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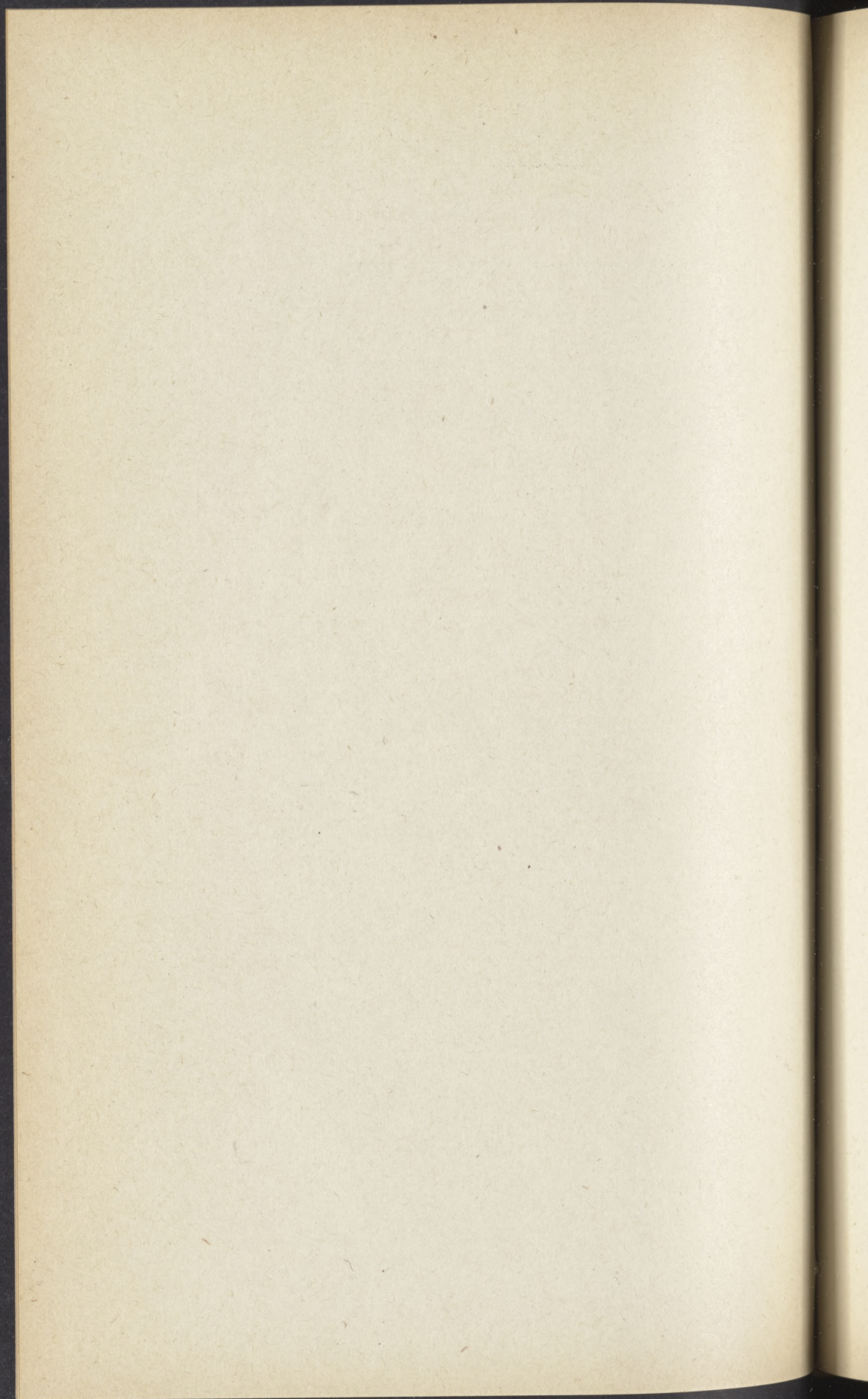
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I
Summons

SUMMONS

(Filed January 23, 1930)

The State of New Jersey To: William L. Griffin,
Receiver of Boonton-Caldwell
New York Bus Company, a cor-
poration. You are summoned
to answer the annexed com-
plaint of Peter A. Struyk and
Rachel Struyk, his wife, in an
action at law in the New Jer-
sey Supreme Court, and take

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notice, that unless you file your answer to said
complaint with the Clerk of the said Court at
Trenton, within twenty days after service upon
you of this writ and the annexed complaint, the
plaintiffs may proceed in the suit and judgment
may be entered against you.

Witness, William S. Gummere, Chief Justice
of the New Jersey Supreme Court, at Trenton,
this 16th day of July, 1929.

20

Isadore Rabinowitz,
Attorney.

Fred L. Bloodgood,
Clerk.

30

II
Amended Complaint
(Filed October 8, 1929.)
NEW JERSEY SUPREME COURT
(Passaic County)

Peter A. Struyk and Rachel
Struyk, his wife,

Plaintiffs,

vs.

10 William L. Griffin, Receiver of
Boonton-Caldwell-New York
Bus Company, a corporation,
Defendant.

Action at Law

AMENDED COMPLAINT

Plaintiffs by way of amendment to the complaint heretofore filed in the above-entitled matter, say that:

20 1. Defendant has been duly appointed Receiver of Boonton-Caldwell-New York Bus Company, a corporation of the State of New Jersey, by the Court of Chancery of the State of New Jersey.

2. On May 25, 1929, there was situate in the Borough of Verona, County of Essex and State of New Jersey, a public road known as Bloomfield Avenue running in a general easterly and westerly direction, which said road is intersected by another public road known as Pompton Turnpike.

30 3. Defendant as Receiver aforesaid, was the owner of a certain automobile bus line and in connection with said line owned and operated certain busses on and along said Bloomfield Avenue in the said Borough of Verona.

4. Plaintiff, Peter A. Struyk, was on said day the owner of a certain automobile and was driving the same along Bloomfield Avenue in an easterly

III

Amended Complaint

direction approaching the intersection of said Pompton Turnpike and had with him as a passenger in said car, plaintiff, Rachel Struyk, his wife.

5. Plaintiff, Peter A. Struyk, did turn into said Pompton Turnpike in a northerly direction and after he had entered the intersection of said Pompton Turnpike, defendant did while driving the said bus along said Bloomfield Avenue in a westerly direction, carelessly and negligently operate the same at a high and excessive rate of speed, and did carelessly and negligently fail to permit plaintiff to exercise his right of way, and did carelessly and negligently disobey traffic rules and regulations, and did carelessly and negligently fail to give any warning or sound any notice of its approach, and did carelessly and negligently fail to observe the presence of plaintiff's said automobile, and did carelessly and negligently fail to slacken its speed at said intersection, and did carelessly and negligently fail to steer said automobile bus in a proper manner, and did carelessly and negligently attempt to cut off the passage of plaintiff's automobile along said highway, and did otherwise carelessly, negligently and recklessly drive and operate said bus.

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6. As a direct consequence of the negligence of defendant, said bus ran into and against the right side of the automobile of plaintiff, Peter A. Struyk, as a result of which plaintiffs were thereby greatly wounded, bruised, contused, lacerated and injured and said automobile was rendered wholly unfit for use and worthless.

30

7. Plaintiff, Peter A. Struyk, suffered a fracture through the middle third of the right femur,

IV
Amended Complaint

the lower fragment of which is comminuted and which has resulted in a marked overriding of the fragments, resulting in a marked deformity and a permanent disability. He was otherwise wounded, bruised, contused and lacerated in and about the head, face, back, spine, body and otherwise. He suffered a concussion of the brain. He was compelled to employ medical, hospital and surgical care and attention and will in the future be compelled to employ such care and attention. He has heretofore and will in the future undergo great pain, suffering and nervous shock, and has heretofore and will in the future be unable to perform his usual daily work.

10

8. Plaintiff, Rachel Struyk, wife of plaintiff, Peter A. Struyk, was as a consequence of the foregoing negligence, greatly wounded, bruised, contused, lacerated and injured. She suffered an impacted fracture of the humerus of the right shoulder which has produced a shortening. She suffered a fracture of the coracoid-process of the scapula, both said injuries are of a permanent nature and will result in a permanent disability of the use of the right arm and shoulder of said plaintiff. She also suffered a concussion of the brain and numerous other wounds, bruises, lacerations and injuries. She underwent and will in the future undergo great pain, suffering and nervous shock. She was compelled to employ medical, hospital and surgical care and attention and will in the future be compelled to employ such care and attention, and has heretofore and will in the future be unable to perform her usual daily work and household duties.

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9. As a consequence of the injuries to plaintiff, Rachel Struyk, plaintiff, Peter A. Struyk, will be

V

Amended Complaint

deprived of and lose the services of his said wife. He has heretofore and will in the future be compelled to employ medical and surgical care and attention to heal her of her injuries.

10. By virtue of an order made by the Court of Chancery of the State of New Jersey, on July 22, 1929, plaintiffs are permitted to institute this action against said Defendant as Receiver and this action is brought in accordance with said order. 10

Plaintiff, Peter A. Struyk, demands as damages the sum of \$35,000.00.

Plaintiff, Rachel Struyk, demands as damages the sum of \$15,000.00.

Isadore Rabinowitz,
Attorney of Plaintiffs.

VI
Answer to Amended Complaint
(Filed November 8, 1929)
NEW JERSEY SUPREME COURT
(Passaic County)

	Peter A. Struyk and Rachel Struyk, his wife, <p style="text-align:right">Plaintiffs,</p> <p style="text-align:center">vs.</p> William L. Griffin, Receiver of Boonton-Caldwell-New York Bus Company, a corporation, Defendant.	}	Action at Law
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ANSWER TO AMENDED COMPLAINT

The defendant answering the amended complaint filed herein in the above case says that:

- 20 1. The defendant denies each and every allegation contained in the complaint.

FIRST SEPARATE DEFENSE

1. The said alleged accident charged in the complaint was caused by, and was solely due to the negligence on the part of the plaintiff, Peter A. Struyk.

30 2. The plaintiff, Peter A. Struyk, was negligent in this, that he caused his said automobile to be operated and driven at a fast and excessive rate of speed, and caused his said automobile to be driven in a careless and negligent manner on the wrong side of the road; he failed to give proper signals or warning of his approach and of his intention to stop, turn and start. He negligently and carelessly failed to observe traffic lights and signals, and failed to use due care for his own safety and for the safety of the occupants of his said

VII

Answer to Amended Complaint

automobile. The driver of the said automobile was incompetent, and the brakes and equipment thereon were defective. He failed to exercise due regard for the rights of others lawfully upon said highway, and otherwise negligently and carelessly operated the said automobile.

SECOND SEPARATE DEFENSE

1. The negligence of the plaintiff, Peter A. Struyk, contributed to the said alleged accident charged in the complaint. 10

2. The defendant hereby repeats the allegations contained in paragraph 2 of the First Separate Defense as though the same were herein fully set forth.

THIRD SEPARATE DEFENSE

1. The defendant says that the plaintiff Rachel Struyk was engaged in common enterprise with the operator of the plaintiff's automobile at the time and place of the alleged accident charged in the complaint. 20

2. The defendant says that the said alleged accident charged in the complaint was caused solely by the negligence of the operator of the plaintiff's automobile.

3. The defendant hereby repeats each and every allegation contained in paragraph 2 of the First Separate Defense as though the same were herein fully set forth.

FOURTH SEPARATE DEFENSE 30

1. The defendant says that the said plaintiff, Rachel Struyk was guilty of contributory negligence at the time and place of the alleged accident charged in the complaint as follows:

2. The defendant hereby repeats each and every allegation contained in paragraphs 1, 2, and

VIII

Answer to Amended Complaint

3 of the Third Separate Defense as though the same were herein fully set forth and repeated.

Chester W. Rothfuss,
Attorney of Defendant.

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IX

Reply to Answer to Amended Complaint

(Filed November 9, 1929)

NEW JERSEY SUPREME COURT

(Passaic County)

Peter A. Struyk and Rachel
Struyk, his wife,

Plaintiffs,

vs.

William L. Griffin, Receiver of
Boonton-Caldwell-New York
Bus Company, a corporation,
Defendant.

Action at Law

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**REPLY TO ANSWER TO AMENDED
COMPLAINT**

Plaintiffs replying to the answer of the amended complaint filed herein in the above matter, say that: 20

REPLY TO FIRST SEPARATE DEFENSE

The allegations of the first separate defense are denied.

REPLY TO SECOND SEPARATE DEFENSE

The allegations of the second separate defense are denied.

REPLY TO THIRD SEPARATE DEFENSE

The allegations of the third separate defense are denied. 30

REPLY TO FOURTH SEPARATE DEFENSE

The allegations of the fourth separate defense are denied.

Isadore Rabinowitz,
Attorney of Plaintiffs.

X

Postea

(Filed February 5, 1930)
NEW JERSEY SUPREME COURT
(Passaic County)

Peter A. Struyk and Rachel
Struyk, his wife,
Plaintiffs,

vs.

10 William L. Griffin, Receiver of
Boonton-Caldwell-New York
Bus Company, a corporation,
Defendant.

Action at Law

POSTEA

20 This action was tried before Judge Newton H. Porter and a jury at the Passaic County Circuit on January 23, 1930, January 24, 1930 and January 27, 1930. Upon motion of counsel for defendant, a judgment of non-suit was entered as against plaintiff, Peter A. Struyk. The jury rendered a general verdict in favor of the plaintiff, Rachel Struyk, and against the defendant in the sum of \$6,000.00.

Newton H. Porter,

Supreme Court Commissioner,
occupying position of Circuit Court
Judge.

80

Dated: January 29, 1930.

XI

Notice of Appeal and Grounds of Appeal

(Filed March 21, 1930)

NEW JERSEY SUPREME COURT

Peter A. Struyk and Rachel Struyk, his wife,	}	Plaintiffs,	Action at Law.
vs.		Defendant.	
William L. Griffin, Receiver of Boonton-Caldwell-New York Bus Company, a corporation,	}	Plaintiffs,	Action at Law.
vs.		Defendant.	

