.
10:00 o'clock A. M.

TRIAL CONTINUED.

(Appearances as before noted.)

JAMES DELANEY, recalled.

10

Mr. Markley: There are one or two questions I forgot to ask Mr. Delaney; may I ask them now?

The Court: You may.

Re-direct examination by Mr. Markley.

Q Mr. Delaney, on this model Studebaker, the roadster, 1923, do you know what brakes they had? A Do you mean how many of what type? 20

Q How many? A Why, it had two on the rear wheels, a foot brake outside and an emergency inside.

Q That is, the brakes were all on the rear wheels? A Yes, sir.

Q Now, suppose one of those wheels gave way and you applied your foot brake, can you tell what would happen to the car? 30

Mr. Studer: I object; I don't think he is qualified to give that expert testimony.

The Court: Qualify him first.

Q Have you driven Studebaker cars? A Yes, sir.

Q Have you examined the mechanism of the brakes? A Yes, sir.

Q And you have been an automobile mechanic how long? A We have got a brake service station at our place. 40

James M. Delaney, re-cross.

Q For tightening brakes and so on? A Tightening and attaching.

Q How long have you been in that business?

A The brake service business?

Q Yes. A We have had our brake service installed with machinery for about three years, and previous to that we did it by hand.

10 Q How long had you done it by hand? A Well, as long as I have been in the automobile game; that will be sixteen or seventeen years.

Q Now, what would happen if you applied your foot brake and one wheel had given way?

Mr. Studer: I object.

The Court: You may cross examine him if you desire.

20 *Re-cross examination by Mr. Studer.*

Q You were the general foreman of that shop, is that so? A Yes, sir.

Q And you were not the man who did the brake work, it was simply done under your supervision, wasn't it? A Why, I do a considerable amount of work—by that I mean I work with the men.

30 Q Did you have particular men to do that particular job? A No; any of the mechanics in the shop do it. And I work in conjunction with the mechanics.

Q What do you, adjust the brakes? A Re-line them and install them, equalize them, anything in the line of brake work.

Q That is simply a repair job, isn't it? A No, sir; I would not call installing new brake linings a repair job.

40 Q Putting new brake lining on, that is just an ordinary job; an ordinary garage man can

James M. Delaney, re-direct.

do that? A It is not a complicated job, nothing complicated about it.

Q And any ordinary repair man can do that?

A Install the brake lining?

Q Yes. A Yes, with a little common sense.

Mr. Studer: Now, if your Honor please, I submit that a mere repair job such as he just talked about, which he may or may not have done, does not qualify him to give an opinion as to what would happen upon the application of the brakes if there was a defect in one wheel; that is a conclusion to be reached by an expert, but he does not qualify himself to be one; he is a garage man doing wheelwright work, and at other times a carpenter. Now he wants to make himself a brake man. I don't think he is. 10 20

The Court: I don't know how he would know simply because he knew how a brake is made and has never seen the practical operation.

Re-direct examination by Mr. Markley.

Q Do you drive automobiles? A Yes, sir.

Q How long have you driven an automobile? 30

A Eighteen or nineteen years.

Q Do you test brakes after you install them?

A Yes, sir; equalize them.

Q What do you mean by equalizing them?

A Why, taking them up, to put the same pressure on each wheel, so that they will take hold alike.

Q How long have you done that? A About as long as I have been in the automobile game.

Mr. Markley: I submit he is qualified. 40

James M. Delaney, re-direct.

The Court: I think not. You have not shown he has ever driven a car with the brakes working in that way.

Q Did you ever drive a car that had only one brake working? A Yes, often.

10 The Court: What happened to that car?
The Witness: Nothing.

Q What do you mean by "nothing?" A Nothing happened, unless that it ran on the road. I knew there was only one brake working after I tried it, and I was careful.

Mr. Studer: I move to strike that out.

20 Q Now, then, you have driven cars with the brakes held only on one wheel? A Yes, sir.

Q And not on the other? A Yes, sir.

Q Now, what happens when the brakes go only on one wheel and not on the other wheel? A Well, the car will skid.

Mr. Studer: I object as immaterial.

The Court: I think it is competent.

30 Mr. Studer: Exception.

The Court: Does the car skid?

The Witness: Does the car skid? If the brake took hold on one wheel?

The Court: Yes.

The Witness: Yes—that is, they started to.

Q Then what did you do when it started to skid? A Applied them easy, took a little longer to stop.
40

James M. Delaney, re-cross.

Q If you jammed on your brakes, say, going at twenty-five miles an hour, and it only applied on the one wheel, what would happen then? A Well, under certain conditions you would turn a perfect circle.

Mr. Markley: Cross examine.

10

Re-cross examination by Mr. Studer.

Mr. Studer: Now, if you Honor please, there has been no proof, in my judgment, to support the conclusion that he just gave; the hypothesis of the proof is missing, and subject to connecting that up I move to strike the testimony out. I would like to make that motion at this time. I don't think there has been any testimony about the brakes not holding.

20

The Court: There was no wheel there for the brake to hold, according to the evidence. The wheel went off, the wheel broke.

Q If the left rear wheel should have a defective brake, in which direction would the car skid? You would skid to the left, wouldn't you?

A Naturally, skid to your left—that is, by “defective” you mean it didn't take hold, and did take hold on the right?

30

Q If it did not take hold on the left rear wheel, the car would skid to the left, wouldn't it? A Naturally.

Q And if the left rear wheel went off suddenly, the car would go to the left, wouldn't it?

A You would have no use of your brake, it would naturally go to the left.

Q It would go to the left? A It would have a tendency to.

40

James M. Delaney, re-cross.

Q Would it? A Yes, surely.

Q Did you repair this car yourself? A I did; we had lots of repairs on it.

Q That is, after the accident? A Yes, after the accident.

Q That is what I meant. A Yes.

10 Q What was the matter with the car? A Why, at the time it came into my shop the top was broken, the windshield brackets, the cowl, was caved in, on which the brackets were fastened. The fenders were rolled pretty badly.

Q Anything else? A Why, the body was racked, a little out of shape.

Q And did you repair the car? A Yes, sir.

Q It came to your garage under its own power, did it not? A I think so; I was not in the garage at the time the car came in.

20 Q And you have since delivered the car to Mr. Martin? A Yes.

Q Did you make a charge for what you did? A Yes, sir.

Q Do you know what the charge was? A Why, I think it was around \$400 or \$450.

Q That is all you charged to repair the car? A Yes, sir.

30 Q I show you a photograph and ask you if that is a true representation of Mr. Martin's car after it arrived in your garage, when it came to your garage on or about August 11, 1923? Do you recognize the car? A Why, it looks like it, but I don't remember this door being off on this side.

40 Q You do not remember the door being off on this side, but do you recognize the car? A Well, it is a Studebaker Special, it looks like it; of course the top was over when I got to the car—that is, this broken top was thrown up over here, and this was pushed down.

James M. Delaney, re-cross.

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

(Marked Exhibit D. 6 for identification.)

Q I show you another photograph and ask you if that represents the car as it appeared when it came into your garage on or about August 11, 1923? A Yes, but as I recall it, I thought these fenders were crushed much worse than this. I remember this indentation on the cowl. 10

Q It appears to be the car? A Yes, sir.

Mr. Studer: I ask to have it marked for identification.

(Marked Exhibit D. 7 for identification.)

Q I show you another photograph of a Studebaker car, I believe, and ask you if you recognize it as the car that came into your garage on August 11, 1923? A Yes, sir. 20

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

(Marked Exhibit D. 8 for identification.)

Q I show you another, the rear view of it, and ask you the same question. A Is that supposed to be a hole in the fender? 30

Q Whatever the picture shows. A It looks like it.

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

(Marked Exhibit D. 9 for identification.)

Q Did you put a new wheel on the car? A No, the wheel was on at the time the car came into the shop. 40

James M. Delaney, re-cross.

Q And it came in on August 11th? A I would not say exactly what time, but the fore part of August.

Q This car had one seat, had it not? A Yes, it was a runabout.

Q Two people could sit in the one seat, or possibly three? A Yes.

Q Now, you endeavored yesterday to give us some idea of the value of that car? A Yes.

Q On or about July 31, 1923? A Yes, sir.

Q You had only seen it occasionally on the street? A Yes, as it stopped in front of the place for gas and oil.

Q Did you in giving that value take into consideration the distance it had been driven? A Yes, the distance I thought it might have been driven.

Q Assuming that a Studebaker automobile had been delivered on or about July 4, 1923, and by July 31st had gone three or four or five thousand miles, in a month, less than a month, would you give that the same value as a Studebaker automobile that had been driven in a month, say, five hundred miles? A That particular car, I think I would, because the appearances of it were splendid.

Q I don't care how it looked, now; take the fact—you did not look at the motor at all, did you? A No.

Q And five thousand miles in a month will result in a great deal more wear on a motor than five hundred miles in a month, will it not? A Yes.

Q Then you would not say it had the same value, would you? A Practically the same.

Q Well, how nearly practically the same? A \$50 or \$25.

James M. Delaney, re-cross.

Q In a month? A Yes.

Q Five thousand miles is about as much as one drives a car in a season generally, isn't it?

A I would not say so.

Q Do you own an automobile? A Yes.

Q What kind? A Cadillac; I have two Fords and a Buick.

10

Q Now, then, you said something yesterday about having made a casual observation of some pieces of wood to which your attention was directed by one of the clerks in Mr. Fullerton's office; you did not go in there for the purpose of examining that wood at all, did you? A No.

Q You went only on personal business to have them act legally for you? A Yes.

Q And somebody showed you this and your curiosity just made you give it the once over, is that right? A Yes.

20

Q Yesterday you spoke of something referred to as dry rot? A Yes.

Q When did you conclude that, yesterday? A No, at the time I looked at the wheel there were a few little pieces I picked up, and they appeared powdery.

Q You would not undertake to say that the pieces you designated yesterday here were the same pieces you saw a year and a half ago casually—do you? A No, sir.

30

Q You designated two pieces of wood yesterday as containing what you say is dry rot?

A Yes, sir.

Q Very small pieces? A Yes, sir.

Q And very small patches of rot? A Yes.

Q Do you know how many spokes there are in such a wheel? A No.

Q Do you know how those spokes are mitered?

A No.

40

James M. Delaney, re-cross.

Q Do you know what I mean by mitered?

A Yes.

Q Do you know the difference between the mitering of a Chevrolet spoke and a Buick spoke?

A No.

10 Q Do you know the difference between the mitering of a Cadillac spoke and a Ford spoke?

A No.

Q What is mitering? A Mitering is where the ends fit over the top of the hub.

Q Do you know if there is a difference in mitering spokes? A It depends upon the number of spokes put into a wheel.

Q Does the difference in mitering have a difference in the strength of the wheel? A Yes.

Q You said something about putting in a spoke once in a while for a customer? A Yes.

20 Q That is, simply completing the appearance of the wheel, wasn't it? A Well, completing the appearance, and gave you practically the original strength.

Q Did you take the bolts out? A Out of the hub?

Q How do you insert those spokes? A We would take the hub out, displace the spoke near to it, and force in the new spoke after fitting it.

30 Q What do you force it in with? A A press.

Q What kind of a press? A An arbor press.

Q Can you find here the piece you marked with an "A" on the end of it? A Here.

Q Will you please indicate where you find this dry rot? A This corner here, down through this bottom corner.

40 Q You think about a quarter of an inch? A On the end there it extends about a quarter up through to here—it extends about an inch.

James M. Delaney, re-cross.

Q And it is about one-sixteenth of an inch deep, isn't it? A Just about.

Q And you don't know whether that was a piece you saw a year and a half ago? A I won't say it was, because I had just little small pieces.

The Court: What causes dry rot? 10

The Witness: Why, I don't think that the Forestry Commission knows it yet; it is something that attacks the hard wood trees and they are dying off fast, and they are trying to discover what it is. It is kind of a blight.

The Court: How would you discover it in a spoke?

The Witness: If you saw it, saw through the cross section of the spoke. 20

The Court: You could not saw a spoke up after you got it ready to insert in a wheel?

The Witness: No, sir; but both ends are sawed off.

The Court: Would it go all the way through the piece of spoke?

The Witness: Not necessarily. 30

The Court: Suppose it did not go through the end, how would you discover it?

The Witness: You could not.

Q Now, then, there is another piece which you have indicated here with an "X" in pencil; is that the piece to which I am pointing near the hub? A Yes.

Q Will you indicate, please, where the dry rot is there, if you can? A There is a small 40

James M. Delaney, re-cross.

portion of it right here in the corner close to the hub.

Q And that extends about a quarter of an inch? A Well, about three-sixteenths.

Q Three-sixteenths of an inch? A Yes, sir.

Q And not more than one-eighth of an inch
10 deep? A Just about that.

Q Now, other than those two little bits of dry rot, that wheel you say was generally as good as wheels generally are? A Yes, it was.

The Court: Would the breaking of one spoke cause a wheel to collapse?

The Witness: No.

Q The wheels on which you have inserted
20 missing spokes were on cars that were run into your place under their own power, weren't they? A Nearly all of them.

Q When a wheel is in motion and the wheels are at right angles with the road, is there stress on the wheel? A Well, you mean any portion of the wheel?

Q On the wheel, on the spokes of the wheel? A Yes.

Q The stress is up and down to the spokes?
30 A Yes, sir.

Q And a blow from either side, if of sufficient force, will break a spoke, won't it? A Yes.

Q And if an automobile going at the rate of twenty to twenty-five miles an hour hits an embankment a foot and a half high, goes over it and revolves twice, landing straddling a fence, and turns back in the direction from which it was coming, such a blow could break a spoke in a wheel, couldn't it? A It would depend on how
40 it was struck.

Cornelius T. Myers, re-direct.

Q But it could break a spoke in a wheel? A
It could be done, yes.

Q The impact with the earth could break it,
couldn't it? A Yes.

Mr. Studer: That is all.

(Witness excused.)

10

CORNELIUS T. MYERS, recalled.

Re-direct examination by Mr. Markley.

Q I believe you said your residence was Rah-
way? A Yes, sir.

Q Now, then, what is your profession, Mr.
Myers? A Mechanical engineer. 20

Q How long have you been a mechanical en-
gineer? A About twenty-five years.

Q And do you hold any degree? A Yes, one.

Q What is it? A Mechanical engineer.

Q M. E.? A Yes, M. E.

Q Where did you obtain that degree? A
Stevens Institute of Technology in Hoboken.

Q Now, have you had any experience in the
automobile business? A Yes, sir. 30

Q Will you please tell us what that experi-
ence has been? A Well, back in 1910, 1911 and
1912 I was chief mechanical engineer for the
General Motors Company in Detroit.

Q Chief mechanical engineer for the General
Motors Company in Detroit? A Yes.

Q Is the General Motors Company an auto-
mobile company? A Yes, sir.

Q What cars did they manufacture? A The
Cadillac, Buick, Carter car at that time; the 40

Cornelius T. Myers, re-direct.

Oldsmobile, the Oakland, and several others that they have since discontinued.

Q Did you say 1910, 1911 and 1912? A Yes, sir.

Q What position did you hold? A Mechanical engineer.

10 Q All right, now; come along from 1912. What was your next work? A Well, I was general manager of the Timken David Brown Company in Detroit.

Q What did they manufacture? A Worm gearing for automobiles.

Q How long were you with that company? A A little over two years—above two years.

Q All right, then; that brings you down to 1914? A Yes.

20 Q What have you done since 1914? A Consulting work.

Q Engineering work? A Yes, sir.

Q Automobile work? A Mostly.

Q Have you been consultant for any wheel companies or associations? A Yes, I have done some work for them.

Q For whom? A Well, the Automotive Wood Wheel Manufacturers Association.

30 Q What kind of an association is that? A Well, it is an association of the wood wheel manufacturers.

Q How many wood wheel manufacturers belong to that association? A I think there were ten or twelve; about that.

40 Q Can you name some of them? A Yes. The Motor Wheel Corporation in Lansing, and the Hayes Wheel Company at Jackson, the Schwartz Wheel Company at Philadelphia, the Muncie Wheel Company, Muncie, Ind. There

Cornelius T. Myers, re-direct.

were half a dozen others; I do not recollect them all.

Q And what was your position with that association? A I was consulting engineer for them.

Q For how long? A About between two and three years.

Q Now, then, I believe you said yesterday you had some experience also with the manufacturing of automobile trucks or wheels for trucks? A These concerns made wheels for both passenger cars and trucks—more wheels for passenger cars than trucks by a good deal.

Q You have had some other experience, I think, you mentioned—I cannot remember them all—were you connected with the Ordnance Department in any way? A During the war I acted as consulting engineer for the Ordnance Department in some work that was being done for them.

Q What was the nature of that work? A It was the designing of motor trucks.

Q The designing of motor trucks for the Ordnance Department of the United States Government? A Yes, sir.

Q Manufacturing wheels, too? A Yes.

Q Now, in your experience with the General Motors, that manufacture these various automobiles stated, and these other companies, have you had to make a study of automobile wheels and other wheels? A Yes.

Q You have made a study of the automobile wheel? A Yes.

Q And the wood that goes into it? A Yes, sir.

Q And over what period of time has that study continued? A Well, I could not state that

Cornelius T. Myers, re-direct.

very definitely offhand; whenever the subject would come up, you add a little to your knowledge.

10 Q During what period of time have you been studying the subject of wood wheels in connection with automobiles? A Well, as I say, off and on since my connection with the automobile industry.

Q When was that? A Since 1910.

Q When you were with the General Motors Corporation? A Yes.

Q Did you at my request look at this wheel or part of the wheel that has been offered in evidence here and the smooth pieces of wood alongside of it? A Yes, sir.

20 Q Did you at my suggestion take that to your place of business at Rahway? A Yes, sir.

Q And examine it? A Yes, sir.

Q And you testified you brought it back again last Sunday? A Yes, sir.

Q Have you examined it? A Yes, sir.

Q And what kind of wood is it? A Hickory.

Q What have you to say as to the character of the hickory? A I would not say that all of those spokes are first class.

30 Q What is the matter with them? A I should say that there were at least four or five of them here brittle and short-fibered.

Q Now, so that the jury may clearly understand, will you please explain, if you can, what you mean by short-fibered—by four or five of those spokes being short-fibered? A Well, perhaps I had better tell you the real function of a wheel so that you can see how this fits in with it.

40 Q I wish you would do that. A Automobile folks usually consider an automobile wheel as something round and carrying a tire. It is round

Cornelius T. Myers, re-direct.

and it does carry a tire. It has anywhere from ten to fourteen spokes in it, and as a rule it is very much stronger than necessary to carry the load. One of those spokes alone would support the weight of the entire automobile without any trouble. You put a number of them in so as to have enough. Now, so far as a spoke in a vertical plane is concerned, there is ample strength there, and the tire and springs absorb some of the shock, but one reason why wood is so successfully used in an automobile wheel is that against the side shocks and blows that the machine has to withstand, there is practically nothing to cushion it except the flexibility of the spokes themselves, and wood, especially good hickory, is a most excellent shock absorber. 10

Q For side shocks? A For side blows, skidding, touching the curb, touching bumps and holes in the road. It is a good shock absorber because when it is hit it gives and returns to its original position. If you have anything that hits it and it snaps off you are sort of out of luck; but if it will give and come back, that is a very desirable thing. It saves the chassis itself from unusual strains and it prevents accidents. Now, if the wood, hickory in particular, is fibered, what we call long fibre wood, very tenacious, it has what we call a great deal of resiliency, will bend away over and come back. In fact, hickory is about twenty times as resilient as steel, which we commonly consider the strongest and most resilient metal. But wood for its weight is perhaps twenty times as resilient as steel. If it is long fibered and flexible, when bent it will come back. That is the function of wood spokes in a wheel, and that is the reason we do not have 20 30 40

Cornelius T. Myers, re-direct.

more spokes in a wheel and that is the reason they are not bigger and stiffer.

Now, if, however, the material is brittle, when the shock comes beyond the stress that the material will stand, it will give, and as it gives it snaps off. Again you are out of luck.

10 Now, these spokes that I have examined, four of them on one side of the wheel do not appear to me to be very good wood. I should say that they were brittle and short fibered.

Q And when you say they are brittle and short-fibered, what happens to the short-fibered, brittle wood? Come down here and indicate to the jury. A An ordinary spoke of good material would be bent over to a considerable extent and the fibres here would stretch a little but would return, but if it was brittle and was bent 20 the fibres will snap off. You might not discover that for a time, but under successive stresses that thing would break off.

Q Are you indicating now a spoke which has been sawed? A No, sir. There is only one that has been sawed.

Q Referring to this spoke, is that the tenon at the end? A This is where the tenon was, I presume.

30 Q What is the tenon? A The tenon is a little projection here that sticks up about that high and fits into the holes in the wheel felloe to hold the spoke in place.

Q Suppose I put an "M" on this one.

Mr. Studer: What does that indicate?

Mr. Markley: It indicates the loss of a tenon.

40 Q What does that indicate to you? A The wood at that particular point looks very poor to

Cornelius T. Myers, re-direct.

me. It has been subjected to a stress. That has just been bitten off. There has been no tenaciousness in that fibre at all; simply under stress it has gone, disappeared; I don't know where to. I would never expect that thing to fracture down below this finished surface in good material. 10

Q Where are these four or five short-fibered spokes? A Here is one broken off short down below here, even on the edge, and down below broken off short. There are practically no little strings to hold that thing together.

Mr. Studer: Just mark that.

Mr. Markley: I indicate that as No. 1 spoke.

The Witness: This one is marked "M." 20
I should say that showed the same defects in the wood.

Q The one I mark "1" is right next to the spoke marked "M," they are right adjoining?

A Yes.

Q Now go to the next. A Here is another one a little better, even though the fracture is not particularly good. If a lot of the spokes held considerably better than that and were not next to one other, I might say they might withstand the stress. 30

Q This one you speak of as not particularly good, we will mark that No. 2. Now, what is the next one? A No. 3 would indicate that it was broken off short and sharp; no little fingers up there to hold that thing together.

Q You call that No. 3? A Yes.

Q That is right next to No. 2? A Yes. 40

Cornelius T. Myers, re-direct.

Q How about the next one? A The same indications, a little better down here, but here is the same indication.

Q By that indication you mean it fractured off short without any fibres holding it together?
A Yes.

10 Q That is No. 4. Have you brought some other spokes that have long fibres to show how they will hold together even when the spoke is bent? A Yes, I brought those over yesterday.

Juror No. 11: Can I ask the expert a question?

The Court: Yes.

20 Juror No. 11: You have said there were four short fibered spokes. I would like to have you locate the long-fibered spokes.

The Witness: It is hard to tell now, because those fibres were pretty badly damaged from contact with the ground.

Q You have the long-fibered spokes here? A I brought some over, yes.

30 Juror No. 11: When this wheel was broken, did it rip that tenon off?

The Witness: It might readily have done that. There is one piece here with a tenon on it. It was ripped out of the steel, and the tenon is intact.

Juror No. 11: Probably pulled out?

40 The Witness: It is hard to tell what happened. It is difficult to pass upon what happened to a wheel after it got into this condition.

Cornelius T. Myers, re-direct.

Q Now, let us have the spokes you say have long fibres. Suppose you take this one and illustrate to the jury what you mean by long fibre?

A There is a spoke that has been placed in the press and broken, simply put between two supports at the ends and pressure applied in the middle to break it. Now, you will see that there are no short fibres in that. Here is a good, hard, tenacious hold. It has been bent down here; you see the angle at which it has been bent by a far greater pressure than could ever be applied to a wheel, and this wood we will call good wood. 10

Q How about this one? A This is a particularly good one, and again you see it has been broken away down, but still holds together.

The Court: What pressure did you use on those? 20

The Witness: Why, your Honor, I don't know; I had to do this in a hurry; we simply put them on the press and pressure was applied until they broke.

Juror No. 6: If the strain that broke those spokes was slowly applied, the result would be different than if it were a sharp blow, wouldn't it? 30

The Witness: I would not say so, not as a rule; all woods vary.

Juror No. 6: If you press it very slowly, and on another piece the blow was very sudden, would that make a difference?

The Witness: It might. I hesitate to say.

Mr. Studer: You won't say it would not?

The Witness: I would not say it would not; no, sir. 40

Cornelius T. Myers, re-direct.

Mr. Markley: I would like to have these marked in evidence.

(Marked Exhibits P. 7 and P. 8.)

Q Have you another? A Now, here is one broken which exhibits very much the same characteristics. You see here the same sort of fracture that you will see in the spokes in the wheel; no shredding; in fact, most of it is broken off short and sharp.

Juror No. 11: How many pounds pressure does it take to break a spoke?

The Witness: It will vary a good deal. There is a very large factor of safety in a wheel. What we want is something that will give under excessive side strain and come back. You have seen Ford wheels going around a corner; you can actually see the spokes give. If it was not for that the Ford axles would never stand up, never in the world.

Juror No. 11: I mean, how much pressure does it take to show the breaking strain?

30 The Witness: I could go into the technical features, into the fibre stresses, and so forth, but it would not mean a good deal to you, and the only way to demonstrate it clearly to you is to take small pieces so that you can readily measure the stresses—

Juror No. 11: You do not know how many pounds was used to break those spokes?

40 The Witness: No, sir; I do not.

Cornelius T. Myers, re-direct.

Mr. Markley: I would like to have this marked in evidence.

(Marked Exhibit P. 9.)

The Witness: Here is another spoke that shows to a very marked degree the short-fibered wood here, and still on that side not so bad. But here you see that this thing is short-fibered and it cracks when the strain gets great enough. It cracks like a pistol. 10

Juror No. 3: Was the same amount of pressure brought to bear on that spoke as on the one you demonstrated before?

The Witness: Well, we did not measure the exact pressure, the actual pressure anywhere, simply bent it until it broke or until it got to a point about like this one, which would ordinarily indicate destruction. 20

Juror No. 11: Isn't it possible that under a slow pressure these spokes will bend a little easier and give rather different than they would under a quick pressure?

The Witness: I am not prepared to say that anything cannot be done. I am simply trying to show the difference in the grain of the wood. I can say this, that in all of these tests the pressure was brought down at about the same speed, and it was simply broken, simply bent, and that was the finish of it. I could go into a technical demonstration at length, but I do not believe you would understand. As a rule when a fellow wants to cover up his meaning he resorts to technical language. Any doctor who does not know what he is talking about— 30

The Court: Never mind about that. 40

Cornelius T. Myers, re-direct.

Mr. Markley: I would like to have these pieces marked in evidence.

(Marked Exhibits P. 10, A and B.)

10 Q Have you another? A Here is a spoke, gentlemen, which had some defect in it, which defect would not necessarily condemn the wood. Checks, we call them. They come in the drying process. When a check takes place, of course that is an incipient crack, crack through the grain, and runs out somewhere. When a strain comes on it it is not necessarily the result of the check. It is a spoke of mighty good hickory. You see it bends out here. See how this thing has been bent? It has really gone back quite a bit already. That is where it was when it was split off. Still, it is holding together, the long-fibered, tough, tenacious wood, and it is fine material for the purpose intended.

20

Juror No. 9: Was that broken in a rapid way?

The Witness: No, they were simply placed on two supports and this bar of iron about four inches in diameter was put on in the middle, and we had a hydraulic plunger to exert the pressure with, and it came down very slowly in each case.

30

Mr. Studer: May I ask a question here?

Mr. Markley: I have not finished my examination. I would like to have this marked in evidence.

(Marked Exhibits P. 11, A and B.)

The Court: You kept on adding pressure until it broke in a certain way?

40 The Witness: No, until they failed.

Cornelius T. Myers, re-direct.

The Court: And your pressure was great enough to break any kind of a spoke you put there?

The Witness: Yes, sir.

Q The purpose of the test was to see if they would break entirely, or bend? A Whether they would break sharply or shred. 10

Q This is another example of a spoke subjected to the same treatment as the other? A They were all done exactly alike.

Mr. Markley: I would like to have this marked in evidence.

(Marked Exhibit P. 12.)

Juror No. 11: There were none of these spokes broken under an impact blow, were there? 20

The Witness: No.

Q Would a reasonable inspection of the wood of which the spokes were made reveal those short fibres? A Not a casual inspection.

Q A reasonable inspection? A It could be discovered. 30

The Court: That is not an answer.

Mr. Studer: I move to strike that out.

Q Would a reasonable inspection by the man who made the spokes from the wood reveal the short fibres? A Yes.

Q And the brittleness you spoke of? A Yes.

The Court: How would you show it; what would happen? 40

Cornelius T. Myers, re-direct.

The Witness: That would have to be discovered in the initial process of manufacture.

The Court: How would you discover it? Here is a piece of wood turned into a spoke. How could you discover it by examining that spoke?

10 The Witness: Not after it was turned into a spoke; I think I would have difficulty in discovering it.

The Court: It could not be discovered?

The Witness: Not at that time.

Q But before it is made into a spoke, that is what we are talking about here?

Mr. Studer: Don't lead.

20 Mr. Markley: I withdraw the question.

Q Would a reasonable inspection reveal it before it is actually turned into a spoke? A Yes, sir.

30 Q Now then, assuming that a light six Studebaker roadster, year 1923, almost new, having been used but a month, less than a month, from July 1st approximately to July 31st, was going along a macadam road, in fairly good condition, at a point where there is a slight curb and a slight down grade, and the automobile was going about twenty-five miles an hour and was going from its right-hand side of the road towards the center of the road, the road being about twenty-five to thirty feet wide, and assuming that this automobile has never had an accident before, and that a day or two before the accident the wheels on the car had been examined to find out whether the wheels were true and the car in good condition, and that it was found that it was in good

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Cornelius T. Myers, re-direct.

condition and functioning properly, and that suddenly the rear wheel collapses, although the metal felloe is apparently in good condition, and the rubber tire on the demountable rim, which was separated from the felloe, has not lost any air but is still inflated after the accident, and assuming further that in the rim of this wheel there are five wooden spokes made of hickory on the same side of the wheel which are short fibered and brittle so that they split cleanly and evenly instead of holding tenaciously until the various fibers were shredded apart, and assuming that the tenon of one of the spokes has been cut clean off, disclosing a wood structure of an inferior nature, in your opinion can you say what in reasonable probability caused the said wheel to collapse? 10

Mr. Studer: I object. There is no proof here that this split cleanly and easily and didn't hold tenaciously and whatever else it was he said. There is no proof that the tenon was cut clean off, no proof that it was of inferior quality, and he is not given the distance over which this car has gone, is simply asked whether a car used a month—that does not give him a basis to judge it on. 20

The Court: I sustain the objection. 30

Q Assuming a car has gone from three to five thousand miles, in addition to the other factors in the question—

Mr. Studer: I still object.

Mr. Markley: I submit that every factor in the question I have proved. I have proved it is a light six Studebaker roadster, almost new, only used a month. It was 40

Cornelius T. Myers, re-direct.

10 going along a macadam road in fairly good condition at a point where there is a curve and a down grade. Those facts are proved in this case. It is also proved that the automobile was going about twenty-five miles an hour and going from its right side of the road to the center of the road after the other car passed, and it has been proved that the car was never in an accident before, and that it functioned properly and that the wheels were true and the brakes good a day or two before the accident. The proof is clear on that. There is proof here that while it was going along in this road the rear wheel suddenly collapsed. There is proof here that the metal felloe is apparently in good condition. The felloe is right here, it can be
20 seen there is nothing the matter with it.