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**NOTICE OF APPEAL AND GROUNDS OF
APPEAL**

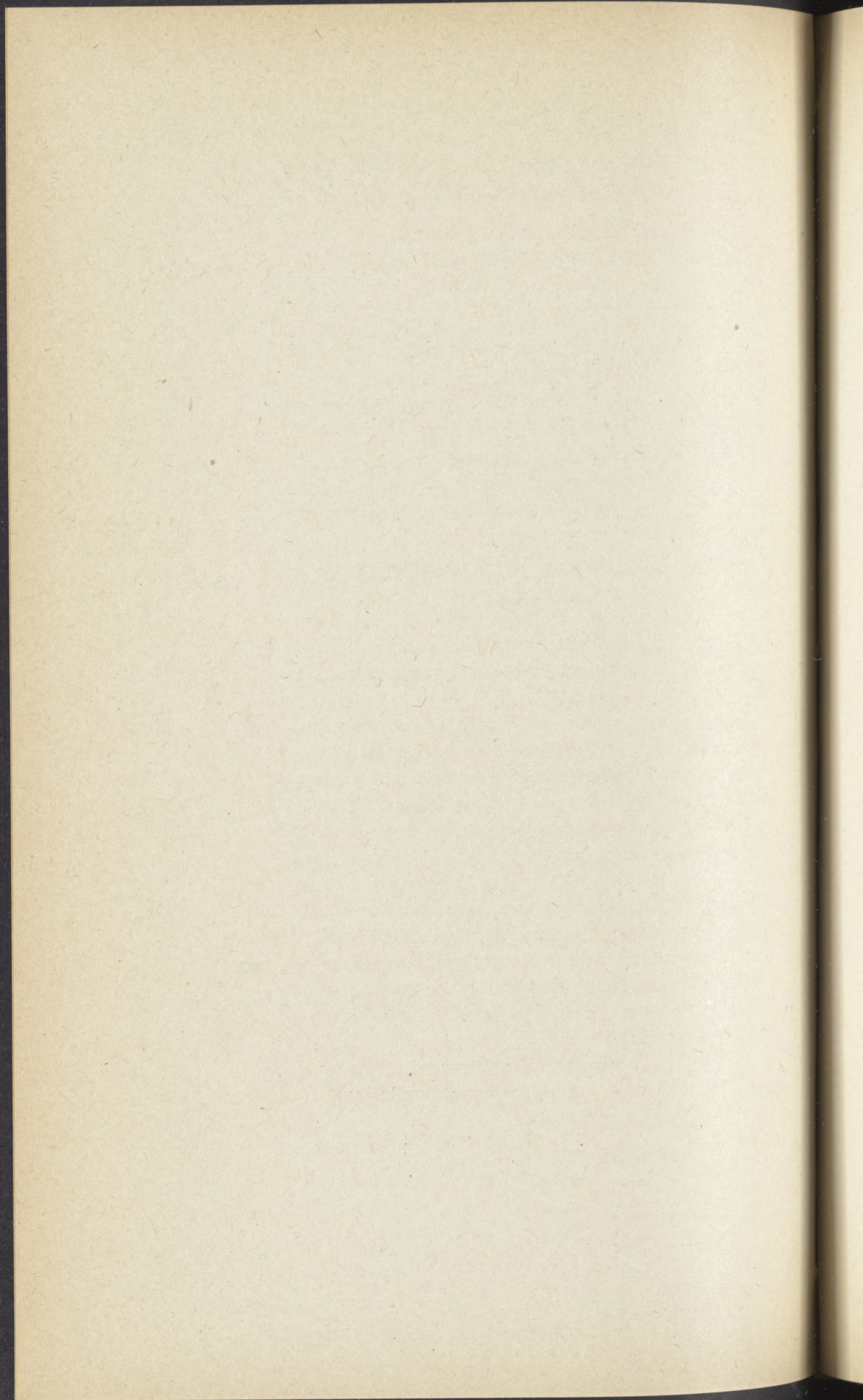
To: Coult, Satz & Tomlinson, Esquires,
Attorneys of Defendant;

Sirs:

Take Notice, that the plaintiff, Peter A. Struyk, 20
appeals to the Court of Errors and Appeals of the
State of New Jersey, from the whole of the judg-
ment entered in this case against plaintiff, Peter
A. Struyk, upon the following ground:

The Trial Court directed a judgment of non-
suit against the plaintiff, Peter A. Struyk, and in
favor of the defendant when thereunto moved by
counsel for the defendant, whereas said Court
should have denied said motion and should have
submitted to the jury for decision the questions in- 30
volved in the issues between said Peter A. Struyk
and the defendant.

Isadore Rabinowitz,
Attorney of Appellant.



NEW JERSEY SUPREME COURT
PASSAIC CIRCUIT

Peter A. Struyk and Rachael
Struyk, his wife,
Plaintiffs,

vs.

William L. Griffin, Receiver of
Boonton-Caldwell-New York
Bus Company, a Corporation,
Defendant.

Action at Law

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Paterson, N. J., January 23, 1930.

Tried Before:

Honorable Newton H. Porter, Judge, and a Jury

Appearances:

Isadore Rabinowitz, Esq., (James M. Murner,
Esq., of Counsel), for Plaintiffs.

Chester W. Rothfuss, Esq., (Joseph Coult, Esq.,
of Counsel), for Defendant.

20

A Jury was duly empaneled and sworn.

Mr. Murner opened the case to the jury on behalf
of the plaintiffs.

Mr. Coult opened the case to the jury on behalf
of the defendant.

Mr. Murner—If the Court please, I would
like to ask, just at this time, to ask whether
or not the ownership of the bus was in the
defendant, and was being operated.

30

Mr. Coult—Yes, we would, however, make
no point on that at all.

The Court—His opening said that.

Mr. Coult—That is just what I said.

Peter A. Struyk—direct

PLAINTIFF'S CASE

PETER A. STRUYK, sworn.

Direct Examination by Mr. Rabinowitz:

Q. Mr. Struyk, you are one of the plaintiffs in this case? A. Yes, sir.

Q. Where do you live? A. I live at 163 North Twelfth Street.

Q. What city? A. North Twelfth Street, Prospect Park.

Q. You are the husband of Rachael Struyk, the other plaintiff in this case? A. Yes, sir.

Q. Were you the owner of an automobile on May 25, 1929? A. Yes, sir.

Q. What kind of a car was it? A. Chevrolet.

Q. What year model? A. 1925.

Q. What type? A. Sedan.

10 Q. What was the condition of the car on that day? A. A No. 1.

Q. Had you had it repaired recently? A. Two days before, I had it completely overhauled.

Q. By whom? A. A couple of gentlemen living in Midland Park, but I cannot recall their names at the present.

Q. All right. Who was operating the car on that day? A. I was, personally, myself.

30 Q. Were you operating it that day? A. Yes, sir.

Q. Who was with you? A. My wife was with me, and my friend, Mr. Studer, and his wife.

Q. Where do Mr. Studer and his wife live? A. They lived at 78 Westervelt Avenue, Hawthorne.

Q. Where was your wife sitting in the car? A. On the rear seat, on the left.

Peter A. Struyk—direct

Q. Was the car right-hand or left-hand drive?

A. Left-hand drive.

Q. Your wife was sitting in back of you? A. Yes, sir.

Q. Who was sitting alongside of you? A. Mr. Studer.

Q. Where is he now? A. He is dead and buried.

Q. Was he involved in the collision, in fact, in this suit? A. Yes, sir. 10

Q. Did he die on the day of the collision? A. Three hours after he was hit.

Q. Where was Mrs. Studer sitting? A. On the right-hand, rear seat.

Q. Alongside of your wife? A. Yes, sir.

Q. What time did you leave the house that day? A. I left my house somewhere in the neighborhood of half past two.

Q. What was the condition of the weather, Mr. Struyk? A. Nice, clear weather. 20

Q. Road dry? A. Dry.

Q. Where did you go with your passengers? A. Why, we just simply took a ride, and I went over in the section of St. Cloud, of Livingston, that way, on the way back home.

Q. Where is St. Cloud? A. It is in the southern section, from Montclair.

Q. Essex County? A. Well, that I don't dare say. 30

The Court—West Orange, Essex County. West Orange is like Clifton. Covers a large territory.

Mr. Rabinowitz—St. Cloud. part of West Orange, your Honor?

Peter A. Struyk—direct

The Court—It is.

Mr. Rabinowitz—Oh, I see.

Q. After you left St. Cloud, where were you bound for? A. Bound for home.

Q. How did you approach your home from St. Cloud? A. Well, particularly the streets, I couldn't tell you, because I don't know which they are, but we went around until we got on to the road that leads from Eagle Rock into Bloomfield Avenue.

Q. Where is that Eagle Rock Road which you now refer to, with reference to the corner of Pompton Turnpike? A. Oh, I would judge it is about a mile, or a little bit more than a mile from the place of the accident.

Q. In which direction, east or west? A. West.

Q. As you left Eagle Rock Road, what street did you enter? A. Bloomfield Avenue.

Q. Then, which way did you turn? A. Right.

Q. Going in what direction? A. East.

Q. Until you came to what street? A. Pompton Turnpike.

Q. State whether or not that is the intersection where the accident happened? A. That is the intersection where the accident happened.

Q. So you say you entered Bloomfield Avenue about a mile east of the point where the intersection, where the accident happened? A. West, rather.

Q. A mile west? I beg pardon. Then you rode along Bloomfield Avenue for about a mile? A. For a mile or more, I won't say exactly just how far.

Q. What did you do at the intersection of Pompton Turnpike, if anything? A. When I got to the

Peter A. Struyk—direct

Turnpike, the lights were red, against me, and I stopped at a dead stop, and I waited until they turned green; when they turned green, I looked up the road, there was—

Q. Just a moment. As you approached the intersection of Pompton Turnpike, how far were you from the right-hand curb of Bloomfield Avenue?

A. Oh, I would say in the neighborhood of about fifty feet, probably, a little bit more.

10

Q. How far were you, as you were riding along Bloomfield Avenue, from the right-hand curb line of Bloomfield Avenue? A. Oh, about four or five feet, with this side of the car.

Q. How wide is Bloomfield Avenue, if you know? A. Oh, to say exactly how wide it is, I couldn't tell you, but I judge it is about fifty feet, probably a little bit more.

Q. You say you stopped for a red light at the intersection, of Pompton Avenue? A. Yes, sir.

20

Q. What was your intention after the light turned from red to green, to turn right or to turn left on Pompton Avenue? A. My intention was to turn left, and get on the avenue, and go home.

Q. Would that road take you home? A. Yes, sir.

Q. Then, as you started to make the turn, upon the green light appearing, what did you do? A. I looked forward to see if the road was clear, and which it was—

30

Q. What did you see, if anything? A. Nothing.

Q. How far could you see ahead of you? A. Somewhere in the neighborhood of about three hundred, or probably a little more than that.

Q. As you looked ahead, to make the intersec-

Peter A. Struyk—direct

tion of Pompton Turnpike is the road flat or inclined? A. It is an incline.

Q. Is the incline down towards Verona, or is it down towards Newark? A. Towards Verona.

Q. So that a vehicle coming towards you from the direction you were looking would be coming down hill; is that so? A. Down hill; yes, sir.

Q. Is it steep or not? A. Oh, it is a gradual grade.

20 Q. When you saw nothing, what did you do?
A. I stuck my hand out, and proceeded; I got on the west-bound car track, swung to go across.

Q. Did you get across? A. I got across pretty well, with the front wheels, pretty near to the curb line.

Q. What curb line? A. The northerly curb line.

10 Q. Is that the other curb line, on the other side of the street, from the side you were on? A. Yes, sir.

Q. That is the far side curb line? A. Far side curb line.

Q. Then what happened? A. I was hit.

Q. Were you hurt? A. He took me to the hospital.

Q. What happened to you? A. I got a compound fracture—

Q. Of what? A. Of the right thigh.

30 Q. What hospital were you taken to? A. Mountainside.

Q. Where is that? A. I think it is in Montclair.

Q. How long were you laid up in the hospital?
A. I was there eight weeks.

Peter A. Struyk—direct

Q. What side of your car was struck? A. The right-hand side.

Q. Do you know what struck it, or not? A. Not right away, no. No, I didn't. I was struck so quick, I didn't know what hit me. Of course, we were—

Q. From the time you started, after getting the green light signal, until the time that you were struck on the right side, approximately how many feet did you cover? A. Somewhere in the neighborhood of about fifty feet. 10

Q. What gear were you in, as you started out? A. I started out in first.

Q. How long did you remain in first? A. Oh, I suppose until I got to the center of the street, I turned to second.

Q. What gear were you in when you were struck? A. Second.

Q. How fast were you going, Mr. Struyk, when the collision occurred? A. Oh, I would judge between six and eight miles an hour, about. 20

Q. How fast were you going, about, when—well, as you were in first gear? A. Not much more than about three—about two or three, probably.

Q. From the time you started to go, on the appearance of the green light, until the accident happened, what was the maximum speed you were going? From the time you started to go on the appearance of the green light, until the time you were struck, what was your maximum speed, your highest speed? A. Somewhere in the neighborhood of six or seven miles an hour. 30

Q. All right. How long were you laid up in the hospital? A. Eight weeks.

Peter A. Struyk—direct

Q. Were you in the ward or were you in a private room? A. Ward.

Q. Was there any charge to you for that service? A. Twenty-four dollars and a half a week.

Q. Did you pay it? A. Yes, sir.

Q. What other injuries did you have besides this compound fracture? A. Cut alongside of the head.

10 Q. How deep was that scar, or your cut? A. That is something I couldn't tell you, because they put about four stitches in it, to heal it up.

Q. Is there a scar there now? A. Yes, sir.

Q. Was your head bandaged as a result of that? A. Yes, sir.

Q. Did they cause you any pains? A. Yes, sir.

Q. Any other disability as a result of that scar or cut? A. All bruises.

20 Q. No, I mean, do you suffer anything else as a result of that cut? A. In the leg.

Q. Speaking of the cut in the head. Did you suffer any other disability as the result of your cut in the head? A. As a result of that cut, occasional headaches.

Q. Now, this leg injury that you speak of, you said it as what leg? A. Right leg.

Q. What was the condition of that leg before the accident? A. A No. 1.

30 Q. Since the accident, did you suffer any disability? A. Why, I have had pain right along in it.

Q. How about your walking; is that impaired in any way? A. Why, I can walk probably a short ways; as I walk along it gets worse, and I try to hobble over, more and more.

Q. Do you limp, or not? A. Yes, sir.

Peter A. Struyk—direct

Q. How much of a limp? Can you tell us? A. I judge by myself that my leg is about a half inch short.

Q. You do not know that, do you? A. I do not.

Q. Definitely? A. Not definitely, no, according to the way I walk, and the way it feels to me, it is about half an inch short.

Q. Mr. Struyk, what form of treatment was administered to you in the hospital for the leg? A. Treatment for the leg? 10

Q. Yes. A. Why, when I was brought there, I don't know what they done with me—

Q. Why not? A. Because I wasn't conscious.

Q. How long were you unconscious? A. That is a thing I couldn't tell you exact, because it was a week or more that I was always in a fog.

Q. You mean that you did not possess your normal faculties for a week? A. Yes, sir. 20

Q. After you were restored to a state of normalcy, what did you find the treatment was that they were administering to you? A. I found out my leg hung in the air.

Q. On what? A. Into a pair of ice calipres.

Q. Was it in a cast, or not? A. No, sir.

Q. Was it ever put in a cast? A. No, sir.

Q. Put up on a form? A. I had a—well, what you call was—I had a wheel formation on it, a wheel on each side, pretty well bandaged up in four blocks. 30

Q. And the leg was lifted? A. Yes, sir; for four weeks and a half.

Q. Was that comfortable or uncomfortable? A. Uncomfortable.

Q. Do you know the purpose of that splice or

Peter A. Struyk—direct

formation? A. No, well, just to keep my leg so it would heal.

Q. Now, Mr. Struyk, will you just step down, please, and show us how you walk, show the jury?

A. (Witness exhibits.)

Q. Walk back to the box, please. A. (Witness continues exhibition.)

Q. How old are you? A. I am fifty-two.

20 Q. What is your occupation? A. Carpenter journeyman.

Q. Journeyman carpenter? A. Yes, sir.

Q. Were you employed at the time the accident happened? A. Yes, sir.

Q. Who were you employed by? A. Noordyk brothers.

Q. What were you earning a week or day? A. Twelve dollars a day.

10 Q. Have you worked since the time of the accident? A. No, sir.

Q. Why not? A. Because I cannot.

Q. It bothers you? A. My leg.

Q. Now, did you—you say you paid the hospital twenty-four dollars and a half a week for eight weeks? A. Yes, sir.

Q. Your wife was also confined to the hospital, was she not? A. Yes, sir.

30 Q. How much did you pay the hospital for her treatment and care? A. Twenty-four dollars and a half a week for five weeks.

Q. She went home before you? A. Yes, sir.

Q. Now, have you had any other expenses as a result of this injury? A. Yes, sir; sixty dollars for the brace on my leg.

Q. How long did you wear that? A. Nine weeks—nine weeks.

Peter A. Struyk—direct

Q. After you left the hospital? A. Two weeks, I was in the hospital with it; seven weeks after I was home.

Q. What was the purpose of the brace? A. They did not tell me what the purpose of the brace was.

Q. Did it give you support? A. Yes, sir.

Q. What other expense did you suffer as a result of these injuries? A. Crutches.

Q. How much did they cost? A. Two and a half. 10

Q. How long did you carry crutches? A. I run on crutches for eight weeks.

The Court—Did he tell us about the cost of the brace?

Mr. Rabinowitz—Sixty dollars.

The Witness—Sixty dollars.

The Court—Then, there was the hospital and the braces and the crutches; that is all you have testified to? 20

The Witness—Yes, sir.

The Court—And about the wages?

The Witness—Yes, sir.

Mr. Rabinowitz—And the wife's injury; I am a little out of order.

The Court—How many weeks was she at the hospital?

The Witness—Five weeks. 30

The Court—At twenty-four and a half a week?

The Witness—Yes, sir.

The Court—Very well.

Peter A. Struyk—direct

Q. What other expenses did you have, if any?
 A. There is—that is all of the expenses I had for me personally.

Q. Did you receive any other bills in connection with this accident from any physician? A. I have been paying to the man that massages me two dollars a week, and he has been taking care of me since last September, still twice a week.

10 Q. How much do you pay for—two dollars a week, you say? A. Two times a week.

The Court—A dollar a treatment?

The Witness—Yes, sir.

Q. Have you received any doctor's bill from any physician in Montclair? A. Not for my ailment.

Q. For your wife? A. For my wife, \$157.00.

20 By the Court:

Q. What doctor? A. From the hospital Mountainside.

Q. Was that a doctor or the hospital bill? A. Hospital bill.

Q. You have told us about her, four weeks at twenty-four dollars and a half a week? A. Besides that, your Honor.

80 Q. Besides the hospital, a bill of \$157.00; is that right? A. Yes, sir.

By Mr. Rabinowitz:

Q. Did you have any x-ray expenses? A. Yes, I had three x-rays in the hospital, cost a piece; also my wife.

Peter A. Struyk—direct

Q. How many x-rays for your wife? A. Same amount.

Q. Are all of those bills paid? A. Yes, sir.

Q. Is that \$151 bill paid for your wife? A. No, sir.

The Court—\$157.

The Witness—\$157.

10

Q. \$157.00? A. Yes, sir.

Q. Is that the only bill that remains unpaid?

A. Yes, sir.

Q. You say that was your automobile? A. Yes, sir.

Q. How long before the accident, did you buy it? A. I bought it in June—well, I had the automobile a year and eleven months.

Q. How much did you pay for it? A. \$375.

Q. Have you had it repaired? A. Yes, sir; 20
two days before it was hit.

Q. Two days before it was hit? Since the accident, have you had it repaired? A. I gave it away since it wasn't worth anything.

Q. Why? A. It wasn't worth anything.

Q. Now, I show you a photograph and ask you if that is a fair and accurate representation of the intersection of Bloomfield Avenue and Pompton Turnpike at the time the accident occurred? A. Exactly. 30

Mr. Rabinowitz—I offer it.

Mr. Coult—No objection.

(Marked Plaintiff's exhibit P-1.)

Mr. Rabinowitz—Can we get these other two in without objection, Judge Coult?

Peter A. Struyk—direct

Mr. Coult—No objection.

(Marked Plaintiff's Exhibit P-2 and P-3.)

Q. Referring to Plaintiff's Exhibit P-1, in which direction does that—does that face as you were looking? A. As I am looking at that now, it faces from west to east.

20 Q. Is that the direction you were looking, when you stopped for the red light? A. Yes, sir.

Q. On the left of that exhibit is an intersecting road? A. Yes, sir.

Q. What is the name of that road? A. That is Pompton-Newark Turnpike.

Q. Is that the road that you intended to turn into? A. Yes, sir.

10 Q. Now, can you indicate the place where you were standing, as you were waiting for the red light to turn to green? Can you indicate that? A. Yes, sir.

Q. Indicate that with "S-1", please, A. "S"—

Q. S-1 where you were standing. A. Do you want to make it a cross where I stood with the front wheels?

Q. Yes, and put the letter S-1 as you were standing for the red light to turn to green; just "X" will be enough. A. (Witness indicates as directed.)

30 Q. All right. Now, can you draw a line and show us approximately the course you pursued as you made the left turn after the light turned green, from X-1 to the point where the accident happened? A. (Witness indicates.)

Q. Will you mark the initials "S-2" at the point where the accident happened? A. (Witness indicates as directed.)

Peter A. Struyk—direct

Q. Now, as you were standing at the point marked S-1, you say you were looking ahead? A. Yes, sir.

Q. How far could you see ahead of you? A. I judge, about three hundred and a little bit more feet up the road.

Q. Could you see to the top of the hill? A. Yes, sir.

Q. Will you mark "X" at the point where you could see from the point where you were standing, at the point where you were standing at S-1? A. (Witness indicates.) What you want, right there. 10

Q. "X"; mark that S-3. A. (Witness indicates at directed.)

Q. How much west— The distance from S-1 to S-2 is about fifty feet, you say? A. Approximately.

Q. And the distance from S-1 to S-3 is about three hundred feet? A. Approximately. 20

Q. Now, I show you plaintiff's exhibit No. 3 and ask you to indicate on that exhibit with S initials—

The Court—What is that?

Mr. Rabinowitz—That is the same corner, your Honor, but facing the other direction.

The Court—Very well.

Mr. Rabinowitz—All right.

The Court—Is that correct, Mr. Struyk? 30

A. That is facing the reverse direction from what I just marked up.

The Court—All right.

Q. That is looking toward Newark or toward Caldwell? A. Towards Caldwell.

Peter A. Struyk—direct

Q. What? A. Towards Caldwell.

Q. That is the direction up, opposite to the direction that you were facing— A. Yes, sir.

Q. As you waited for the red light? A. Yes, sir.

Q. Now, indicate with "X" the point where you stood as you waited for the red light to turn green, and mark the initials "S-1", alongside of it. A. (Witness indicates as directed.)

10

Q. Will you draw a line indicating approximately the course you took, as you passed from S-1 to the scene, where the accident happened? A. (Witness indicates as directed.)

Q. Put the initials "S-2" at that point. A. (Witness indicates as directed.)

The Court—I guess this is a good place to stop; we will take a recess until tomorrow morning.

20

Evening recess.

Paterson, N. J., January 24, 1930
(Trial of the cause continued.)

PETER A. STRUYK, recalled.

Direct Examination (Continued) by Mr. Rabinowitz:

30

Q. Mr. Struyk, as you were standing at the intersection of Pompton Avenue and Bloomfield Avenue, waiting for the red light to turn green, how far back from the intersection were you standing? A. Approximately about four feet.

Peter A. Struyk—direct

Q. And how long did you wait there before the light turned green? A. About a minute.

Q. I show you three photographs of an automobile, purporting to be photographs of an automobile, and ask you if those are photographs of your car, that is, the car that was involved in this collision. A. It was so badly wrecked, I can't tell you.

Q. Do you recognize that as the car that was involved in this collision? A. From my license plates, and my numbers on them, yes, sir, that is my car. 10

Mr. Rabinowitz—I offer the photographs in evidence.

Mr. Coult—I might look at them a minute.

No objection.

(Photographs marked Exhibits P-4, P-5, and P-6.) 20

Q. We were speaking yesterday of charges of the Mountainside Hospital, and you stated that a bill in the amount of \$155 was rendered to you for services, rendered to your wife, Rachel Struyk, the other plaintiff in this suit. Were there any charges, imposed on you, for services rendered to you by the hospital aside from those charges that you spoke of yesterday? A. I don't remember. There was a bill against me for \$191, for me personally. 30

Mr. Coult—Oh, no.

Mr. Rabinowitz—I concede that that be stricken out.

Peter A. Struyk—direct

The Court—Objection sustained. Strike it out.

Q. Do you know whether or not such a charge was imposed?

Mr. Coult—It appears how he knew. He says he don't remember.

20

The Court—Yes, he doesn't know, I take it, if that is all he knows about it.

The Witness—That is all.

The Court—That is not admissible, he never got a bill.

Q. Did you ever get a bill? A. Personally, I did not, no, sir.

10

Q. Now, Mr. Struyk, after you looked up the hill, and saw that the road was clear, what did you do? A. I looked through my mirror to the rear to see if there was any cars to pass me, and I saw there wasn't any, and I stuck my head out and looked out the window and proceeded to cross.

Q. Speaking of the injuries, do you have—suffer any pain? A. Continuous.

Q. How do you walk? A. Limp, heavy.

Q. Is your leg as strong as it was, prior to the accident? A. No, sir.

80

Q. What effect does walking have upon your leg, if anything? A. It feels as though it is ready to give away at any minute.

Q. Have you tried to walk for any distance? A. Yes, I have.

Q. And what happens when you try to walk for any distance? A. Just like I say, it feels just

Peter A. Struyk—cross

like the knèe gives out. It does give out sometimes, and I have got to come to a dead stop and catch myself.

Q. Do you rest then? A. I must stand a few minutes.

Q. How far can you walk—before you have to come to a dead stop? A. About a block, about a city block, that is about the limit.

Mr. Rabinowitz—Cross examine.

10

Cross Examination by Mr. Coult:

Q. You say, Mr. Struyk, that you were going east on Bloomfield Avenue? A. Yes, sir.

Q. And at the time of the accident, you were not crossing Bloomfield Avenue in a northerly direction? A. No, sir.

Q. Had you been at the mushroom farm in St. Cloud? A. I don't know where that is.

20

Q. Well, had you been out—had you stopped in St. Cloud? A. No, sir.

Q. You hadn't stopped at all? A. No, sir.

Q. And as I understand it, you had no particular place that you were going to; you were just taking a ride? A. Yes, sir.

Q. Is that right? A. Yes.

Q. And you knew the cement road which leads from the point where this accident happened south towards Northfield Road, don't you, which is a continuation of the Pompton Pike? A. Yes.

30

Q. Were you on that road at any time in the course of your trip that day? A. On the extreme end.

Q. Well, as I understand it, you came from St.

Peter A. Struyk—cross

Cloud down that road to the Eagle Rock Road; is that right? A. Yes, sir.

Q. How did you get to St. Cloud? Did you come up the big hill at Mt. Pleasant Avenue? A. I can't recall.

By the Court:

10 Q. Had you been through the South Mountain Reservation, past the deer park? A. I can't recall, your Honor.

The Court—All right.