There is proof here that the rubber tires on the demountable rim was inflated, air in it. Two witnesses testified to that.

30 There is proof here that in the rear left wheel there were these five wooden spokes which we have identified, and the witness said the five wooden spokes are made of wood which was short-fibered and brittle. He said that on the witness stand just now; and also that when there are short fibres and brittle spokes that they split easily and cleanly instead of having the wood shred as in the samples which we have produced here.

Now I ask him what, in his opinion, would in reasonable probability have caused the wheel to collapse.

40 The Court: What is your objection now, since he had added the 5,000 miles?

Cornelius T. Myers, cross.

Mr. Studer: There is no proof that these spokes split cleanly and easily. I don't think that the hypothesis he included in the question are in the case.

The Court: I think that may be.

Mr. Studer: It is also to be considered that this wood wasn't necessarily of that kind a year and a half ago. I would like to ask him something about that, if that would not make a difference. He simply had it last Sunday or Sunday before last, and he necessarily does not know the condition of the wood as it was a year and a half ago when this thing happened. 10

The Court: You may examine him as to that. The original objection was to the fact that he left out of the question the factor of 5,000 miles use. That might make a very great difference. 20

Mr. Studer: I would like to cross examine him, if I may.

The Court: You may cross examine.

Cross examination by Mr. Studer.

Q Now, Mr. Myers, you got this wood from Mr. Markley's office and you took it to your place in Rahway? A Yes, the wheel and this. 30

Q By this you mean the wood of the Studebaker car? A Yes, sir.

Q When? A About two weeks ago.

Q Now, then, that wood having been left in a lawyer's office for a year or so and in another lawyer's office for a while, just left in a room at ordinary temperature and what not, dissembled as it is, would not be in the same condition 40

Cornelius T. Myers, cross.

that it was in at the time it was a wheel on July 31, 1923, would it? Moisture conditions would be different, isn't that so? A I thought you answered your question before you finished it.

Q I am asking you isn't that so? A May I have it repeated to me?

10

Mr. Markley: I object to the question, the words "what not."

The Court: I sustain the objection.

Q This wood having been left as it was for a year and a half in a lawyer's office would not be in the same condition as it was when it was a wheel on July 31st, would it? A I would not say that there was any material change in the structure of the wood.

20

Q The moisture makes a difference, does it not? A A slight difference, yes.

Q And the drier it becomes the more brittle it becomes; is that so? A No.

Q What does it do? A Becomes stronger.

Q The wood then absorbs the moisture from the air and equalizes its moisture content with that of the air during that period? A Quite likely.

30

Q And the more moisture there is in the wood the less flexibility the wood would have; isn't that so? A The more moisture, the less flexibility?

Q Yes. A Well, I think quite the reverse. You steam wood to get it flexible.

Q Then the more moisture it has what does it do, break easily? A Yes, breaks easier.

Q It would lose its elasticity, wouldn't it? A Not necessarily.

40

Cornelius T. Myers, re-direct.

Q Isn't it so that you dry wood to get a better spoke? A Yes, sir.

Q Then you take the moisture out, don't you? A You do.

Q And the moisture that is in the air would equalize itself in the wood, wouldn't it? A Give it time, yes.

Q A year and a half would be long enough, wouldn't it? A A year and a half, yes, I think that would be amply sufficient for the pieces that you have here.

10

Q It would very likely change the condition of that wood, would it not, as against what it was when it was a spoke in a wheel in July, 1923? A Not materially.

Q Well, how? A Oh, it might change a fraction of a per cent., but I don't think it would change it materially. It certainly would not deteriorate in a dry office.

20

Mr. Studer: Now, I renew my objection.

The Court: I will allow the question.

Mr. Studer: Exception.

Direct examination by Mr. Markley (continued).

Q What is your answer to my question, Mr. Myers? A I wish you would read it again.

30

Q All right. Assuming that a light six Studebaker roadster, year 1923, almost new, having been used about a month, from about July 1st to July 31st, which had gone between three and five thousand miles, was going along a macadam road in fairly good condition at a point where there is a slight curve and a slight down grade, and was going from the right side of the macadam road toward the center of the road, the

40

Cornelius T. Myers, re-direct.

10 road being about twenty-five to thirty feet wide, and assuming that this automobile had never been in an accident before and that it was examined a day or two before the accident and found in good running order and functioning properly, good condition, and that suddenly the rear wheel collapsed as the automobile is going
20 along that road, and after it collapsed you found that the metal felloe is in nowise injured, apparently all right, and the rubber tire on the demountable rim is still inflated, the air is in it, and assuming further that in the rear left wheel there are five wooden spokes made of hickory, on the same side of the wheel, which are short-fibered and brittle, so that they split cleanly and easily instead of holding tenaciously until the various fibres are shredded apart, and assuming that the tenon of one of the spokes above mentioned was out of its place, as appears in one of the spokes, disclosing the wood structure of those spokes of an inferior nature, Mr. Myers, in your opinion, can you say what in reasonable probability caused that wheel to collapse?

30 Mr. Studer: I wish to object as to the metal felloe; I don't think it is in evidence here that it is all right. He should be given an opportunity to look at the felloe.

Q Have you looked at this metal felloe? A Yes.

Q Assuming that the metal felloe in that condition is in my question, now then—

Mr. Studer: I don't think he has answered you about the felloe.

40 The Witness: I have not examined it closely.

Cornelius T. Myers, re-cross.

Q Well, looking at it, and in my question assuming that the felloe was in that condition—

Mr. Studer: May I direct his attention to something about the felloe that is important?

The Court: Yes, of course.

10

Re-cross examination by Mr. Studer.

Q Now, Mr. Myers, are you familiar with felloes? A Yes, sir.

Q Have you looked at this one? A Yes.

Q Just look at it as I place it on the floor; there is some marked difference in the surface of that felloe, is there not, it does not lie plumb on the floor, does it? A Maybe the floor is not plumb.

20

Q Well, look at it from the side and tell me by your eye—or take something that is plumb in your judgment—and test the felloe against it? A Well, I would say it seems slightly distorted.

Q Now, a distortion of that kind would not lead you to conclude that the felloe is all right, would it? A Well, “all right” is not a very definite term.

Q Well, it is not true, is it? A It does not appear to me to be true.

30

Q Then it is a fact that this felloe is not true? A Not true, but it is not badly out of shape.

Q But it is out of shape, isn't it? A I would not accept it as a new felloe, no.

Q And a sharp blow might have put it out of shape, might it not, impact with the ground? A Yes.

40

Cornelius T. Myers, re-direct.

Mr. Studer: I renew my objection, if your Honor please, lacking a very important hypothesis to the question.

Mr. Markley: I will put that into the question.

10 Q I assume in my question a felloe of the kind you see there, that is, the felloe as it existed after the accident, now then, do you want me to give you the question again? A I have a copy of that question with me, can I refer to that?

The Court: No, let the stenographer read the question with that change.

(Question repeated by stenographer as follows:)

20 Q Assuming that a light six Studebaker roadster of the year 1923, almost new, having been used about a month, from about July 1st to July 31st, which had gone between three and five thousand miles was going along on a macadam road in fairly good condition at a point where there is a slight curve and a slight down grade, and was going from the right side of the macadam road to the center of the road, the road being about twenty-five to thirty feet wide, and
30 assuming that this automobile has never been in an accident before and that it was examined a day or two before the accident and found in good running order and functioning properly, good condition, and that suddenly the rear wheel collapses as the automobile is going along that road and after the collapse it is found that the metal felloe was in the shape you see it now, and the rubber tire on the demountable rim was still inflated, the air is in it, and assuming
40

Cornelius T. Myers, re-direct.

further that in the rear left wheel there are five wooden spokes made of hickory on the same side of the wheel which are short-fibred and brittle, so that they split cleanly and easily instead of holding tenaciously until the various fibres are shredded apart, and assuming that the tenon of one of the spokes above-mentioned was out of its place as appears in one of these spokes, disclosing the wood structure of that spoke of an inferior nature, Mr. Myers, in your opinion, can you say what in reasonable probability caused that wheel to collapse? 10

Mr. Studer: Same objection. I don't think he has tested these spokes in any way so as to conclude that they do break easily and cleanly. I object to the use of the word collapsed. That is not in evidence. The only evidence there is is that he heard a cracking. Furthermore it is not a light six, it is a special six. There is no proof that those spokes broke cleanly and easily either. 20

The Court: Isn't that so, Mr. Markley?

Mr. Markley: He testified to those five spokes; he testified that they were made of brittle material and short fibred.

The Court: But you asked him if they broke easily. 30

Mr. Markley: He said when they were short fibred and brittle that they broke easily and cleanly instead of holding tenaciously.

The Court: You may put the question to him that way if you want to, that the spokes seemed to be short fibred and brittle, if that is what he said in reference to them.

Mr. Markley: All right. 40

Cornelius T. Myers, re-direct.

The Court: Now, will the stenographer repeat the question with those changes?

(Question repeated by stenographer as follows:)

Q Assuming that a special six Studebaker
10 roadster, year 1923, almost new, having been
used about a month, from about July 1st to
July 31st, which had gone between three and five
thousand miles, was going along a macadam
road, in fairly good condition, at a point where
there is a slight curve and a slight down grade,
and was going from the right side of the mac-
adam road toward the center of the road, the
road being about twenty-five to thirty feet wide,
and assuming that this automobile has never been
20 in an accident before and that it was examined a
day or two before the accident and found in good
running condition and functioning properly, good
condition, and that suddenly the rear wheel col-
lapses as the automobile is going along that road,
and after the collapse it is found that the metal
felloe was in the shape you see it now, and the
rubber tire on the demountable rim still inflated,
the air is in it, and assuming further that in the
rear left wheel there are five wooden spokes
30 made of hickory on the same side of the wheel
which are short fibred and brittle, and assuming
that the tenon of one of the spokes above-men-
tioned was out of its place, as appears on one of
the spokes, disclosing the wood structure of that
spoke of an inferior nature, Mr. Myers, in your
opinion can you say what in reasonable proba-
bility caused that wheel to collapse?

Mr. Studer: I still press my objection as
40 to the wheel collapsing.

Cornelius T. Myers, re-direct.

The Court: I think that may be answered.

Mr. Studer: Exception.

A Yes, sir.

Q What?

Mr. Studer: There is an absence of the hypothesis as to the condition of the road in that question which I think should be included. 10

The Court: It may be answered.

Mr. Studer: Exception.

Q What was the cause, Mr. Myers? A I believe that the wheel probably failed due to the fact that there being five spokes of inferior material almost or practically contiguous or practically contiguous, that when the strains that they would ordinarily resist took place, at least one of those spokes weakened—it may not have broken, probably didn't it—it threw additional stress on the spokes to one side or probably both sides of it. Now, if those spokes were of an unsatisfactory material that could not help the spokes that was failing first, the failure was probably progressive until the time when conditions were such that the wheel would not withstand the ordinary side stresses for which it was designed. 20 30

Mr. Studer: I move to strike out the answer as not responsive. He prefaced it by something that happened long before.

The Court: It is a hypothetical question and he is giving a hypothetical answer.

Mr. Studer: It is not responsive and I move that the answer be stricken out. 40

Cornelius T. Myers, cross.

The Court: What we are trying to find out is what caused that wheel to collapse. I don't think he has told us. However, I will allow the answer to stand if it answers the question.

Mr. Studer: Exception.

10 Q Can you give any approximation as to the ordinary life of a wooden wheel made of hickory? A It ought to last as long as the car.

Q About how long would that be on an average? A You can go out to the junk pile and find wooden wheels that are twenty years old.

Mr. Markley: That is all.

20 *Cross examination by Mr. Studer.*

Q You are assuming that the metal felloe was all right at the time? A Yes, I believe that is what the question stated, that everything else was O. K. on that car.

Q Including the felloe? A Yes, including the felloe.

30 Q You now say it is not all right and that the felloe is not true? A I would not call that a felloe that was acceptable for replacement in the car, no, sir.

Q You would not call it a felloe that could have been used in the car, would you? A That should be used?

Q That should be used or could be used in the car at the time? A No, I wouldn't say that.

40 Q It would not be accepted in a car, would it? A I could not say that.

Cornelius T. Myers, cross.

Q You won't say it was? A I didn't see that fellow until two weeks ago.

Q You see it now? A Yes.

Q Well, now, with your scientific knowledge and your imagination, I am asking you to go back to the thirty-first of July, 1923, and ask you if that fellow in that condition would have been used in a wheel at that time? A I don't know. 10

Q What do you think? A I am not thinking.

Q Let's try to think. Can you answer the question? A No.

Q As a scientific expert— A It is a question of fact and not science.

Q A question of fact? A Yes, sir.

Q Then ordinary common sense would answer the question, would it? 20

Mr. Markley: I object to that as purely argumentative.

Q You do not need any scientific knowledge to answer that question, do you? A No, sir.

Q Well, will you disregard all your scientific knowledge and base it on your common sense and answer it? A What is the question?

Q Would that fellow have been on a Studebaker car on July 31, 1923? A You have mixed your question before you start. You say would it have been used and you asked me should have been used, which do you mean? 30

Q Would that fellow have been used in a Studebaker automobile in that condition, in your common sense judgment, on July 31, 1923? A I would say they would not have used such a fellow in an original assembly.

Q Now, Mr. Myers, where did you get these spokes, by these I mean referring to these things 40

Cornelius T. Myers, cross.

that you demonstrated before the jury a little while ago? A From a wheelwright.

Q Were these spokes ready to be used? A They were in storage.

Q In storage ready to be used, and they are the kind of spokes Packard cars use, are they not? A That I can not say.

10 Q You won't deny it? A Well, I won't deny it, no.

Q And they were ready to be used as spokes, were they? A Yes, sir.

Q You took them and put them in presses and applied whatever gradual pressure you needed to apply to destroy them, didn't you? A Yes.

20 Q And until you had destroyed them you were not able to say that they were defective as you found them to be after you destroyed them? A That is correct.

Q And there was not one of them given a hard blow, a sharp blow such as an impact would be? A No.

Q Do you know that there is an allegation in this case that this car had been in a collision and an impact with the ground, had met with a sharp blow? A I know that, yes, sir.

30 Q There is no mystery about applying a sharp blow to a piece of wood, is there? A No.

Q There is no secret, scientific or in common sense or otherwise with reference to testing the strength of material applying a sharp blow or a gradual pressure? A No.

40 Q And you had something to indicate the pressure, the power that was applied to break all these spokes, did you not? There was an indicator? A Not one to indicate with any accuracy the actual pressure applied.

Cornelius T. Myers, cross.

Q Aren't there indicators that will indicate with a fair degree of accuracy the pressure that is applied? A Oh, yes.

Q And in your work you have access to those indicators, haven't you? A Yes.

Q And you knew you were going to be asked here about how you had broken these several spokes, didn't you? A Yes, I presume so. 10

Q What distance from the ends were the supports when you applied this gradual pressure? A You will probably see the marks on the ends—about ten inches apart. They were applied about an inch and a half from the edge of the spokes.

Q Did you hold them in? A They were not held at all, they were simply laid on the two blocks.

Q Weren't they held on the blocks in any way? A No, sir. 20

Q And right in the middle you applied the pressure? A There were two small blocks used as supports and a bar of iron about four inches in diameter laid on top of it and the pressure was applied to that bar, forcing it down on to the spokes. If you wish me to I can illustrate on the blackboard.

Q Yes, go ahead. 30

(Witness illustrates on the blackboard.)

Q Was the power exerted from above or below? A Exerted from below; it would have made no difference.

The Court: Do you know how many pounds pressure there was applied?

The Witness: Not the actual pressure, no, sir. This was a very heavy press and 40

Cornelius T. Myers, cross.

the indicator was not anywhere near sensitive enough to measure with any degree of accuracy a test of this kind.

Juror Number Ten: May I ask a question?

The Court: Yes.

10

Q (By Juror Number Ten.) Were those spokes all laid alongside of each other and the pressure made at the same time?

The Witness: No, one after the other, each one separately. I simply put the pressure on until each one failed as you see it there.

By Mr. Studer.

20

Q How long did it take to make those experiments? A I am sure we do not know; we were fussing back and forth I should say maybe around half an hour or three-quarters of an hour doing the actual breaking of those pieces.

The Court: Did you break any others that you did not bring here?

30

The Witness: No, I brought everything that I broke.

Q Where did you buy these spokes you have used in the experiment here? A From the Phineas Jones Company, in Newark.

Q They are reputable wheelwrights and spoke makers, are they not? A Yes.

40

Q They used to be carriage people before they went into the spoke and automobile wheel business? A That I can not say.

Cornelius T. Myers, cross.

Q They have been in business upwards of fifty years and very reputable people? A Yes.

Q And these are the spokes they sold to their customers to be used in automobiles, isn't that so? A I don't know; they didn't sell those.

Q Did you just go and take them? A Yes.

Q Out of the general run they had on sale for customers? A Those were not finished; they are not quite ready to be assembled in wheels. 10

Q They have not been painted either? A No.

Q Now then, you did not apply any experiments of that kind to the spokes in this wheel, did you? A No.

Q By this wheel I mean this Studebaker wheel? A No, sir, I did not.

Q A wheel in motion has the stress up and down through the spokes when it is at right angles to the road? A Ordinarily, yes. 20

Q A wheel in motion on the road is at right angles to the road? A Absolutely.

Q And the stress is through the spokes? A Yes.

Q Now a blow from the side will break a spoke, won't it? A Sometimes.

Q Assuming an automobile of this kind going along the road as this was, say at twenty or twenty-five miles an hour, had struck an embankment a foot and a half high in such a manner that it turned over twice, straddled a fence from fifteen to twenty feet from the edge of the road and its direction was reversed so that it was headed from where it had come when it came to a stop, such a revolution or revolutions of any automobile and such a happening could have broken a wheel off, could it not? 30 40

Cornelius T. Myers, cross.

Mr. Markley: Objected to, there is no evidence to support such a hypothetical question.

The Court: He may answer the question.

Mr. Markley: Exception.

A It could readily have broken it, yes.

10 Q And the felloe here being out of line and untrue as it is could have gotten out of line and untrue as it is as the result of the impact with the earth could it not? A Well, it might have been if it hit a heavy stone underneath the surface or something of that sort.

Q Spokes in a wheel are held rigid at both ends, are they not? A They should be.

20 Q And assuming they are, a sharp blow struck in the middle, where the spokes in a wheel are held rigid at both ends, will break it almost instanter, will it not? A No, sir.

Q Will it break quicker when the ends are held than if the ends are loose, as you had them when you made the experiment? A Almost any material will do that.

Q Anything held at the end will break quicker if it is struck than if it is loose? A Surely.

30 Q You did not test any of these by having the ends held together rigidly, did you? A No.

Q Can you give us any idea what pressure you exerted on these? A No, sir, I cannot.

Q Didn't you have any indicator there at all? A Yes, it was in a press, that was far too big for any indications.

Q Was there any mystery about it? Haven't you any idea what it was? A There is no mystery whatever about it.

40 Q And you have no idea whatever about it? A No, sir, I do not know what the pressure was; I have no means of knowing.

Cornelius T. Myers, cross.

Q And your whole purpose was to apply a pressure until they broke, was it? A Yes, that is all.

Q The pressure of these machines is to exert a pressure until the object being tested is broken, is that right? A On a wood testing machine, yes, but this was not a wood testing machine. 10

Q What was it? A A wheel press.

Q You had access to wood testing machines, didn't you?

Mr. Markley: I object to that. He has answered that once and said yes; I don't see that it is going to help by asking it two or three times.

The Court: Let him ask the question.

By the Court.

20

Q This piece has been sawed off? A Yes.

Q Where did it come from, what part? A This is just one of the loose pieces that has been sawed in two; it was one of the spokes of this wheel.

Q Now, two of those pieces are smooth at the ends; have they been sawed? A I only cut up one of the spokes and this is the one.

Q How about the others? A I didn't cut the others. 30

Q Isn't it evident from the appearance of them that they have been sawed? A I see no evidence on any of the other spokes.

Q You mean to say you could break a spoke in a wheel as smoothly as this? See this one?

A I see it is quite a similar condition.

Q Take this one; has that been sawed off?

A There is no indication that that has been sawed off. 40

Cornelius T. Myers, cross.

10 Q How about this? A No, sir, that is machined. This is a process of manufacture. This is a tenon here. That is all done in the wheel maker's plant. This is the tenon; you can see the little fillet, the little rounding where the tenon was previously and see where it has come out here. The whole thing has broken off short and sharp at the bottom.

The Court: That has not been cut off?

The Witness: Oh, no, I don't believe so.

The Court: Is there a difference in the feeling of it?

20 The Witness: No indicating whatever; there is no difference in the feeling which would indicate any material difference to me.

The Court: You do not think they have been sawed off?

The Witness: No, sir.

By Mr. Studer.

Q As an expert, can you say how much pressure it would take to break one of those spokes which you broke? A No, sir.

30 Q You cannot say? A No, sir.

The Court: Have you any idea of the amount of pressure that a good spoke, a proper spoke for an automobile of this character, should stand?

40 The Witness: Well, there would be an allowance limit in the manufacture of a wheel of perhaps one hundred per cent. still be satisfactory if the wood was tenacious and had an amount of resiliency. That is

Cornelius T. Myers, cross.

an important thing. There are all sorts of stresses in supporting the load. One spoke alone will support the load of an entire car without difficulty, but the essential thing and the only reason why they use wood and want to use good wood is because when the critical shocks come, side blows or skidding blows of that sort, they want a resilient material, and that is the only reason that I know of. 10

Q Mr. Myers, assuming an automobile on a curve was bearing to its left, the force is exerted against one of the rear wheels, isn't it? A Yes, there is a greater amount on the right wheel than on the left.

Q Centrifugal force is against the right wheel? A It tends to lift a little off the wheel on the inside and put it on the wheel on the outside. 20

Q And the weight is on the right wheel in bearing to the left; that is true? A Yes, sir.

The Court: I did not understand you to say, Mr. Myers, that it would be practicable to test every spoke of a wheel by putting it in a press the way you did, would it? 30

The Witness: Oh, no.

The Court: That would not be practical?

The Witness: No.

The Court: It would not be practical to keep on pressing it until it broke?

The Witness: No, sir. But, your Honor, I was not testing for actual tensile strength. I was testing to get something which would show the jury what I believe was an example of an essential thing in this construction. 40

Motion for a Non-suit.

Mr. Studer: And the only way you could show it was to destroy the material itself?

The Witness: That is not the only way; that is the nearest I could get to it.

Mr. Studer: That is all.

10 Mr. Markley. That is all. That is our case.

Mr. Studer: I respectfully move for a non-suit on the ground that I called to your attention at the close of the plaintiff's opening yesterday, namely, that there was no liability on the part of a manufacturer to a third person, citing, as I did, Winterbottom against Wright.

20 Also on the ground that there is no negligence shown as against this defendant with reference to the manner in which this wheel alleged to be defective was improperly made, the only proof being a test requiring complete destruction of the material tested, which is far and beyond any reasonable test that anybody could be saddled with in the manufacture of anything to be sold to anybody. There is no proof of any defect or
30 any absence of inspection or any defective construction, therefore there is no evidence of negligence in the case.

Michael J. O'Hara, direct.

DEFENSE.

MICHAEL J. O'HARA, sworn.

Direct examination by Mr. Studer.

Q What is your business? A Civil engineer. 10

Q Where do you live? A Hudson, New York.

Q Are you familiar with the highway leading from Hudson, New York, passing through Livingston? A I am.

Q Have you made some measurements and a drawing of the location there? A I have.

Q At about Fred Stickle's warehouse? A Yes, sir.

Q I show you a drawing and ask you if you prepared that? A I did. 20

Q Is that drawing to scale? A It is.

Q What is the scale? A The scale on the plan looking down on the road is one inch equals thirty feet. The scale on the profile showing the grade of the road from one end of this curve which has been spoken of is one inch equals three feet. The horizontal scale is one inch equals thirty feet and the vertical scale one inch equals three feet. 30

Q Is Stickle's farm indicated on this map? A The farm buildings, yes.

Q And is the road indicated, the macadam road? A It is.

Q Tell us the width—

Mr. Studer: I would like to offer this map in evidence.

(Map offered in evidence and marked Exhibit D. 10.) 40

Michael J. O'Hara, direct.

Q When did you make these measurements?

A The measurements were made on September 18, 1923; the map was prepared last Saturday.

Q What is the roadway made of Mr. O'Hara? A Bituminous macadam.

10 Q How wide is the macadam strip? A Fifteen and one-half feet.

Q For how far a distance does that extend with reference to Stickle's farm, that width of the road? A It is that same width for at least 600 feet north, that is in the direction of Hudson above Stickle's farm and for about 800 or 900 feet below Stickle's farm.

Q Is there a shoulder on the right and left side of the macadam strip? A There is.

20 Q How wide is that shoulder? A On the westerly side of the road the width of the gravel shoulder is seven feet and on the easterly side of the road it is five feet.

Q Makes a total over all from shoulder to shoulder about what? A Twenty-seven and one-half feet.

Q Is there any ascent, any ditch or any ascent on the side of the road at the westerly edge of the shoulder? A Just where?

30 Q Well, say south of Stickle's farm? A Yes, there is.

Q And what is that, is it a decline or an ascent? A It is an ascent.

Q About how high? A About a foot.

Q How long a distance does that continue? A As I remember 150 or 200 feet.

Q Have you indicated a fence on the westerly side of the road there? A I have.

40 Q How far from the westerly edge of the shoulder was the fence at the time? A It

Michael J. O'Hara, direct.

varies slightly. At the southerly building of Stickle's farm the corner of the fence is nineteen feet from the shoulder of the road and at a point 100 feet south of that it is twelve feet, and for the rest of the distance to the curve it is eight and one-half feet from the shoulder of the road.

10

Q And what is there lying between the westerly shoulder of the road and the fence?

A A ditch.

Q With reference to the grade of the road going southerly is there a descent or an ascent?

A A descent going southerly.

Q What is the grade? A Two degrees grade.

Q What does that mean? A That means a decline of two feet in every 100 feet.

20

Q Is there a curve? A There is.

Q Going how? A To the left, going south.

Q What is the degree of that curve? A About an eighth degree curve.

Q I show you Exhibit D. 3 and ask you if the buildings in the foreground and to the right are part of the Stickle's farm buildings? A They are.

Q I show you Exhibit D. 4 and ask you if the buildings shown to the right of the foreground are part of the Stickle's farm buildings? A Yes, sir.

30

Q The same question with reference to Exhibit D. 5? A Yes, sir.

Q The same question with reference to Exhibit D. 1, the building on the left side, foreground? A Yes, sir.

Q I show you Exhibit D. 2, the photograph showing Luckey-Platt Company sign under the tree and ask you if you recognize that place as

40

Michael J. O'Hara, cross.

being a view of the Stickle's farm buildings?

A It is.

Q On the right side of the road? A On the right side of the road.

Mr. Studer: Cross examine.

10 *Cross examination by Mr. Markley.*

Q What do you mean when you say an eight degree curve to the left? A It means that the curve for a distance of 100 feet turns an angle of eight degrees. That does not mean much to the jury but it means in this particular case that there is a deflection to the left side from the direction of the tangent part of the road north of Stickle's farm of about fifteen
20 feet for every 100 feet.

Q That is rather a slow curve—it is not a sharp curve? A No, it is not an exceedingly sharp curve, not above the ordinary.

Q This shows the road toward New York going south? A Yes, sir.

Q And the shoulder on the west side which would be the right side going to New York? A Yes.

30 Q The west side of the road, you say this shoulder was how much? A Seven feet.

Q And that shoulder is about level with the macadam? A Well, there is a crown in the macadam road, it is about level with the edge of the macadam road.

Q Yes of course. The road is built with a crown in the center in order to drain the water? A Yes, sir.

40 Q But the shoulder is seven feet on the west? A Yes, seven feet.

Michael J. O'Hara, cross.

Q That is about level with the right-hand edge of the macadam going toward New York?

A Approximately so.

Q Looking at Exhibit D. 1, in which direction is that as you look at the picture? A That is looking northerly.

Q Up toward Hudson? A Yes, toward Hudson. 10

Q And the seven foot dirt shoulder begins at about where you see "D. 1"? A Yes, sir.

Q And runs to the left of the picture? A Yes, sir.

Q That is seven foot you say? A Yes, sir.

Q And between that and this ditch you speak of is there a grass plot? A Yes, sir.

Q About how wide is that grass plot at a point about opposite "D. 1"? A It looks from this picture as though it might be two feet wide. 20

Q And the ditch is on the outside of that? A Yes, sir.

Q That grass plot is about level with the shoulder of the road? A Not exactly level; the picture shows it.

Q Is it higher or lower? A A little lower.

Q But the ditch is to the left of the two feet? A That is right. 30

Q As you look at the picture? A Yes, sir.

Q Now, this ditch only extends for a short distance, doesn't it? A Well the ditch is shown in the picture here, looking south.

Q In this picture I am asking you if the ditch appears opposite "D. 1"? A It shows for the entire length.

Q Did you make any measurements to see what the depth of the ditch was opposite P. 1?

A No, I did not. It is just my observation. 40

Michael J. O'Hara, cross.

Q What is the building that appears opposite "D. 1"? A A wagon house.

Q On Stickle's farm? A Yes, sir.

Q Now, the point marked X, where you see the fence, how far is the fence at that point from the shoulder of the road? A Approximately twelve feet.

Q That is, the point where you see the X on the fence to the near side of the shoulder of the road is only twelve feet? A Twelve feet; that is indicated on that map.

Q And what would you say was the depth of the ditch at the point about opposite D. 11? A About a foot.

Q That is the depth of the ditch below the grass plot? A Yes, sir.

Q And is there a roadway leading into Stickle's farm just below the ditch? A Yes.

Q And where that roadway begins the ditch disappears, doesn't it? A Yes, sir.

Q The road was a pretty good macadam road when you saw it in September? A A good road.

Q I believe you said you saw it in September? A September 18, 1923.

The Court: How much crown is there to the road, can you tell me, from the edge of the macadam to the center?

The Witness: About six inches.

Cross examination (continued) by Mr. Markley.

Q You said there was a down grade going south towards New York from Hudson, two degrees down grade? A Yes, sir.

Michael J. O'Hara, cross.

Q That is two feet in every 100 feet you traveled; in other words there is a drop in the road, a down grade, so that for every 100 feet you travel you travel two feet down? A Yes, sir.

Q How far does that continue? A For about five hundred feet. 10

Q For five hundred feet? A Yes, sir.

Q Where does it begin? A It begins at the beginning of the curve.

Q In other words up here as you show on your map the road is a straight road toward Hudson? A Yes, sir.

Q There is no grade there? A It is practically level.

Q Practically level? A Yes, sir.

Q Until you get to the beginning of the curve? A Yes, sir. 20

Q And when you get to the beginning of the curve then the down grade first begins? A Yes, sir.

Q And it is two feet in every 100 feet? A Yes, sir; for 500 feet.

Q Then it becomes level again? A Then it becomes level again. 30

Mr. Markley: That is all.

(Witness excused.)

Mr. Studer: There was a witness who was unable to come to this trial and his testimony was taken *de bene esse*. All rulings on objections, and so forth were reserved until the trial. There is some testimony here that is objectionable I think, to be perfectly frank, and I would like to read 40

Deposition of Peter W. Clum, direct.

it slowly and let Mr. Markley have the opportunity to object.

Mr. Markley: I have no objection to that.