By Mr. Coult:

Q. Where did you start from that day? A. From my house.

Q. Where is that? A. 163 North Twelfth Street.

20 Q. In Paterson? A. Prospect Park.

Q. Can you remember what your course was? From there where did you go? A. Well, the whole course, I cannot tell you. That is, I don't remember, in other words.

80 Q. In general, where did you go first? What town? A. I went up Union Avenue, along the new road till I hit the new curve that comes into the main turnpike again, that goes—I didn't follow it, I shot off and took this concrete road and I came to an intersection where that and Bloomfield Avenue comes together again, and I went as far as Caldwell and shot off right, and went in through the country section there. Now, to recall just which roads I rode that afternoon, I cannot tell you, Brother.

Peter A. Struyk—cross

Q. You can't remember? A. I cannot. I didn't take such particular notice. It was just a pleasure ride.

Q. Did you go from Caldwell to St. Cloud? A. Out through that way, yes. I have done that more than once.

Q. You did it on this occasion, did you? A. Yes, sir.

Q. And then you started from St. Cloud on that same road in the direction of Paterson, didn't you? A. Yes, sir, till I struck— 10

Q. All right. Then you got to Eagle Rock Road? A. Yes.

Q. And you turned back again towards Caldwell? A. I turned left and went to Bloomfield Avenue.

Q. No, you turned left and went directly in—you went in the direction opposite to that in which you had come, didn't you? You went west? A. I went west, yes. 20

Q. So that when you got to this concrete road, which leads to Paterson, you went over that for a mile or two and then turned left and went west; is that right, on the Eagle Rock Road? A. Yes.

Q. How far did you keep on that road, do you know? A. I think I got into Bloomfield Avenue.

Q. You had to make another turn before you could do that, didn't you? A. The Eagle Rock Road that I am referring to comes out of the Eagle Rock right direct to Bloomfield Avenue. I don't know what road that is. I couldn't tell you what avenue it is. 30

Q. You don't remember what it was. Well, then, you got back on Bloomfield Avenue again and started east? A. East, yes, sir.

Peter A. Struyk—cross

Q. What day of the week was this, can you recall? A. It was Saturday afternoon.

Q. And the accident happened at what time?
A. About five o'clock.

Q. There was the usual amount of traffic in Bloomfield avenue at that time, wasn't there? A. Not heavy.

20 Q. And when you came to this light at the point where the accident occurred, it was red? A. Yes, sir.

Q. And can you tell how long a time it had been red before you got there? A. Well, not exactly, but when I came there it was red and I had to stop, which I did.

Q. Well, you observed the light before you got to it, didn't you? A. Yes, sir.

Q. And those lights are visible from a long distance back, aren't they? A. Yes, sir.

10 Q. And had it been red all the time you saw it? A. No, sir.

Q. What? A. No, sir.

Q. Did you see it turn from green to red? A. Yes, sir.

Q. And where were you when it did that? A. A little ways down the road.

Q. How far down the road? A. Oh, I should judge about half a block.

30 Q. While you traversed that half a block to the point where this light was located and while it was still red, did you see any traffic going across Bloomfield Avenue? A. I can't say.

Q. You don't recall that? A. I can't recall that, no, sir.

Q. And by the time you had traversed that half a block and gotten to the point where this accident happened, there were no cars ahead of you at all? A. No, sir.

Peter A. Struyk—cross

Q. And when you got there, there was not waiting traffic there to go east or west? A. No, sir.

Q. Although the light had changed when you were a half a block away and it stayed red all of that time; is that right? A. Yes, sir. Yes, sir.

Q. And then you stopped there, for a minute or two? A. One minute, about.

Q. One minute. You are talking now about a minute of sixty seconds length? A. Yes, sir. 10

Q. And during the whole of that time, there was no traffic which came up in either direction to wait to go across that intersection until the lights had turned green; is that right? A. Yes, sir.

Q. And, in fact, when the light turned green and you were ready to make this left-hand turn, nothing yet had appeared going west on Bloomfield Avenue at five o'clock on this Saturday afternoon; is that right? A. Let me have that question, Brother. 20

(The question was read by the reporter.)

A. That is right.

Q. And, in fact, when you started to make your left-hand turn you could see all the way to the top of the hill, commonly known as the Montclair hill, and there was then nothing in sight; is that correct? A. That is correct. 30

Q. You then started to make your left-hand turn; is that correct? A. After I looked.

Q. After you looked, yes. And at that time, when you started to make your turn, everything was clear to the east, as far as you could see? A. Yes, sir.

Peter A. Struyk—cross

Q. Now, at that time, there was a marker or a dummy policeman standing in the center of the Pompton Pike, just out of the line of Bloomfield Avenue; do you recall that? A. Yes, sir.

Q. I show you exhibit P-1 and direct your attention to this marker that I mean. A. Yes, sir.

Q. That was there at the time this accident happened? A. Yes, sir.

10 Q. Now, when you stopped, you were, as I understand it, four feet back of the point where this concrete road comes in on your right? A. Yes, sir.

Q. And the light which you were watching or which you had seen and which turned from red to green, was on the left-hand side of the street, wasn't it? A. One on the left and one on the right.

Q. And one on the right? A. Yes, sir.

20 Q. Now, where did you stop with reference to that light? A. I don't quite get that question.

Q. Well, had you reached that light yet when you stopped? A. Had I reached the road—

Q. Had you reached a point opposite the light when you were stopped or were you back of it? A. No, sir.

Q. No, sir. Well, which was it? Let me put it this way: You were where you could still see that light, weren't you? A. Yes.

30 Q. So that you were far enough back so you could watch it, weren't you? A. Yes.

Q. Well, now, how far back of it were you? How far ahead of you was the light when you stopped? A. The light I was watching?

Q. Yes. A. It was across the street on the opposite corner, and just how far, if you want to

Peter A. Struyk—cross

know the amount of feet, I couldn't tell you exactly.

Q. I understand you to say a moment ago that there was one, both on the right and on the left; was that correct? Was there one on the right-hand side? A. There was one here, and there was a light there, and the blinker is here in the center of the road.

Q. All right. Taking this light that was on your left, were you behind, were you to the west of that, or had you reached it when you stopped? Which? A. That light on my left, which I was watching? 10

Q. Yes. A. Was away over on the far corner from where I stood.

Q. Well, you say you were four feet back of the intersection; that you do remember? A. Yes, sir.

Q. Now, in making this turn you have indicated on this photograph P-1, a line in ink? A. Yes, sir. 20

Q. Have you taken into account in making that line the perspective of this photograph; that is, have you tried to put it as nearly as you could as it appears in that picture? A. I put it on there just about the same way that I drove.

Q. Now, having in mind that that blinker or the marker was in the center of Pompton Pike, and having in mind the fact that the center of Bloomfield Avenue would be in the center of these trolley tracks, did you go beyond the center of those two center lines before you started to turn left or did you cut across? A. About the center of my car went over that intersection, the middle of the road, what I should call— 30

Peter A. Struyk—cross

Q. I want you to be perfectly clear on this so that I am not confusing you at all. Taking the center line, the center line of Pompton Pike, right through the marker, and carrying it right across Bloomfield Avenue, and taking the center line of Bloomfield Avenue right between the trolley tracks, did you go to the right of the point where those two lines would intersect? A. I kept just about on the right of it.

20

Q. On the right of it? A. Yes.

Q. So that you made a turn which would bring you first out on Bloomfield Avenue up to the point where these two center lines would intersect, and then a left-hand turn into the Pompton Pike; that is right, isn't it? A. Yes, sir.

Q. Now, what kind of a car did you have? A. Chevrolet Sedan.

Q. That was in good condition? A. Yes, sir.

10

Q. Was it a six or a four? A. Four.

Q. And then there was nothing ahead of you to obstruct your passage across that street, was there? A. No, sir.

Q. Did your car have a good pick-up? A. Yes, sir, because I just had it overhauled.

Q. You threw it first into first speed and then into second to go around this corner? A. Yes, sir.

30

Q. And you say when you were in first speed you were going very slowly? A. Yes, sir.

Q. How fast, about? A. Approximately about three miles.

Q. That would be a little slower than an active man can walk? A. Yes, sir.

Q. How long did you keep going at the rate of three miles an hour? A. Till I struck, probably

Peter A. Struyk—cross

the center of the road, and then I shifted in second.

Q. So that you went at the rate of three miles an hour from the time when you started to make the turn, until you got out to the center of the intersection? A. Pretty near.

Q. And then you shifted into second? A. Yes, sir.

Q. And during the whole of that time you were going at the rate of three miles an hour? A. About. 10

Q. Then, when you shifted into second and you started to go across the second half of Bloomfield Avenue, how fast did you go? A. Then, I went a little bit faster. Then I was going between six and eight, I guess, at the time.

The Court—A little louder, please.

Q. You say you got very nearly across before the accident occurred? A. Yes, sir. 20

Q. But you shifted into second at the point where you started to go across the second tracks of the trolley tracks? A. About.

Q. You never knew what collided with you until after the accident happened? A. No, sir.

Q. You started a suit against the Boonton-Caldwell-New York Bus Company and Lakeland Stages, Incorporated, and Elwyn Jacques, on the 11th day of June, 1929, did you not? A. Yes, sir. 30

Q. And Mr. Rabinowitz was your attorney? A. Yes, sir.

Peter A. Struyk—cross

Mr. Coult—I suppose there is no objection to your signature?

Mr. Rabinowitz—Why, of course, that suit was discontinued, your Honor. I object to that.

The Court—Object to what?

Mr. Rabinowitz—I object to the use of any prior proceedings, or any documents in any other proceeding.

10

The Court—He has not offered them yet.

Mr. Coult—I will explain the purpose of it now. It is an admission in writing over the signature of the attorney. I am not offering it for any other purpose.

20

Q. Now, I show you here a Summons and Complaint against the Boonton-Caldwell and New York Bus Company and Lakeland Stages Corporation, and Elwyn Jacques. I call your attention to the fifth paragraph in which you say, "The plaintiffs, Peter A. Struyk,"—

Mr. Rabinowitz—I object, if your Honor please, to the reading of it.

The Court—If the facts in a previous suit by this witness are different from the facts that he is now testifying to, it is evidential.

30

Mr. Rabinowitz—If the witness will say that he has made a statement different than he makes here, on the witness stand, of course, that is admissible, but a suit which has been discontinued and is not part of the pleadings in the present case would seem to be wholly immaterial. The plead-

Peter A. Struyk—cross

ings, are not verified, they are not signed by the witness.

The Court—I think they are proper. I will allow it.

Mr. Rabinowitz—Exception, if the Court please.

Q. I call your attention to this paragraph: "Plaintiff, Peter A. Struyk, was on said day the owner of a certain automobile and was driving the same on and along said Pompton Avenue in a northerly direction approaching the intersection of Bloomfield Avenue, and had with him as a passenger in said car, the plaintiff Rachel Struyk, his wife." You were aware that you made that claim, I suppose, weren't you? 10

Mr. Rabinowitz—If your Honor please, he has not made that yet. I object to it. He has not said he did. He is showing him a paper. 20

The Court—He is asking him. He is asking him whether he is aware that he made that claim.

Mr. Rabinowitz—He has not said that he did.

The Court—He is asking him.

Mr. Rabinowitz—That would seem to assume he has made the claim. 30

The Court—Well, these suits—that is the suit—that is the claim the suit makes.

Mr. Rabinowitz—Not that he made, Sir.

The Court—He is asking him.

Mr. Coult—I will withdraw it and put it this way:

Peter A. Struyk—cross

Q. Are you aware that that claim was made in that suit in your behalf by your attorney?

Mr. Murner—Now, may we have the question completed? What claim?

By the Court:

Q. Do you understand the question? A. That question I don't get, your Honor.

The Court—Reframe it.

By Mr. Coult:

Q. Well, I will ask it this way: Do you know that you sued the Boonton-Caldwell and New York Bus Company and Lakeland Stages, a corporation, and Elwyn Jacques, on the 11th day of June, 1929? I believe you said you did know that. A. I knew it, yes, sir.

Q. All right. Do you know that in that suit the claim was made that you were driving your automobile along Pompton Avenue in a northerly direction approaching the intersection of Bloomfield Avenue? A. Never.

Q. You didn't know that at all? A. I didn't drive there.

The Court—No, the question is, do you know that that is what the papers in the suit said?

Mr. Murner—He said never.

A. I do not.

Peter A. Struyk—cross

Q. You didn't know anything about it? A. No, sir.

Q. Did you talk with your attorney before this suit was brought? A. No, sir—only once, and that I was in such agony that I left the proceedings to my son, my older son, which works—

Q. And you only saw the attorney once? When was that? A. When I laid in the hospital.

10

Mr. Coult—I would like to have this Summons and Complaint marked for identification.

The Court—Let it be marked.

(Paper marked D-1 for identification.)

Q. Now, do you know—withdraw that. You recall, of course, the beginning of this suit, don't you, against Griffin, the receiver of the Boonton-Caldwell Bus Company, that was started on the 16th day of July, 1929, by Isadore Rabinowitz, your attorney? A. Yes, sir.

20

Q. And that is the suit we are now trying, isn't it? A. Yes, sir.

Q. Had you seen Mr. Rabinowitz after this first suit was discontinued and before the start of the second one on the 16th day of July, 1929? A. Personally, not.

Q. You hadn't talked to him or seen him at all? A. Personally, not.

30

Q. Well, you know that the first suit was discontinued, and another one started for you, don't you? A. Yes, sir. Yes, sir.

Q. I call your attention to the fourth paragraph of the complaint filed—the original complaint filed in this case: "The plaintiff, Peter A. Struyk, was on said day"—no, that is not it.

Peter A. Struyk—cross

“Plaintiff, Peter A. Struyk, was on said day the owner of a certain automobile and was driving the same on and along Pompton Avenue in a northerly direction approaching the intersection of Bloomfield Avenue, and had with him as a passenger in said car, Rachel Struyk, his wife.” That is not true, is it?

10

Mr. Rabinowitz—I object to that, sir: He said he did not see counsel.

The Court—No, he is asking him whether the original complaint is true or not. That is proper.

Q. Is it true? A. Paragraph four?

20

Mr. Rabinowitz—If your Honor please, may I suggest at this time that the complaint has been amended?

The Court—Of course, it has been amended.

Mr. Rabinowitz—And the amendment has been consented to by the representative of the other side.

The Court—Of course, it has been amended. He is not asking him about that. He is asking him whether the original complaint is true or not.

30

Mr. Rabinowitz—If your Honor please, it is not true, because they consented to an amendment.

The Court—Are you trying to tell this witness what to say, Mr. Rabinowitz?

Mr. Rabinowitz—Not at all.

The Court—The question is a proper

Peter A. Struyk—cross

one. I will allow it. The question is whether the original complaint, as it was just read to him, was correct or not.

The Witness—That is not true.

The Court—That is the answer.

Q. All right.

Mr. Coult—I will ask your Honor to have this original complaint marked for identification, for the reason that it does not appear in the transcript. 10

(Paper marked D-2 for identification.)

Q. Do you know the Chief of Police of Verona? A. I know him now.

Q. You have seen him in connection with this case, several times, have you not? A. I saw him once when I was in the wheel chair. 20

Q. And you had a conversation with him about this accident, didn't you? A. When I was in the wheel chair, yes.

Q. Did you tell him how the accident happened? A. No, sir.

Q. Why, there was an investigation at that time, wasn't there? Weren't you aware of that?

A. Not when I was in the wheel chair.

Q. What did you think that the Chief wanted to know when he saw you? A. I couldn't tell you. 30

Q. Did you think he was just making a friendly call? A. I didn't know.

Q. You did have some conversation with him about the accident, didn't you? A. If I did, I don't know when.

Peter A. Struyk—cross

Q. Do you remember telling the Chief of Police how this accident happened and his preparing a statement according to your statements to him and you signing it? A. Yes.

Q. When was that? A. That was when I was in agony. I do remember that. I can recall that.

20 Q. How long was that after the accident, Mr. Struyk? A. That is a thing I can't tell you. I don't remember.

Q. You can't remember anything you said to him? A. I can't recall any of it, to tell you the truth.

Q. Didn't you tell the Chief of Police, Rowlan, of Verona, that you were driving your auto from St. Cloud over the cement road that leads across Bloomfield Avenue to Newark? A. No, sir.

10 Q. Now, let us have this straight. Is it that you don't remember, or do you deny that you made that statement? Which? A. I have a faint vision of it.

Q. You have a faint vision of having told that? A. That I was talking to him, but I don't know what I said.

Q. You can't remember what day it was? A. No, I cannot.

Q. Can you remember where it was? A. It was in the hospital.

30 Q. Have you a recollection at all as to whether or not you told him you were driving your auto from St. Cloud over the cement road that leads across Bloomfield Avenue to the Newark Pompton Turnpike? A. No, sir.

Q. Will you say that you did not tell him that? A. Yes.

Peter A. Struyk—cross

Q. Well, then, what did you tell him? A. I can't recall.

Q. So that although you can't recall what you did tell him, you know you did not tell him this?

A. I was in a fog.

Q. Well, then, you don't know whether you told him that or not, do you? A. Not exactly.

Q. Did you tell him that as you got to the intersection of this cement road and Bloomfield Avenue, the traffic lights changed from red to green, and that there was an opening and you started to cross Bloomfield Avenue? Did you tell him anything like that? A. Not to my recollection. 10

Q. Can you say you didn't tell him that? A. I can't say. In the agony I was in I might have talked to him and said something to him to get rid of him, that I was in a fog.

Q. Well, is that what you did do? Did you tell him just something in order to get rid of him? 20

A. Yes, I don't doubt I did, because I was in agony.

Q. You didn't have to talk to the Chief if you didn't want to, did you? A. No, but to get rid of him.

Q. You just did it to get rid of him? A. Yes.

Q. As far as you know you might have told him all these things? A. I wouldn't say I did not.

Q. Which, so far I have called to your attention? A. I wouldn't say I didn't say it, but I wouldn't say I did. 30

Q. Did you tell him you didn't know how far you had got and the next thing you knew you found yourself in the hospital? Do you remember telling him anything like that? A. I don't remember.

Peter A. Struyk—cross

Q. And do you recall that what you said was written down and that you signed your name to it? Do you remember that? A. I remember signing my name to it. I thought if I signed it, I am done and he will leave me.

Q. You can remember signing something? A. Just about, yes.

Q. You don't know what was in it? A. No, sir.

10 Q. So far as you know now, it might have been true or might have been false? A. Yes, sir.

Q. Did you look at the thing you signed at all? A. No, sir.

Q. Do you know where the paper went? A. No, sir.

Q. Did you know it was part of an investigation growing out of the death of one of the occupants of your car? A. No, sir.

20 Q. You can't remember when this conversation took place at all? A. No, sir.

Q. Do you know it was at the hospital? A. Yes, sir.

Q. You have no—You can't remember any of the substance of the conversation at all? A. No, sir.

Q. You can remember signing the paper, that there was a paper signed? A. Yes, I remember that I signed it to get rid of him.

30 Q. And you don't know how long it was after the accident? A. No, sir.

Q. Did you tell the Chief another thing? Didn't you tell him that if a car had not got in your way, you would have made it? Do you remember telling him that? A. I don't know of telling him that.

Mr. Coult—I think that is all.

Peter A. Struyk—redirect-recross

By the Court:

Q. You say that the statement may have been true and it may have been false; is that correct?

A. Yes, sir.

Q. Why could it have been false? A. I don't know, your Honor.

Q. There is no reason why you should tell him something that was not true, was there? A. I was in such agony most of the time, in a fog, and he stayed there and wanted it. 10

Q. You wouldn't lie to him because you were in agony, would you? A. Not if I knew it.

Q. All right. So, so far as you know, what you told him was true? You meant it to be true, did you not? A. Yes, sir.

The Court—All right. Is there anything further?

20

Redirect Examination by Mr. Rabinowitz:

Q. Mr. Struyk, did you read that statement before you signed it? A. No, sir.

Q. Do you know whether the man you were speaking to put down on that paper what you told him? A. He put it down if it is down.

Q. Do you know whether what you told him has been put down in that paper? A. No, I do not.

30

Mr. Rabinowitz—That is all.

Recross Examination by Mr. Coult:

Q. Well, now, if your mind was so befogged, how is it that you can remember that you didn't

Phillip Bott—direct

read it? A. If I had read it, I would know what was in it.

Q. Then, you don't know whether you read it or not, do you? A. I didn't read it.

Q. What? A. I didn't read it.

Q. How do you recall you didn't read it when your mind is so befogged as to other circumstances? A. I can't place where I read it. I don't know whether I read it or not. I can't place
 10 nothing of it.

Mr. Coult—That is all.

PHILLIP BOTT, sworn

Direct Examination by Mr. Rabinowitz:

Q. Mr. Bott, where do you live? A. 355
 20 Hamilton Avenue.

By the Court:

Q. Where? A. Paterson.

By Mr. Rabinowitz:

Q. Paterson? A. Yes.

Q. What is your occupation, please? A. Automobile mechanic.

Q. How long have you been an automobile
 30 mechanic? A. Oh, about fifteen or sixteen years.

By the Court:

Q. A little louder, Mr. Bott. A. About fifteen or sixteen years.

Phillip Bott—direct

The Court—Fifteen or sixteen years.

By Mr. Rabinowitz:

Q. Were you employed by the Boonton-Caldwell-New York Bus Company on May 25 or 27, 1929? A. Yes, sir.

Q. In what capacity? A. Mechanical superintendent.

Q. What were your duties as mechanical superintendent, please? A. To see that the buses were in mechanical condition, keep the time of the mechanics and keep the pay roll. 10

Q. Did you supervise the repair and maintenance of buses of the Boonton-Caldwell-New York Bus Company? A. Well, it was originally the Boonton-Caldwell-New York Bus Company, but I was working under the Lakeland Stages, Incorporated. It was their original buses of the Boonton-Caldwell-New York. 20

Q. Were you familiar with the bus that was involved in the collision with Mr. Struyk, on May 27, 1929? 20

The Court—Twenty-five.

Q. May 25? A. I can't recall the date, but I am familiar with the case.

Q. Did you know what number bus was involved in that collision? A. Bus No. 6. 30

Q. Did you know that bus, Mr. Bott? A. Yes, sir.

Q. What was the condition of that bus? A. Very poor condition.

Phillip Bott—direct

Mr. Coult—I move to have it stricken out.

The Court—Strike it out.

Q. Did you make an examination of the mechanism and of the parts of that bus? A. Yes, sir.

Q. How long before the accident? A. The very day of the accident.

20 Q. The day that the accident happened? A. Yes, sir.

Q. Before the accident or after? A. Before the accident.

Q. Now, from your examination at that time, can you state whether or not that bus was in proper working condition?

Mr. Coult—Just a moment.

10 A. It was not.

Mr. Coult—Just a moment. If the Court please, I think it is too general.

The Court—Too general. Strike it out.

Q. That is what I am trying to get at. Just what defects did you find in the bus, if any? A. Why, it only had one brake and it had poor hubs, poor rear hubs, axle shaft hubs.

30 Q. How about the sleeves? A. The sleeves were slightly bent, but not to be dangerous.

Q. How many brakes was the bus equipped with originally? A. Two.

Q. What are those brakes? A. Why, one was a brake worked on the rear wheels, and one was a hand brake working on the propeller shaft.

Phillip Bott—direct

Q. The hand brake is commonly referred to as the emergency brake? A. Yes.

Q. Was that on the right or the left of the driver? A. On the right.

Q. And then, you say, there was a foot brake? A. A foot brake, yes, sir.

Q. And is that brake propelled by the right or left foot of the driver? A. By the right foot.

Q. What was the trouble with that brake, if anything? A. Why, it had been repaired at night, under the night foreman's supervision, and he had no new parts to put in it, so he welded it fast, what we call the bracket inside, and by welding the bracket inside, he didn't get it central, and the brake drug, so he disconnected it altogether. 10

Q. The time that you saw that brake on the day of the accident, do you say that there was no foot brake at all? A. There was no foot brake at all.

Q. What would happen if the driver would apply his foot pressure to the foot brake pedal? A. It didn't mean anything, because it was disconnected. 20

Q. And the only brake that the bus had then was this so-called emergency brake? A. Yes, sir.

Q. Did you know the driver of this bus? A. Yes.

Q. What was his name, please? A. Mr. Jacques. 30

Q. Did you speak to him about this brake before he left on the trip? A. He knew about it before he started.

The Court—No, strike it out.

Phillip Bott—direct

By the Court:

Q. Did you speak to him about it? A. Yes, sir, I did.

By Mr. Rabinowitz:

Q. And what did you tell him? A. I warned him that he only had one brake.

10

Mr. Coult—I object to it.

The Court—Objection sustained.

Q. But you say he did know about it? A. He did know about, yes.

Q. Who were the officers of this corporation?

A. Well, that I couldn't say. The only man I knew of was Mr. Jake Konnor and Mr. N. Fish. I knew of a Mr. Cole. His name was on the pay checks, but I never met the gentleman.

20

Q. Was Mr. Fish an officer of the corporation? A. He was supposed to be president.

Q. Did you speak to him about this brake? A. I did, yes.

Mr. Coult—Well, now, just a moment.

The Court—Objection sustained.

30

Q. Well, what was the trouble with the sleeve that you spoke of? A. It was only slightly bent where it hit a curb or something.

Q. What function does the sleeve perform? A. It carries the rear wheels.

Q. When they are bent, what effect does it have on the bus? A. Just a little, throws the bus out of alignment, the rear end will travel over to the left, if the left sleeve is back, it will travel

Phillip Bott—cross

to the right a little bit. It will travel the opposite direction.

Q. So that the rear wheels, are not in the same line with the front wheels? A. Exactly.

Q. And a bus in that condition might pass an object with its front wheels and stay on the same line and still strike an object with its rear? A. Yes, sir.

Q. And how badly were these sleeves bent, Mr. Bott? A. Well, I don't know; I suppose probably on a level road bed it would be about a foot in the rear. 10

Q. So that the rear of this bus overhung the front of the bus about a foot? A. About a foot, yes.

Mr. Rabinowitz—Cross-examine.

Cross Examination by Mr. Coult:

Q. And the rear of the bus would normally be wider than the front, wouldn't it, anyhow? A. What is that? 20

Q. Your rear wheels are wider than your front wheels anyhow? A. Yes, on account of the dual tires.

Q. How much are they wider? A. Why, I should judge about three and a half to four inches.

Q. So that whether these sleeves were bent or not it would still be— A. No, it wouldn't. 30

Q. Just a minute. You don't know what I am going to ask you. I say, whether the sleeves were bent or not, it would still be true— A. No, it wouldn't.

Q. What wouldn't? A. Your whole body will go out of alignment, the whole bus.

Phillip Bott—cross

Q. You don't know what I am going to ask you. I say, whether the sleeves were bent or not it would still be true that the front of your bus might pass an object and the rear still hit it? A. Yes, that is right.

Q. That is so, isn't it? A. Yes.

Q. Now, you say that you made an examination of this on this day? A. I did, sir. Yes.

10 Q. Where? A. At Pine Brook, New Jersey Garage.

Q. At what time? A. Well, I can't recall what time.

Q. Do you know whether or not it was the morning or the afternoon or when? A. I believe it was in the afternoon.

Q. You can't tell at what time in the afternoon? A. I couldn't tell you what time, no.

20 Q. Which way was the bus going then? A. The bus wasn't going; it was standing out in front of the garage. It was ready to go east, to New York.

Q. It was ready to go east? A. Yes, as far as—

Q. On which trip? A. I couldn't tell you.

Q. Didn't you know anything about the time of the buses? A. I didn't.

30 Q. You know—withdraw that. How long did you work for the company? A. Oh, about, I guess, two months, at that time.

Q. Were you employed by the receiver? A. No, I was employed by Mr. Fish.

Q. How long had the bus company been in the hands of a receiver when this accident happened? A. I couldn't even tell you that.