10 Mr. Studer: This is the testimony of one of the witnesses taken at the office of Walter C. Archibald, Esq., Referee, 93 State street, Albany, N. Y., Friday, January 9, 1925.

“PETER W. CLUM, was examined.

The Court: I want to say to the jury right here that this has the same effect as if the witness were here. It is taken under the statute, that is admitted by counsel, of course.

20 “Q What is your full name? A Peter W. Clum.

“Q Where do you reside? A Livingston.

“Q Is that New York? A Yes, sir.

“Q What is your occupation? A Farmer.

“Q Are you in business for yourself? A No, working for my father.

“Q Do you know of an accident which happened on or about July 31, 1923? A I do.

30 “Q In the vicinity of Livingston, N. Y.? A Yes, sir.

“Q Will you tell us what you know about it? A Tell you what I know about it—what do you want me to do, start from the beginning?

“Q Start from the beginning and tell us when you first knew of this accident? A I first knew of this accident about 4:20 in the morning, I was called out of bed.

40 “Q Is that daylight or standard time? A Standard.

Deposition of Peter W. Clum, direct.

“Q This was in July? A Sure.

“Q That is when daylight saving time was in effect? A That was standard time.

“Q Go ahead. A And when they hollered I looked out of the window.

“Q When they hollered—who do you mean? A My father.

“Q What is his name? A Stephen J. Clum. He hollered and I looked out the window and I seen a fellow out in the yard all blood; blood all over his face and his clothes was all blood; just light enough for me to see the reflection.

“Q Was this the other man that was with your father? A Covered with blood.

“Q Or the other man? A Other man; father was in the house; he got up, trying to call him up.

“Q Tell us what you did. A So I got up and got dressed, and by the time I got dressed and got down they told me to get the car, asked me to get the car to take the fellow to the hospital, and I said yes. So I started and they started you know, and they beat me down there; wasn't much difference. When they got down there I was maybe ten or fifteen feet behind them with the car.

“Q Did they walk or ride down? A Walked down.

“Q You went down in your car? A Yes.

“Q How far is it from your house? A From that place, must be ten hundred feet or so; about four lengths of a telephone pole apart.

“Q That is where the accident happened from your house? A That is where the accident happened, below my house.

“Q When you got to the scene of the accident, what did you do? A I turned the car around.

Deposition of Peter W. Clum, direct.

“Q What car, your car? A Yes.

“Q What did you do? A My father and the other fellow put the other fellow in the car and I started for Hudson.

“Q Asked you to take him to the hospital? A To the hospital.

10 “Q You took these men, the plaintiff in this case, Dominick Martin, and his son to the hospital? A To the hospital.

“Q Where was the hospital located? A Hudson, N. Y.

“Q How far was Hudson from the scene of this accident? A About nine miles; nine and one-quarter at the most.

“Q How long did it take you to get to the hospital from there? A Can't tell you.

20 “Q Was it half an hour? A Yes, good half an hour.

“Q Wasn't any more? A Because I took him there with a Ford car.

“Q It wasn't longer than half an hour? A No, it wasn't longer than half an hour.

“Q Did you come back to the scene of the accident after you left Dominick Martin and his son at the hospital? A I did.

30 “Q What did you do when you came back? A What did I do when I came back—I picked up that stuff.

“Q What stuff?”

Mr. Studer: Now there is an objection.

Mr. Markley: We will go ahead to the next question.

40 “Q And what did you see when you got back to the place where the accident occurred?”

Deposition of Peter W. Clum, direct.

Mr. Studer: That is also objected to.

Mr. Markley: Go ahead.

“A I seen a smashed up car.

“Q And was it the same car that belonged to the plaintiff in this action?”

Mr. Studer: That was objected to. 10

Mr. Markley: I withdraw the objection.

“A Yes.

“Q Tell us the condition of that car; what you found when you examined it? A What I found—you mean the parts I found?

“Q Exactly; what the condition of the whole car was? A Whole car—top smashed off of it; the top, and left hind wheel was smashed off, and the forward left wheel was bent over. 20

“Q In what position was this car? A Straddling an American field fence.

“Q Which side of the road was it on? A On the right-hand side, going down.

“Q What direction is that, east or west? A West.

“Q West side of the road? A West side of the road.

“Q Was it straddling the wire fence on the west side of the road? A Yes. 30

“Q Where was the left rear wheel you spoke of? A Left rear wheel, that was the tire and rim; nothing left of it, it was broke, broke right through the middle spokes, and she laid about three or four feet; three feet at the highest, about, right behind the car.

“Q Was there a bank there? A There was.

“Q And was this car on the bank or over the bank? A Over the bank. 40

Deposition of Peter W. Clum, direct.

“Q Did you notice any marks in the road just before the place where the accident occurred?”

10 Mr. Markley: Now we object to that on the ground that it is incompetent and immaterial and not connected with the car in question.

Mr. Studer: It is connected up later.

The Court: It is objectionable.

“Tell us what these marks were.”

Mr. Markley: That is objected to.

The Court: I think that is objectionable, too.

20 Mr. Studer: I pray an exception to both of your Honor’s rulings.

“Q Can you characterize these marks in the road for us? Can you tell us what kind of marks they were?”

Mr. Studer: There is an objection to that.

30 The Court: I think that is objectionable, too.

Mr. Studer: Exception.

“Q Did you remove any of the personal belongings of Dominick Martin or his son from the car? A I did.

“Q Will you tell us what you did take from the car, or around or near the car?”

40 Mr. Markley: I withdraw the objection there.

Deposition of Peter W. Clum, direct.

“A I took some tires, two tires and the rims of the ones that was broke, and a blanket. That is all I took from the car.

“Q Did you take anything away from around the car; was there anything around the car at all, in the road side or beside it? A Yes, I picked up a revolver.”

10

Mr. Markley: The motion to strike out is withdrawn.

“Q Did the plaintiff tell you the revolver belonged to him?”

Mr. Markley: Withdraw the objection.

“A He did.

“Q You stated a minute ago that you took the left wheel, and I think you said two tires, back to your garage in the afternoon, didn't you? You said you took them back to your garage? A Yes, right away.

20

“Q When you had this left wheel in your garage, did you examine it? A I did.

“Q Will you tell us what your examination disclosed in reference to its condition?”

Mr. Markley: The objection is withdrawn. 30

“A The tire was in perfect shape but the spokes was sticking in all around, in the felloe, in the rim where the wooden spokes set in. It was all broken spokes sticking in it, from one to four inches long, all around them holes, what was left of them. Once in a while one wasn't there.

“Q Did the wood to you appear to be all good wood, or was it brittle and easily breakable?”

40

Deposition of Peter W. Clum, direct.

Mr. Studer: That was objected to.

The Court: I think it is objectionable. It does not appear that the witness was qualified.

10 “Q Was there any knots in the wood? A I didn’t see any.

“Q Was there any crack in the steel frame around the steel rim?”

Mr. Studer: There is an objection to that.

Mr. Markley: I withdraw the objection to that.

20 “Q What did you notice, if anything, about the rim of the wheel? A I didn’t notice anything about it; she was right fast to the rim and the tire right alongside.

“Q Was the tire good, blown up? A The tire was in perfect order.

“Q In so far as you could ascertain, was the rim in good condition?”

Mr. Markley: I withdraw the objection.

30 Mr. Studer: The question was not answered anyway.

“Q What did you notice, if anything, about the remaining part of the spokes of this wheel? A I didn’t notice anything only they were broke, right straight through; that is all I noticed.

40 “Q Let us get back to the time when you were talking to the plaintiff, Dominick Martin, at the time the coroner came down to the scene of this accident, were you present? A At the scene of the accident?

Deposition of Peter W. Clum, direct.

“Q Yes. A He didn’t come there; he came to my house.

“Q The coroner came to your house? A Yes.

“Q Was the plaintiff at your house, too? A Out in the road, yes.

“Q Where were you at the time? A I was over in the lot and they called me over. 10

“Q And you and Mr. Martin and the coroner were together? A And another man sat in the hind seat.

“Q Do you know who that man was? A Some relation to Martin.

“Q You don’t know who he was? A I don’t know whether brother-in-law or son-in-law, or what he was.

“Q Was there a conversation at the time between you four gentlemen? A No regular conversation. The coroner came there— 20

“Q Answer yes or no? A No.

“Q No conversation at all? A No.

“Q Nobody said anything? A Yes.

“Q Then there was conversation? A Yes, but I meant like this—

“Q Answer my question; was there or was there not anything said by any of the parties present at the time when you were with the other three gentlemen? A Yes. 30

“Q Did you hear the plaintiff, Dominick Martin, say anything to the coroner?”

Mr. Markley: I withdraw the objection.

“A Yes, the first thing they asked me—as soon as the coroner came he asked me if I seen anything.”

“Q Tell us what you heard the plaintiff, Dominick Martin, say to the coroner with reference to this accident? A I didn’t hear him say nothing. 40

Deposition of Peter W. Clum, direct.

“Q You state you heard him say nothing? A He didn't say nothing at that time.

“Q When did he say anything in your presence to the coroner with reference to this accident? A He sat down afterwards; he came walking down on the road about a day afterwards. They came down there looking and he was talking about the accident.

10 “Q Who is this? A Dominick Martin.

“Q And the coroner? A No, another fellow.

“Q Who was the other fellow? A I couldn't tell you, I don't know, I don't know them people.

“Q You never heard the plaintiff, Dominick Martin, say anything to the coroner in your presence? A No, he never said nothing in my presence, all except the coroner asked me questions.

20 “Q What conversation did you have with the coroner?”

Mr. Studer: That is objected to and I think the objection is well taken.

“Q Were you ever called as a witness at the coroner's inquest? A No, not on this case.

30 “Q Do you know if there ever was an inquest taken by the coroner? A I don't.

“Q What did you do with the personal belongings of Dominick Martin after you collected them? A After I collected them he told me to give them over to the man that came after the car, and I transferred the stuff to the Crescent Garage.

“Q What did you give the Crescent Garage, that you took from the car? A The tires and rim, and a few tools, and blankets, etc., like that;

40

Deposition of Peter W. Clum, cross.

little odds and ends; little pieces of iron; I don't know what they all are."

By Mr. Markley.

"Q Did you see this particular accident? A See the accident when it happened, no.

"Q Did you know Dominick Martin before the occurrences that we have talked about here? A No, sir. 10

"Q On what road did this accident happen? A On the Albany Post Road.

"Q What kind of a road is that? A Macadamized road.

"Q At this particular place is it cement or macadam? A Macadamized.

"Q In what condition was the highway at the point where you found this car? A Good condition, because it had only just been repaired. 20

"Q How wide was the road? A Twenty-four foot roadway, macadamized.

"Q How wide was the macadam part of the road? A Twenty-four feet.

"Q Are you sure of that? A That is what I was always told, I never measured it. They said that was twenty-four feet macadamized. That is what I was told when they were building it, but I never measured it myself, I was only going by what I was told. 30

"Q Is this highway much used? A Yes.

"Q It is a main road? A The main highway from New York to Albany.

"Q What kind of a day was July 31, 1923? A I can't tell you.

"Q Pleasant? A Yes, warm weather, nice and warm.

"Q Nice warm day? A Yes, didn't rain. 40

Deposition of Peter W. Clum, cross.

“Q How many cars would you say go up and down that road every day?”

Mr. Markley: That was objected to; we do not care anything about that.

10 “Q Traffic is very heavy on this road? A Yes, in the summer time.

“Q Who have you talked to with regard to this case? A I ain't talked to no one much; I ain't talked to no one only when somebody ask me questions and I say something. I ain't talked to no one outside of that.

20 “Q Did you talk to a representative of the defendant and sign a statement for them? A I signed that affidavit; when the man came I signed the affidavit, the same as you have here now, I suppose.

“Q Do you recollect when a representative of the plaintiff came to you and asked you to sign a paper, and you refused to tell him anything about the accident?”

Mr. Markley: That was objected to.

Mr. Studer: Go ahead.

30 “Q Did you sign any affidavit for any representative of the plaintiff?”

Mr. Studer: Withdraw the objection.

“A Yes, I signed one.

“Q Now, did you retain any of this material that was taken out of this car yourself? A What do you mean, retain?

“Q Keep it? A No, sir.

40 “Q Have you been a witness before in any accident case? A No.

Deposition of Peter W. Clum, cross.

“Q Did you make any memorandum of what you found with regard to this accident? A No, I just piled it all on a heap, and when the towing car came down they took it; I told them where it was and they went and got it.

“Q You had no interest in this matter whatever? A No, Dominick asked me if I would pick up that stuff and keep it until the garage man came for it. He asked me that at the time in the hospital. 10

“Q Do you know of your own knowledge whether the man that you saw at the hospital was the man who was in this car at the time of this accident? A No, sir, I don't.”

Mr. Studer: “Q In reference to any conversations had with anybody with reference to this case, you have talked this case over with me, haven't you? A Yes.” 20

“Q And you talked it over with our representatives, have you not? A Yes.”

Mr. Markley: “Q Don't you think you are confused when you say that you have signed an affidavit for some representative of the plaintiff? A I said I signed a paper. A man came around and took my affidavit; I signed a paper, but don't know who it was.” 30

Mr. Studer: “Q Don't you know who it was asked you to come around and sign the paper? A I knew, but it is so long ago.”

Mr. Markley: “Q And you took no notes about it? A No.”

“Q And so it is pretty hard to remember over a year ago just what happened there? A 40

Frederick H. Stickles, direct.

I can remember all the stuff I told you—I can remember. That stuff was easy to remember, but sometimes names and some stuff I forget.

“Q Do you know what kind of a car this was? A Studebaker.”

10

FREDERICK H. STICKLES, sworn.

Direct examination by Mr. Studer.

Q Where do you live? A Now I live at Livingston, New York.

Q Where did you live during the summer, 1923? A I lived in Germantown.

20 Q Were you building a house in Livingston in the summer of 1923? A I was.

Q There are some pictures here showing what has been referred to as Stickles' farm buildings. I show you these five pictures and ask you if the buildings shown on those five pictures are your farm buildings? A They are.

Q And where is that farm? A About a mile south of Livingston.

30 Q Were you there in the early part of August at or the latter part of July, 1923? A I was every day.

Q Do you remember August 2, 1923? A I do.

Q Did anything unusual occur in the vicinity of your farm on that day? A Why, in the morning there was an accident.

Q What time, do you recall? A About 6:30 standard time.

40 Q And when you arrived where did you find the Studebaker automobile? A Lying on my fence.

Frederick H. Stickles, direct.

Q In what condition was the automobile? A It was lying right side up, headed toward Hudson.

Q Was it broken at all? A Yes. It was broken, the windshield was broken, the front axle was bent and a rear wheel broken.

Q Who was there when you got there? A 10
Why, there was Mr. Stephen Clum.

Q Is Stephen Clum the father of Peter Clum?
A Yes.

Q Do you know where Peter Clum is now?
A He is in Florida.

Q He was there, and his son? A His son was not there; his son had taken this party to the hospital.

Q The father was there? A The father and the man that works for me. 20

Q Who was the man that works for you? A Joseph Dowsky.

Q What work was he doing for you? A He was doing every kind of work, farm work, helping me on the buildings and everything I asked him to.

Q You were then building a house? A Yes, sir.

Q He was present when you arrived, was he?
A Yes. 30

Q What did you do? A Why, I looked things over, looked at the tracks on the road.

Q Did you see tracks on the road? A I did.

Q Where did those tracks begin?

Mr. Markley: I object to that.

The Court: He may describe what he saw on the road early that morning. There seems to be some doubt about whether it is August 2nd or July 31st. 40

Frederick H. Stickles, direct.

Mr. Studer: Yes, there is a marked discrepancy.

The Court: I will allow the question what he saw on the road.

Mr. Markley: Exception.

10 Q Where were the tracks on the road? A There were tracks in the road from the two rear wheels with the brakes on, marking the road leading right up to where the accident was, to where the car lay.

Mr. Markley: I object to that and ask that the latter part be stricken out where he said there were tracks on the road of the two rear wheels with the brakes on.

20 The Court: That may be struck out.

Q Did any tracks run right up to the edge of the road? A To the edge?.

Q How far from where the automobile was standing were these tracks? A They ran right up to where it hit in the ground and made a big mark on the ground, where it tore up the earth.

30 Q I show you Exhibit D. 2, a photograph showing the Luckey-Platt Company sign and ask you if the automobile was then standing anywhere near this sign, and if so where? A It was standing about twenty-five or thirty feet north of the sign where that fence post is.

Q Will you put an S there alongside of where the automobile was standing when you arrived there? A Yes.

40 Q You have put an S right at the fence post, have you? A Yes. The automobile laid there; the fence post was broken.

Frederick H. Stickles, direct.

Q Was more than one fence post broken?

A There were two fence posts broken.

Q Can you indicate where the last of those marks were on the road? A Right where this spot is on the bank.

Q Make an S there, please. A Yes, that is where the tracks ended. That was all scratched around there. 10

Q How high is this little bank at S. 1 from the level of the road, about? A About a foot and a half to two feet, to the bottom of the ditch.

Q The ditch is there? A Yes, sir.

Q I show you Exhibit D. 1 which has an X on it put on by Mr. Martin, indicating where his car came to a stop, I believe. Now, with reference to the X where did you see Martin's car? A With reference to the X, the car laid right there after the accident. 20

Q You spoke of marks starting at a point S. 1 on Exhibit D. 2. How far apart were those marks on the road? A The width of two automobile wheels.

Q And how far did they extend northerly, that is towards the farm buildings? A Seventy paces, 210 feet.

Q Did you pace them off? A I did.

Q What was the course of those marks starting seventy paces away? A They started a little to the left of the road. They went on the left of the road and ran along for about fifty feet and gradually crossed until the right wheels were on the dirt off the macadam, on the right side of the road for about fifty feet, then back over to the left then sharp across to the bank where the tracks ended. 30

Q How deep a mark were those marks on the road? A When they first started there 40

Frederick H. Stickles, direct.

was not so very much of a mark. It could be plainly seen though for more than 100 feet. Where the marks ended it showed that the wheels had both been locked.

Q Why do you say that? A Because they made a very heavy mark on the road.

10 Q And that extended for 100 feet? A One hundred feet from where the car struck the bank.

Q I show you Exhibit D. 3, which shows your farm buildings, Mr. Stickle, and ask you, with reference to the driveway leading into your farm buildings where the first of those marks first appeared? A Twenty feet above my driveway.

20 Q That is, to the south of the driveway? A To the north of the driveway.

Q Past the driveway? A Past the driveway, twenty feet north, they started.

Q Just indicate about where twenty feet north is. A It was over this way where they started, right across from these trees.

Q Were they in the middle of the road then? A No, they were over to this side, up this way.

30 Q They were to the left side or the right side of the road? A They were to the left side when they started.

Q And they continued for how long did you say? A From about forty to fifty feet, working to the right, then they ran off the right side with the right wheels over on the dirt for forty to fifty feet, then back on the road and worked over to the left, then sharp back to where the car struck the bank.

40 Q What was the intervening ground, as indicated on Exhibit D. 1, between the fence and

Frederick H. Stickles, direct.

the ditch? A It was about 20 feet from where it hit this fence, because it did not go right straight.

Q My question is what is the character of the ground there, stubble or dirt or what, grass, rocks or what? A It is grass. I have a roadway through there; it was cross my roadway. 10

Q Now, from the point where the last tracks were to the place where the automobile was stopped, what was the distance? A Why fifteen to twenty feet.

Q On a diagonal? A Yes, sir.

Q Did you see any other spokes on the road? A I did.

Q Where was the wheel? A It laid under the car.

Q To the left or to the right of the car? A To the left. 20

Q That is to the westerly side of the car, is that right? A The westerly side of the car. The car was headed north.

Q Was the felloe there? A It all laid there, the pieces and all.

(Recess until two P. M.)

30

AFTERNOON SESSION.

By Mr. Studer.

Q How long have you lived in that part of the country, how long have you been familiar with that part of the country? A How long I have owned the place myself?

Q Yes. A I have owned it four years now myself. 40

Frederick H. Stickles, cross.

Q Did you see any holes in the road by those marks that you spoke of? A I did not.

Q What kind of day was it? A It was a little foggy in the morning, the road was a little bit damp.

10 Q Was Mr. Martin or his son there at the time you arrived? A They were not there, they had gone to the hospital.

Cross examination by Mr. Markley.

Q You say when you got there it was 6:30 standard time? A Yes.

Q How do you know? A I know by my watch, and that was the time I got there every morning.

20 Q You mean you got there every morning in July, 1923, at 6:30? A Yes.

Q How did you get there? A With the car.

Q You did not live there? A I did not, I lived in Germantown, ten miles.

Q When did you first live there? A December of 1923.

Q You were not living there at all at the time of the accident? A I was not living there, I was there every day.

30 Q You had come by your own car from Germantown, where you were living? A Yes.

Q That is where you were living? A Yes.

Q In July, 1923, how long had you owned the farm at that time? A Three years before that.

Q And you were building a house at that time so that you could live in it? A Yes.

Q You finished that house and moved in in December? A Yes.

40 Q You did not go by daylight time at that time? A I went by standard time.

Frederick H. Stickles, cross.

Q So that 6:30 standard time, you got there at 7:30 daylight saving time? A Yes.

Q When you got there the spokes were not on the road, when you got there at 7:30 daylight saving time? A No, they all laid by the car, everything laid together.

Q They all laid together by the car? A 10
Yes.

Q In a pile? A No, right where the wheel lay.

Q They all lay with the wheel? A Yes.

Q Did the felloe lay where the spokes were? A Yes.

Q Did the tire and the demountable rim lay at the same place? A Yes.

Q All together? A Yes.

Q And the tire on the demountable rim, did 20
that still have air in it? A Yes.

Q And it was still attached to the rim? A Yes.

Q And all lay right alongside of the spokes and the felloe? A Yes.

Q Right alongside of the car? A No, sir, it was pinned under the car.

Q You said on direct examination that the felloe and the wheel lay on the left side of the car? A The car was on it, yes. 30

Q On the left side? A On the left side, yes.

Q Now, weren't they on the left side of the car? A Surely, they were on the left side of the car.

Q You did not see Mr. Martin at all that morning? A I did not.

Q You did not see his son that morning? A I did not.

Q You got there around half-past seven day-
light saving time? A Yes. 40

Frederick H. Stickles, cross.

Q And the only man you saw there was your helper? A My helper, and Mr. Clum.

Q The man you say is now in Florida? A Yes.

Q Do you still live up there? A Yes.

Q Live on the farm there? A Yes.

10 Q How long have you been down here? A I came down to Newark Sunday night.

Q You have been down here ever since Sunday night? A Yes.

Q Staying at a hotel? A Yes.

Q Where?

Mr. Studer: I object as immaterial.

The Court: I will allow it.

A Robert Treat.

20 Q The Robert Treat Hotel in Newark? A Yes.

Q You are not connected with the Studebaker Corporation, are you? A Not in any way.

Q You came down here voluntarily from up in Livingston, did you? A Surely, I came down voluntarily.

30 Q How many miles is it from Livingston down here? A I don't know how many miles it is down here, it is a hundred and some miles from New York to Livingston.

Q Did you come down alone or with somebody? A I came down on the train. I came down with some others that I know.

Q Did anybody bring you down here? A No, sir.

Q How did you know about coming down?

Mr. Studer: I object as immaterial. The case was on trial and the man was coming to testify.

40

Frederick H. Stickles, cross.

The Court: It is cross examination.

Mr. Studer: Exception.

Q Didn't somebody from the Studebaker Company go up there and bring you down? A They asked me to come down, yes, the Studebaker people.

10

Q What are you being paid per day while you are here? A I do not expect to be paid anything—all expenses, that is all.

Q Your railroad fare? A Yes.

Q You do not expect to get anything for your time? A My expenses, that is all.

Q What do you mean by your expenses, your day's pay? A No, I expect to be kept while I am here.

Q How about your loss, are you going to be paid for that? A I do not know as I will be paid for my loss of time, no.

20

Q Have you talked over this case with anybody? A No, sir.

Q Are you sure? A Yes.

Q This road is the main road from Albany to New York? A Yes.

Q It is a much-traveled road, isn't it? A Yes.

Q It is a state road? A Yes.

30

Q The Albany Post Road? A The Albany Post Road.

Q A great many cars go past there in the summer time? A Yes.

Q You did not see anything of the accident itself, you were not there when this accident happened? A I was not.

40

William Finley, direct.

WILLIAM FINLEY, sworn.

Direct examination by Mr. Studer.

Q Where do you live? A Hudson, New York.

10 Q What is your business? A I am one of the coroners of Columbia County.

Q Were you such in the summer of 1923? A I was.

Q In the course of your duties as coroner of Columbia County, did the fact that there had been an accident in Livingston, New York, come to your attention? A Yes.

Q When did you hear about it? A On the morning of August 2nd, I was called from the Hudson City Hospital.

20 Q When you went there did you meet Mr. Martin? A I did.

Q The plaintiff in this suit, the father? A Yes.

Q Did you have a talk with him there? A I did.

Q What was the nature of your talk? A I asked him where he was from—

30 Mr. Markley: I object to this, because anything that Mr. Martin, Sr., may have said, cannot bind the estate.

The Court: It is competent, because Mr. Martin is a party himself.

Mr. Markley: I think it ought to be limited to that case. It cannot bind the estate of the dead man; he was not present and took no part in it.

40 The Court: We will take the testimony. Any admissions he made could not bind the decedent.

William Finley, direct.

Q Did you ask him about the accident? A I did.

Q What time did you meet him? A I was called from the hospital and arrived in the morning, and I think I got there possibly a half hour later, I should say between seven and eight.

Q Is that daylight time or standard time? 10
A We go on daylight saving time in Hudson.

Q Did you go back to the scene of the accident with him? A Yes. Mr. Martin tried to explain just where it was. I could not seem to understand, so I had my car out in front, and possibly an hour later we went down to the scene of the accident.

Q Did you take the young man who was on the stand yesterday, Lupi, with you? A Yes.

Q You and Lupi and Martin went back? A 20
Yes.

Q Did you ask Martin how this accident happened? A I did.

Q Where did you ask him that, at the scene of the accident, or at the hospital? A I talked with him at the hospital and at the scene of the accident.

Q What did he say to you with reference how the accident happened?

Mr. Markley: Where? 30

Q Either at the hospital or at the scene of the accident.

Mr. Markley: I object. We cannot meet the conversation unless we know where it took place.

Q Where was the talk? A I conversed with him at the hospital and at the scene of the accident. 40

William Finley, direct.

Q What did he say to you either at the hospital or at the scene of the accident with reference to what happened? A He told me he was on his way to New York, that his wife had been sick and he was going down to a specialist.

10 Q Did he tell you who the specialist was? A No, he did not mention the doctor's name.

Q Did you ask him? A I do not know whether I did or not, that I could not say.

Q Did he tell you what time he had left Schenectady? A I asked him what time.

Q What time did he say?

Mr. Markley: I object.

The Court: What he said about the accident is competent.

20 Mr. Markley: It seems to me it ought to be directed to something for the purpose of contradiction.

The Court: The question is what time he left. It is competent.

A He said he left Schenectady about half-past two, daylight saving time.

Q Did he tell you how the accident happened?

30 A He did.

Q What did he say? A He told me he ran on a Ford truck without any lights, and that he tried to pull out of the way of it and lost control of the car.

Q Did he say anything about the speed at which he was going when he lost control of the car? A The way he spoke about speed was on account of asking what time the accident happened; he said around four o'clock.

40 Q Around four o'clock? A Yes.

William Finley, direct.

Q What, if anything did he say about speed?

A I said to him you must have been traveling some to get from Schenectady here in that time. How fast were you traveling? I said "How fast were you traveling?" He said, "Between fifty and sixty."

Q Did you find this automobile when you got back to Livingston? A I did. 10

Q Where was the automobile? A It was over in the lot.

Q I show you a photograph, Exhibit D. 1, with a mark X on it, and ask you with reference to that mark X where the automobile was when you got there? A The machine was straddling a wire fence.

Q Were the posts up or down? A No, the posts were broken, I think.

Q Did you see the left wheel of the car at the place when you got there? A I noticed a broken wheel, but I did not make any thorough investigation on that. 20

Q Where was the wheel when you noticed it with reference to the car? A Well now, I would not swear positively to that, I think I just walked around the car and I did not make any thorough investigation on that.

Q Did you look at the road—do you know Mr. Stickle's farm buildings? A Yes. 30

Q Did you look at the road from Stickle's farm buildings, down to where the car was? A I did.

Q Did you observe any marks on the road? A It looked as if his tires had slid.

Q Did you see marks on the road? A Yes.

Q For how long a distance would you say those marks were? A I am no judge of distance. I walked quite some distance on the road and saw the marks. 40

William Finley, direct.

Q With reference to Mr. Stickle's driveway, which appears on Exhibit D. 3, where do you say the marks began going in a southerly direction down to where the car finally was? A What do you say?

10 Q Withdraw the question. I show you Exhibit D. 3 and it is the fact this is the entrance to Mr. Stickle's driveway appearing in the foreground. With reference to that driveway where did those marks begin? A South of the driveway.

Q About how far south? A I can't tell you that; that would be just guessing on measurements.

20 Q Over how much of a distance did they continue, with reference to Exhibit D. 1, where do you say those marks were? A They crossed over this driveway leading into Mr. Stickle's barn.

Q How far back on the road did they show up towards Stickle's buildings? A How far back this way (indicating)?

Q Yes, north of the road. A He was on the macadam and went off of the macadam and then came down in a southerly direction, and went across this driveway into the lot.

30 Q That is where the marks were? A Yes.

Q Did you observe any wood or any pieces of splintered wood, any spokes, on the roadway? A No.

Q What was the nature of those marks that you say you saw on the roadway? A It looked as though the brakes had been put on and it made an impression on the road as though the car had slid.

40 Q Was there no wood on the road at all? A There was not any wood that I saw.

William Finley, cross.

Q Did you learn that Martin had a revolver?

A On the way back to Hudson, after being at the scene of the accident I asked him who brought the boy to the hospital, and he said the farmer that lived just north of the accident, Mr. Clum, and I said, "Did you pay him for taking the boy in?" He said "No." I said, "You had better stop with me and see if you have to pay anything;" and he did. Mr. Clum said he had taken some things out of the car, they had a .44 automatic revolver. I asked Martin if it belonged to him, and he said yes. I said, "What are you doing with that gun?" He said, "Oh, I was carrying it in my car." I said "Have you a license?" He said "No." I said "I have a good mind to put you in jail for carrying a gun." He said, "Well, I have had trouble enough," so he prevailed on my good nature, and I let him go. 10 20

Q Did he show you a license? A He did not.

Q Did you see any holes in the road by these marks? A No, I did not see any holes.

Cross examination by Mr. Markley.

Q You did not see any holes in the road, not one? A No. 30

Q The road was perfectly smooth? A As far as I know, there was not any more holes in it than in the ordinary macadam road.

Q Perfectly smooth? A I would not call it smooth.

Q A macadam road? A The ordinary macadam road.

Q Nothing the matter with the macadam? A Not that I know of. 40

William Finley, cross.

Q All you saw was the mark of two automobile tire wheels? A Yes.

Q That is all you saw? A Yes.

Q You say this was a cloudy morning? A Not when I got there.

Q You say it was a clear morning? A I
10 would not say that.

Q You say the macadam was wet? A Not when I got there.