Q. You don't remember? A. I do not.

Phillip Bott—cross

Q. It was in the hands of the receiver when the accident happened? A. That I couldn't say.

Q. You don't know? A. I don't know.

Q. And was it your duty to make inspections of all of these buses? A. Yes, sir.

Q. And report them, I suppose? A. Yes.

Q. Did you have any authority as to whether or not a bus should go out on the run? A. I thought I did when I took the position.

Q. Well, did you have? A. No, sir. 10

Q. Just what was your job? What was it called? A. I was called superintendent then.

Q. You were the superintendent of what? A. Of the garage.

Q. Of the garage? A. Yes, sir.

Q. So that your duty was to see that these buses were in repair? A. Yes.

Q. And did you inspect every bus as it came in there? A. Yes.

Q. And before it started out on each trip? 20
Yes.

Q. Didn't you have authority to take a bus off the line, if you wanted to? A. I did, but when somebody else sent it out over my head, what could I do?

Q. Was this bus sent out over your head? A. Yes.

Q. How many times was that done? A. Twice, to my knowledge. 30

Q. Well, how long did this condition exist? How long was this condition present? A. The condition had been present for about three weeks.

Q. And hadn't you done anything about it? A. I had reported it to the bosses, that is all I could do.

Phillip Bott—cross

Q. You say you thought you had authority?

A. I told them I would not be responsible for any condition of the bus if they sent it out.

Q. Just whom did you report that to? A. To Mr. Fish and Mr. Konnor, both.

Q. When did you cease working for the company or the receiver? A. Why, in June, in June. Sometime in June. I couldn't recall what date.

10 Q. Did you ever have any trouble with them?

A. Nothing, only that they were lax on pay. I figured sooner or later I was going to work for nothing, so I resigned, on a Saturday night.

Q. You had some trouble about getting your pay, didn't you? A. I didn't have no trouble. I just simply didn't get it.

Q. Have you got it yet? A. No.

20 The Court—That is trouble, isn't it?

Q. That doesn't create any feeling on your part? A. No, I figure they didn't have the money and I couldn't expect to get blood out of a stone.

Q. Well, you say you are not at all— A. No, I am not in sympathy with either party in this case. I am just—

30 Q. You haven't any feeling one way or the other? A. No, I have not. I am just simply here to tell the truth.

Q. You want to see justice and truth prevail? A. Absolutely.

Q. Were you subpoenaed in this case? A. Yes, sir.

Q. When? A. Yesterday.

Q. Where? A. In Paterson.

Phillip Bott—cross

Q. Do you know anybody connected with this case? A. I do not.

Q. Now, you say this bus had only one brake?
A. One brake, yes.

Q. That was the emergency? A. That was the emergency.

Q. Was that in good working order? A. That was a good brake.

Q. Did you adjust that brake? A. Why, I didn't adjust it, but I tested it. 10

Q. Did you test it on this particular day? A. Yes.

Q. It worked satisfactorily? A. Worked good.

Q. You say that is on the right-hand side of the chauffeur? A. Yes.

Q. And it is applied, I suppose, by pulling a lever? A. Pulling a lever back.

Q. Which will stop the bus quickest, the foot brake or the emergency? A. The emergency of that particular type bus. 20

Q. It will? A. Yes.

Q. So that in the event of an accident looming up, I suppose the emergency brake is the proper brake to use, isn't it? A. Why, yes, for a quick stop. The only thing is the weak point in the braking axle shafts, and if you should break an axle shaft and which that bus seemed to have a whole lot, you wouldn't have no brakes.

Q. I know, but if you applied the emergency and you did not break any axle shaft, you would get a better result than if you used the foot brake? 30

A. A better result with that brake, yes.

Mr. Coult—That is all.

Phillip Bott—redirect

Redirect Examination by Mr. Rabinowitz:

Q. You were asked about who you reported this defect to and you said Mr. Fish and Mr. Konner. Will you tell us what you reported to them, Mr. Bott? A. I reported—I told them I wanted to have new parts to put in for the brakes, otherwise with the mechanism welded up off center, there was no foot brake, it was disconnected, the mechanic ought not to have disconnected it, because it would not work.

10

Q. What did they say to you in answer to that?

Mr. Coult—Just a minute. I want to object to that.

The Court—Objection sustained.

Q. Did they provide you with the parts that you requested? A. No.

20

Q. Is that the reason that you could not repair the brake? A. Absolutely.

Mr. Coult—It is leading.

Mr. Rabinowitz—I will withdraw it.

The Court—It is withdrawn. Strike it out.

Q. Why didn't you repair the brake? A. I had no parts to repair it.

30

Mr. Rabinowitz—That is all.

John Klein—direct

JOHN KLEIN, sworn.

Direct Examination by Mr. Rabinowitz:

Q. Mr. Klein, where do you live? A. 497 E. 23rd street.

By the Court:

Q. Where? A. Paterson.

10

By Mr. Rabinowitz:

Q. What is your occupation? A. Automobile mechanic.

Q. How long have you been engaged in that occupation? A. About four or five years.

The Court—Keep your voice up.

Q. Were you connected with the Boonton- Caldwell Bus line on May 25, 1929? A. Yes, sir. 20

Q. In what capacity? A. Driver.

Q. Of what? A. Bus.

Q. Where did the buses go from? A. From Dover to New York.

Q. Did all their buses go from Dover to New York? A. Yes, sir.

Q. Were you acquainted with the bus that was involved in the collision with the Struyk car? A. No, sir. 30

Q. Did you know that bus at all? A. Yes, sir, I did.

Q. Did you ever drive that bus? A. Yes, sir.

Q. Did you see the bus on the day of the collision? A. Yes, sir.

Q. Where did you see it? A. Seventh Avenue, New York.

John Klein—direct

Q. Did you see the driver of the bus that day?

A. Yes, sir.

Q. Who was the driver? A. Mr. Jacques.

Q. What was he doing at Seventh Avenue, New York? A. Going to the tunnel, through to New Jersey.

Q. Was it at the terminal of Seventh Avenue, New York? A. No, it was leaving.

10 Q. Was it being operated then? A. Yes, sir.

Q. Do you know what the condition of the brakes on that bus were? A. Not on that day, no.

Q. Well, did you know about the brakes on any other day? A. Yes, sir.

Q. What were the conditions?

Mr. Coult—Now, I object to that.

The Court—Objection sustained.

20

Q. How long before the day of the accident were you last acquainted with the condition of the brakes, Mr. Klein? A. About a week and a half or two weeks.

Q. And did you see the bus after the accident?

A. Yes, sir, I did.

Q. Where did you see it? A. Mounted on the curb.

Q. Did you go to the scene of the accident? A. Yes, sir, I did.

80

Q. Who sent you there? A. I was the bus following, and I picked up his passengers.

Q. Oh, you were in the bus that followed this particular bus? A. Yes.

Q. Coming from New York to Caldwell? A. Yes.

John Klein—direct

Q. And you say you picked up the passengers of this bus? A. Yes.

Q. The bus that was involved in the collision? A. Yes, sir.

Q. Where did you pick up the passengers? A. At the corner of—let me see—Turnpike and Bloomfield Avenue.

Q. The Pompton Turnpike and Bloomfield Avenue? A. Yes.

Q. Where did you take those passengers? A. 10
I took them as far as Pine Brook, and then my relief man took the bus.

Q. Now, did you know the condition of the brakes a week and a half before the day of the accident? A. Yes.

Q. What was their condition?

Mr. Coult—I object to it.

The Court—Objection sustained. It is 20
too remote.

Q. From the time that you saw the bus a week and a half before the accident to the time of the accident, do you know whether or not any change had been made in that bus? A. I don't know.

Q. When you saw the bus being operated on Seventh Avenue, New York, can you tell us whether or not the rear and the front of the bus were in line or out of line? A. Out of line.

Q. What was out of line? A. The rear from 30
the front.

Q. To what extent? A. Oh, I should say between eight and ten inches.

Q. And did you observe the condition of the body of the bus when you saw it on Seventh Ave-

John Klein—direct

nue, New York? A. Well, with that being out of line, you could see the body wasn't straight.

Q. Now, when you got to the scene of the accident, did you see the positions of the respective cars that were involved in this accident? A. Not that position at the time it was struck, no.

Q. Did you see the position of the bus on the road when you got there? A. Yes.

10 Q. I show you exhibit P-2 and ask you whether or not you recognize that? A. I do.

Q. As the intersection of Pompton Turnpike and Bloomfield Avenue? A. Yes.

Q. Can you indicate on that photograph where you saw the bus?

Mr. Coult—Well, now, if the Court please—

20 A. The bus was right here (indicating).

Mr. Coult—May I find out when he got there?

The Court—Yes.

Mr. Coult—I know where that bus was, if counsel wants to tell me what he is going to ask so there won't be any dispute about it.

Mr. Rabinowitz—Only where it was, about.

30 The Court—When did he get there?

By Mr. Coult:

Q. What time did you get there? A. Around twenty minutes or a half hour after the accident.

John Klein—direct

Q. Well, what time did you get there? A. I couldn't tell you what time it was.

By the Court:

Q. Then, you can't tell us when the accident was. You didn't see it? A. No, I don't know.

The Court—All right, objection sustained.

10

By Mr. Rabinowitz:

Q. Now, when you got there you did see the bus, did you not? A. Yes, sir.

Q. And was it on the road or not?

Mr. Coult—I object to that.

The Court—Objection sustained.

Q. You say you were in the bus that succeeded this bus? A. Yes.

20

Q. And at what intervals do the buses leave New York?

Mr. Coult—Oh, I object to that as not being material.

The Court—I don't see the materiality of it.

Mr. Rabinowitz—I wanted to show the difference in time between one bus or the other.

30

The Court—Suppose it was only ten minutes after? Before you can have this witness testify where he saw the bus, it must appear that the bus had not been moved. You can't get it in by this witness in any way that I know of.

John Klein—direct

Mr. Coult—I still think we are not going to have any material dispute about it.

The Court—I don't believe so, either.

(Counsel conferred out of the hearing of the stenographer.)

Mr. Coult—I think you had better prove it by someone who knows.

Mr. Rabinowitz—All right.

10 Q. Did you see any marks in the road? A. Yes, sir, I did.

Q. From where to where? A. Just before the cross walk.

Q. How long were those marks? A. Around twelve or fifteen foot.

Q. Do you know whether or not they were tire marks? A. They were tire marks.

20 Q. Where did they lead to? A. I couldn't say just where they led to. Right about three foot on the other side of the crosswalk.

Q. Did you help to remove the bus that was damaged? A. I did.

Q. And did you drive the bus back to the garage? A. No, sir, I did not.

Q. Who did? A. I don't know who did.

Q. Did you notice the car that was—the other car that had been damaged in the accident? A. Did I what?

30 Q. Did you notice the other car that had been damaged in the accident? A. Yes, it had been moved.

Q. Where was it moved to?

Mr. Coult—Objected to.

The Court—What was the question?

John Klein—cross

Mr. Rabinowitz—I will withdraw the question.

The Court—All right.

Q. I show you exhibit P-4, 5 and 6, and ask you if they represent fairly the condition of the automobile when you saw it, as it lay there in the road? A. Yes, sir.

Mr. Rabinowitz—That is all.

10

The Court—Cross examine.

Cross Examination by Mr. Coult:

Q. You know the witness who was last on the stand before you? A. I do.

The Court—Keep your voice up.

Q. You came in the courtroom with him, didn't you? A. Sir? 20

Q. You came into Court with him, didn't you? A. Yes.

Q. Where did you come from? A. From downstairs.

Q. Mr. Murner's office? A. Yes.

Q. And how long had you been there? A. Oh, I should judge about half an hour.

Q. Now, how long have you known the witness who preceded you? A. Since I worked for the Lakeland. 30

Q. Did you and he go on the job about the same time? A. No, sir.

Q. Well, how long has that been? A. Since about last April.

John Klein—cross

Q. For whom do you work now? A. Hawthorne Motor Company.

Q. For whom does he work? A. Triangle Express.

Q. Are you related to the Struyks? A. No, sir.

Q. By marriage? A. No, sir.

Q. Do you know them? A. No, sir, I don't know the Struyks.

10 Q. You haven't known them at all? At any time? A. No, sir.

Q. Is your brother's wife related to them? A. Not to the Struyks, no, sir.

Q. What? A. Not to the Struyks.

Q. Why, do you qualify it by saying not to the Struks? A. Well, they are not related to the Struyks.

Q. Had your brother's wife any interest in this case? A. No, sir.

20 Q. Connected with anybody having any interest in it? A. They know him.

Q. Know who? A. Staper.

Q. Who? A. Staper.

Q. Do you know the Stapers? A. I do, the son.

Q. And Stapers have suits pending, arising out of this accident, haven't they? A. I don't know.

Q. Don't you know that? A. No, I do not.

30 Q. Well, you know that Mr. and Mrs. Staper were in this automobile at the time the accident occurred? A. I do.

Q. But you don't know that they have suits pending against this—

Rachel Struyk—direct

Mr. Murner—Objected to. What difference does it make?

The Court—Oh, I think he can answer that. He already said it, I think.

Q. You say you don't know that? A. No, sir, I do not.

Mr. Coult—I think that is all.

10

RACHEL STRUYK, sworn.