Q How was it? A It was absolutely dry.

Q It was a clear day? A Yes. The sun was out, shining, when I got down there; it was around nine in the morning.

Q You did not get there until nine o'clock? A No, I did not leave the hospital—that is what
20 I said.

Q You did not get there between seven and eight in the morning? A No, I got to the hospital between seven and eight.

Q You did not get to the scene of the accident on this bright summer's morning until nine o'clock? A I should say around nine o'clock.

Q Was it between nine and ten? A Possibly.

Q Between eleven and twelve? A No.

30 Q Well, it may have been between nine and ten? A Yes, it may have been.

Q And you went over to this automobile? A At the scene of the accident?

Q Yes. A Yes.

Q And what did you do to the automobile? A I did not do anything.

Q Didn't you do something to it? A Nothing.

Q Now, just think back and see if you can't
40 remember what you did to the automobile? A

William Finley, cross.

I did not do anything to the automobile, just walked around it.

Q What did you do to the back of the automobile? A I didn't do anything.

Q Didn't you break open the back? A No, I did not.

Q Didn't you break open the back compartment? A No, sir. 10

Q Are you willing to swear now on your oath that you did not? A Positively.

Mr. Studer: All of this is on his oath.

Q You did open the back compartment? A I did not.

Q You looked in the back compartment? A I did not.

Q The time you are speaking of is daylight saving time? A We go on that time up there, yes. 20

Q You got there between nine and ten daylight saving time? A Yes.

Q You said this man said he was going fifty to sixty miles an hour? A He did.

Q Did you ask him to say "fifteen?" A No.

Q You don't know whether he was saying "fifteen," and you misunderstood him for "fifty," do you? A I know I did not misunderstand him. I know what he said. He said "Between fifty and sixty." 30

Q This is a much-traveled road, isn't it? A Very much, yes.

Q You know that as country out there? A Yes.

Q You know the distance across from Schenectady to this point, do you? A I do.

Q What is the distance? A If he came out of Schenectady one way I would figure it would 40

William Finley, cross.

be eighteen miles. If he came on a direct line down Washington avenue or Central avenue, Washington avenue in Albany, and down State street, it would be about sixteen miles.

10 Q To where? A From Schenectady to Albany. I am just telling you the distance until I got to the scene of the accident.

Q I would like to know the distance without all the intermediate steps.

Mr. Studer: I think the best way is to take it step by step.

The Court: He is trying to tell you how it goes.

A It is thirty-four miles from Albany to Hudson.

20 Q First it is sixteen to Albany? A From Schenectady to Albany.

Q Next, thirty-four from Albany to where?

A From Albany to Hudson. And it is about nine miles, I should say, or ten, to the scene of the accident? That is fifty-nine miles? A Yes.

Q He told you he left home about what time?

A Half-past two.

30 Q And the accident happened what time? A Around four o'clock.

Q Did he say 4:15? A He said around four o'clock.

Q He did not say exactly at the minute of four? A No, he did not.

Q If he was going fifty or sixty miles an hour he would be past the scene of the accident, wouldn't he, at four o'clock?

40 Mr. Studer: I object to the assumption of the speed he was going at. He did not go at that speed all the way.

William Finley, cross.

A It is necessary to travel fifty or sixty miles. I meant to go that distance in that time.

Q He did not tell you he was traveling fifty or sixty miles an hour all the way down, did he?

A No, he did not.

Q Did you look at the tire? A No, I did not; the only examination I made of the automobile was to walk around it. 10

Q Did you look at the rim? A I did not.

Q Did you look at the spokes? A No, I knew there was one rim broken, but what was broken I do not know.

Q Did you see where the spokes were? A No.

Q You do not know where the wheel was? A No, I do not know anything about it.

Q You do not know where the felloe was? A No. 20

Q What did you go down there for? A Well, I did not know where the accident was, Mr. Martin tried to explain to me, but I could not seem to get just where he meant, so I had my car in front of the hospital and asked him to go down with me, which he did.

Q Who was at the scene of the accident when you were talking to him? A Nobody, only Mr. Martin and Mr. Lupi, this other young man. 30

Q This young man whose deposition was read here. Didn't he ride back with you? A Mr. Clum?

Q Yes. A No.

Q Wasn't he at the scene of the accident when you were there? A No.

Q Didn't he climb over from the field to where you and Martin were? A He might have been in the field or the barn somewhere. 40

William Finley, cross.

Q When you got there didn't you call to Peter Clum who was in the field, and say, "Come over here"? A He was not at the scene of the accident with me at all.

Q Was he there while you were talking with Martin? A Not at the scene of the accident; he was in front of his barn or house.

10 Q Did you ask him what he knew of the accident?

Mr. Studer: I object as immaterial and incompetent, what he said to Clum.

The Court: I will allow it.

Mr. Studer: Exception.

A I might have, I don't know. I could not say positively.

20 Q Didn't you go to Peter Clum's house when you got to the scene of the accident? A I went to the scene of the accident first and turned around.

Q Didn't you go to the scene of the accident with Mr. Martin and Mr. Lupi? A Just on my way back.

Q Didn't you call him over from the lot opposite his house? A I might have.

30 Q And weren't you and Mr. Martin and Mr. Lupi and he there together? A Four of us, yes.

Q And Mr. Lupi was sitting in the hind seat of your car at the time? A Right.

Q And you stood there and had this conversation, didn't you? A Yes.

Q I want you to look at this picture, which Mr. Studer showed you, Exhibit D. 3, in which he pointed out Mr. Stickle's driveway. There is the driveway, according to Mr. Stickle. You

40

William Finley, cross.

say you saw the marks on the roadway south of the driveway, that is nearer the New York end? A Yes.

Q You did not see any this side of the driveway (indicating)? A No.

Q You did not see any at the driveway? A The marks I saw were on this road. 10

Q Will you put a mark as to how far south of the driveway you saw marks? A I cannot.

Q Tell me how many feet south of the driveway you first saw the marks? A I cannot tell you.

Q Was it ten or fifty? A I cannot tell you.

Q Give me your best judgment, how far south of this driveway, you first saw any marks? A I would not be fair to myself or you to answer that. 20

Mr. Studer: Just approximate it.

A I cannot answer it and answer it right.

Q You know what a foot is, it is twelve inches. Can you fix in this court room how far south of the driveway you first saw any marks, going towards New York? A May I see those other photographs?

Q There is D. 1, which is after you get around the curve; there is D. 5, after you get around the curve; there is D. 4. A Here is one I think possibly I can tell. 30

Q Take my pencil and put where it is you first saw the marks on the road south of the driveway? A I would say about here at the extreme right of the picture.

Q We will put an X mark on D. 4, where you first saw the marks—I will make that an F; is that right? A Yes. 40

William Finley, cross.

Q The point where you first saw the mark is the point where you put F on D. 4? A I should say that would be fair.

Q That is after you passed the driveway leading into Stickle's shown in D. 3? A Yes.

Q And the point F is after you make the turn in the road, isn't it? A Yes.

10 Q This is after you get around the turn in the road where you put the F? A Yes.

Q That point after you make the turn in the road—will you just come down with me a moment? Here is Stickle's house. The driveway comes out from the house. Now, you have put a mark somewhere in here, haven't you? A Yes.

20 Q Can you mark with a pencil or pen on there, so that we can see where you first saw the mark—in the road—here is the house, the driveway comes out there, where was it you first saw the marks on the road? This is south going this way, that is north up that way. A What do you want me to mark?

Q Put the mark where you first saw the skid mark south of the house, put an F. (Witness marks.)

30 Q You did not see any skid marks, twenty feet north of the driveway, did you? A No, I do not think I did; I know I did not.

Q You are positive there were none there, aren't you? A Well, I don't know whether they were there or not, but I did not see them.

Q Did you look in the road to see how far the skid marks were? A I walked up the road, I don't know how far I went.

40 Q I am asking you only for your best recollection; you say the skid marks began south of the driveway leading in to Stickle's house? A Yes, to the best of my knowledge.

George Dowski, direct.

Q You are trying to give us your best knowledge? A Absolutely.

Q You went there purposely to see what happened? A Yes.

Q Can you tell us in feet how far south of Stickle's driveway you first saw any skid marks?

A I cannot. I could not judge that distance.

10

Q You do know it is after you get around the curve? A It might be on the point of the curve, it might be on the curve of the road.

Q But you did not see any skid marks at the driveway or twenty feet north of the driveway, did you? Your eyesight, I am talking about?

A I could not say.

Q Did you see any, you personally? I am not talking about anybody else's eyesight—your eyesight. A I don't want to say I did not because I don't know whether I did or not. That is the best answer I can give you.

20

GEORGE DOWSKI, sworn.

Direct examination by Mr. Studer.

Q Where do you live? A Livingston.

Q How old are you? A Thirty-nine.

30

Q What is your business? A I work on a farm.

Q Were you working on a farm in August, 1923? A Yes.

Q For whom were you working? A Fred Stickle's.

Q That is the man who testified here a little while ago? A Yes.

Q What were you doing? A I was working on the farm about the house at that time.

40

George Dowski, direct.

Q Building the house? A Yes.

Q Where were you building the house? A North of the driveway, right on the corner, right along the road.

10 Q Did you come to work that morning alone or in company with some one? A I came all alone from Livingston, about a mile.

Q What time did you arrive? A About ten minutes of six, standard time.

Q What day was it, do you know? A On August second.

Q Was Mr. Stickles there when you arrived? A No.

Q Did you learn that there had been an accident? A Yes.

20 Q How soon after you arrived did you learn that? A I saw when I came down the road a car laying over a fence.

Q How far off the road was the car? A About ten or twelve feet.

Q And what was the condition of the fence? A Down on the ground, two posts broken.

Q In which direction was the car headed? A North.

Q Toward Hudson? A Yes.

30 Q Did you go down and look at the car? A Yes.

Q Did you observe where the left rear wheel was? A The left rear wheel was under the car, right under the edge.

Q Was the felloe there? A There was no one there, only Mr.—

Q No, the felloe of the car—the felloe of the wheel. A The felly, yes.

40 Q Were there any spokes on the road? A No, sir.

George Dowski, cross.

Q I show you Exhibit D. 1, which has an X on it, and ask you where with reference to that X on the left side of the picture the automobile was when you got there? A The automobile was right about there (indicating)—just about by the X, that post there, and another post here, was broken.

Q A post by the X was down, and a post farther south was down, that just appears in this picture? A Yes. 10

Q Did you observe any marks in the ditch? A Only where the grass was torn up, the ground.

Q Did you observe any marks on the road? A Only where the tires skid.

Q Tell us about that. A That was above the driveway where he started and it run down crossways of the road, he was on the macadam and then off. He was on the right side, and he was off, and went back to the left and to the right again. 20

Q And off into this ditch? A Yes.

Q Were you present with Mr. Stickles when he paced off those marks? A Yes.

Q Do you recall how long those marks were? A They run up above the driveway. 30

Cross examination by Mr. Markley.

Q You work for Stickles? A Yes.

Q What time did you go to work that morning? A I left the house about twenty minutes to six, standard time.

Q What time did you get to work on the farm? A I get to the farm about ten minutes to six.

Q That would be ten minutes to seven daylight saving time? A Yes. 40

George Dowski, cross.

Q Do you still work for George Stickles? A No, sir, I am working at Hudson.

Q Did you come down here with Stickles? A Yes.

Q Together? A Yes.

Q Did you talk this over with Stickles? A No, sir.

Q Did you talk it over with anybody? A No, sir.

Q How long have you been here? A I came Sunday night.

Q Do you stop at the Robert Treat, too? A Yes.

Q You have not talked with Mr. Stickles or anybody else? A No, sir.

Q Sure about that? A Yes.

Q Your expenses are being paid? A I suppose so.

Q And your salary? A I don't know.

Q You hope so? A I hope so.

Q These skid marks started twenty feet north of the drive, didn't they? A Yes.

Q That is what Stickles says? A Yes.

Q That is what you say? A Yes.

Q Did you talk it over with Stickles? A No, sir.

Q You paced it off? A We did, together. I was watching.

Q You heard it was twenty feet? A I think it was about twenty feet.

Q Where were the spokes when you got there? A In the ditch.

Q All together? A No, they were all scattered around in the ditch.

Q Where was the shoe? A Under the car.

Q Was it inflated? A It was blowed up.

Q Was it on the rim? A Yes.

George Dowski, cross.

Q You saw that? A Yes.

Q Was that near the spokes? A It was not on top of the spokes, they were scattered around.

Q Where was the wheel? A Right there.

Q To the left of the car? A Yes.

Q Did you talk with Stickles about that? A No. 10

Q The fellow and the inside of the wheel were to the left of the wheel? A Yes, all together.

Q You did not speak to Stickles about that? A No, sir.

Q Did you speak to anybody at all about this case since the accident? A No, sir.

Q As a matter of fact you made an affidavit, didn't you, for the Studebaker corporation and swore to it? A That I don't know, what I made it for. 20

Q You know what an affidavit is—how old are you? A Thirty-nine.

Q You made an affidavit and signed it, didn't you? A Why, yes.

Q And you swore it was true, didn't you? A Yes.

Q You did speak to them about this case? A No.

Q Didn't you speak to them when you made your affidavit? A I didn't only say what he asked me about it. That is all I said to him. 30

Q Where did you make that affidavit? A In Livingston.

Q To whom did you make it? A I don't know who the man was.

Q Did you write it out? A No, sir.

Q Was it typewritten? A I don't know.

Q You signed it? A It was just on paper, that is all I know.

Q Was it in ink or type? A Ink. 40

George Dowski, cross.

Q When was that? A I can't say just when it was, it was after the accident.

Q You have read that since? A No, sir.

Q It was read to you at the Robert Treat Hotel? A No, sir.

10 Q Didn't you have a conference of witnesses out there? A What?

Q Didn't you have a man sit down and talk over the case with you? A No, sir.

Mr. Studer: On Sunday you sat down with me and I went over the case with you and that was the first time you talked with me about it?

The Witness: Yes.

20 Q How did you get to the scene of the accident? A I was working right there by the barn.

Q Did you walk there or ride there? A I walked.

Q You did not ride in an automobile? A No, sir. I have got a car of my own that I drive down there every morning in.

Q Did you drive down there that morning in your car? A Yes.

30 Q That is what I am asking you. On the morning of the accident you drove there in an automobile? A Yes, sir.

Q Which way did you come? A I was going south.

Q The same way this automobile was going? A Yes.

Q You came along the same road? A Yes.

40 Q Was the road wet? A I didn't notice it being very wet, it was kind of foggy in the hollow there—

Charles R. Brower, direct.

Q I am talking about the macadam road.
Was that wet? A Not to amount to anything.

Q Was it dry? A Not very dry.

Q Was it a clear day? A Yes.

Q You drove over the same road this automobile drove over? A Yes.

Q That is a much traveled road? A Yes. 10

Q In the summertime especially? A Yes.

Q Was there anybody there when you got there? A Steve Clum.

Q Anybody else? A That is all.

By Mr. Studer.

Q Did you see Steve do anything with a revolver? A No, sir. He only just showed it to me under a whole lot of rags there; that is all I see. He just showed it to me under a whole lot of rags. 20

CHARLES R. BROWER, recalled.

Direct examination by Mr. Studer.

Q You testified yesterday you sold this automobile to Mr. Martin? A I did. 30

Q When? A June 5th.

Q 1923? A 1923.

Q Before the car was delivered to him—went out of your sales place—was there anything done to the rear package compartment?

A Yes, that back was dropped down so there could be more room there.

Q That was at his request? A That was at Mr. Martin's request. 40

Ralph Berlotte, direct.

Q Was there anything done with reference to springs? A We put sedan springs on instead of roadster springs.

Q Are sedan springs lighter or heavier than the springs that were on there? A Heavier.

10 Q When was the delivery made? A I think about the 25th of June.

Cross examination by Mr. Markley.

Q You did not put a new wheel on, did you?
A No, sir.

RALPH BERLOTTE, sworn.

20 *Direct examination by Mr. Studer.*

Q For whom did you work during July and August, 1923? A For Fred R. Brower.

Q The man that just preceded you on the stand? A Yes.

Q What did you do for Mr. Brower? A I had charge of inspections.

Q Where do you live? A Schenectady.

30 Q Do you remember hearing about this accident? A I read about it.

Q The day prior to the accident did you do anything to this car of Mr. Martin's at his request? A I did something to the car; I don't remember positively if a day before or two days before. Checked up his brakes and front wheel adjustments.

Q How were the brakes when you let it go? A All right.

40 Q How were the wheels? A So far as I could see they were all right.

John Ryan, direct.

Q Did you go over the back wheels as well as the front wheels? A I just spun them around to see if they were true.

Q And were they true? A They were at the time.

Cross examination by Mr. Markley.

10

Q You say you spun them around to see if they were true? A Yes, jacked the wheels up and spun them around.

Q You jacked the car up and just spun the wheels around? A Yes, sir.

Q And they were true? A They were true.

Q All four wheels? A Yes, I checked up the four.

Q And the brakes were all right? A Nothing the matter with the brakes. 20

Q They were all right? A When I got through with them.

Q You checked up on the bearings? A The front wheel bearings.

Q Was there anything the matter with the car when you got through with it? A Nothing serious, only Mr. Martin wanted—

Q Was there anything the matter with the car when you let go of it a couple of days before? 30
A No, sir.

JOHN RYAN, sworn.

Direct examination by Mr. Studer.

Q What is your business? A At the present time?

40

John Ryan, direct.

Q Yes. A Service manager for R. T. Thompson, Studebaker bureau, Schenectady.

Q What was your business in July and August, 1923? A I had charge of the stock department. I worked for Mr. Brower.

Q You worked for him? A Yes.

10 Q One of your associates was Mr. Berlotte?
A Berlotte was inspector at the time.

Q Was Berlotte working there at the time?
A Yes.

Q One of your associates? A Yes.

Q Do you remember this car was purchased by Mr. Martin in July, 1923, from the Brower Company? A Yes, I would say it was about that time; I could not say exactly whether July or June.

20 Q Do you remember whether or not anything was done to the carrying compartment of this car before it was delivered to Mr. Martin? A The rear compartment was dropped down to give more space.

Q How much did you drop it down? A Approximately eight inches; I cannot say exactly how much. Dropped down in order not to interfere with the shaft.

30 Q That was to give more carrying space? A Yes.

Q Did you change the springs? A We took off the regular roadster springs and put a sedan spring in place of the roadster springs.

Edward Sheldon, direct.

EDWARD SHELDON, sworn.

Direct examination by Mr. Studer.

Q What is your business? A Mechanic—
auto mechanic.

Q Where do you live? A 28 State street, 10
Hudson, New York.

Q How long have you been an auto mechanic?
A I have worked for Tinker for six years.

Q Who is tinker? A A garage man in
Hudson.

Q You have worked for him six years? A
Yes, it will be six years the next coming May.

Q What other work have you done as a me-
chanic besides your work for Tinker? A I was
in the army two years. 20

Q What did you do in the army? A After
the armistice was signed I was mechanic and
sergeant.

Q Did you repair automobiles in connection
with your work in the army? A I did.

Q Do you know this automobile of Mr. Mar-
tin's, the Studebaker Light Six, Special Six? A
I do.

Q Did you see it on or about August 2nd? 30
A I was sent after the car to bring it to the
garage at Hudson.

Q When were you sent after the automo-
bile? A I left the garage about ten or fifteen
minutes after twelve daylight saving time.

Q And the garage was in Hudson, about ten
miles away? A About that.

Q About what time did you arrive at the
place? A About half an hour it would take to
drive the distance. 40

Edward Sheldon, direct.

Q When you arrived there where was the automobile? A Lying on the fence, sitting on the fence on the wheels.

Q What was the condition of the automobile?

A The windshield was broken, the top was broken, the right rear door or right door was
10 knocked off; the front axle was bent and the left rear wheel; I think there was a dent in the cowl and the fender dented up somewhat.

Q Where was the left rear wheel when you got there? A It lay right under the car.

Q Was the felloe there? A The felly and the tire and rim were under the hub.

Q Were there any spokes in the road? A Not that I seen.

Q What did you do in order to get that left
20 rear wheel out; did you jack the car up? A I hoisted it up with the assistance of Ray Smith.

Q Is Ray Smith here? A Yes.

Q He came down with you? A Yes.

Q You and he did this work together? A He works on the lower floor and I work upstairs in the shop.

Q You worked together on this car? A Yes.

Q What did you do? A We hoisted the
30 rear up, took the wheel off and the tire and rim from the old wheel we put back on the new wheel, and then we ran our tow car around in front of the car and hooked on to it, and with the assistance of the Studebaker and the tow car we pulled it up in Mr. Stickel's barn there, I believe it is; there we took off the front wheel and straightened the front axle as good as we could, and drove it to Hudson under its own power.

40 Q Under its own power? A Yes.

Edward Sheldon, direct.

Q Did you look around the place where the car was, did you look in the field there by the fence? A Not a great deal, no.

Q Did you look in the ditch? A Not much.

Q Did you look in the road? A I stood by the side of the car where we put the wheel on and noticed the tracks where they ran into the ditch. 10

Q Where did you notice the tracks?

Mr. Markley: I object. Here it is at one o'clock. This accident happened at four o'clock in the morning. This was a much settled road.

The Court: I think this is too remote.

Mr. Studer: He can say what he saw. I would like to ask him how near the place where the car went off the road he saw these tracks. 20

The Court: Find out where he saw them first.

Q Where did you see these tracks with reference to where the car went off the road? A The way it looked, the car went right straight in.

Q Right straight in to where the car went off the road? 30

Mr. Markley: I object to this. Here is a much travelled piece of road. I say it is too remote, unless they can connect it up as the marks of the tires of this car, because many cars passed over that road that day.

The Court: There is no doubt about that. He may describe what he saw.

Q What did you see? 40

Edward Sheldon, direct.

Mr. Markley: I object as immaterial, irrelevant and incompetent.

The Court: You may ask that.

Mr. Markley: Exception.

10 A I seen the tracks that run into the road where it looked as though the rear brakes had been applied and the wheels dragged along and made the track on the road.

Q For how long a distance from where these marks were at the edge of the road or the ditch did they extend back toward the Stickle's farm?

A I could not say that.

Q Have you any idea? A No, I have not.

Q Did you make repairs on this car later at Tinker's garage? A I helped one of the mechanics several days after that.

20 Q Where was the car as a matter of fact repaired, at Tinker's garage? A Just the axle work straightened as good as we could at Tinker's, so they could drive it.

Q I show you Exhibit D. 6 for identification, and ask you if that is the way the car looked when you saw it at that time with the exception of the fact that the left rear wheel was broken off? A Yes.

30 Q It does? A Yes.

Q I show you Exhibit D. 7 and ask you if that properly represents the way the car looked when you saw it that day, with the exception that the left rear wheel was off? A Yes.

Q I show you Exhibit D. 8 for identification, and ask you the same question? A What I seen at the scene only this spindle was bent down over here, it had to be straightened.

40 Q The left front axle was bent down? A Yes, and we braced it at the scene of the accident so we could drive it.

Edward Sheldon, direct.

Q I show you D. 9 for identification and ask you the same question? A Yes.

Mr. Studer: I offer the pictures in evidence.

Mr. Markley: No objection.

Admitted and marked Exhibits D. 6, 7, 8 10
and 9 of this date.

Q Do you know what work was done to repair that car? A No, I did not.

Q Had you done that kind of repairing work at the time? A We do it at the garage, yes.

Q You personally had done that kind of repair work? A Yes.

Q For how long had you done that kind of repair work? A That was about four years, I think, at that time. 20

Q And what in your judgment do you say had to be repaired? A Well, a new wheel, of course, the rear wheel, and the front axle either had to be straightened or a new one.

Q Do you know what the fair market price was for a new wheel at that time? A I don't know, I imagine—I think around fourteen dollars.

Mr. Markley: I object. He is not qualified. 30

A I don't know what the prices of stocks are.

Q You say the front axle? A The front axle either had to be straightened or a new one.

Q That is a matter of work, to straighten the axle? A Yes.

Q How long in your judgment would it have taken to straighten that front axle? A Two hours, I think. 40

Edward Sheldon, direct.

Q What in your judgment would have been a fair charge for two hours work to straighten the axle? A A dollar and a quarter an hour.

Q What else had to be done? A The windshield was broken.

10 Q Do you know what the price of a new windshield was? A No, sir.

Q What else had to be done? A New top.

Q Do you know the price of a new top? A No.

Q What else had to be done? A The cowl straightened up where it had been thrust in by the turning over.

Q That is a matter of labor, is it? A Yes.

20 Q How long in your judgment would it take to repair that front cowl? A I have no idea.

Q Approximately? A We do not do body work.

Q We will leave that for some one else. What else had to be done? A Well, a new fender; I don't remember just how bad the fenders were bent up, if they could be straightened, or if it would have to be new ones.

Q If they were new ones that is a part price, you are not competent to give that? A No.

30 Q What else? A The spindle, I am not sure if the spindle was bent or not in the left front wheel.

Q To straighten the spindle is it a matter of labor, or what? A A matter of labor.

Q How long in your judgment would it have taken to straighten that bent spindle? A I don't know. It is cheaper to buy a new one.

40 Q Do you know whether there was a new one bought or this one straightened? A I am not sure it was bent.

Edward Sheldon, cross.

Q What else was the matter with this car?

A That is all I can remember.

Q The door off, you say? A The right door.

Q And that is a part price, is it? A Yes.

Cross examination by Mr. Markley.

Q This tire and rim that were torn off the broken left rear wheel I understood you to say you used? A Yes. 10

Q The tire was on the rim? A Yes.

Q The rim was all right and you used it?

A The rim was onto the steel felloe.

Q Did I understand you to say all these things were under the hub of the car? A Yes, the left hub, the one beside the broken wheel.

Q When you got there about one o'clock? A Yes. 20

Q July 31st?

Mr. Studer: He did not say July 31st.

A It was around August the 2nd, or around there.

Q Who told you August the 2nd? A That was what was on my statement, August the 2nd.

Q You have talked this over with other witnesses for the defense, as to the date? A No. 30

Q Did you come down with them from New York State? A Yes.

Q All on the same train? A Yes.

Q With the representative of the Studebaker people? A I do not know who he was.

Q What was his name?

Mr. Studer: I object as immaterial.

Q What is the man's name? A Carroll. 40

Ray Smith, direct.

Q You say when you got there at one o'clock, this rim, this felloe and this rubber tire were all under the rear hub? A Right under the wheel.

Q And you could not get them out until you jacked up the car? A No.

10 Q They were not over on the left side of the car? A The wheel was on the left side.

Q Were they on the left side of the car, as the car faced toward Hudson or were they under the hub? A I do not quite get your question.

Q I understood you to say they were under the left rear wheel. A The left rear hub laid through the rim.

Q You jacked up the car and got them out? A Yes.

20 Q Then they were not standing on the left side of the rear of the car? A No, sir.

Mr. Studer: I think that is slightly misleading.

The Court: This is cross examination.

Q Who was there with you? A Ray Smith went from the garage with me.

30 Q Right from Tinker's Garage? A Yes.

Q Where were the spokes when you got there? A I don't know. I did not notice that.

RAY SMITH, sworn.

Direct examination by Mr. Studer.

40 Q What is your business? A I am working at Tinker's Garage.

Ray Smith, direct.

Q How long have you been working at Tinker's Garage? A It will be four years this coming May.

Q Did you go to the scene of this accident with the witness who has just preceded you?

A Yes.

Q What time did you get there, if you remember? A I imagine it was half-past twelve. 10

Q You went there for what purpose? A Went down to get the car.

Q How did you find the car when you got there? A Straddling the wire fence.

Q I show you the photograph D. 1 and direct your attention to a mark X on there, and ask you how near that mark X the car was when you got there? A I should say where that X is. 20

Q Were there a couple of fence posts knocked down? A I think there were two fence posts knocked down.

Q Where was the left rear wheel? A Under the hub, the left rear brake arm was right through the tire and rim.

Q Was the tire inflated? A Yes.

Q What did you and Sheldon do? A When we got there we backed the service car up, with a hoist on the back and jacked it up to get the old wheel out and a new one on. 30

Q Where did you take the car to then? A Then we ran the service car around and got hold of the front end and pulled it up in Mr. Stickle's yard.

Q What did you do then? A We straightened the axle back as much as we could so that we could drive the car back to Hudson.

Q Did you drive it off under its own power?

A Mr. Sheldon drove it back to Hudson. 40

Ray Smith, cross.

Q Did you see any wood, any spokes, in the road? A I did not.

Q Did you see any marks in the road? A I saw marks in the road.

Q Where, with reference to the place this car went off the road were those marks?

10 Mr. Markley: I object to that. It seems to me that is calling for a conclusion.

The Court: Find out where they were.

Q Where were the marks with reference to the right shoulder of the road? A The way the marks looked, first they went off the left-hand side of the road, it showed the impression where the wheels had dragged, then it went over to the right, and then it went around off to the left, and looked as though it went across the road, and struck the bank, the left rear wheel.

20

Q What were those marks like? A It showed where it kind of pulled the tire in the macadam.

Q For how long a distance did those marks extend back from where the car was towards Stickle's farm building? A Well, that I could not say, I did not measure them.

Q But give me a general idea. A I should say they started below the driveway, because I traced them back.

30

Q You traced them back? A Yes.

Q Was the rim attached to the felloe? A Attached to the felly.

Q With lugs? A Yes, with lugs.

Cross examination by Mr. Markley.

Q What time did you get there? A About half-past twelve.

40

Ray Smith, cross.

Q What kind of a road was this? A Macadam road.

Q What kind of a day was it? A It appeared to be a good day, as far as I can say.

Q How was the road when you got there?
A It was dry.

Q Macadam road? A Yes. 10

Q Dirt shoulder on each side? A Yes.

Q Was it a much traveled road? A Yes.

Q You say it looked as though the part of the macadam had been pulled? A Yes.

Q You could see that? A Yes.

Q No question about it? A No question about it. I could see it.

Q You could see those marks beginning up near Stickle's driveway? A Yes.

Q Did you see it down where the car went off the road, did you see the marks in the macadam where it had been pulled? A Yes. 20

Q Now this wheel was under the car? A Yes.

Q Sure about that? A Sure.

Q And the car was on top of the wheel?
A Yes.

Q And you had to jack the car up to get the wheel out? A Yes.

Q When you got there the wheel was not standing at the side of the car? A No. 30

Q You are sure about that? A Sure.

Q What was your side partner's name? A Edward Sheldon.

Q Did you talk this case over with him?
A No.

Q Did you talk it over with anybody? A I just talked it over with Mr. Studel.

Mr. Studer: Studer, my name is. 40

John F. Ryan, direct.

Q Did you come down on the train with any of these men? A I did.

Q All together? A Yes.

Q With this man from the Studebaker company? A No, sir.

10 Q What was the name of the man from the Studebaker company? A We came from Hudson all together.

Q Wasn't there a man from the Studebaker that brought you down? A No.

Q You are at the Robert Treat Hotel? A I am.

Q You have not talked to anybody but Mr. Studer about this case? A No, sir.

20

JOHN F. RYAN, recalled.

By Mr. Studer.

Q You said you were what in connection with Mr. Brower's sales agency? A At that time I was stock man, as well as I had charge of taking in and letting out all work there.

30 Q Did you at that time have familiarity with the cost of different parts, such as windshields, tires, wheels and the like? A Yes.