Direct Examination by Mr. Rabinowitz:

Q. Mrs. Struyk, you are one of the plaintiffs in this case? A. Yes, sir.

By the Court:

Q. A little louder, Mrs. Struyk, so we can all hear you. A. Yes, sir. 20

By Mr. Rabinowitz:

Q. And you were seated in the automobile involved in this collision? A. Yes.

Q. Where were you sitting? A. In the rear of my husband.

Q. Your husband was driving? A. Yes, sir.

Q. And where were you driving that day— riding? A. Through Caldwell. 30

Q. At the time of the collision, where were you bound for? A. Home.

Q. What time of day did this accident happen? A. About five o'clock.

Rachel Struyk—direct

Q. Where did it happen? A. On the corner of Pompton Turnpike and—

Q. Bloomfield Avenue? A. Bloomfield Avenue.

Q. Tell us how you got to Bloomfield Avenue.

A. From Eagle Rock Road, we came down Bloomfield Avenue.

10 Q. How long were you riding on Bloomfield Avenue before you got to Pompton Turnpike? A. Well, I should judge about a mile.

By the Court:

Q. What kind of a road was it that you were last on, before you came to Bloomfield Avenue? What kind of pavement did it have? A. Well, it was only a con—it was an ordinary road.

Q. It was not concrete, was it? A. No, sir.

20 By Mr. Rabinowitz:

Q. Then, when you got to Bloomfield Avenue, leaving that road, you turned which way, right or left? A. We turned left, when we came—when we turned off the Pompton Turnpike.

Q. When you got to Bloomfield Avenue, which way did you turn after you reached this Eagle Rock Road?

30 Mr. Coult—Well, if the Court please, she hasn't said anything about Eagle Rock Road.

The Court—No, strike it out. After she left Eagle Rock Road—

By the Court: ---

Q. After you left the road that you were on, when you came to Bloomfield Avenue, did you turn right or left on Bloomfield Avenue?

Rachel Struyk—direct

Mr. Rabinowitz—I am speaking now, sir—

The Court—No, I am asking her a question. I think it is intelligible.

Q. Is it, Mrs. Struyk? A. When we came from the Eagle Rock Road?

Q. You got on Bloomfield Avenue, didn't you?

A. Yes, sir.

Q. And you went a mile before the accident? 10

A. Yes, sir.

Q. Now, when you got on Bloomfield Avenue, from that road, you turned the corner into Bloomfield Avenue, didn't you? A. Yes, sir.

Q. Did you turn right or left? A. Right.

By Mr. Rabinowitz:

Q. Then, you approached Pompton Turnpike?

A. Yes, sir. 20

Q. Now, what did you do, or, rather, what did your husband do as he got to Pompton Turnpike?

A. We stopped for the red light.

Q. Then, what did he do? A. When the light turned green, we went across the road and were going to the Pompton Turnpike.

Q. Did anything happen to you? A. Yes, we were turned over.

By the Court: 30

Q. A little louder, please. A. We were turned over.

By Mr. Rabinowitz:

Q. By what? A. By a bus.

Q. Where did the bus come in contact with

Rachel Struyk—direct

your automobile—withdraw that. What part of your automobile and the bus came together? A. The front part.

Q. On what side? A. The right side.

Q. What part of the bus came into contact with your right side? A. That is something I couldn't tell you.

Q. Did you see the bus before the accident?
A. Yes, I did.

10 Q. Can you tell us, Mrs. Struyk, about how far away it was from you when you first saw it? A. About a hundred and fifty feet.

Q. And how close were you at that time to where the accident happened? A. About twenty-five feet.

Q. And were you going fast or slow? A. Slow.

Q. Was the bus going fast or slow? A. Fast.

20 Q. Now, as the result of this accident, what happened to you? A. I had a fracture of the arm and shoulder.

Q. Were you treated by any physician? A. Yes.

Q. Where? A. In the hospital, in Montclair, Mountainside.

Q. Were you laid up in bed at the hospital?
A. For five weeks.

30 Q. What treatment, what form of treatment was administered to you? A. I had a cast on my arm and I was hung in a frame.

Q. Can you show us how your arm was hung up in the frame? A. I can't get it up that way it was.

Q. Well, show us with your good arm. A. (The witness indicated.) I laid that way three weeks.

Rachel Struyk—direct

Q. Three weeks like that? A. Yes.

Q. Was there anything in your hand as you held it up? A. Yes, a spool, I held.

Q. And you say it was in a cast? A. Yes, sir.

Q. Why did they do that, do you know?

Mr. Coult—Oh, I object to that.

The Court—Objection sustained.

10

Q. What was the trouble with your arm?

The Court—Broken.

A. A fracture.

Q. What part of the arm? A. The top part.

Q. What arm? A. Right arm.

By the Court:

20

Q. What shoulder? A. Right shoulder.

By Mr. Rabinowitz:

Q. Then, after your arm was relieved, did you remain at the hospital? A. For two weeks.

Q. And then you were taken home? A. Yes, sir.

Q. Now, as you held your arm in that position, was that painful or not? A. Well, it was tiresome.

30

Q. Did you suffer any other injuries? A. I suffered pain after it came down, but not while it was up, so much.

Q. Did you have any other injury aside from the injury to your right arm and shoulder? A.

Rachel Struyk—direct

Not that I was treated for. My knee was skint and I was all bruised.

Q. Were those bruises and other injuries that you mentioned painful? A. Yes, sir.

Q. How long did they last? A. About three weeks.

Q. Mrs. Struyk, what was your occupation at the time of the accident? A. Housekeeper.

Q. For your husband? A. Yes, sir.

10 Q. Did you have your own household duties to perform? A. Yes, sir.

Q. And as a result of these injuries were you compelled to employ any assistance at home? A. Yes, sir.

Q. How often? A. Well, I had my daughter-in-law and son with me for two months.

Q. Your brother-in-law? A. My daughter-in-law and my son.

20 Q. For two months? A. Yes, sir.

Q. Taking care of your home? A. Yes, sir.

Q. You didn't pay them anything, did you? A. No, sir, not yet.

Q. And how long did they come to your home?

A. They were there all the time. They stayed with us.

Q. Do they live—I see. Did they do your household work? A. Yes.

30 Q. And after that did you employ any household work? A. Yes, I had a lady to do my work once a week for me.

Q. What did you pay her? A. Three dollars a day.

Rachel Struyk—direct

By the Court:

Q. Three dollars a day once a week? A. Yes.

Q. For how long? A. For about two months.

By Mr. Rabinowitz:

Q. Are you able to do your work in the house as you used to do it? A. The light part of it, not the heavy part.

Q. Who does the heavy part? A. My sister-in-law does it. 10

Q. Was there anything the matter with your arm—is there anything the matter with your arm today? A. I can't raise it.

Q. Show us how high you can raise it? A. (The witness complied.)

Q. Show us how high you can raise the other arm. (The witness complied.)

Q. Just show us the right arm again. A. Yes. 20

Q. Is that as high as you can go with it? A. That is as high as I can get it.

Q. Does it pain if you try to lift it higher? A. Yes, sir.

Q. What are you doing for it, if anything? A. I have it massaged twice a week.

Q. Do you pay for that? A. Yes.

Q. How much do you pay for that? A. A dollar a treatment.

Q. How much? A. A dollar a treatment. 30

Q. A dollar a treatment. And how many treatments have you taken? A. Well, up to now I have had fifty-one treatments.

Q. How many? A. Fifty-one.

Q. And you are still taking them? A. Yes, sir.

Rachel Struyk—direct

Q. Now, Mrs. Struyk, did you have any illness prior to the accident? A. My chest.

Q. What was the trouble with your chest? A. Well, it is weak; it is sore.

Q. You mean your lung? A. Yes.

Q. After the accident, did that condition become worse? A. Yes.

Q. In what respect? A. Well, it is not free. My breathing is not free.

10 Q. Your breathing isn't free? A. No, sir.

Q. Was it free before the accident? A. Yes, sir.

Q. Were you shocked as a result of this accident? A. Yes.

Mr. Coult—Oh, if the Court please, it is very leading.

The Court—Don't lead. Don't lead, please.

20

Q. Describe the effect, if any, upon your nervous system. A. Well, my back and my chest get bad.

By the Court:

Q. Back and chest? A. Yes.

By Mr. Rabinowitz:

30

Q. What is the matter with your back and chest? A. Well, I think it is from the shock.

Mr. Coult—I move to strike it out.

The Court—Strike it out.

Rachel Struyk—direct

By the Court:

Q. What is the trouble with it? What happened to it? A. My nerves are shot.

Q. What? A. My nerves are shot.

Q. No, no, what happened to your back? A. It pains me. I can't straighten up.

Q. All right.

By Mr. Rabinowitz:

10

Q. You say your nerves are affected?

Mr. Coult—Now, that is not fair.

Mr. Murner—She did say that.

The Court—I strike it out, though.

Mr. Murner—Not the last time.

The Court—Well, then, I will strike it out now, because she is not competent to say that. That is a conclusion.

20

Mr. Murner—She can tell her condition.

The Court—She can tell us how she feels, but she can't say, "My nerves are shot"; and if she does I will strike it out. You know that is a correct ruling. Don't waste time. Next question.

Q. How did you sleep before the accident, Mrs. Struyk? A. All right.

Q. Had your ability to sleep been affected in any way since this accident? A. Yes, I don't sleep as well.

30

Q. You don't sleep as well? A. I don't sleep as well.

Q. How about your appetite? A. Well, that is fairly.

Q. Fairly good?

Rachel Struyk—direct

By the Court:

Q. Anything else wrong with you, Mrs. Struyk, except what you have told us? A. No, sir.

Mr. Rabinowitz—Just one question I would like to have on the record as to how high her arm can be raised.

10 By Mr. Rabinowitz:

Q. Will you just raise your arm?

Mr. Rabinowitz—Indicating a point, your Honor, about opposite the shoulder.

Mr. Murner—Not up that high.

The Court—You mean her elbow. Her hand is above her elbow.

Mr. Rabinowitz—The elbow is about six inches below the shoulder.

20

The Court—I think that is about correct.

Q. You can raise your elbow to a point about six inches below your shoulder? A. Yes.

Mr. Rabinowitz—That will be stipulated.

The Court—No, he doesn't stipulate that; that is your statement.

Mr. Rabinowitz—Your Honor said it was correct.

30

Mr. Coult—Well, that is all right, too. I will stipulate it.

Mr. Rabinowitz—We will stipulate that she says that now she indicates a point about six inches below the shoulder.

The Court—Is that all?

Rachel Struyk—cross

Mr. Rabinowitz—That is all.

The Court—Cross examine.

Cross Examination by Mr. Coult:

Q. Now, Mrs. Struyk, you remember that you were interviewed by the Chief of Police of Verona in connection with this accident, don't you? A. I remember seeing him, yes.

Q. Well, he talked to you about it, didn't he? 10
A. He didn't talk to me about the accident.

Q. Mrs. Struyk, didn't you know, that because of the death of one of the occupants of your car, there was an investigation made by the police?

A. No, I didn't know anything about that.

Q. Don't you remember that you told the Chief of Police what you knew about this accident? A. No, sir.

Q. You did have a conversation with him about the accident? A. No, I had no conversation with him. 20

Q. Why, he wrote out a statement for you to sign, didn't he? A. No, I didn't sign anything.

Q. What? A. I didn't sign anything.

Q. Well, do you write? A. No, sir.

Q. You can't write, can you? A. No, sir.

Q. And you can't read? A. No, sir.

Q. So you neither read nor write? A. No.

Q. But don't you remember that he wrote out something on a paper and that you said that you 30
couldn't read it? A. No, sir.

Q. Well, the Chief did see you, didn't he? A. He seen me, yes.

Q. What did he talk about? The weather?

A. We don't talk about nothing much. He asked

Rachel Struyk—cross

me if I was hurt and I said yes. That is about all.

Q. He didn't make any investigation of you at all as to how this accident happened? A. No, sir.

Q. Did he ask you if you were in the automobile? A. Yes.

Q. Didn't he ask you where you went and what you did and how the thing happened? A. No, sir.

10 Q. Not one word about it at all? A. Not that I can remember.

Q. Is your memory good? A. Yes.

Q. You remember how this accident happened pretty well, don't you? A. Yes, sir.

Q. Can you remember any—withdraw that for a moment. You remember that the Chief did ask you if you were in the car? A. No, I can't say that I do remember that the Chief asked me that.

20 Q. Didn't you tell him where you were seated in the car? A. (No audible response.)

The Court—No.

Q. No? A. No, sir.

Q. Where were you seated in the car? A. In the rear seat.

Q. Do you remember having been in St. Cloud?

30 A. Yes, sir.

Q. Did you stop there? A. No, sir.

Q. Had you had your dinner? A. Yes, sir, at home.

Q. That was at noon time? A. Yes, sir.

Q. What time did you expect to have supper?
A. Around six o'clock.

Rachel Struyk—cross

Q. At your home? A. Yes, sir.

Q. In Paterson? A. At Prospect Park.

Q. How? A. In Prospect Park.

Q. Did you expect to get dinner or supper?

A. Yes.

Q. What time did you ordinarily eat at that time? A. Around six o'clock.

Q. It was five o'clock when the accident happened? A. Yes, sir.

Q. You had an hour to get home and get dinner? A. Yes, sir. 10

Q. Don't you remember the Chief asking you anything about the traffic lights? A. No, sir.

Q. Didn't you tell the Chief that you couldn't remember where this accident happened, or that you were going to cross a street? A. Not to my knowledge.

Q. And you didn't see the traffic light yourself and you didn't know what highway—

20

Mr. Murner—Just a moment.

Q. Withdraw it. That you were going to cross the street and you didn't see the traffic lights? A. We seen traffic lights.

Mr. Murner—I object to that, if the Court please. This witness has testified that she has told the police all that she said, and he has asked her four or five times, and that is all she knows. 30

The Court—Laying a foundation to contradict her a little later.

Mr. Murner—Maybe.

The Court—I think there isn't much doubt about it. That is the purpose. I

Rachel Struyk—cross

don't mean that he will contradict her, but he has a right to lay the foundation to contradict her if he can. She may answer.

Mr. Coult—She is a witness as well as a party.

Q. Didn't you tell him that? A. What was the question?

10 Q. Didn't you tell him you didn't know what streets you were on or where the accident happened, that is, by any street, but that you didn't see any traffic lights? Do you remember telling him that? A. No, I do not.