Q What, on or about August 1st, was the fair market price of a new rear wheel for a Special Studebaker Six automobile? A The approximate price is \$26.40—it probably would not vary a dollar or two.

40 Q For the kind of windshield that a Studebaker Special Six carried at that time what was the fair market price at that time? A Thirty dollars.

John F. Ryan, direct.

Q For the kind of top that a Special Studebaker Six had on at that time what was the fair market price at that time? A Ninety-six dollars.

Q Have you ever straightened a cowl or had a cowl straightened? A We had a car of our own one time that had tipped over and the cowl was dented in due to the windshield being broken. 10

Q Is that a matter of body work? A Well, to a certain extent. It comes under metal workers' labor.

Q Are you able to say what a reasonable length of time would be to straighten a cowl? A That would all depend. It would average about thirty hours' labor.

Q What would be the cost of the labor? A \$1.25 an hour, for thirty hours. 20

Q What was the fair market price for a new fender such as was carried by a Studebaker Special Six at that time? A Front or rear?

Q I think you said both. A A front fender costs \$16.20, and the rear \$13.80.

Q What was the price of a right door on that kind of an automobile at that time? A Thirty dollars. 30

Q If a spindle was so bent that it required a new one, what was the fair price for a spindle at that time? A If it was a right-hand spindle it would cost—no, they are both the same price; they are \$5.40, I believe, or some \$4.80.

Q What in your judgment would be a reasonable length of time to perform the labor required in replacing those parts? A I would say about sixty-five hours. 40

Q At \$1.25 an hour? A \$1.25 an hour.

John F. Ryan, cross.

Cross examination by Mr. Markley.

Q Are these the prices of the Studebaker Corporation agency? A Those prices are the prices that were in effect at that time approximately. The prices vary in different territories. They add on a war tax.

10 Q These prices you have given me are the prices at the Studebaker agency? A Yes, the Studebaker corporation.

Q The Studebaker agency that Mr. Brower maintains for Studebaker cars at Schenectady, you are giving his prices, is that right? A Yes.

Q Are you a mechanic? A Yes, I am.

Q And familiar with the various parts and work that go into the doing of automobile work? A Yes.

20

Q Do you know what the towing charge would be?

Mr. Studer: I object. I do not think there is any claim for towing. They ran it back under its own power. It is not cross examination, either.

30 The Court: He may answer that question.

Mr. Markley: Exception.

A From what place to what place?

Q From Livingston over to Hudson, to go over and jack it up and take it over to Hudson? A I would say the towing price would be approximately twenty-five dollars in addition to the man's time that was on the job, for whatever work he did.

40

Karl N. Wise, direct.

Q What would it cost to paint that car? A To do a good job, about eighty-five to one hundred and twenty dollars.

Q You did not go over this car with the idea of estimating as to the cost of repairing, did you? A I never saw the car after the accident at all.

10

Q All you are doing is answering as to specific items that Mr. Studer is giving you, telling him what those particular parts cost, is that right? A That is all.

Q You do not know what this particular car needed? A No, I did not see the car.

WILLIAM FINLEY, recalled.

20

By Mr. Studer.

Q At any time did Mr. Martin in talks you had with him in reference to how the accident happened, tell you the rear left wheel snapped and the accident happened because the left rear wheel snapped? A Never.

30

KARL N. WISE, sworn for the defendant.

Direct examination by Mr. Studer.

Q Where do you live? A A suburb of Detroit, Burlingham, Michigan.

Q And what is your business? A In the engineering department of the Studebaker corporation.

Q Are you an engineer? A Yes.

40

Karl N. Wise, direct.

Q Where did you get your technical education? A The University of Michigan.

Q When did you graduate from the University of Michigan? A The year 1909.

Q And what has been your practice since your graduation? A Almost exclusively automobile work.

10 Q How long have you been associated with Studebaker? A In the present employment a little over three years.

Q Are you familiar with the cars known as Studebaker, Special Six? A I am.

Q Serial number 3062210; are you familiar with that type of car? A That three million series is the Special Six car.

Q Where was that car manufactured? A Detroit, Michigan.

20 Q Where does the Studebaker Corporation have factories? A Detroit, South Bend, and Windsor, Ontario, the principal factories.

Q Where are the Special Sixes manufactured? A For this country they are all manufactured at Plant 3, of Detroit, Michigan.

Q Detroit, and that is where you are stationed? A Our offices of the engineering department are at a different plant, Plant 5.

30 Q But in Detroit? A In Detroit.

Q Are you able to say when car bearing serial number 3062210 was manufactured? A Not exactly.

Q Approximately can you say, the month? A I would say between the second and fifth month of 1923.

Q That is February to May, 1923? A I would think so, yes.

40 Q Did the Studebaker Corporation manufacture the wheels at that time that went on that car? A No.

Karl N. Wise, direct.

Q Did it ever manufacture wheels that go on its cars? A No.

Q Who manufactures the wheels? A The Kelsey Wheel Company, Detroit, Michigan.

Q What condition are the wheels in when they arrive at the Studebaker plant in Detroit?

A A priming coat, lead or oil, depending on the finish that is to be given to the wheel. 10

Q That does not mean much to me, because I don't know much about wheels. A If the wheel is to be painted it is given a priming coat, a filler.

Q A filler of what? A I am not a paint man; I do not know exactly what the compound is. It is presumably a base of the final painting operation.

Q That is done by the Studebaker Corporation? A That is done at the Kelsey plant. 20

Q After the wheels leave the Kelsey plant what does the Studebaker Corporation do with the wheels? A Paint them and brand the tires and the rims.

Q Where are the tests made of the wheels during their course of manufacture? A In the Kelsey plant.

Q Do you know whether during the manufacture of this wheel which you say was some time from the second to the fifth month of 1923, that was done? 30

Mr. Markley: With this wheel?

A I do not know.

Q Do you know what methods of inspection were invoked at the Kelsey plant at that time?

A Not in detail.

Q Do you know whether or not Studebaker had, exclusive of Kelsey, men in the Kelsey plant 40

Karl N. Wise, direct.

doing the manufacture of this wheel, for the purpose of making inspections independent of the Kelsey at that time? A It has always been the custom to have several inspectors in the plant, presumably that was the case at that time.

10 Q Who, if anybody, from the Studebaker Company, had general supervision of the Studebaker inspectors at that time at the Kelsey plant? A I do not know.

Q Did you ever have anybody under you who had general supervision of these inspectors? A No.

Q Do you know Mr. William Bagley? A I do.

20 Q What was his position with the Studebaker Company in 1923 during the making of this wheel? A He was in the so-called M. and S. Department—Methods and Standards.

Q What was the wheel base of Studebaker Special Six model, such as this was? A The wheel base of the car, one hundred and nineteen inches.

30 Q Were the wheels that were used on Special Six models at that time used upon any other models of Studebaker at that time? A The same wheel equipment was used on the Big Six.

Q What is the difference between the Big Six and the Special Six? A Considerable weight difference, a larger car, seven inches more wheel base.

40 Q After the Studebaker automobile had been entirely completed, that is the wheels had come from Kelsey, had been attached to the car, what road tests and the like were conducted by the Studebaker Company? A Road tests are not given to finished cars, completely finished cars.

Karl N. Wise, cross.

Q What is the final test that Studebaker makes? A There are inspection tests on the individual units, before the assembly of those units, and a great many cars are moved from plant to plant for shipment, which is a distance of probably four or five miles. They all do not make that trip.

10

Q Do you know what the individual tests are before the car is finally assembled? A I am not very familiar with our production operations, except that all motors go on the dynamometers for tests. Other units go under tests for sound, noises, and so forth.

Cross examination by Mr. Markley:

Q What was the weight of this car, the Special Six? A Special Six roadster?

20

Q Yes, 1923. A In the neighborhood of twenty-eight hundred.

Q Might it be three thousand two hundred and eighty? A Not that much, without passengers.

Q When it is ready for the road, doesn't it weigh three thousand two hundred and eighty? A With the passengers in the car?

Q No, without the passengers. A No, I do not think it will weigh that much.

30

Q How much did you say? A Twenty-eight hundred, or something like that, shipping weight, I believe.

Q You say you were in Plant 5, at Detroit? A Plant 5.

Q And in Plant 3, was where they assemble wheels? A Assemble cars and build most of the parts.

Q How many plants are there? A They are numbered consecutively up to five. One plant—

40

Karl N. Wise, cross.

I do not know whether it is numbered under five or above five. There used to be plants up to twelve.

Q At Detroit? A Not all in Detroit.

Q How many at Detroit? A Three at Detroit, three large plants.

10 Q You were in Plant 3. You said something about Plant 5? A I am located at Plant 5.

Q You say there are only three plants there? A There are only three plants in Detroit proper.

Q What numbers do they bear? A Plants 3, 4 and 5, and Plant 10.

Q You say that covers quite a large area, several miles, five miles you said? A Not altogether.

20 Q How much altogether? A Plants 3 and 4 are together, and Plants 5 and 10 are adjacent.

Q How far are they apart? A The two groups are I would say three and a half miles or four miles.

Q There are two plants at one point and two at another point? A Yes, sir.

Q Three or four miles away? A Yes, sir.

30 Q You are sure your present employment with Studebaker has been for a period of three years? A Yes.

Q Had you had a previous employment with them? A Yes, sir; I was with the old E. M. F. Company before they became Studebaker.

Q How long was that employment? A From the middle of 1909 until the early part of 1913.

Q When did you go with the Studebaker Corporation, the present defendant? A I was there at the time they became Studebaker, and remained there thereafter.

40 Q 1913? A No, I believe it was 1911.

William E. Bagley, direct.

Q Then you have been with this company or its predecessor all that time since it started?

A No, I was away from 1913 to the beginning of 1922.

Q Then you went back again for your present employment? A Yes, sir.

Q And what is your position there? A Experimental research work. 10

Q Just in experimental research work? A Yes.

Q With respect to the improvement of the car? A Improvement of the car, new designs, new developments, pure research.

Q You have made no inspection of wheels yourself? A No.

Q You know the wheel? A Yes.

Q You have seen it? A Yes.

Q Are you a mechanical engineer? A Yes. 20

Q What is the life of a wheel? A Barring damage and accident, almost indefinite.

Q Go on forever? A Barring accidents.

Re-direct examination by Mr. Studer.

Q Barring accident, you say? A Barring accident.

30

WILLIAM E. BAGLEY, sworn.

Direct examination by Mr. Studer.

Q What is your profession? A Supervisor of inspection.

Q Are you a technical man, are you an engineer? A I call myself an engineer practically.

Q What are you? A I am a mechanic.

40

William E. Bagley, direct.

Q What is your education? A Public school, high school.

Q How long have you been working as a mechanic? A Twenty-two years.

Q What have you done as mechanic for twenty-two years? A Machinist, toolmaker, tool designer.

10 Q With whom are you working now? A Studebaker.

Q How long have you been working for Studebaker? A Fifteen and a half years.

Q What has been your work with Studebaker for fifteen and a half years? A For fifteen years inspection division.

Q Inspection of what? A Automobiles, all parts.

Q Including wheels? A Yes.

20 Q Can you tell us about when car bearing serial number 3062210 was built? A About April, 1923.

Q Did the Studebaker Corporation as such make the wheels? A Purchased their wheels.

Q From whom did it purchase the wheels? A Kelsey Wheel Company, Detroit.

Q Had you anything to do with the kinds of inspections that were made at the Kelsey Wheel Manufacturing Company by the Studebaker people at that time? A The work of inspection.

30 Q You had? A Yes.

Q What did you have to do with it? A Specified instruction how the wheels would be inspected.

Q To whom did you give these specific instructions as to how the wheels were to be inspected? A The inspectors assigned to the work, also the Kelsey Wheel Company.

40 Q To the inspectors assigned to the work by your company? A Yes, supervising.

William E. Bagley, direct.

Q And by the Kelsey Company? A Yes.

Q And how many inspectors did the Studebaker Company have at the Kelsey plant during the time this wheel was being made? A Three.

Q What were their duties as given by you to them? 10

Mr. Markley: I object to that, as immaterial, irrelevant and incompetent, what he told the inspectors.

A Supervision, inspection of parts, and assembly.

The Court: He can tell what instructions he gave the inspectors. It has no value unless connected up. 20

Mr. Markley: Will your Honor allow my objection on that ground?

The Court: Yes, with the understanding it must be connected up.

Q What were the individual duties given to them by you?

Mr. Markley: May I have my exception 30
noted to this entire line?

The Court: Yes.

Q What were the specifications you gave them? A To inspect a percentage of all the parts entering into the assemblies, and also the assemblies.

Q In what way were they to inspect the parts entering into the assemblies and the assemblies?

A After the Kelsey Wheel inspector had passed 40

William E. Bagley, direct.

on the work, Studebaker inspectors were to inspect a percentage of it and see that it was up to our specifications.

Q And what were the specifications? A To see if the spokes were of good, clear timber, according to the specification laid down by the engineering department.

10 Q What else? A For dimensions, finish, workmanship in general, and the sub-assemblies and the finished wheel.

Q Did you prescribe tests to be applied?
A We do.

Q What tests? A Before the spokes are assembled, a percentage is taken say from various kilns to check for moisture content.

20 Q Were those checks for moisture content prescribed for the Studebaker men as well as for the Kelsey men? A No, sir; Kelsey men made their own tests.

Q These were independent, for Studebaker?
A Yes.

Q And what else? A The sub-assemblies were tested after we took a percentage of them.

30 Q What were the tests prescribed? A On the semi-finished wheel, each wheel after the spokes were pressed into place were struck one to three times with a hammer to see if the spokes were well seated and did not move under the blows. After the hubs were assembled they were tested for accuracy of running true.

Q What was the percentage of trueness, do you know? A Oh, it runs from three to five per cent.

40 Q Go on; what other specifications were prescribed for Studebaker? A We inspected all metal parts. The inspector inspected all bearings one hundred per cent.

William E. Bagley, cross.

Q What do you mean by bearings? A Each and every bearing.

Q What else? A Examined the fit of bearing hubs in the front wheels, taper of bore in the rear wheels, assembly of bearing caps, the assembly of hubs and wheels.

Q Do I understand you to say this was independent of Kelsey's own inspections? A Yes. 10

Q How many men did Studebaker have at the Kelsey plant at that time? A Three.

Cross examination by Mr. Markley.

Q Does the Kelsey Company make all your spokes? A Yes.

Q How many wheels a day do they turn out for you, that is back in April, 1923? A About two thousand a day. 20

Q How many inspectors did you have at that time? A Three.

Q How many spokes are there in each wheel? A Twelve.

Q Does your company prescribe the kind of wood out of which the spokes are to be made? A Yes.

Q What kind of wood in April, 1923? A Hickory. 30

Q What kind of hickory? A Wagon-makers' grade C, or better.

Q How many grades are there? A There are three we recognize, A, B, and C.

Q Which is the best? A A.

Q You had C, is that right? A We prescribed grade C.

Q Is grade C wood tenacious, strong, and long fibre? A I am not a wood expert. 40

William E. Bagley, cross.

Q All right. Do your company inspectors inspect the wood before it is machined into the spoke? A No, sir.

Q You do nothing with the wood? A Not before it is machined into the spokes.

Q You make no test of the wood itself, your inspectors? A After it is machined.

Q Before it is machined? A No, sir.

Q You say you inspected a percentage of the parts. What percentage of the spokes do your men inspect—in April, 1923? A It depends on the amount. It runs an average of two to three per cent.

Q Out of two thousand wheels a day they turned out in April, 1923, would they inspect two or three per cent. of those two thousand?

A Yes.

Q And they would not inspect ninety-seven or ninety-eight per cent. of that, would they? A Visually, look at them.

Q But actual inspection, such as you have described here, they would not do that except with two to three per cent.? A It would be impossible.

Q But they did not do it, did they? A Nobody does.

30

Mr. Markley: I ask that that may be stricken out.

The Court: Strike it out.

Q Your inspectors only inspected in the manner you have described, two or three per cent. of the amount of wheels turned out in a day in April, 1923, is that right? A Yes.

Q And they made no inspection at all of the timber of which the spokes were made be-

40

Karl N. Wise, direct.

fore they were turned out in the machine? A Before they are assembled in the wheels.

Q No inspection before they are turned out in spokes? A No inspection before they are turned out in spokes.

March 5, 1925.
10:00 A. M.

10

KARL N. WISE, recalled.

Direct examination by Mr. Studer.

Q How long has the Studebaker Company been making automobiles? A Over twenty years.

20

Q And prior to that what was the business of the Studebaker Company? A Wagon and carriage making.

Q For how long a period? A I think it was since 1830, something like that, I am not sure.

Q What experience have you had with metal felloes that go on wheels such as this felloe in evidence here? A Well, we have used metal felloes since they were first used.

30

Q You yourself, what has your experience been with the felloes? A As representing the engineering department, we have used them and specified them.

Q Over how long a period has this experience of yours extended? A Well, intimately no longer than my return to the Studebaker Company three years ago.

Q And over that period how intimately? A Well, we have had them on all types and on all test cars in the engineering department.

40

Karl N. Wise, cross.

Q Will you look at this fellow, Exhibit P. 5, and tell me whether or not in your judgment it is plumb and true? A It is a pretty nearly a half inch out of true.

Q Is that the way that fellow would be on a car in July, 1923? A Absolutely not.

10 Q Can you indicate with particularity where the half-inch untrueness is on that entire fellow? A It is out right here at this point.

Q Mark that with an X.

(Witness complies.)

Q What does that indicate to you? A Well, it has been sprung out of shape by some impact.

20 Q Now, if an automobile going down a two per cent. grade at the rate of twenty or twenty-five miles an hour—fifty miles an hour—hits an embankment a foot and a half high and turns back in the direction from which it was coming, after turning over, landing about ten feet from the ditch, would a force of that kind, in your opinion, have anything to do with the untrueness which you found in the fellow at this time? A Such a blow could distort that fellow in this
30 manner.

Mr. Studer: That is all.

Cross examination by Mr. Markley.

Q Your measurement is more or less guess work, with your eye, isn't it? A That was an approximation.

40 Q An approximation of a half inch? A I said at least a half inch; it may be more.

Karl N. Wise, cross.

Q You do not know if this floor on which you laid the felloe to ascertain whether it was true or not is itself true? A I turned this two ways on the floor. If the floor was not true one way it would show in the other direction.

Q However, it is a guess without an instrument, isn't it? A Yes, I gave the measurement approximately. 10

Q Now I want to ask you one question I forgot yesterday. This was a Special Six? A Yes.

Q The Studebaker Company makes three kinds of cars, doesn't it? A Three distinct sizes.

Q The Light Six, the Special Six and the Big Six? A At that time, yes.

Q Nineteen twenty-three I am speaking of? A Yes. 20

Q And the Light Six is a lighter car than the Special Six? A Yes.

Q The Special Six was a medium weight car? A Yes.

Q The Big Six was a heavier car? A Yes, sir.

Q What horsepower was the Special Six? A Production motors will run between forty-five and fifty horsepower. 30

Q And what speed would that car attain in good working order? A That car in good working order will exceed sixty miles an hour.

Q It is made to go sixty miles an hour? A It goes sixty miles an hour as the result of the size of the motor.

Q In other words it is made to go sixty miles an hour or faster, isn't it? A Yes.

Mr. Markley: That is all.

Cornelius C. Cahill, direct.

Re-direct examination by Mr. Studer.

Q Do you know the weight of a Special Six car?

10 Mr. Markley: He said 2,800 pounds yesterday.

A There are probably six body types and it is hard to remember them all, but I placed the roadster in the neighborhood of 2,800 pounds shipping weight.

Q Do you know the weight of a left rear wheel such as was on the car at that time? A I do not.

Q What do you mean by shipping weight?
A The weight of a car as it is shipped from
20 the plant. That would be minus water, oil and gas, battery and so forth.

Q And passengers? A No passengers.

Mr. Studer: That is all.
(Witness excused.)

30 CORNELIUS C. CAHILL, sworn.

Direct examination by Mr. Studer.

Q Where do you live? A I am living at Crescent Lake, a sort of a suburb of Detroit, thirty-three miles out from the city proper.

Q What is your business? A I am a wheelwright working in the engineering department.

Q In the engineering department of what company? A In the Kelsey Wheel Company,
40 Detroit, Michigan.

Cornelius C. Cahill, direct.

Q How long have you worked for that company in that department? A In this department I worked for about five years.

Q What has been your experience and training in your special line? A Well, I would say about thirty years' practical experience in addition to a three-year course in engineering in a technical school and in addition to that a course in the Madison Testing Laboratory in the University of Wisconsin. 10

Q What has been your experience working in hickory wood? A Well, it has comprised all the work from the log to the finished product.

Q And has that to do with the making of spokes of automobile wheels? A Yes.

Q And for how long a time has that experience continued? A In the neighborhood of probably thirty years. 20

Q For what companies other than the Kelsey Wheel Company, if any others, have you been working in connection with the making of wheels? A I was employed with the Wasepuetka Company, the Commonwealth Company, the Kelsey Wheel Company, the Imperial Wheel Company and several other smaller concerns.

Q Have you ever done any government work? A Yes, sir. 30

Q What? A I was inspector of artillery wheels during the war in the Ordnance Department.

Q For how long a period? A Two years all together, about one year in actual inspection work. Later I was in the Salvage Board under Colonel Bursley of the surplus material, going around the State of Michigan and in that district. 40

Cornelius C. Cahill, direct.

Q In 1923 did the Kelsey Company make automobile wheels for the Studebaker Corporation? A Yes, sir, they did.

Q The wheels that were applied to the Special Six? A Yes.

10 Q Where was the work done? A The work was carried on, assembling and machining and the finished machining at the Kelsey Wheel Company, Detroit plant.

Q In Detroit? A Yes, sir.

Q Was that particular work under your supervision? A Yes, sir.

Q For how long a period was it under your supervision? A Oh, three and one-half years.

20 Q For what other companies at that time did the Kelsey Wheel Company make wheels? A Well, we made wheels for the Packard Light Six, the Hupmobile, the Dodge, the Paige and the Jewett, the Lincoln and Cadillac, the Studebaker and the General Motors truck wheels.

Q During that time, the first five months, say, of 1923, did the Studebaker Corporation have inspectors at the Kelsey plant? A Yes, sir.

Q How many? A They had three men.

Q Did any of these other companies of which you have spoken have any men, any inspectors?

30 A The Dodge Company had one man.

Q Did any of the other companies have any?

A Not at that time.

Q Now, your experience extends from the tree to the finished product; is that right? A Yes.

40 Q Just begin at the beginning, if you will, in the process of manufacturing a Studebaker Special Six rear wheel that was in existence at the Kelsey plant under your supervision at the time mentioned. A You want me to tell you in my

Cornelius C. Cahill, direct.

own way, beginning from the tree, to the finished product?

Q Exactly, as it was in vogue at the time when this wheel was made. A Well, in the first place the logs are secured in two manners. In our Southern plant they are brought to Memphis and in some instances the logs are put on steamships and in other instances the logs are cut and delivered to the mill. 10

Q When you refer to Memphis— A I mean the Kelsey Wheel Company have a plant at Memphis equipped for making spokes from logs to the semi-finished product, ready for shipment.

Q Go ahead. A These logs are brought into the yard and sawed up on band saws and worked on down to dimension stock and while green they are transferred by means of conveyors to the dry kilns and dried down to the moisture content in the wood of from eight to ten per cent., and this is done in order to reduce the cost of shipping and prevent the stock from season checks, and so forth, which take place if permitted to lay out. After the billets are dried they are delivered to the spoke room, where they are turned into what we term a club spoke. 20

Q And are they dried? A Dried in dry kilns for the purpose. 30

Q And the temperature is regulated by some kind of an indicator, is it? A Yes, we have instruments that show the condition of heat and circulation and humidity within the kilns, enabling the operator to see what is going on and giving the stock in the kiln intelligent supervision.

Q Now, then after that? A Then after that they are released from the kiln. Previous to being released from the kiln there is a test 40

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taken by means of a tromoroid scalometer. The billets are put into the oven at a temperature of 212 degrees maximum and left there for a sufficient period to dry them down to the proper moisture content, and until the stock is dried down to ten per cent. the kiln is not released. After being released the billet is turned into what we term the club spoke and this club spoke is sent up to us for further machining.

10 Q Now, from your experience, what have you to say as to whether or not the cost of manufacture so far pursued and the tests so far applied accord with the proper practice in the industry? A That is the best practice possible. That is what we endeavor to do at all times.

20 Q Now, from there on. A These spokes are delivered in Detroit and again placed in dry kilns in order to remove what surplus moisture might have been picked up in transit and to bring them down to what we consider the best possible condition for manufacture, which is from three to five per cent. moisture content.

30 Q Go ahead. A Tests are again made as to the moisture in the wood in the same manner as they were tested out before leaving Memphis, and when they showed a moisture of five per cent. based on a number of specimens taken from different portions of dry kiln, the kiln charge is released for manufacture. There are no kilns released that do not show this condition, because that particular work was under my supervision and I had a man that had nothing to do but test this moisture content of the various kilns. A record is kept of each kiln charged.

40 Q Who made the inspection and tests you have just spoken about? A The Studebaker Corporation had men there with the privilege of

Cornelius C. Cahill, direct.

making tests similar to the ones my men made and these men had to be satisfied before we could release the kiln; in other words, all of this work was carried on under the supervision, and you might say the authority, of the Studebaker men.

Q And the actual test and the physical handling was done by the Kelsey men? A Yes, sir, 10
of course.

Q Now, then, go ahead from there. A After the spokes were released for machining the spokes were mitered—

Q When you talk about mitering, what do you mean? A I mean the miter on the head end of the spoke, so that when twelve are assembled together it forms a solid or the equivalent of a solid piece of wood, and these miters we use are different from any other wheel construction at 20
the present time. It is what is known as a taper miter and it is accomplished by using a miter block or anvil with two knives coming with a downward stroke simultaneously from each side of the head and by carrying them on an eighteen degree we get a five-degree taper on each side of the spoke.

Q Is that taper used on all the other wheels that your company makes? A All the metal 30
felloe wheels we build.

Q Go ahead from there. A And then these spokes are inspected for defects which might have been caused by drying, such as checks, in addition to timber defects.

Q Who made those inspections? A The Kelsey Wheel Company, one hundred per cent.

Q And was this one hundred per cent. inspection also under the supervision of the Studebaker men? A Absolutely. They had free 40

Cornelius C. Cahill, direct.

access to our plant at all times, in any part of our plant.

10 Q What next, please? A Then from the mitering and polishing they go by means of a conveyor, the A number 1 stock, is carried by the conveyor over to the assembly room and discharged at a point where they again receive one hundred per cent. inspection.

Q Meaning what? A Meaning that we inspect the stock after it is mitered and polished, for defective machine work and other things that the other fellow may have missed. It is possible that once in a while a man will not get everything.

20 Q And was that one hundred per cent. inspection also under the supervision of the three Studebaker men there? A Yes. I want it understood now that the Studebaker people had free access to all departments of the plant at all times. It was a mutual understanding that anything that didn't suit them they had permission to stop the work at any stage of manufacture at any place in the plant.

Q And your inspection was carried on by your own men in addition to that? A Yes, sir.

30 Q What after that, please? A Well, then, as I say, the spokes were again inspected, one hundred per cent. inspection, and they go through the automatic tenon machine, which cuts each and every spoke to the same length and at the same time cuts the tenon that fits into the felloe here. That tenon is cut on the end of the spoke and the spoke is equalized.

Mr. Studer: I would like to have this piece of spoke marked, which is taken from the general exhibit, indicating a tenon.

40 (Marked 6 A.)

Cornelius C. Cahill, direct.

Q Let me interrupt you. Did you have prepared a number of photographs and did you bring them here, showing in detail the process of manufacture from time to time? A Yes, sir.

Q I show you a book containing a number of photographs. A Yes.

Q Were those photographs taken under your direction? A Yes, sir. 10

Q And in your presence? A Yes, sir.

Q They were taken when? A Well, I cannot just say when they were taken but it was along about the latter part of December.

Q 1924? A Somewheres around there, yes; I do not recall the exact date.

Q Were the several process of manufacture which are shown in these photographs in existence at the time the wheel in question was manufactured at your plant? A Yes, sir. 20

Q Are they identically as they were then? A Yes, sir.

Mr. Studer: I offer these, I think they will be helpful to everybody concerned.

Mr. Markley: I object to them. I understand this man is merely testifying to a system the Kelsey Company had. 30

The Court: I won't admit them at the present time.

Q Now, you were at what point in the manufacture of the wheel? A At the stage, putting the tenon on the spokes.

Q After putting the tenon on the spokes what was done? A The spokes were put in a sort of a cylinder which revolves like this and the spoke is equalized and after the spoke is equalized and the tenon put on it then passes to the 40

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10 next stage. Glue is applied to six of the spokes and they are placed in a taper guide, the six tapered miters placed in this band of the felloe with the small side of the taper miter upward. Then six other spokes placed in the felloe with the small side of the taper miter down, forming a wedge like this. The spokes in this way, attached to the felloe band then go to a press and this press presses both sides simultaneously, that is, a lateral pressure is exerted simultaneously on both sides and this semi-assembled wheel and the felloe assembly now has the lateral tension necessary to hold the wheel intact. The pressure exerted must not be less than seventy pounds to the square inch.

20 Q Then what? A Then after this wheel is assembled in this press each and every wheel is struck forcibly with a hammer, I believe a two-pound machinist hammer and the machinist strikes the center portion of this wheel, the part covered by the hub. This man strikes it forcibly and this wheel at this stage of manufacture must give forth a clear ringing sound or else it does not go any further. If it gives a punky or dull sound, we know automatically something is wrong in the manufacture which stops immediately at that point.

30 Q Was this test applied to every wheel made at that time? A Absolutely and even to the present time.

Q And that was also under the general supervision and inspection of the Studebaker Company? A Yes, their men were in the plant all the time.

40 Q What next? A And another thing at this point, the spokes that had been previously inspected at least two or three inspections up to

Cornelius C. Cahill, direct.

this point of manufacture, in the event that a spoke did slip through, the tremendous pressure exerted assembling this wheel, unless the spoke was of good quality, it would not withstand it and the wheel would not go any further.

The wheel is next put into the facing machine and the wheel is faced both on the bottom and on the top to a true plane and at the same time it is bored for the hub which is to fit later. It is bored to a sleeve fit. After this the wheel is again inspected and gauged for thickness, because it has to be faced to a certain thickness to enable us to use a certain long hup bolt and it must come up to specifications in the assembly. 10

Q Then what? A Then after this the wheel is faced and gauged and goes through the miter filing operation which consists in bringing the wheel to a uniform circle within a given tolerance and that enables the man performing this operation to see each individual spoke again and should he find a spoke which may have slipped through he takes a piece of red crayon and marks the spoke and sets it to one side and this wheel goes no further. After this operation the wheel is again inspected by the man supposed to do that work in addition to finishing up, and the wheel then goes to the hubbing department 20 where the hub is placed on it. At this point I want to make it clear that the hubs are all inspected previously to delivery to the assembly room. They all received one hundred per cent. inspection; in fact all parts are inspected one hundred per cent. in each department of the Kelsey Wheel Company where they are made. In the last operation this wheel is bolted on a multiple drill and twelve holes are bored for the bolts. Then there is a gauge fits over 30 40

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that template and these drills run through the
template. After this job is done they are again
inspected to see that everything is all right be-
fore the hub goes on. The wheel, the drum and
the hub are assembled and bolted together, the
bolt tightened up and the ends of the bolt peoned
10 over. Then the wheel is mounted on a pilot and
the wheel leveled and tested as to lateral and
radial roundness; that is, taking the periphery
of the wheel as a whole. At this stage if the run-
out is three-thirty seconds of an inch out either
way, down to nothing, the wheel goes on. If the
run-out is more than three-thirty seconds of an
inch the wheel does not go any further until the
wheel is trued up, and each wheel is inspected in
this manner one hundred per cent. Then after
20 that it goes through another inspection to see
that everything is assembled properly and the
bolts peoned over and that the workmanship up
to this point is what it should be and that there
are no blemishes due to the knives hitting it or
something of the kind. At this point the men
put the grease-plug into the hub and it goes
through what we call the final inspection. They
are placed on racks at this stage and the wheel
is given a final inspection all the way through.
30 After this the wheels are ready for shipment.

Q For this size wheel, for the Studebaker
Special Six, did you have a special line of men
to do that? A Absolutely. We have a depart-
ment for it. We must have it. For large pro-
duction you must have a line-up that can do this
work without making changes.

Q What do you say as to whether the method
of manufacture which you have spoken about
and the inspections and tests which you have
40 spoken about accord with proper practice in the

Cornelius C. Cahill, direct.

manufacture inspection and assembly then in vogue in the manufacture of wheels? A Yes, to the best of my knowledge; that is the best possible practice in vogue in all plants.

Mr. Studer: Now I would like again to renew my offer as to these pictures. The Court has examined them, I think. 10

The Court: They are very interesting but I cannot say they are competent.

Mr. Studer: Exception. I will ask to have them marked for identification.

(Marked Exhibit D. 10 for identification.)

Q I show you the remnant of a wheel which is an exhibit of the plaintiff's in this suit with a felloe, and ask you if you recognize that as being a Kelsey wheel? A Yes, sir. 20

Q And for whom were they made? A The Studebaker, Detroit plant.

Q Of which you have supervision? A Yes.

Q Now, then, you have spoken about the inspection for moisture content? A Yes, sir.

Q Made by the Kelsey Wheel Company? A Yes, sir.

Q What if anything did the Studebaker inspectors do as to moisture content? 30

Mr. Markley: I object to this unless that is to be connected up.

Mr. Studer: I am speaking of the time when this wheel was manufactured, between the second and fifth months of the year 1923.

Q You do know what the Studebaker men did at the time with reference to the moisture content inspection, do you not? A Yes, sir. 40

Cornelius C. Cahill, direct.

10 Q What if anything did the Studebaker inspectors do as to the moisture contents of wheels made at the Kelsey plant between the second and fifth months of the year 1923? A Well, as I said before they were privileged at all times to do anything that they liked in the way of
20 10 checking up material or inspection and among the things they did was to take spokes and submit them to my men I have there for tests for moisture contents. They would take spokes out after the dry kiln had been released and test the spokes to see that the moisture content was not above five per cent. Of course it is impossible to test each individual spoke. The result is based upon a percentage of the spokes tested because in order to test the spokes you have to destroy them.
20 You have to take the cross section and get the average from the center to the outside of the piece and they would take these spokes and bring them in and request that those tests be made.

Mr. Markley: Who requested this, the Studebaker people?

The Witness: Yes, sir.

30 Q What did the Studebaker Company do over the same period by way of inspection and tests to see whether or not the spokes were well seasoned? A They did several things, for instance, we inspected each wheel. Each wheel that left our plant never went out without a thorough inspection, under no condition whatever. There was no wheel that left our plant without one hundred per cent. inspection.

40 Mr. Markley: I object as a conclusion. He is testifying from hearsay. He says he didn't do it.

Cornelius C. Cahill, cross.

The Court: You may cross examine him.
You asked him a question and he said he did.

Cross examination by Mr. Markley.

Q You are in the engineering department as I understand it? A Yes, sir.

Q And how long have you been in the engineering department? A In the neighborhood of five years.

10

Q Were you in the engineering department about the second and fifth months of 1923? A Yes, sir.

Q Have you got more than one building out at the Kelsey plant? A We only have the one place where we actually assemble the wheels.

Q How many buildings have you got there? A We have three plants. The assembling of the wheels over which I had control or supervision was all carried on at one plant, the main plant.

20

Q What was your title at the Kelsey plant from the second to the fifth months in 1923? A I don't know as I ever had any title; I am not very much interested in titles anyway.

Q Were you in the engineering department? A Yes, sir.

30

Q And working out where they made the wheels? A Certainly. You could not sit up in the office and supervise the making of wheels.

Q Were you supervisor of inspection at that time? A Yes.

Q And did you personally inspect each and every one of the wheels made by the company? A I should hope not.

Q You merely supervised the inspection, is that it? A I supervised the inspection, yes.

40

Cornelius C. Cahill, cross.

Q But as to the actual inspection of those wheels you could not do that ordinarily? A No.

Q How many inspectors of wheels did you have there from the second to the fifth month in 1923? A We had in the neighborhood of one hundred and fifty men on inspection.

10 Q How many wheels do you turn out in a day? A We were turning out in the neighborhood of about two million and a half wheels a year on the average.

Q Can you say how many wheels per day you turn out on an average? A That is easily figured, at least ten thousand wheels.

Q And your job was not to inspect any of those ten thousand wheels, was it? A It was, yes.

20 Q How many would you inspect a day ordinarily on an average? A I would probably go over two or three hundred wheels a day during the course of a day.

Q Out of the ten thousand you were turning out? A Yes, I would probably go over two or three hundred wheels in one department one day and the next day I would not be in that department, but making an inspection some place else.

30 Q You would have to rely on your assistants, wouldn't you? A Absolutely.

Q And on your men to do the work right? A Yes, but it is part of my job to have men that I can rely upon.

Mr. Markley: I ask that that be stricken out, yes is his answer.

The Court: Strike out the last part.

40 Q And when you say every wheel was one hundred per cent. inspected you mean by that

Cornelius C. Cahill, re-direct.

that you assume your men do it one hundred per cent.? A Not only assume it, but I know it.

Q And you assumed that every man in inspecting the work made his inspection one hundred per cent., didn't you? A I did not necessarily assume that.

Q You would have to be right at the men's backs to do that? A If you will let me explain. 10

Q Just answer the question; you would have to be right at the men's backs to do that? A Not necessarily.

Q You know you have to testify in court from your personal knowledge, don't you? A Yes.

Q And not from what somebody tells you or what you think you know? A No, sir.

Mr. Markley: Now I submit that the answer he made was a pure conclusion and I ask that it be stricken out. 20

The Court: I won't strike it out.

Mr. Markley: Exception. That is all.

Re-direct examination by Mr. Studer.

Q Now, you were talking about the independent examination made by the Studebaker people at the time to see whether or not the spokes were well fitted and you have told us about that. Now I want to ask you if they inspect the wheel and felloe to which I directed your attention a few minutes ago, go through the same course of inspection as you have described? 30

Mr. Markley: I object. There is nothing here to show that he has any personal knowledge about this particular wheel. 40

The Court: I don't think there is.

Cornelius C. Cahill, re-direct.

Q You recognize it as a Studebaker wheel?

A Yes, sir.

Q And you have told us about the course of manufacture that a Studebaker wheel went through? A Yes, sir.

10 Q Now, would you say whether or not this wheel for that reason went through the same course of manufacture?

Mr. Markley: I object on the ground that he has no personal knowledge about it.

The Court: Do you say you can identify one particular wheel from another after they are manufactured?

The Witness: What do you mean by that, your Honor?

20 The Court: You say you made ten thousand wheels a day?

The Witness: Yes, sir.

The Court: Is there any way you could pick out afterwards any particular one of those ten thousand wheels from any of the others?

The Witness: No, not of the same type or the same model.

30 The Court: That is what I am speaking of, of the same model.

The Witness: No, sir; you could not.

Q Now, what did the Studebaker inspectors do by way of inspecting for trueness over that period? A Well, they would in some instances put the wheel on and test it for trueness and in another inspection they would stand there and see that the job was carried out according to specifications.

40

Cornelius C. Cahill, re-direct.

Q And what did they do with reference to inspecting for the metal parts and bearings? A Well, one of the three men was on metal parts exclusively.

Q Now, you have peculiar knowledge of hickory, did you say? A I think I have.

Q You have studied it and worked with it for what length of time? A Thirty years off and on. 10

Q Do you know what dry rot is? A I think I do; yes, sir.

Q What is it? A Well, dry rot is a condition brought about by a fungus attack caused by dampness and humid conditions and the stock is more susceptible to these conditions along in May, June and July, sometimes in August and particularly in the south when the stock is in its green condition, and that is one of the reasons why we dry our stock down before shipment, in order to make it less susceptible to mould and other things that bring about decay in the course of time, because when you put the stock on to the cars when it is green it is piled closely and the circulation of the air is not sufficient to carry off the moisture and stagnation with the result in some aggravated cases it will form like water marks on the wood and by drying it down and taking out this moisture we bring the dampness down to the minimum. We take out about 1,300 pounds to the thousand board feet in the way of free water that we would be paying freight on. 20 30

Q I direct your attention to this brake drum and ask you if any of those spokes you see there indicate the presence of dry rot? A This is pretty well filled up with mud so that you cannot tell much about it. There is some substance in here. 40

Cornelius C. Cahill, re-direct.

Q You examined this wheel the other day, did you not? A Yes, just a sort of a temporary examination. I cannot see any semblance of dry rot there at all.

10 Q I show you an Exhibit with an A on it and ask you if anywheres on that piece of wood you see any evidence of dry rot? A No. This is just dirt or something. I can show that through a little further if you will let me cut it.

The Court: Any objection?

Mr. Markley: No.

Q Are you able from a visual inspection to see any dry rot? A No, sir; I cannot see any.

Q Well, cut it if you want to. A (After cutting exhibit.) No, it is not there.

20 Q What have you to say as to whether or not there is any such thing as short fibred hickory wood? A Just what do you mean by that?

Q That is what I would like to know. Is there any such thing as short fibred hickory wood? A Why no. I would say that in breaking a piece of hickory the velocity of the shock it received and the position in which it was struck when it received the blow would make a difference as to how the fibres look, long or short. For example, 30 you can take a piece of hickory, a representative piece of hickory and you can break it in three or four different ways; you can fasten one end and bring it back and forth and gradually break it and you will get a long fibre condition. You cannot get anything else. On the other hand if you take a piece of hickory identical with that piece for instance, you could support it on each end and strike a sharp, powerful blow and you would break it straight like this and it would 40

Cornelius C. Cahill, re-direct.

look short fibred. The same way with a sharp blow or heavy pressure; you would get two different conditions.

Q I show you some broken pieces of wood and ask you if you recognize what those were originally? A Well, they were spokes of the Packard type. 10

Q Are they of the same length as the spokes which were in this wheel of the Studebaker special six? A No, they are much longer than the spokes we use on the Studebaker job.

Q What is the length of the spokes used on the Studebaker job? A In the finished wheel the spoke will measure nine and three-eighths inches over all and the rear wheel, if taken out of the finished assembly will measure nine and thirteen-sixteenth inches over all. 20

Q What have you to say as to what the break in this piece of wood which I hold in my hand, Exhibit P. 8, reveals to you with reference to its so called fibre condition? A It reveals a good piece of wood.

Q Now, as to its fibrous condition? A The fibrous condition in that is a little bit longer as to the actual length of the fibres, you don't know and I don't know and nobody else really knows what it is on that particular piece. 30

Q If a piece of wood of that kind were struck a sharp blow would it have a different appearance? A It would all depend upon the force of the blow and where it was applied.

Q Indicating Exhibit P. 12. A This spoke fractured right in here. It fractured straight through here.

Q I show you again this hub and drum of the Studebaker wheel and ask you from the appearance of the broken parts of the spokes of this 40

Cornelius C. Cahill, cross.

wheel particularly these five, could you tell the jury what kind of a blow, if any, was applied to those spokes to break them in that condition? A Well, I would say, judging from the appearance of the wheel, not knowing exactly what happened—

10

Mr. Markley: I object to that, merely looking at this wheel and trying to tell us how it happened.

The Court: He may tell what kind of a blow he thinks would cause a break of that kind, if he can.

Mr. Markley: I would like to ask him a few questions first, then.

20

Cross examination by Mr. Markley.

Q Can you tell from merely looking at this wheel as you see it there what the facts were with reference to how it was broken? A Why, it indicates—

Q Yes or no.

Mr. Studer: I don't think that is a fair question.

30

The Court: I sustain Mr. Studer's objection to your question.

Mr. Markley: Exception.

Q There might be any number of blows that might cause that kind of a condition? A No.

Q You think it was only one particular kind of a blow that would cause the condition of the wheel as you see it there? A I would say a particular condition rather than a particular blow.

40

Cornelius C. Cahill, re-direct.

Q There might have been any number of blows struck from different angles at different times under different situations that might cause that condition as you see it there, isn't that so?
 A I do not say that either. I don't know just how to meet your question. I would say that there is only one condition that would result in that. 10

Q We are not talking about conditions. We are talking about blows. What I am asking you is whether it is your opinion that a certain kind of a blow would cause that condition? A No, I would not say that.

Mr. Markley: Then I object to Mr. Studer's question.

The Court: I think your question is objectionable. 20

Re-direct examination by Mr. Studer.

Q What do you say as to the application or kind of force that was applied to that, a slow force or a quick force? A I want to get you right on this now.

Q The force; was it applied slowly or quickly? 30

Mr. Markley: I object to that. That is a mere conclusion again.

The Court: He may answer.

Mr. Markley: Exception.

A In my opinion the force of the skidding motion or the velocity with which he made the turn, together with the weight of the car and the rear axle and the speed at which he was driving was 40

Cornelius C. Cahill, cross.

such that opposition for even an inch would cause that condition.

Q Now, what about the priming coat, where is that applied? A At the Kelsey plant.

10 Q And what is the priming coat? A It consists of a paint and the paint itself consists of a pigment and lead, linseed oil, the linseed oil making up the vehicle of the paint and the lead goes to make up the body of it. It is principally lead and oil.

Q Do you recognize this new wheel which we have here as being one of the stock wheels of the Kelsey Company made for Studebaker cars? A Yes, that is the rear wheel for the Detroit model.

20 Q And is that the kind of a wheel that was made for the Detroit model of the Studebaker between the second and the fifth months, 1923? A Yes, sir.

Mr. Studer: I offer it in evidence.

Mr. Markley: May I ask him some questions first?

Mr. Studer: Yes.

Cross examination by Mr. Markley.

30 Q When the wheels leave your place they just have the priming coat on them? A Yes, sir.

Q They do not have any rubber on them? A No, sir.

Q And you do not know what kind of rubber tires they had in 1923?

Mr. Studer: I do not include the tire at all. I am just talking about the wheel itself, the spokes, the felloe and the hubs.

40 Q Is the felloe on the wheel when it leaves your place? A Yes, sir.

Cornelius C. Cahill, cross.

Q Is the demountable rim on it? A No, sir.

Mr. Markley: I object to the offer as it stands here.

The Court: Before you can offer it you will have to take off the demountable rim.

Examination by Mr. Studer continued.

10

Q Are the lugs on this wheel similar to the lugs on the other wheels manufactured at the time? A Yes, they are the same type.

Q Were the lugs applied in the same manner? A Yes, sir.

Q Was the felloe band fastened in the same manner? A Yes.

Q The same number of spokes? A Yes.

20

Mr. Studer: I will have the tire removed and offer it. Cross examine.

Cross examination by Mr. Markley.

Q The manufacture of automobile wheels is a serious thing, isn't it? A Yes, we consider it so.

Q And you try, by the system you have in vogue, to turn out a perfect wheel? A Yes, although we have not succeeded in turning out a real perfect wheel; I don't think a perfect wheel was ever made by anybody.

30

Q And as a result you make numerous inspections, don't you? A Yes, sir.

Q How many inspections would you say that the wheels go through from the time they came to your place in Detroit until they leave there with the paint on; how many inspections? A

40

Cornelius C. Cahill, cross.

About eight I would say, not including the test on the wood.

Q Eight inspections? A Yes, sir.

Q By eight different men? A Yes, eight different stages of manufacture.

10 Q In addition to that you make tests of the wood? A Yes, sir.

Q And how many tests of the wood do you make, not to name them, I mean approximately how many? A I could not say; it all depends upon how far along the drying is and the temperature, and so forth; there are different things that govern that.

Q This does not include all that goes on down in Memphis? A No, I am talking about the Detroit plant.

20 Q Now, does the wood come to the plant at Detroit in its raw state? A Not exactly raw, it is what we call dimension stock, semi-finished.

Q Does it come there as timber—it does not come there as spokes? A It does in some instances.

Q That is, some of the spokes are made down at Memphis? A Yes.

30 Q What proportion of the spokes are made in Memphis? A Well, say thirty per cent. That includes the Ford spokes and other spokes that are machined at Memphis.

Q In other words thirty per cent. of the spokes you manufactured back in the second to the fifth months in the year 1923 were made down in Memphis? A Not complete, no.

Q Not complete? A They are all spokes, but they are different terms, club spoke, tenoned spoke, semi-finished spoke—

40 Q They are machined into the shape of a spoke? A In a semi-finished condition, when they are received at the Kelsey plant.

Cornelius C. Cahill, cross.

Q How many are semi-finished when they come to the Detroit plant from Memphis? A What we term semi-finished?

Q Yes, approximately what percentage are in that shape? A One hundred per cent. semi-finished on this type of wheel.

Q That is they are one hundred per cent. semi-finished? A Yes, sir. 10

Q Will you just tell the jury what you mean by a semi-finished spoke one hundred per cent.? A I think I have what we call a club spoke here. When the spoke arrives from Memphis that is the shape of the spoke, what we term a club spoke.

Q And they are all one hundred per cent, that way when they come from Memphis? A Yes, all Studebaker and high grade spokes. 20

Q So that when you get them from Memphis they are already in the form that this one is which is marked Exhibit P. 10A? A Yes, sir.

Q Now then, you say that this dry rot is a difficult thing to guard against? A Well, it is if you do not take precautions for guarding against it.

Q And that it is a sort of a fungus? A Yes.

Q That gets into the wood? A Well, it depends. Now, this fungus is similar, a whole lot, to a mould, and this mould works in, and unless there is something done to kill the mould it will develop into a dry rot. That is one condition. Another cause is the log lying in the mill yard partly submerged in mud and water. 30

Q What is the effect of dry rot on wood? A It weakens it.

Q And are those conditions more prevalent in the spring months? A In the spring of the year the conditions leading up to dry rot are more prevalent. 40

Cornelius C. Cahill, cross.

Q And is it more prevalent in the south than in the north? A Yes.

Q Down in Memphis it would be more prevalent than up here in the north? A Yes.

Q And I suppose those are the things that have to be guarded against? A Yes, certainly.

10 Q And I suppose there are certain well known ways of doing that? A Yes.

Q Can you tell the jury some of them? A The most efficient way is to remove the surplus moisture before it is shipped.

Q If the dry rot gets into it. A The dry rot won't get into it if you take the log green—

Q I am assuming that the dry rot has gotten into it. A Yes.

20 Q In the spring months of the year down in Memphis. A Yes.

Q We will say that it is actually there. How would you find that out or what test would reveal it? A Why, dry rot is detected by visual inspection.

Q What do you mean by visual inspection? A What you can see by the naked eye.

Q Can you see dry rot with the naked eye? A Absolutely.

30 Q It is easy to see, isn't it? A It is easy to see, yes.

Q And where is your lookout for dry rot? Down at Memphis or up in Detroit? A At Memphis and at Detroit also.

Q Oh, do they? A Why certainly.

Q So that ordinary visual inspection will reveal dry rot? A Yes, sir.

40 Q And if you find dry rot in the timber from which spokes are made, in Memphis, what do you do with that timber? A What do you mean?

Cornelius C. Cahill, cross.

Q You won't use timber that has dry rot in it? A Absolutely no.

Q What will you do with it? A Discard it, absolutely.

Q No wheel manufacturer would use any spoke in a wheel that has dry rot in it, would he?

A Absolutely no. 10

Q Now, didn't you ever chop wood yourself as a boy? A Absolutely.

Q Did you ever get a piece you had to hit many times and it would not break for you?

A Well, that was because I was not able to put enough force into the blow.

Q And you turned it over and hit it again and again? A Yes, and as I got older I probably would not have to put so many blows into it.

Q And did you take another piece, the same size, the same thickness and hit it one blow and it would chop right off clean? A It would if it was a different kind. 20

Q Now, in one instance it would be tougher fibred wood, wouldn't it? A It would if it was hickory.

Q I am saying where you had to hit the same piece of wood with your axe time after time on one side, turn it over and strike it, that piece of wood certainly must have been of a tougher fibre than the other wood that would crack right away as soon as you hit it once, isn't that so? A Well— 30

Q One was tougher fibre than the other? A Yes. There is as much individuality in woods as there is in human beings.

Q Absolutely, and there is just as much individuality in hickory? A Yes.

Q There are all kinds of hickory, isn't that so? A Well, not all kinds of hickory. 40

Cornelius C. Cahill, cross.

Q There are different kinds of hickory? A Yes, they come under the classification of hickory.

Q How many kinds of hickory do you know of? A I know the kind we use.

Q I am not asking you that; I am asking you how many kinds of hickory do you know? A Offhand I could not tell you exactly.

10 Q There are three classes, A, B and C hickory, isn't that so? A No, sir.

Q Didn't you ever hear of that? A No, sir, not in the automobile manufacture.

Q Never heard of that? A Not in automobile manufacturing.

Q A, B and C hickory for automobile manufacturers? A No, sir.

Q You do not know that the Studebaker people use in their wheels class C hickory, do you?

20 A (No answer.)

Q Do you know that? A Do I know that?

Q Yes. A Well—

Q Come now, do you know it or don't you know it, that they use class C hickory? A Well, they use the best hickory possible.

Mr. Markley: I ask that that be stricken out.

30 Q Do you know that the Studebaker people in the wheels which they use, use class C hickory?

A No, I do not.

Q Yet you manufactured all the wheels that the Studebaker people used back in April, 1923?

A Yes, sir.

Q And you say you are a wood expert? A Yes, sir.

Q And you do not know there is a class A hickory, do you? A Not in the term you mean

40 to embrace.

Cornelius C. Cahill, cross.

Q And you do not know there is a class B hickory? A Not as it applies to automobile spokes.

Q And you do not know there are several different kinds of hickory, do you? A I do not, not as applied to automobile spokes.

Q Some half a dozen kinds of hickory? A I 10
would not say so.

Q Don't you know? A I would say that I do not know then.

Q You have made a study of woods? A Absolutely.

Q Now, how many kinds of hickory are there? A Well, "hickory" is broad in scope.

The Court: Can you answer the question?

The Witness: The word "hickory" is 20
rather broad. There are several woods that come under that same heading.

Q They are not all of the same tenacious trend, are they? Some hickory is good and some is not good? A Yes, sir.

Q Some break very easily and some do not break so easily? A Yes, sir.

Q Therefore, you make strength tests to determine how strong it is, don't you? A Yes. 30

Q And how tenacious it is? A Yes, sir.

Q And those tests are part and parcel of the inspection and selection of wood for automobile wheels, isn't that so? A Yes.

Q You have to determine its strength, don't you? A Yes, sir.

Q And where is that done in your organization? A That is done at the Kelsey plant.

Q Where? A Detroit, Michigan.

Q You are there, are you? A I am. 40

Cornelius C. Cahill, cross.

Q Well, you did not testify to any strength test in your direct examination? A No, but I supervise the test for strength.

Q I am just asking you, did you, on your direct examination testify to a single strength test that these spokes are put through? A No, I don't think I did.

Q How near is your plant out there to the Studebaker plant? A Oh, I would say two miles and a half from the main plant—three miles probably.

Q And they had three men on duty at your plant during this period second to the fifth months, 1923, when this wheel was probably in the course of manufacture? A Yes, sir.

Q One of those men had nothing to do with the wood? A No, sir.

Q He was entirely on metal? A Yes, sir.

Q Therefore only two men were there from the Studebaker Company that had anything to do with the wood? A Yes, sir.

Q How many of those two men had anything to do with wood wheels? A Of the two men?

Q Yes. A The two men had all to do with the wood wheels.

Q Now, you say, those two men had the right to throw out anything that was not right and you would abide by it? A Yes, sir.

Q Whatever they said went, is that so? A Yes, that is the idea exactly.

Q Of course if they did not say anything, it was all right? A Oh, no.

Q Well, whose job was it to finally pass on those wheels, the Studebaker Company or your company? A As I was telling you right along, they had free access to the plant. We

Cornelius C. Cahill, cross.

did not know when they would be going around and if they would say anything we would have to take care of it immediately.

Q Now, who had the final say as to whether the wheel was good or bad? A The Studebaker.

Q Now then, you said something about inspecting for defects caused by drying; defects in the wood were frequently caused by the drying process to which the wood was put, isn't that so? A Yes. 10

Q What are the defects that result from the drying process through which you put the wood? A The result would be checking.

Q What do you mean by checking? A I mean checking across the medullary line. That sort of checking might be due to seasoning, weather; we would also be looking out for honeycombing, anything like that that would show up. In addition we also looked for timber defects. 20

Q What do you mean by timber defects? A Defects that are in the timber itself; that is, not due to seasoning but in the timber itself.

Q But there is dry rot? A Not necessarily dry rot; there are a lot of defects besides dry rot. 30

Q Dry rot would be a different defect as distinguished from drying defect? A You will find dry rot as a timber effect, but not in the same seasons; dry rot, to a certain extent, comes from the manner in which the timber is handled. It would not be entirely up to the timber itself.

Q Well, if you found any dry rot you would certainly not use that wood for spokes would you? A No, sir. 40

Cornelius C. Cahill, cross.

Q Did you ever find any of your inspectors not doing their work properly? A They did not stay long after I discovered them.

Q But you did find some of your inspectors who were not one hundred per cent., didn't you? A Oh, yes, you will.

10 Q That happens quite frequently in a factory? A Yes, in any line of endeavor you will find it.

Q They get away with it for a while before you discover it? A But you cannot fool all the people all the time.

Q Of course not, and it is a mighty good thing; but they do get away with it? A Yes, sir; only occasionally.

Q And when you discover it, of course you let them out? A Yes, sir.

20 Q But that will happen? A Yes, sir.

Q And you will get bum wheels if you have bum inspectors? A Yes, but—

Q And the way—

Mr. Studer: Let the witness finish his answer.

30 The Witness: You cannot answer that question affirmatively without some qualifications.

Mr. Studer: And I object to the word bum.

The Court: I think he may answer that in his own way.

40 Q All right, let's have your answer? A I would not put it just that way; it is possible that you would have a man that would be slighting his work, but on the next operation following you would be in a position to check that fellow up.

Cornelius C. Cahill, cross.

Q Yes, but after the wood is made into a spoke— A And in the meantime we would find out in the next operation that someone had been slighting his work; understand?

Q Did you ever find you had a bad inspector, a careless inspector working on the material itself? A No, I never had any trouble with the inspection of the material itself. 10

Q And the workmen finishing the spokes never make any mistakes, do they? A I don't say they do not, but their carelessness would be caught up on the next operation.

Q You have had workmen whom you found were not doing their work right? A I said so before.

Q I was talking about inspectors before? A Yes, sir.

Q Now, in your work, you had some men between you and the men who did the actual inspection? A The way that thing is done is this: I give personal supervision to this work, but the job being as large as it is I have to have some assistance. 20

Q You have some assistant foremen? A Yes, sir.

Q How many assistant foremen under you? A I have one assistant foreman under me. 30

Q And he was an inspector, too? A Yes, sir.

Q Now, about the men who actually do the work in the manufacture, are they under you?

A The inspectors are under me.

Q No, I mean the men who do the work, making the spokes? A No, they do not come under me.

Q You have nothing to do with them? A No. 40

Cornelius C. Cahill, cross.

Q You are limited to a general foremanship over the men who do the inspecting of the work?

A Yes; in other words, to keep a check on the manufacturing.

Q You check up the manufacturing? A Yes, sir.

10 Q But do none of the manufacturing yourself? A No, I do not.

Q Sometimes these spokes split in assembling them? A Yes, at times; that will occasionally happen.

Q Then what happens? A Those spokes do not go any further.

Q If it is discovered, that is the end of it? A It must be discovered, because automatically that loosens up the tension in the wheel.

20 Q Well, if you have one bad spoke in a wheel it is going to hurt the wheel, isn't it?

A It would from our point of view, but in actual service I would not say that it would.

Q Suppose you had five bad spokes in a wheel, it would be a bad wheel, wouldn't it? A It would.

30 Q And if such a wheel on a Special Six Studebaker roadster, 1923, collapsed from no cause, that wheel having been used for but five thousand miles at the most, that wheel must have been defective if that happened? A I would say it would not happen.

Q I say if it happened. A If it happened.

Q Yes; assuming it happened. A Why, any ordinary wheel will outlast the life of the car.

Q And how long is that? A It all depends upon how the car is used.

40 Q Well, assuming ordinary usage, what is the life of a wheel? A I don't know. I have seen some cars run for six years and I have seen

Cornelius C. Cahill, cross.

some run for two years that was not as good as the car that was run for six years.

Q The fact that this wheel was kept in a dry place would not harm it any, would it? A I would not say that it would.

Q I think I asked you whether you had anything to do with the work down at Memphis? A Yes, I did. 10

Q Were you at Memphis about April to May, 1923? A Yes, May, 1923.

Q Then you divided your time between Memphis and Detroit? A Well, I didn't live there; I would not be there more than two or three days.

Q Now, were you down at Memphis between April and June, 1923? A I think I was there; I would not say for sure; I do not recall just what dates I was down there. I know one year I was there in February and another year I was there in August; another year I was there close to the holidays. 20

Q You go down there once or twice a year; is that it? A One year I was there twice and I think on another occasion I was there twice.

Q Then, you are not down there ordinarily? A No, but conditions would arise which would necessitate my going down. 30

Q If they had something there they wanted to talk to you about you would go down there; is that right? A Yes, sir.

Q Did you have anything to do with the making of Studebaker wheels for the plant up in Ontario—Windsor? A No, they have a plant over there. We have what we call the Windsor plant.

Q Where is the Windsor plant? A That is in Windsor, Ontario. 40

Cornelius C. Cahill, re-direct.

Q That is separate from your plant? A Yes; we make wheels over there.

Q How about at South Bend? A We make the wheels for South Bend at the same plant we make the Detroit wheels and we shipped to South Bend.

10 Q And you make the wheels in Windsor for the cars that are manufactured at Windsor by the Studebaker people? A Yes.

Q I suppose it is a sort of interlocking of directors of the two plants? A Yes.

Mr. Studer: I object as immaterial.

The Court: Objection sustained.

Mr. Markley: Exception. That is all.

20 *Re-direct examination by Mr. Studer.*

Q How long has the Kelsey Wheel Company been in business now? A I don't know exactly. I think I came with the Kelsey Company in 1912 and they were making wheels when I came there.

30 Q I think you spoke about some strength tests; what are those tests? A Why, we have a room set aside for that purpose, and we have a solid steel platform, and we have a long rod sixty inches high, approximately, two or two and a half inches in diameter, and on this upright there that will slide up and down on this rod weighing one hundred pounds. Then we have this pilot set onto this, which is made out of nickel steel, the best steel we can procure. The wheel is mounted on this pilot in a position that would permit the weight to strike the rim—not the rubber tire, but the rim, at the point where it connects with the felloe band. Then there is a
40 little hole put in this rim and the wire connected

Cornelius C. Cahill, re-direct.

out so that you can get a reading of the deflection that takes place. We start the test off by raising the weight up two inches and increase it up to sixty inches. Every time that the weight drops two inches it represents two hundred inch pounds applied to this wheel. We have made tests at different times on different makes of wheels in order to determine how our wheels compare with other wheels of different makes. 10

Q Is this test for comparison with others?

A Yes, sir, to see how our wheels will stand up for strength in comparison with other wheels. Depending upon the construction, you can carry that weight up to sixty inches and start over again and put three or four additional sixty-inch drops on and vary the poundage up to thirty, thirty-two, thirty-four thousand pounds. But with this tapered miter which we use we have not destroyed a wheel. 20

Q By this method you are able to accurately measure the weight necessary to cause breakage or destruction? A Yes, sir.

Q Now, you are asked a question about the grade of hickory used in these Studebaker wheels? A Yes.

Q What grade of hickory was used? A The best grade of hickory obtainable. 30

Q What is that called in the trade? A Wagon makers' C grade hickory or better.

Q Do you know whether that C grade is used in any other wheels? A The beginning of this C grade business was in 1908 and 1909; I cannot recall the exact date when the wagon makers' association adopted that as standard. There had to be a jumping-off place and they wanted to have a line drawn between good material and defective material, and anything that would 40

Cornelius C. Cahill, re-direct.

come under the heading of C grade or better was classed as first-class material.

Q Well, is there a difference between the three grades? A Not as far as strength is concerned.

10 Q —in wagon makers' hickory? A Not as far as strength is concerned; absolutely no difference.

Q Any difference as to tenacity? A No, sir.

Q You said that in the war you had to do with the ordnance? A Yes, sir.

Q Did you make any wheels at the time used by the army? A Yes, sir.

Q What wheels? A We made the sixty by eight.

20 Q What do you mean? A The sixty by eight is a wheel that weighed about a half ton, complete with rubber tire on; it was the largest wheel made during the war.

Q Used for mounting the 240 m. m.? A Yes, sir.

Q For artillery wheels? A Yes, sir.

Q And what wood did you use; what grade hickory? A C grade or better.

Mr. Studer: That is all.

30 Juror No. 7: Do you drive a car?

The Witness: Yes, sir.

Mr. Studer: We rest.

Dominick Martin, direct.

REBUTTAL.

DOMINICK MARTIN, recalled.

Direct examination by Mr. Markley.

Q Mr. Martin, say fifteen? A "Fiftee." 10

Mr. Studer: What is that?

Mr. Markley: Say fifteen as best as you can?

Mr. Studer: I object.

The Court: I will let him answer.

Mr. Studer: Exception.

Q Say fifteen? A "Fiftee."

Q Say sixteen? A "Sixtee." 20

Q Now then, did you go to the scene of the accident with the corner? A Yes, sir.

Q And when you got to the scene of the accident who did you meet there, do you remember? A Met the farmer.

Q You met one of the farmers, did you? A One of the farmers, yes, sir.

Q Now, what if anything did Mr. Finley do with the back of your automobile? A Well, he broke the back of the car. 30

Q Was there anything in the back? A No.

Q Did Mr. Finley say to you that he had a good mind to put you in jail? A Never did.

Q Did he say to you, "Come over here to this farmer and pay the bill you owe him"? A What?

Q Did he say to you, "Come over here to this farmer and pay the bill you owe him"?

Mr. Studer: I object, there is no such evidence. 40

Dominick Martin, cross.

A Sure he did.

Q Did you tell Mr. Finley you were going fifty or sixty miles an hour before the accident?

A No, I told him fifteen to twenty-five miles an hour.

10 Mr. Markley: Cross examine.

Cross examination by Mr. Studer.

Q You did not say yesterday or the day before when you were on the stand that you were going fifteen to twenty-five miles an hour, did you? A I said twenty-five, about twenty-five, yes.

20 Q But you now say that a year and a half ago you told the coroner that you were only going fifteen miles an hour? A Fifteen to twenty-five.

Q How long have you been in America? A Well I came here in 1902.

Q You have been here twenty-one years up to the time that this accident happened? A Twenty-one years.

Q Did Mr. Finley open the back of your car? A He did at the Hudson garage.

30 Q Somebody else did it didn't they? A He did.

Q In the Hudson garage? A Yes, sir.

Q Didn't you say that this breaking into your car took place at the scene of the accident? A No, he didn't do that.

Q He didn't? A He done that at the Hudson garage.

40 Q Didn't one of the mechanics open it? A Well, when I was there to get some of my stuff I asked the mechanic and he said—

Dominick Martin, cross.

Q Never mind what the mechanic told you; you went to the garage at Hudson? A Yes, sir.

Q And you talked with the mechanic? A Yes, sir.

Q And as a result of what somebody told you, you now say that Mr. Finley broke open your car? A That is what the mechanic says. 10

Q Somebody told you that? A Yes, sir.

Q You did not see it at all, did you? A No, I did not see it but I asked the question.

Q I asked you whether you saw it? A No, I didn't see him break into the car.

Mr. Studer: Then I move to strike out that whole testimony about what Mr. Finley is supposed to have done because plainly it is hearsay.

The Court: Strike it out. 20

Q Did I understand you on your direct examination to say that your car turned over?

The Witness: Turned over, then got up again.

The Court: Turned over then got up again?

The Witness: Yes, sir.

The Court: And where was it when it turned over? 30

The Witness: It was about nine miles past from Hudson.

The Court: Was it on the road or on the fence?

The Witness: It was on top of the fence.

The Court: When it turned over?

The Witness: It turned over and went there. 40

Charge to Jury.

The Court: When it turned over it went on the fence.

The Witness: After it turned over it went on the fence, yes, sir.

Mr. Markley: That is our rebuttal.

(Witness excused.)

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Mr. Studer: I again respectfully move for a direction of a verdict on the further ground that there has been no evidence shown that this wheel was negligently made, the evidence being that the wheel was not made by the defendant but purchased by it from another manufacturer. There is no evidence that the defendant knew of any alleged defects or that any alleged defects could have been discovered by any reasonable inspection.

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The Court: It is a jury question.

Mr. Studer: Exception.

CHARGE TO JURY.

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Members of the Jury: This case has been so carefully tried by counsel for the plaintiff and counsel for the defendant and argued at such great lengths, that I doubt if I can help you in any way by referring to the testimony of the various witnesses, and so I intend simply to call your attention to the general evidence and the rules of law which are applicable to it.

There was a motion made to direct a verdict and a motion made to non-suit. Both of these motions were decided adversely to the defendant, but that is no indication of what you should do.

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It is no indication of what the Court thinks of

Charge to Jury.

the merits of this case. That is simply the ruling of the Court that as this case stands, it is a case a jury must pass upon; there are facts in dispute and those facts must be determined by the jury and not by a court, and so, keeping that fact in mind, that the decision of the Court not to nonsuit and the decision of the Court not to direct a verdict has no bearing whatever upon the way and manner in which you shall decide this case. Try to see if you can, just exactly what you have to decide. 10

On or about the twenty-third of June, 1923, Dominick Martin purchased a Special Six Studebaker roadster which he operated for a little over a month, and during that time he drove it somewhere between three and five thousand miles. On the thirty-first day of July of that year or the second day of August—there is some dispute as to the exact day on which this accident happened, but that fact makes no difference in your decision on this case—Mr. Martin started from his home in Schenectady in this automobile, accompanied by his son, Mario, somewhere about two o'clock in the morning. His son was a minor, a little over seventeen years of age. When he had driven some fifty-nine or sixty miles, an accident occurred and both Mr. Martin and his son were injured and the son so badly injured that he died of the injuries so received shortly after the accident. 20 30

The father took out letters of administration on the estate of the deceased in the State of New York, both the father and the son being residents of that State, and he brings this suit in this State against the Studebaker Corporation, that corporation being a corporation of the State of New Jersey, on behalf of himself individually 40

Charge to Jury.

and on behalf of himself as the administrator of his deceased son, to recover personally damages for his automobile which was injured in this accident, and to recover for injuries received by him in this accident, and as administrator of his son he also seeks to recover compensation for the pecuniary injury resulting from his son's death, to himself as the boy's father and next of kin.

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So you see, members of the jury, there are in reality two actions being tried together, one by Dominick to recover the damages which he sustained by being injured and by having his automobile damaged; the other as the administrator of his son to recover compensation for the pecuniary injury resulting from his son's death to himself as his son's father and his son's next of kin.

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Now, there are these two cases which you have to decide. The mere fact that Dominick was injured and his son's death was the result of the injuries which he received in this accident will not entitle the plaintiff to recover in this case. Before the plaintiff can ask you to give him a verdict for damages against this corporation, he must satisfy you by a preponderance of the evidence that the accident was caused by a defect in this automobile wheel. You see, the mere fact of an accident by the breaking of a wheel, does not make the defendant liable. The plaintiff contends that he was driving along the public highway, riding from Albany to New York at a rate of about fifteen to twenty-five miles an hour at the time this accident happened; that he saw a Ford automobile approaching him, that he turned out to let the Ford pass, and that as he did so he heard a noise at the rear of his automobile, his automobile skidded completely around, turned

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Charge to Jury.

over and brought up on an wire fence along the road. He claims that this accident was due to the breaking of one of the back wheels.

The defendant denies this and claims that the accident did not happen in that way, but contends that the automobile was being driven at a high rate of speed, that Martin lost control of it, that it went off the road and into a ditch and a small embankment that was there, and in doing so the wheel broke and the accident occurred.

Now here, members of the jury, is the first question you have to decide. How did this accident occur? If you find that the high rate of speed at which this automobile was being driven caused the driver to lose control of it so that the automobile went off the road and the wheel was broken, and this accident occurred by reason of the high rate of speed at which the car was being driven and was not caused by a defective wheel, there can be no recovery by the plaintiff against this defendant. You see, that ends the whole case; there is no other question to decide. But if on the contrary you find that the accident was caused by a defective wheel breaking while the car was driven at a reasonable rate of speed, then you have to go a step further and determine whether the defendant is liable for that defective condition of the wheel which broke. There was no contractual relationship between the plaintiff and this defendant. He did not buy this automobile from the defendant, but from a Mr. Brower, an automobile dealer, but the plaintiff contends that the accident was due to the negligence of this defendant in the manufacture of this automobile. He sets out the negligence in the complaint as follows: "The defendant was negligent and careless in the manufacture of said

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Charge to Jury.

10 automobile and failed to use due care in its construction and in testing the same and the materials of which it was made, such automobile was constructed for the purpose of running at considerable speed on ordinary highways and to render the same safe and suitable for such purpose and safe for the ordinary purposes of its use, it was necessary that good, strong and proper material should be used in its wheels, and that the materials used in the wheels should be sufficiently inspected and tested to see that they were strong and durable and safe. The defendant negligently put wheels upon said automobile that was purchased by the plaintiff, the spokes of which were inferior, unsuitable and constructed of unsafe timber that did not and could not stand the strain of ordinary use to which said automobile was put and for which it was made and intended to be put, but such material was not sound, but was brittle or brash and without sufficient strength to properly run and sustain the weight of said automobile."

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30 That is the claim that the plaintiff makes against this defendant. Now, the first question which you have to consider in determining the liability of this defendant, is the duty the law casts on the manufacturer of an automobile. An automobile is not inherently dangerous if properly made, but if it is defective or insufficiently constructed, it becomes dangerous to the life and limb of persons riding in it. The danger of injury to a person riding in an automobile from defects in material or construction is so great that there is impressed upon the manufacturer of this class of vehicle the duty of using reasonable care in their construction so that they will be reasonably safe, not under all circumstances

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Charge to Jury.

and conditions, but when used with proper care. You see, the duty is to use reasonable care in their construction so that they will be reasonably safe, not under all circumstances and conditions, but when they are used with proper care. A manufacturer of automobiles will be charged with notice of the unsafe condition in a machine if the construction is so faulty that a person engaged in its manufacture could not fail to observe it. When the defect is due to the unsound condition of one of its parts which was purchased by the manufacturer of the automobile from a reputable concern and was used by such manufacturer in ignorance of its defective condition after a reasonable testing, he is relieved of the responsibility which would have been imputed to him, that is to the manufacturer, if he had actually manufactured the defective part in question.

Now, in the present case the defendant purchased the wheels used in the manufacture of this particular kind of automobiles from the Kelsey Wheel Company. The defendant did not manufacture the wheels, but they purchased them from an outside company. It was the duty of this concern to inspect these wheels with reasonable care before attaching them to their automobiles to see that they were reasonably safe for the uses for which they were intended. An inspection must be a reasonable inspection, not an unreasonable one. Their duty is to use reasonable care in making the inspection of these wheels before they attach them to the automobiles which they were to sell. This defendant did not select the wood from which these wheels were made. He did not make the wheels, but purchased them ready for use, and when the

Charge to Jury.

defendant received them they were covered with a priming coat of paint. That fact would not relieve them from the duty of making a reasonable inspection. The fact that the defendant bought the wheels of the automobile from a reputable manufacturer does not absolve the defendant from his duty of inspection. It was not merely a dealer in automobiles, it was a manufacturer of automobiles. It was responsible for the finished product, and it was not at liberty to put the finished product on the market without subjecting the component parts, including the wheels, to ordinary and simple tests. The obligation to inspect must vary with the nature of the thing to be inspected, and the more probable the danger the greater the need of caution.

If you believe the testimony of the defendant, not only were the wheels inspected after they were received at their plant, but they employed three men to inspect the wheels while they were being manufactured at the plant of the Kelsey Wheel Company. You have heard from the witnesses that have been on the stand the manner in which those wheels were tested while they were being manufactured by the Kelsey Wheel Company and you have heard how the defendant inspected them after they came to the plant in Detroit. If the defendant had no notice that the wheels purchased were defective and used reasonable care to inspect the wheels so purchased and used, and the wheel company was a reputable concern, there would be no liability on the part of the defendant even if the accident was caused by a defective wheel and not by careless driving. You see, the liability of the company depended upon its failure to reasonably inspect these wheels which they purchased.

Charge to Jury.

This defendant cannot be held liable for any negligence on the part of the wheel company, so if you should find that the wheel in question was made by this wheel company of defective or improper wood and broke by reason of such defect, this defendant would not be liable for the negligence of the wheel company. The wheel company would have to be responsible for its own negligence unless the defendant knew of the defect or could have discovered it by reasonable and proper inspection of the wheel before it attached it to the automobile. It is not contended that this company had anything to do with the purchase of the raw material out of which these wheels were constructed. The material was purchased by the wheel company. If you find from the evidence that the plaintiff has by a preponderance of the evidence established that this defendant was negligent and that such negligence was the proximate cause of this accident, then the plaintiff can recover and there will have to be two verdicts, one for Dominick individually and the other for Dominick as administrator of his deceased son.

Individually he is entitled to a sum that will compensate him for the damage to his automobile and also for injuries which he received personally. The damage to his automobile would be the difference between the value immediately before the accident and the value of the automobile after the accident. You have heard what the automobile cost when it was new and how long it had been driven. An expert has given his opinion as to what it was worth before the accident. You have heard what it cost to have it repaired and you have also heard the evidence of an expert as to what in his opinion it

Charge to Jury.

was worth after the accident and before it was repaired. From all this evidence you are to say what sum will compensate this plaintiff for the automobile.

10 The plaintiff is entitled, if entitled to recover at all, to a sum which will compensate him for the injury which he received personally in this accident. It is for you to determine the amount of recovery, but the law indicates what matters you should take into consideration in arriving at this verdict. He is entitled to be compensated for the pain and suffering which resulted to him from this accident. Now, that is not an arbitrary sum to be guessed at by you, but you gentlemen, in your jury room should consider the length of time that he suffered, the severity of his wounds, and then say what, in your opinion, he should
20 be awarded to compensate him for that suffering. If he paid any money or laid out any money in endeavoring to be cured of his injuries, such as doctor's bills or hospital bills or for medicine, he would be entitled to be compensated for that. If he lost any money through being prevented from carrying on his regular business by reason of this accident, he is entitled to be compensated for that. In other words, he is entitled to be
30 compensated for pain, suffering and any loss he sustained by reason of this accident, and you will be governed in determining that amount by the evidence which you have heard.

As administrator of his deceased son, he is limited in his recover to the pecuniary injury resulting to the next of kin by reason of this young man's death. Pecuniary damage does not include anything for mental suffering and anguish growing out of the death of this young man. The feeling of the father and the mother
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Charge to Jury.

caused by the sudden death of their son cannot be considered in an action brought on the death of a person. He is only entitled to recover the pecuniary loss that the father and mother would suffer by reason of this boy's death. It appears that the mother was sick at the time of the boy's injury and died some months afterwards. The father is living. He would be entitled to the earnings of this boy until he was of age or emancipated, that is, until he left home to care for himself. This boy was not engaged in any business; he was still attending school. He was, however, taking music lessons and his father was paying out some four dollars a week, as I understand it, for his lessons. While the boy was not in business, he did earn a certain amount of money per week, as the father testified, by playing at various entertainments. The father would be entitled to receive that amount of money and he did receive it from his son, according to his testimony, and you shall take that into consideration in determining the amount that the father gained by reason of his son's living. In other words, if the son had lived, how much would he have obtained from his son by reason of his earning power? The father had to support the son during the time of his minority, pay for his clothing, pay for his education, and that is to be considered by you in determining what sum the father really did profit in a pecuniary way by the life of his son after considering the expenses that he would be obligated to pay out during that time, but that does not end the pecuniary loss that the father would sustain under the law of the State of New York. This is an action based upon the death of the son in the State of New York. In considering

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Charge to Jury.

pecuniary loss, the father would be entitled to any money which the son might give him after he became of age. You will consider whether the boy, after he became of age, would pay anything to his father, and if so how much. In addition to that you should take into consideration the fact that if the father became incapacitated and unable to care for himself, under the law his children would be obliged to care for him during the time that he was incapacitated by old age or while he was unable to earn his own livelihood. Take that into consideration.

You should take all of these conditions and circumstances into consideration in arriving at what sum you should allow the father as administrator of the boy, and you should take into consideration also in determining that fact the amount that the boy might earn after he became of age. He was having an education, probably to be able to earn more than he would if he was simply having the ordinary school education. In other words, you are to determine from all the evidence that you have heard what sum would be the pecuniary loss of this father by reason of the death of his son.

Those are the facts, gentlemen of the jury, which you have to decide.

Now then, to summarize what I have said, if the evidence fails to satisfy you that the accident was caused by a defective wheel, then there can be no recovery by the plaintiff. If you reach the conclusion that the accident was caused by a defective wheel but it does not satisfy you that the defendant failed to use reasonable care in inspecting the wheels of this automobile before the automobile was placed on the market, then there can be no recovery by the plaintiff.

Charge to Jury.

If you find that the accident was caused by a defective wheel and that the defendant was guilty of negligence in failing to properly inspect the wheel placed on this automobile, then there can be a recovery by the plaintiff and you should assess the damages of the father in the way and manner which I have indicated, and the damages of the father as administrator of the son in the way and manner in which I have indicated. 10

Now, members of the jury, it is not a case of sympathy; it is not a case of an individual against a corporation. It is a case to be decided by you from the evidence, and when you go to your jury room and consider the evidence and apply the rules of law which I have laid down for your guidance, any verdict which you arrive at in this way and manner will be a proper verdict in this case. 20

Now, I have several requests to charge and I have covered, I think, most of them. If counsel think I have not and will indicate, I will determine whether I will charge them further than I have charged.

Mr. Markley: I think your Honor did charge my first request but number two I don't know if your Honor charged or not. 30

The Court: I refuse to charge that other than I have charged.

Mr. Markley: Number three I don't think your Honor has charged.

The Court: I refuse to charge other than I have charged.

Mr. Markley: Number four, I don't think your Honor has charged.

The Court: I will charge that if you desire. 40

Charge to Jury.

Mr. Studer: I would ask your Honor to charge my fourth request, my sixth request and my seventh request.

The Court: I will charge number four of the plaintiff's requests and number four of the defendant's requests, but as to the others I refuse to charge except as I have charged.

The Court: Now, members of the jury, I have two requests to charge on the question of law and I will charge them now.

If you find that the rear left wheel on the automobile which the plaintiff purchased had spokes in it which were manufactured from wood which was short-fibred and brittle and that the wood had dry rot in it and these defects were discoverable by a reasonable inspection, which was not made, or if made, was negligently made, and that as a proximate result of those defects the automobile wheel collapsed, as the plaintiff testified, causing the car to turn around, and overturn, then the plaintiff is entitled to recover.

I do so charge you.

The defendant requests me to charge:

If you find as a fact that the accident occurred as the proximate result of the manner in which the automobile was driven by Mr. Martin, and that the death of his son was the proximate result of the negligent driving on the part of the father, then there can be no recovery either by the father individually, or as administrator of his son's estate.

I so charge you.

Exceptions to Charge.

EXCEPTIONS TO THE COURT'S CHARGE.

Mr. Markley: Exception to that part of your Honor's charge beginning: "There was no contractual relationship between the plaintiff and this defendant and that the defendant would be relieved if it had made a reasonable testing or inspection of the wheels when it received them." 10

The Court: You may take exception to what I did say.

Mr. Markley: Exception to that part of your Honor's charge in which the Court said the defendant did not manufacture the wheels, and must merely use reasonable care as to their inspection.

To that part of your Honor's charge where the Court said the defendant did not select the wood and did not turn it to spokes; that was done by another company separate and distinct; if the defendant had no notice of the defect from such an inspection as would be made after the wheels came into their possession and the wheel manufacturer was a reputable wheel manufacturer, then the defendant would not be liable. 20

The Court: You may have an exception to whatever I said on the subject.

Mr. Markley: Exception to that part of your Honor's charge where your Honor said the defendant cannot be held liable for the negligence of the wheel company who manufactured the wheel or for any defects in the wheel that may be due to the negligence of the wheel company, unless the defendant knew or should have known by a reasonable inspection of the defective wheel. 30

The Court: You may have an exception to what I said. 40

Plaintiff's Requests to Charge.

10 Mr. Markley: To that part of your Honor's charge where the Court said if there was a defective wheel but you are not satisfied that the defendant did not use reasonable care in its inspection made by it to determine the defects, then the defendant would not be liable even though the wheel was defective. It is my contention that they are liable irrespective of their own negligence, if the manufacturer of the wheel was negligent.

Exceptions to the Court's refusal to charge my requests numbered two and three.

Exception to your Honor's charging the fourth request of the defendant's.

20 Exception to that part of your Honor's charge wherein your Honor said the defendant would not be liable for any defects in the wheel which were not discoverable by the defendant after the wheel came into the defendant's possession.

The Court: You may have an exception to whatever I said on the subject.

PLAINTIFF'S REQUESTS TO CHARGE.

30 1. The fact that the defendant bought the wheels of the automobile from a reputable manufacturer does not absolve the defendant from a duty of inspection. It was not merely a dealer in automobiles. It was a manufacturer of automobiles. It was responsible for the finished product and it was not at liberty to put the finished product on the market without subjecting the component parts, including the wheels, to ordinary, and simple tests. The obligation to inspect must vary with the nature of the thing

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Plaintiff's Requests to Charge.

to be inspected. The more probability of danger the greater the need of caution.

2. Beyond all question, the nature of an automobile gives warning of probable danger if its construction is defective. This automobile was designed to go at considerable speed. Unless its wheels were sound and strong, injury was almost certain. It was as much a thing of danger as a defective engine for a railroad. The defendant knew the danger or should have known the danger. It knew also that the car would be used by persons other than the buyer. This was apparent from its size. There were seats for two persons. It was apparent, also, from the fact that the buyer was a dealer in cars who bought to resell and in this instance sold the car to the plaintiff. The maker of this car, the defendant, supplied it for the use of purchasers from the dealer. The dealer did not buy the car for his own use but merely as a middleman to sell it to the ultimate user. The defendant was therefore under a duty to the plaintiff in this case to use reasonable care to provide the car with wheels which were sound and strong and which would stand the ordinary stress and strain and usage of similar automobile wheels on similar cars.

3. The duty which the defendant, the manufacturer of the automobile, owed to the plaintiff can be stated by the rule that one who puts on the market an imminently dangerous article owes a public duty to all who may use it to exercise reasonable care in proportion to the peril involved, and liability in a case of this kind arises out of that duty which the law imposes to use due care in doing acts which in their nature are dangerous to the lives of others.

Defendant's Requests to Charge.

4. If you find that the rear left wheel on the automobile which the plaintiff purchased had spokes in it which were manufactured from wood which was short fibred and brittle and that the wood had dry rot in it and these defects were discoverable by a reasonable inspection, which was not made, or if made, was negligently made, and that as a proximate result of those defects the automobile wheel collapsed, as the plaintiff testified, causing the car to turn around and overturn, then the plaintiff is entitled to recover.

DEFENDANT'S REQUESTS TO CHARGE.

1. The mere fact that the Court denied the motions made by the defendant for a judgment of non-suit and the direction of a verdict in its favor, in no way means that it is liable in this action.

2. The general rule is that a manufacturer is not liable to third persons, who have no contractual relations with it, for negligence in the manufacture of an article in question, in the absence of wilful injury or fraud on the part of the manufacturer, and that one who is not a party to a contract cannot sue in respect to a breach of duty arising out of the contract.

3. An automobile is not inherently dangerous in itself, and the rule is that one who manufactures articles dangerous only when defectively made or installed, such as tables, chairs, carriages, automobiles, &c., is not liable to third parties for injuries caused by such articles, except in case of wilful injury or fraud.

Defendant's Requests to Charge.

4. If you find as a fact that the accident occurred as the proximate result of the manner in which the automobile was driven by Mr. Martin, and that the death of his son was the proximate result of the negligent driving on the on the part of the father, then there can be no recovery either by the father individually, or as administrator of his son's estate. 10

5. In order to hold the defendant, the plaintiff must prove to you by the greater weight of the evidence, that the accident was brought about solely by reason of a defect either in the material of which the wheel was made, or because of negligence in the construction of the wheel.

6. If you find that all reasonable inspections of the wheel were made by the defendant, and that all reasonable tests known at the time of its manufacture were applied to the wheel before the automobile was sold by the defendant, and that those inspections and tests did not reveal any latent defect in the wheel, then, even though you find that the wheel did break because of a latent defect, there is no liability upon the defendant, and your verdict must be in its favor. 20

7. If you find in fact that there was a defect in this wheel, which was the proximate cause of the accident, your verdict, nevertheless, must be in favor of the defendant, if you also find that there was no failure on its part to discover the defect; after employing all reasonable tests and methods of inspection at the time the wheel was made, and that it did not omit or neglect to exercise ordinary care in inspecting or testing the wheel, and that the ordinary usual and known tests of inspecting or testing the wheel were not omitted. 30 40

Defendant's Requests to Charge.

8. If you come to the question of damages because of the death of Mr. Martin's son, you must deduct from any award that you make, all the expenses to which the father would have been subject had the boy lived, including such educational advantages as the father had given the boy up to the time of his death, and would have continued to give him had he lived.

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9. If you find that Mr. Martin in any way contributed to the accident resulting in his injury, and the death of his son, then, even though you also find that the defendant was negligent in the manufacture of the article in question, you must give a verdict in favor of the defendant as against Mr. Martin, individually.

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10. In determining what weight to attach to the testimony given by the expert witnesses produced by both sides, you should consider their respective experience, knowledge, intelligence and familiarity with the particular subjects regarding which they gave testimony.

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New Jersey Court of Errors and Appeals

DOMINICK MARTIN, individually
and as administrator of the
goods, chattels and credits of
Mario Martin, deceased,

Plaintiff-Appellant,

vs.

THE STUDEBAKER CORPORATION, a
corporation,

Defendant-Respondent.

*Action
at Law.*

*On Appeal
from New
Jersey Su-
preme Court.*

BRIEF IN BEHALF OF THE APPELLANT.

(1)

Statement of the Case.

This appeal brings before this Court for review a judgment of the Supreme Court in favor of the defendant-respondent (hereinafter referred to as the defendant) and against the plaintiff-appellant (hereinafter referred to as the plaintiff) in an action based on a complaint containing two counts. The first count is by the plaintiff individually to recover damages for personal injuries sustained by him and for the demolition of his automobile as the result of an accident which happened on July 31, 1923, at a point thirty-one miles from Poughkeepsie in the State of New York, when his automobile overturned as the result of a defective rear wheel which collapsed (p. 9, *et seq.*). The second count is by the plaintiff as general administrator of the estate of his son to recover damages under the New York Death Act for the latter's death as the result of the accident in question, the son having been a passenger in his father's automobile at the time

(p. 12). The action was brought against the manufacturer of the automobile which the plaintiff was operating. The wheels of the automobile were manufactured by another company, namely, the Kelsey Wheel Company of Detroit, Michigan, and they were delivered to the defendant's plant in Detroit as finished wheels, ready to be used after they were painted, the priming coat having been put on at the Kelsey plant (p. 214, l. 40, to p. 215, l. 30).

The trial court submitted the case to the jury and a verdict was brought in in favor of the defendant. It is from the judgment entered on that verdict that the present appeal is taken (p. 1).

The grounds of appeal are limited to errors in the charge of the trial court (p. 2).

(2)

Grounds of Appeal.

The grounds of appeal will not be reiterated. They appear in full at page 2 of the State of Case.

It is contended on behalf of the plaintiff that error was committed by the trial court in instructing the jury as to the liability of the defendant as manufacturer of the automobile for the condition of safety of the wheel which collapsed.

(3)

BRIEF OF THE ARGUMENT.**I.**

The trial court erroneously instructed the jury that the defendant could not be held liable for any negligence on the part of the Kelsey Wheel Company even if the jury found that the wheel company negligently constructed the wheel of defective or improper wood and as a result the wheel broke and caused the accident.

The instructions of the trial court to which exceptions were taken are as follows (p. 277, ll. 1-20):

“This defendant cannot be held liable for any negligence on the part of the wheel company, so if you should find that the wheel in question was made by this wheel company of defective or improper wood and broke by reason of such defect, this defendant would not be liable for the negligence of the wheel company. The wheel company would have to be responsible for its own negligence unless the defendant knew of the defect or could have discovered it by reasonable and proper inspection of the wheel before it attached it to the automobile. It is not contended that this company had anything to do with the purchase of the raw material out of which these wheels were constructed. The material was purchased by the wheel company.”

Again, the trial court said (p. 273, l. 25, to p. 274, l. 25):

“But if on the contrary you find that the accident was caused by a defective wheel breaking while the car was driven at a reasonable rate of speed, then you have to go a step further and determine whether the defendant is liable for that defective condition of the wheel which broke. There was no con-

tractual relationship between the plaintiff and this defendant. He did not buy this automobile from the defendant, but from a Mr. Brower, an automobile dealer, but the plaintiff contends that the accident was due to the negligence of this defendant in the manufacture of this automobile. He sets out the negligence in the complaint as follows: 'The defendant was negligent and careless in the manufacture of said automobile and failed to use due care in its construction and in testing the same and the materials of which it was made, such automobile was constructed for the purpose of running at considerable speed on ordinary highways and to render the same safe and suitable for such purpose and safe for the ordinary purposes of its use, it was necessary that good, strong and proper material should be used in its wheels, and that the materials used in the wheels should be sufficiently inspected and tested to see that they were strong and durable and safe. The defendant negligently put wheels upon said automobile that was purchased by the plaintiff, the spokes of which were inferior, unsuitable and constructed of unsafe timber that did not and could not stand the strain of ordinary use to which said automobile was put and for which it was made and intended to be put, but such material was not sound, but was brittle or brash and without sufficient strength to properly run and sustain the weight of said automobile.' "

Again, the trial court said (p. 275, ll. 10-20):

"When the defect is due to the unsound condition of one of its parts which was purchased by the manufacturer of the automobile from a reputable concern and was used by such manufacturer in ignorance of its defective condition after a reasonable testing, he is relieved of the responsibility which would have been imputed to him, that is to the manufacturer, if he had actually manufactured the defective part in question."

In summing up the test of liability of the defendant as manufacturer, the trial court said (p. 276, ll. 35-40):

“You see, the liability of the company depended upon its failure to reasonably inspect these wheels which they purchased.”

And at the conclusion of the whole charge the trial court summarized the test of liability thus (p. 280, ll. 30-40):

“Now then, to summarize what I have said, if the evidence fails to satisfy you that the accident was caused by a defective wheel, then there can be no recovery by the plaintiff. If you reach the conclusion that the accident was caused by a defective wheel but it does not satisfy you that the defendant failed to use reasonable care in inspecting the wheels of this automobile before the automobile was placed on the market, then there can be no recovery by the plaintiff.”

To summarize the instructions just quoted, the trial court held that the defendant was not liable for any negligence on the part of the wheel company even though the wheel was negligently made of defective or improper wood and collapsed by reason of such defects; that the defendant could not be liable for the negligence of the wheel company; that that company would have to be responsible for its own negligence; that all the defendant was liable for was a failure to make a reasonable and proper inspection of the wheel as a finished product; that the defendant had no liability with respect to the purchase of the raw material; that this was so because there was no contractual relationship between the plaintiff and the defendant; and that when the wheel, though defective and unsound, was purchased from a reputable concern there was no liability on the part of the manufacturer

of the automobile except for a reasonable testing or inspection of the finished product.

Exceptions were duly noted to these portions of the court's charge (p. 283, l. 1, to p. 284, l. 10) and these exceptions are preserved in the grounds of appeal (p. 2, l. 1, to p. 7, l. 30).

THE FACTS.

The plaintiff purchased the automobile new direct from an agency of the defendant at Schenectady, New York, on June 25, 1923, for \$1,390 (p. 23, ll. 1-40). The accident happened about a month later on July 31, 1923 (p. 29, ll. 30-40). The plaintiff lived in Schenectady with his wife and family. His wife was very ill and he started for New York City early in the morning, at two o'clock, to call upon a Dr. Taylor who had treated his wife for her illness, with the idea that he would return the same day to Schenectady (p. 30, ll. 1-20). The automobile was a special six roadster, having two seats (p. 30, ll. 20-35). The car was delivered to him new on July 1, 1923 (p. 31, ll. 1-10). He had operated the car for about a month and prior thereto had operated automobiles for about five years (p. 31, ll. 1-30). His seventeen-year-old son, Mario, the deceased, accompanied him to New York (p. 30, ll. 15-20). About five o'clock in the morning, as he was going along the public road toward New York, he was traveling about twenty-five miles an hour on a macadam road about twenty-eight to thirty feet wide with a dirt shoulder on each side three or four feet wide (p. 32, ll. 20-40). He was about in the center of the road. It was a clear day and the road was dry (p. 33, ll. 1-20). He had passed Schenectady and a town known as Hudson when he saw a car coming in the opposite direction,

about seventy to a hundred feet away, and he turned his car so as to have it completely on the right side of the road in the direction in which he was going. About a minute or so after the other car had passed he tried to turn back to the center of the road when "I heard a big noise in the back at the left rear wheel and as soon as I turned my head to see it the car went down, then I tried to save myself and I put on the brakes. After I put on the brakes, the car slid over, like that, and after one turn it skipped over and went toward the fence" (p. 33, ll. 25-40). The first thing he knew that anything was wrong was when he heard "a big crack like of wood, a big noise," and as he looked around to the rear left side the car on that side went down (p. 34, ll. 1-40). He had struck nothing in the road; there was no bump of any kind; it was a smooth, even pavement (p. 35, ll. 1-30). He had not collided with any other car (p. 33, l. 40, to p. 34, l. 5). There was only a little curve in the road and he was just about entering the curve when the rear left wheel collapsed (p. 35, l. 30, to p. 36, l. 5).

Cornelius T. Myers, a mechanical engineer, qualified by twenty-five years of experience, who had been for three years chief mechanical engineer for General Motors Company, Detroit, which manufactures a number of cars including the Cadillac, Buick, Oldsmobile, Oakland and Carter, and who also had been general manager of the Timken David Brown Company which manufactured worm gearing for automobiles, and who after 1914 entered the consulting field in engineering work, devoting his time mostly to automobile work, testified that he was a consultant for the Automotive Wood Wheel Manufacturers Association, whose membership consists of manufacturers of wood wheels. Among the members were The Motor Wheel Corporation of Lansing,

Hayes Wheel Company of Jackson, Schwartz Wheel Company of Philadelphia and the Muncie Wheel Company of Muncie, Indiana (p. 111, l. 15, to p. 112, l. 40). He said all of these concerns made wheels for both passenger cars and trucks but mostly for passenger cars (p. 113, ll. 10-15). During the war he was consulting engineer for the Ordnance Department of the United States and dealt with the designing of motor trucks, including the manufacturing of wheels (p. 113, ll. 20-30). He had made a study of the manufacture of automobile wheels as well as other wheels and also of the kind and quality of wood of which automobile wheels should be made (p. 113, ll. 30-40).

He examined the wheel which collapsed; in fact, he took the wheel and various parts of it to his laboratory at Rahway and examined the wood. It was made of hickory. There were at least four or five spokes of the wheel which were brittle and short-fibered (p. 114, ll. 20-30). These four spokes were all on one side of the wheel and were not made of very good wood (p. 114, l. 30, to p. 116, l. 20). The wood at one particular place on the wheel looked very poor; there was no tenaciousness in the fiber at all. He said, "I would never expect that thing to fracture down below the finished surface in good material" (p. 117, ll. 1-10).

The car had only been driven three thousand miles (p. 51, ll. 30-35).

After the witness had thus testified he was given a hypothetical question which incorporated all of the facts which had been proven as to the condition of the automobile and of the wheel, as follows (p. 134, ll. 10-38):

"Q Assuming that a special six Studebaker roadster, year 1923, almost new, hav-

ing been used about a month, from about July 1st to July 31st, which had gone between three and five thousand miles, was going along a macadam road in fairly good condition, at a point where there is a slight curve and a slight down grade, and was going from the right side of the macadam road toward the center of the road, the road being about twenty-five to thirty feet wide, and assuming that this automobile has never been in an accident before and that it was examined a day or two before the accident and found in good running condition and functioning properly, good condition, and that suddenly the rear wheel collapses as the automobile is going along that road, and after the collapse it is found that the metal felloe was in the shape you see it now, and the rubber tire on the demountable rim still inflated, the air is in it, and assuming further that in the rear left wheel there are five wooden spokes made of hickory on the same side of the wheel which are short fibered and brittle, and assuming that the tenon of one of the spokes abovementioned was out of its place, as appears on one of the spokes, disclosing the wood structure of that spoke of an inferior nature, Mr. Myers, in your opinion can you say what in reasonable probability caused that wheel to collapse?"

He answered as follows (p. 135, ll. 20-30):

"Q What was the cause, Mr. Myers? A I believe that the wheel probably failed due to the fact that there being five spokes of inferior material almost or practically contiguous or practically contiguous, that when the strains that they would ordinarily resist took place, at least one of those spokes weakened—it may not have broken, probably didn't—it threw additional stress on the spokes to one side or probably both sides of it. Now, if those spokes were of an unsatisfactory material that could not help the spokes that was failing first, the failure was probably progressive until the time when

conditions were such that the wheel would not withstand the ordinary side stresses for which it was designed."

He said that wooden wheels of the character of the wheel in question should have lasted twenty years before they were ready for the junk pile (p. 136, ll. 10-20).

The metal felloe of the wheel which was contained in the wooden spokes was not damaged by the accident. The spokes collapsed (p. 38, ll. 20-30).

Still another witness, James M. Delaney, who had been in the automobile business for many years and who actually worked in the shop making wooden wheels for vehicles, and who also continually repaired automobile wheels (p. 79, l. 20, to p. 81, l. 40), testified that he examined the wheel shortly after the accident and found that some of the pieces of wood had dry rot (p. 85, ll. 20-30; p. 92, ll. 20-40). He also said it was short-grained or short-fibered without the proper interlacing which would result from long-fibered wood and which would give greater strength and tenacity (p. 94, ll. 1-40). When wood had dry rot in it it could be readily seen (p. 97, ll. 30-40).

On the foregoing testimony the jury had the right, if they believed these witnesses, to conclude that the rear left wheel was made of wood which was of poor quality, that the wheel itself was defective and that these facts could have been readily ascertained. The question presented is as to what duty the manufacturer of the automobile was under to the purchaser of this automobile. Was it merely a duty to inspect or test the finished wheel after the priming coat of paint had been put on it? Also, was the duty of the manufacturer of the automobile with respect to pro-

viding a proper wheel of good material different and less than that of the manufacturer of the wheels?

It is our contention that the manufacturer of the automobile was under a greater duty than merely to make a test or inspection of the finished wheel; that it was under a duty, as alleged in the complaint, to use reasonable care to construct the wheel of proper material, and that involves the duty to use reasonable care to select proper raw material from which to make the wheel, to season the raw material, to harden it, to make it suitable for an automobile wheel; in short, the same duty that the manufacturer of the wheel would owe to the purchaser of the wheel direct from him; and this seems to be the settled law.

THE LAW.

The latest enunciation of the rule in this State will be found in *Heckel v. Ford Motor Co.*, 128 Atl. 242, where this court held that the manufacturer of an appliance that will become highly dangerous when put to the use for which it is designed and intended because of defects in its manufacture owes to the public a duty irrespective of any contractual relation *to use reasonable care in the manufacture of such appliance*, and such duty calls for and requires the exercise of reasonable care in applying reasonable tests to detect defects and deficiencies in the appliance. In that case an action was brought against the manufacturer of a Fordson tractor purchased by the plaintiff from a dealer. Suit was brought to recover damages for personal injuries sustained by the plaintiff through the alleged bursting of a pulley attached to the tractor. At the time power from the motor of the tractor was being applied

and transmitted to a circular saw by and through a belt running over a pulley attached to the tractor and over another pulley attached to the saw. At the saw and as a part thereof was a flywheel. The saw was distant about twenty-five feet from the tractor. The saw, flywheel and saw pulley were not products of the appellant. The tractor had been running but a short time when there was what was described as an explosion and the plaintiff was struck by a piece of metal and his arm injured. The tractor pulley was found to be broken, the gasoline tank and carburetor broken off and certain housing of the tractor broken. The flywheel of the saw was also later found to be broken. There was testimony tending to show a defect in the tractor pulley. Motions were made for nonsuit and direction of verdict on various grounds. The trial court denied the motions, the case went to the jury and a verdict was rendered in favor of the plaintiff. This court held that there was no error in refusing to grant either of the motions, and that a contractual relation by appellant with respondent was not necessary to charge the former with responsibility. At page 243 this court said (*italics ours*):

“A contractual relation by appellant with respondent was not necessary to charge the former with responsibility.

The manufacturer of an article, not inherently dangerous, but which may become dangerous when put to the use for which it is intended, *owes to the public the duty of employing care, skill and diligence in its manufacture and of using reasonable diligence to see that it is reasonably fit for the purpose for which it was intended.*

In *Van Winkle v. American Steam-Boiler Co.*, 52 N. J. Law 240, 19 A. 472, it was held in cases where an act is highly dangerous, if not done with care and skill, ‘to the persons or lives of one or more persons known or un-

known, the law *ipso facto* imposes as a public duty the obligation to exercise such care and skill.' This rule has been persistently and consistently followed in this state. *Styles v. Long Co.*, 70 N. J. Law 301, 57 A. 448; *Guinn v. Del. & Atl. Telephone Co.*, 72 N. J. Law 276, 62 A. 412, 3 L. R. A. (N. S.) 988, 111 Am. St. Rep. 668; *Piraccini v. Director General*, 95 N. J. Law 114, 112 A. 311; *Republic of France v. Lehigh Valley R. R. Co.*, 96 N. J. Law 25, 114 A. 242; *Barnett v. Atlantic City Electric Co.*, 87 N. J. Law 29, 93 A. 108; *Tomlinson v. Armour & Co.*, 75 N. J. Law 748, 70 A. 314, 19 L. R. A. (N. S.) 923. * * *

The manufacturer of an appliance, that will become highly dangerous, when put to the uses for which it is designed and intended, because of defects in its manufacture, owes to the public a duty, irrespective of any contractual relation, to use reasonable care in the manufacture of such appliance, and such duty calls for and requires the exercise of reasonable care in applying reasonable tests to detect defects and deficiencies in the appliance. This duty is not met by a showing that reasonable tests are required, but it must appear that such tests were applied and their application was made in a reasonably careful manner."

It is therefore clear that the duty of the defendant as the manufacturer of the automobile with respect to the condition of one of the wheels thereof, manufactured by an independent contractor, is no different from that of the manufacturer of the wheel. The duty of each is identical, namely, to use reasonable care, skill and diligence in its manufacture and of using reasonable diligence to see that it is reasonably fit for the purpose for which it was intended. The fact that "there was no contractual relationship between the plaintiff and this defendant and that the plaintiff "did not buy this automobile from

the defendant" is immaterial in determining the liability of the defendant and the effect of pointing out those facts to the jury could not but help warp their judgment in measuring the duty which the defendant owed to the plaintiff. To tell the jury that the defendant would not be liable for any negligence on the part of the wheel company even though the wheel company made the wheel of defective or improper wood and by reason thereof the wheel broke, is clearly erroneous. Even though the wheel company would be responsible for its own negligence, still, the defendant likewise would be liable for that negligence if the defendant failed to exercise reasonable care in the manufacture of the automobile, which means reasonable care in the manufacture of each part thereof. Furthermore, it might be questionable whether the wheel company would be liable to the plaintiff for a negligent manufacture of the wheel. The jury might very well have concluded that the plaintiff's cause of action for the defective wheel should have been against the wheel company because the trial court said "the wheel company would have to be responsible for its own negligence." Again, the trial court instructed the jury: "It is not contended that this company (defendant) had anything to do with the purchase of the raw material out of which these wheels were constructed." Here again, the trial court concluded what was not so as to the contention of the plaintiff, for the plaintiff contended and alleged in its complaint that the defendant was under a duty to use reasonable care in the manufacture of the automobile, including the wheel, and that contention was made throughout the trial (p. 10, l. 20, *et seq.*).

The fact that the defendant purchased the automobile wheel from a reputable concern in ignor-

ance of its defective condition is again immaterial, for the duty is placed on the defendant to use reasonable care to provide a reasonably safe wheel and it cannot hide behind the fact that the manufacturer of the wheel might be a reputable concern.

Unless it can be said that the duty to use reasonable care to inspect the finished wheel when it came into the defendant's possession is the only duty that the defendant owed the plaintiff, the instructions of the trial court to the jury were clearly erroneous.

Also, unless it can be said that the duty to use reasonable care, skill and diligence in the manufacture of the wheel and the duty to use reasonable diligence to see that the wheel is reasonable fit for the purpose for which it was intended, which this court in the case of *Heckel v. Ford Motor Co.*, 128 Atl. 242, *supra*, said was the duty, is tantamount to saying that the defendant's duty is satisfied when it makes a reasonable inspection of the finished wheel after it comes into its possession, the instructions are clearly erroneous.

The trial court instructed the jury generally as to the duty of a manufacturer of an automobile by saying: "The duty of using reasonable care in their construction so that they will be reasonably safe, not under all circumstances and conditions, but when used with proper care. You see, the duty is to use reasonable care in their construction so that they will be reasonably safe, not under all circumstances and conditions, but when they are used with proper care" (p. 274, l. 35, to p. 275, l. 10). Immediately thereafter, however, the trial court modifies that correct instruction by the instruction that "when the defect

is due to the unsound condition of one of its parts which was purchased by the manufacturer of the automobile from a reputable concern and was used by such manufacturer in ignorance of its defective condition after a reasonable testing, he is relieved of the responsibility which would have been imputed to him, that is, to the manufacturer, if he had actually manufactured the defective part in question'' (p. 275, ll. 10-20).

II.

CONCLUSION.

For these reasons we respectfully submit that the judgment below should be reversed and a venire de novo ordered.

February Term, 1926.

EDWARD A. MARKLEY,
Of Counsel.

COLLINS & CORBIN,
Attorneys of Appellant.

New Jersey Court of Errors and Appeals

DOMINICK MARTIN, individually and as Administrator of the goods, chattels and credits of Mario Martin, deceased, <i>Plaintiff-Appellant,</i>	}	<i>On Appeal.</i>
<i>vs.</i>		
THE STUDEBAKER CORPORATION, a corporation, <i>Defendant-Respondent.</i>	}	

BRIEF FOR DEFENDANT-RESPONDENT.

Statement.

This case was tried for three successive days in March, 1925, at the Hudson Supreme Circuit before the Honorable Willard W. Cutler and a jury and resulted in a verdict in favor of the defendant-respondent, hereinafter called the defendant.

The appeal is based upon six exceptions to the Court's charge to the jury, one refusal by the Court to charge as requested by the plaintiff-appellant, hereinafter called the plaintiff, and one charge of the Court to the jury, as requested by the defendant. As to this latter exception, the fact is that the Court did not charge the request as set forth on page 9 of the state of the case, the defendant's second request. He did charge the defendant's fourth request, but denied the defendant's second request and, obviously the request charged, the fourth, was quite proper and properly charged. (State of Case, pp. 282 and 283.)

The action was brought by Dominick Martin, individually and as administrator of the estate of his son, Mario Martin, for damages resulting from an accident which occurred on the State Highway in New York State between Hudson and Poughkeepsie and near a place called Livingston. As the result of the accident, the Studebaker automobile which Dominick Martin was driving, was damaged, Martin himself sustained some personal injury and his son Mario was killed.

The basis of the action was a claim by Martin that a wheel upon the automobile which he was driving, a Studebaker Special Six Model, was defective, due to the negligence and carelessness of the defendant, that the spokes of the wheel were of inferior material and improperly constructed and that such negligence and inferiority and improper construction brought about the breaking of the wheel and was the proximate cause of the accident. The defense was that there was no negligence in the construction of the wheel by the defendant and that the accident was due entirely to the negligence of the plaintiff in the operation of the automobile which he was driving.

The plaintiff had not purchased the automobile directly from the Studebaker Corporation, but had bought it from a dealer in Schenectady, New York, who in turn had purchased it from the Studebaker Corporation (p. 23).

THE LAW.

There are four reasonably recent cases dealing with the liability of a manufacturer of a finished product, who puts it on the market to be used, without inspection, by his customers and the law to be derived therefrom is that if the

manufacturer is negligent, where danger is to be foreseen, he will be liable for that negligence.

Perhaps the leading case is *McPherson v. Buick Motor Co.*, New York Court of Appeals, 217 N. Y. 382, 111 N. E. 1050, in which Judge Cardozo extended the principle of *Thomas v. Winchester*, 6 N. Y. 397, to cover things which, if negligently made, are reasonably certain to place life and limb in danger, instead of restricting that principle only to things which, in their normal operation, are instruments of destruction, such as poisons, explosives and the like. In the Buick case, as in this case, the defendant company was not the maker of the wheel alleged to have been defective.

That case was followed in this State in *Heckel v. Ford Motor Company*, Errors and Appeals, 1925, 128 Atlantic 242, and it was also followed by the Circuit Court of Appeals, 2nd Circuit in *Johnson v. Cadillac Motor Car Company*, 261 Fed. 878, where that Court reversed its previous ruling in *Cadillac Motor Car Company v. Johnson*, 221 Fed. 801.

An examination of Judge Cutler's charge to the jury in this case shows clearly that he was following Judge Cardozo's opinion in the Buick case, in some places, word for word.

The underlying reason for liability in the Buick case is the failure of the manufacturer to observe reasonable care in connection with the inspection of the component parts of the whole which he finally sells to the public at large and the reverse follows, namely, that if such reasonable care has been taken by the manufacturer, then he is under no liability to a third person, if despite such reasonable care, the finished product proves defective. Again and again, throughout his opinion,

Judge Cardozo emphasized the need of reasonable care by the manufacturer in testing and inspecting the component parts of the finished article and, in like manner, Judge Cutler repeatedly emphasized the need of similar care.

REPLY TO EXCEPTIONS.

In the first ground of appeal (State of Case, pp. 2-4), Judge Cutler repeated what Judge Cardozo said in the Buick case. Judge Cardozo said:

“It is true that the court told the jury that ‘an automobile is not an inherently dangerous vehicle.’ The meaning, however, is made plain by the context. The meaning is that danger is not to be expected when the vehicle is well constructed. The court left it to the jury to say whether the defendant ought to have foreseen that the car, if negligently constructed, would become ‘imminently dangerous.’ Subtle distinctions are drawn by the defendant between things inherently dangerous and things imminently dangerous, but the case does not turn upon these verbal niceties. If danger was to be expected as reasonably certain, there was a duty of vigilance, and this whether you call the danger inherent or imminent. In varying forms that thought was put before the jury.”

Judge Cutler conveyed the same idea to the jury. He told them that an automobile “is not inherently dangerous if properly made,” but if it is defectively or insufficiently constructed, it becomes dangerous to the life of persons riding in it. It is difficult to see how the first ground of appeal has any merit, whatever, because the charge but follows the Buick case and only stresses the need of reasonable care by way of tests and inspections on the part of the manu-

facturer to see that the finished product will be reasonably safe when used with proper care.

The second ground of appeal (State of Case, pp. 4-5) is also without foundation. Not only did Judge Cutler again repeat the need of reasonable care and reasonable inspection, but he even used, word for word, the language of the Buick case where he said:

“It was not merely a dealer in automobiles, it was a manufacturer of automobiles. It was responsible for the finished product, and it was not at liberty to put the finished product on the market without subjecting the component parts, including the wheels, to ordinary and simple tests. The obligation to inspect must vary with the nature of the thing to be inspected, and the more probable the danger the greater the need of caution.”

As to the third exception (State of Case, pp. 5-6), the testimony shows that the Studebaker Corporation did not make the wheel which the plaintiff broke, but bought it from The Kelsey Wheel Company of Detroit. The Kelsey Wheel Company was a reputable maker of wheels, having been in business for many years and at the time the wheel in question was made, it was also manufacturing all wheels for such other automobile makers as Packard, Hupmobile, Dodge, Paige, Jewett, Lincoln, Cadillac and General Motors Truck wheels (p. 230). Testimony regarding inspection was given in great detail for the defendant by Carl N. Wise (pp. 213-228), William E. Bagley (pp. 219-223), and Cornelius C. Cahill (pp. 228-264). In effect, it was that three inspectors were kept by the Studebaker Corporation at the plant of the Kelsey Wheel Company in Detroit during the time when the wheel in question was manufactured whose inspection was entirely independent of the inspec-

tion made by the Kelsey Wheel Company itself. It also appeared that of all the other companies for which the Kelsey Wheel Company made wheels, the Dodge Company alone had independent inspection and that by only one man, while, as has already been said, the Studebaker Corporation had three men at the Kelsey plant who acted entirely independently of the inspection which was made by the Kelsey Wheel Company itself and which was detailed particularly by the witness, Cahill (pp. 228-264).

After directing the jury's attention to the testimony regarding the independent inspection by the Studebaker Corporation at the Kelsey Wheel Company's plant, Judge Cutler again stressed the need of the Studebaker Corporation to use reasonable care in inspecting the wheels which it purchased and unquestionably, the jury felt that such reasonable care had been used, if, in fact, they did not find that the accident was due entirely to the negligent operation of his automobile by the plaintiff.

Judge Cutler did not absolve the Studebaker Corporation from its duty at any time in the third ground of appeal and, of course, his charge should be read in its entirety in determining whether or not he committed error, rather than that some few words be taken by themselves and set up as error. As was said by this Court in *Heckel v. Ford*:

“This portion of the charge must be read in connection with the balance of the charge and the language employed must be interpreted with respect thereto.”

As to the fourth ground of appeal, (State of Case, pages 6-7), Judge Cutler again followed

Judge Cardozo. In the Buick case, Judge Cardozo said:

“We think the defendant was not absolved from a duty of inspection because it bought the wheels from a reputable manufacturer. It was not merely a dealer in automobiles. It was a manufacturer of automobiles. It was responsible for the finished product. It was not at liberty to put the finished product on the market without subjecting the component parts to ordinary and simple tests.”

Judge Cutler expressed that fact in other language when he told the jury that the Wheel Company would have to be responsible for its own negligence, “unless the defendant knew of the defect or could have discovered it by reasonable and proper inspection of the wheel before it attached it to the automobile.”

Underlying the fourth ground of appeal as well as the entire charge of Judge Cutler was the clear direction by him to the jury that the defendant's duty was to use reasonable care in having the manufactured article reasonably safe when used with proper care and again and again, he repeated the defendant's duty to make reasonable and proper inspections of the wheel and reasonable, ordinary and simple tests.

The fifth ground of appeal (State of Case, page 6), is again but a repetition of the principle set forth in the Buick case. It called upon the jury to absolve the defendant if the evidence did not satisfy them that the defendant “had failed to use reasonable care in inspecting the wheels * * * before the automobile was placed on the market,” and on the other hand, it told the jury to find the defendant guilty if the evidence showed that the accident “was caused by a defective wheel and that the defendant was guilty of negligence in failing to properly inspect the wheel.”

REPLY TO PLAINTIFF'S BRIEF.

With particular reference to the plaintiff's brief, his principal argument is that Judge Cutler incorrectly charged the jury that the duty of the defendant ended, and began, when it had made a test of the finished wheel. That was not the charge and, as already has been said, the proof was that the tests and inspections conducted by the defendant continued throughout the entire construction of the wheel and were carried on by three of its men at the plant of the Kelsey Wheel Company who acted independently of Kelsey's men. Throughout his charge, Judge Cutler again and again stated that "the liability of the company depended upon its failure to reasonably inspect these wheels which they purchased" (State of Case, p. 276, ll. 38-40).

Under Point I on page 3 of the plaintiff's brief the summary of the Court's charge as therein contained does not correctly epitomize what the Court said and that will be seen by reading the excerpt of the Court's charge which immediately follows the summarization of it set forth at the top of page 3 of the plaintiff's brief. Throughout his charge the Trial Court reiterated again and again that the defendant was under a duty to make reasonable inspections and tests of the wheel and those words occur in every quotation from the Court's charge which is set forth on pages 3, 4 and 5 of the plaintiff's brief.

The plaintiff again incorrectly paraphrases the Court's charge when he says in his brief (p. 5, ll. 29-31), "that all the defendant was liable for was a failure to make a reasonable and proper inspection of the wheel as a finished

product." That is not so. Judge Cutler at pages 274-275 of the State of the Case said:

"The danger of injury to a person riding in an automobile from defects in material or construction is so great that there is impressed upon the manufacturer of this class of vehicle the duty of using reasonable care *in their construction* so that they will be reasonably safe, not under all circumstances and conditions, but when used with proper care. You see, the duty is to use reasonable care *in their construction*, so that they will be reasonably safe, not under all circumstances and conditions, but when they are used with proper care. A manufacturer of automobiles will be charged with notice of the unsafe condition in a machine *if the construction* is so faulty that a person engaged in its manufacture could not fail to observe it."

At pages 275-277 he said:

"Now, in the present case the defendant purchased the wheels used in the manufacture of this particular kind of automobiles from the Kelsey Wheel Company. The defendant did not manufacture the wheels, but they purchased them from an outside company. It was the duty of this concern to inspect these wheels with reasonable care before attaching them to their automobiles to see that they were reasonably safe for the uses for which they were intended. An inspection must be a reasonable inspection, not an unreasonable one. Their duty is to use reasonable care in making the inspection of these wheels before they attach them to the automobiles which they were to sell. This defendant did not select the wood from which these wheels were made. He did not make the wheels, but purchased them ready for use, and when the defendant received them they were covered with a priming coat of paint. That fact would not relieve them from the duty of making a reasonable inspection. The fact that the defendant

bought the wheels of the automobile from a reputable manufacturer does not absolve the defendant from his duty of inspection. It was not merely a dealer in automobiles, it was a manufacturer of automobiles. It was responsible for the finished product, and it was not at liberty to put the finished product on the market without subjecting the component parts, including the wheels, to ordinary and simple tests. The obligation to inspect must vary with the nature of the thing to be inspected, and the more probable the danger the greater the need of caution.

If you believe the testimony of the defendant, not only were the wheels inspected after they were received at their plant, but they employed three men to inspect the wheels while they were being manufactured at the plant of the Kelsey Wheel Company. You have heard from the witnesses that have been on the stand the manner in which those wheels were tested while they were being manufactured by the Kelsey Wheel Company and you have heard how the defendant inspected them after they came to the plant in Detroit. If the defendant had no notice that the wheels purchased were defective and used reasonable care to inspect the wheels so purchased and used, and the wheel company was a reputable concern, there would be no liability on the part of the defendant even if the accident was caused by a defective wheel and not by careless driving. You see, the liability of the company depended upon its failure to reasonably inspect these wheels which they purchased.

This defendant cannot be held liable for any negligence on the part of the wheel company, so if you should find that the wheel in question was made by this wheel company of defective or improper wood and broke by reason of such defect, this defendant would not be liable for the negligence of the wheel company. The wheel company would have to be responsible for its own negligence unless the defendant knew of the defect or could

have discovered it by reasonable and proper inspection of the wheel before it attached it to the automobile.”

And again at page 280 he said:

“If you reach the conclusion that the accident was caused by a defective wheel but it does not satisfy you that the defendant failed to use reasonable care in inspecting the wheels of this automobile before the automobile was placed on the market, then there can be no recovery by the plaintiff. If you find that the accident was caused by a defective wheel and that the defendant was guilty of negligence in failing to properly inspect the wheel placed on this automobile, then there can be a recovery by the plaintiff.”

A reading of Judge Cutler's entire charge will show that he did not limit the defendant's duty to an inspection of the finished product, but on the contrary, he placed upon it the liability for the finished product and told the jury the defendant's duty was to reasonably inspect and test throughout the construction of the article which it manufactured and sold, as a whole, regardless of whether or not it was the maker of all of the component parts of that whole.

It is also to be borne in mind that in the Ford case the company there sued was the manufacturer of all of the component parts of the finished article which it sold, but the law as set forth in that case, that is, the duty of reasonable inspection and tests throughout the process of manufacture, was the law as charged to the jury in the case now under discussion. The difference between that case and the present case is that upon hearing the evidence with reference to testing and inspecting the jury found liability against the Ford Company, while here, after listening to the evidence on those two points and

being fully advised by the Court regarding the defendant's liability for testing and inspecting throughout the process of manufacture, the jury found against the plaintiff. We submit that the jury was correctly charged, that the verdict was proper and that it should not be disturbed.

Respectfully submitted,

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