Q. So you remember when it was you saw that bus before the accident happened, and it was going fast? A. No, I can't say.

Q. You can't remember? A. That I said it, no.

20 Q. Well, now, will you say that you didn't tell him any of those things? A. Not to my knowledge. I don't know of saying it.

Q. So you remember when it was you saw him? A. Not just when, no. I know I was in the hospital, but just when it was I couldn't tell you.

By the Court:

30 Q. Do you know this name? A. No, sir.

By Mr. Coult:

Q. Well, now, you say, Mrs. Struyk, that you remember coming out on Bloomfield Avenue and that you drove on Bloomfield Avenue about a mile? A. Yes.

Rachel Struyk—cross

Q. Had you been on a concrete road at all? A. Yes, sir.

Q. You know where St. Cloud is, don't you?

A. Yes.

Q. Had you been there before? A. Yes.

Q. Hadn't you been at the mushroom farm?

A. No, I don't know anything about that.

Q. You know where the mushroom farm is?

A. No, sir.

Q. But you remember being on this concrete road? A. Yes. 10

Q. Had you been on that before? A. Yes.

Q. Had you been over this same route before?

A. Yes, sir.

Q. Is there any particular reason for going to St. Cloud? A. No, just for a ride.

Q. Do you know how far you went on this concrete road? A. No, I do not.

Q. Do you remember turning off of it at all? 20

A. Yes, sir.

Q. Do you know what road you turned off on?

A. Not the name of it.

Q. Where did it go? A. By the big electric plant, the electric plant.

Q. You went by the electric plant after you turned off of the concrete road? A. (No audible response.)

The Court—The answer is "yes". 30

A. Yes.

Q. All right. You don't know the name of that road then, do you? A. No, I don't.

Q. How far did you go down that road past the electric plant? A. Till we hit the Bloomfield Avenue.

Rachel Struyk—cross

Q. So that your idea is that there is some road that leads off the concrete road that leads into Bloomfield Avenue? A. Yes.

Q. You had to make another turn to get back to Bloomfield Avenue if you went that way? A. That I am not so sure of. I leave all that to my husband, the driving part of it. I don't pay so much attention just what.

10 Q. Now, at the time of the accident were you paying particular attention? A. No.

Q. I see. Now, you say that you remember that you had a red light when you came to the crossing? A. Yes, I remember that. I do watch lights.

Q. If you never paid particular attention and left all that to your husband, how is it that that stands out in your memory? A. Because I always look at the lights.

20 Q. This is one of the things you didn't leave to your husband? A. I leave them to him to a certain extent, but of course, I watch them. I am in the car.

Q. Let's see. Who was in the back seat with you? A. Miss Staper.

Q. Were you talking? A. No, sir.

Q. You hadn't been talking at all from the time you left St. Cloud? A. Oh, yes, we had talked.

30 Q. You had talked, sure? But you were not talking before the accident happened? A. No, sir, we weren't talking.

Q. Was there any particular reason to stop talking? A. Only watching traffic, that was all.

Q. There wasn't any traffic? A. No, we were in the track.

Rachel Struyk—cross

Q. There was no traffic there, was there? A. Not while the light was red, but when the light was different.

Q. Well, what traffic did you see that you were watching? A. I was watching our car to get across.

Q. Well, do you mean to say that when you were watching the traffic you meant you were watching your own car go across the street? A. Yes.

10

Q. Is that what you mean by traffic? A. Sure.

Q. Mrs. Struyk, isn't it a fact that Bloomfield Avenue at five o'clock on this Saturday was full of cars going both ways; isn't that true? A. That is something I can't say.

Q. What? A. I can't say. I know there were cars around, but which way they were, I can't say.

Q. Do you remember seeing this bus before the accident? A. Yes.

20

Q. Isn't it a fact that a trolley car went through there before the bus did? A. I can't say.

Q. Didn't you know? A. No.

Q. Well, is it possible that one might have gone through ahead of the bus?

Mr. Murner—I object to that.

Mr. Coult—She says she doesn't know.

Mr. Murner—Possible. Everything is possible.

30

Q. Well, would you say that there was no trolley car that went across the street, ahead of the bus? A. Yes.

Q. You say there wasn't any? A. No.

Q. Did you see any other vehicles of any kind except this bus— A. No, sir.

Rachel Struyk—cross

Q. There wasn't anything else in the range of your vision? A. No.

Q. Did anything cross in front of your car when you were standing there waiting for the light to turn? A. No, sir.

Q. So that that signal on Bloomfield Avenue turned from green to red and red to green again and nothing went across in front of you? A. No.

Q. On the Pompton Pike? A. No.

10 Q. Or on this concrete road? A. (No audible response.)

Q. Did you see the bus come from the top of the hill? A. Yes, sir.

Q. That is a long ways from where you stopped, isn't it? A. Quite a ways.

Q. How many feet would you say? A. I judge about one hundred and fifty.

Q. What? A. I judge about one hundred and fifty feet.

20 Q. Oh, was the bus just coming from the top of the hill when you first saw it? A. Coming down.

Q. Well, did you see it come over the top of the hill? A. I just seen it, when it was coming down. I didn't just see it when it came around. I seen it coming down the hill.

Q. And how far away from the place you were was it then? A. I judge about one hundred and fifty feet.

30 Q. You said that the top of the hill was about one hundred and fifty feet away; is that right?

A. Well, I am not so good on those stages.

Q. Well, let me ask you this: Were you looking ahead up the street all the time? A. No, I looked sideways.

Rachel Struyk—cross

Q. And you saw this light and you saw that it was red; is that right? A. When we came, yes.

Q. You saw it change to green? A. Yes.

Q. And you saw that there wasn't anything in front of you in the way of vehicles? A. No, sir.

Q. And you know that nothing crossed—A. No, sir.

Q. Didn't you see this bus when it first came up over the hill, at Montclair Hill? A. No, I did not, no, sir. 10

Q. You didn't see it then? A. No, sir.

Q. When you saw it, it was about how far away? A. Just on the slope of the hill, coming down.

Q. And how far from the place where the accident happened? A. About one hundred and fifty feet, I judge.

Q. How far away was your car from the place where the accident happened when you saw this? A. About half the road. 20

Q. That is, had you gotten over the center of Bloomfield Avenue yet? A. When we were hit?

Q. No, when you saw this bus. A. Well, then we were half-way off the road.

Q. Had you got to the center of the road yet? A. Yes.

Q. Had you gotten over the—had you gotten over the first line of trolley tracks when you saw this bus? A. Yes. 30

Q. Had you gotten over in that second line of trolley tracks when you saw this bus? A. Well, I can't say sure.

Q. Well, don't you know where your car was when you saw this bus one hundred and fifty feet

Rachel Struyk—cross

away? A. We were about in the center of the road.

Q. About the center of the road. Was it coming fast? A. Yes, sir.

Q. How fast would you say it was going? A. I don't know the rate of speed, but it came an awful speed.

Q. Was it going as fast as a railroad train? A. Yes, sir.

10 Q. Did you scream or call out or say anything? A. I gave a yell when he hit us.

Q. No, didn't you give a yell when you saw it coming like that, only one hundred and fifty feet away? A. No, I did not.

Q. You didn't say anything and it was coming very fast? A. Yes, sir.

20 Q. Well, now, you have driven in automobiles considerably, haven't you? A. I have never driven any, no, sir.

Q. No, sat in them. You have sat in them? A. I ride in them, yes.

Q. Do you ever watch the speedometer to see how fast you are going? A. No.

Q. Can you read figures? A. I generally sit in the back seat.

Q. I say, can you read figures? A. Yes, I can read figures.

30 Q. You never had any chance to determine how fast automobiles run, have you? A. No, sir.

Q. But you say this bus was going as fast as a railroad train? A. It was going an awful rate of speed.

Q. Is that the best estimate of the speed you can give us? A. Yes, sir.

Mr. Coult—I think that is all.

Jennie M. Stein—direct

JENNIE M. STEIN, sworn.

Direct Examination by Mr. Rabinowitz:

Q. Mrs. Stein, your residence, please? A. 329 Park Avenue East Orange.

Q. Were you an occupant of an automobile on May 25, 1929? A. Yes, sir.

Q. Was that automobile in the vicinity of Pompton Turnpike and Bloomfield Avenue at about five o'clock of that day? A. Yes. 10

Q. Where was it with reference to that intersection? A. I was driving east on Bloomfield Avenue.

Q. Coming from the Caldwell side, going towards Newark? A. Newark, yes, sir.

Q. And what did you do when you got to the intersection of Pompton Turnpike and Bloomfield Avenue? A. There was a red light and I stopped. 20

Q. Who was with you at the time? A. My husband and two children.

Q. Who was operating your automobile? A. I was.

Q. Is your husband here? A. No, he is not here. He is away.

Q. Where is he? A. He is in Chicago at present.

Q. And you were going east on Bloomfield Avenue, you say? A. Yes. 30

Q. Did you wait for the light to turn green? A. Yes.

Q. And did it turn green? A. Yes.

Q. When it turned green, what did you do? A. I started my car.

Jennie M. Stein—direct

Q. Did anything happen while you were at that intersection? A. This accident.

Q. Tell us what you saw. A. Well, when I heard the collision, that was the first I had seen anything of it, and I just saw the car turning over. That is all I did see.

Q. You saw the Chevrolet car turning over, you mean? A. An automobile. I couldn't say what it was.

10 Q. Now, did you see the bus? A. At the time of the collision.

Q. Was it the bus that came in contact with the automobile? A. I couldn't say that. They went just together.

Q. You saw them together? A. Uh-huh.

Q. And then, immediately after that the automobile turned over? A. Well, I just saw it as it was turning over.

20 Q. Now, after the accident didn't you notice the course that the bus took? A. It swung around, but I wasn't looking then. I looked straight ahead and was going on my way.

Q. It swung around, did it? A. I saw it just turning a bit.

Q. How far did it turn? A. That I couldn't say. I should say it turned toward me.

Q. Did they come toward you? A. It came across the street.

30 Q. Over to your side of the street? A. Yes.

Q. Did anything happen to your car? A. As the bus swerved around it crushed my front fender and bumper.

Q. And where were you standing at that time? A. Why, between—right in the center of that road that crosses.

Jennie M. Stein—direct

Q. Of that intersecting road? A. Yes.

Q. And then did it continue on after striking you? A. The bus did, yes.

Q. Where did it go? A. Up on the sidewalk in between the two posts.

Q. Was it the near sidewalk or the far sidewalk in the direction you were going? A. The far sidewalk.

By the Court:

10

Q. Toward Montclair? A. Yes.

By Mr. Rabinowitz:

Q. And how much of the bus went up on the sidewalk? A. I really can't say. It was up there just between those two posts. I don't—I didn't know just where the curb was.

Q. So that the bus after the accident turned left, came all the way across to you, which was on the other side of the street? A. Yes.

20

Q. And then continued to turn left until it jumped the curb and went on the sidewalk? A. Huh-huh.

Q. I show you a photograph exhibit P-2, and ask you if you recognize that as the intersection where you were parked or standing at the time the accident happened (handing exhibit to the witness). A. Which is east on this?

30

Mr. Rabinowitz—If I may suggest to the witness, this if facing toward St. Cloud; this is going west on Bloomfield Avenue.

A. Oh, well, then, I was over here (indicating).

Q. Can you mark that, please, where you were?

Jennie M. Stein—direct

The Court—I think she has got it twisted.

The Witness—There is a road-house on this side of the road, if that is it.

By the Court:

Q. A road-house? A. Some kind of a tea-room of some kind.

10 Q. I never saw it. A. Didn't you?

By Mr. Rabinowitz:

Q. Now, indicate with an X where you were standing when you were struck, please, by this bus? A. Oh, where I was standing?

Q. When you were struck by the bus.

Mr. Coult—She didn't say she was struck.

20

Q. Or where you were when you were struck by the bus.

The Court—She didn't say she was standing, but counsel said where you were standing.

Q. Indicate where you were when you were struck by the bus? A. I should judge about mid-way.

30

Q. All right. Now, we will mark that A-1.

Q. Where did the accident happen? Can you tell us? A. I couldn't tell you exactly, no.

Q. Well, approximately, to your best judg-

Jennie M. Stein—direct

ment? A. Well, it seemed as though it was—I judge about over here, (indicating).

Q. All right. Will you mark that A-2 and then we will draw a line to show the course that the bus took from the time of the accident until the time it stopped after jumping the curb. A. I can't tell you just where it went or what, because I didn't see it. I was looking straight ahead.

Q. Where did it go after it hit your automobile? A. It went—after it hit me? 10

Q. Yes. A. Well, it went in between these two posts,—where are the signal lights? Are the signal lights there? It went between the posts where the signal lights were and the—

The Court—Keep your voice up.

Q. This is the tea room, is it not? A. I don't know. I couldn't tell you. 20

Q. Well, can you tell us how far it went up on the sidewalk?

Mr. Coult—I think this is rather leading.

The Court—Yes.

Q. Did it go up on the sidewalk, Mrs. Stein?

A. In between the two posts.

Q. All right. You have indicated with an A.

A. The front of the bus. 30

Q. Mark that A-3. A. (The witness complied.)

Mr. Rabinowitz—Cross-examine.

Jennie M. Stein—cross

Cross-examination by Mr. Coult:

Q. I show you exhibit P-1—

Mr. Rabinowitz—Just one question.

By Mr. Rabinowitz:

Q. How long did you stay there after the accident? A. Well, I should judge probably half
10 an hour or more.

Q. Did the bus remain in the position where it went for that half hour? A. Yes, it was still there when I left.

By Mr. Coult:

Q. I show you exhibit P-1 and ask you if you can indicate the place where the bus finally wound up on that photograph. A. Yes, I think it is right
20 in between.

By the Court:

Q. A little louder, please, Mrs. Stein, I don't believe the jury can hear you. A. Yes. I can't see the signal lights on here. It is in between here, between where the signal lights were and the little sign.

By Mr. Coult:
30

Q. Now, you were coming east on Bloomfield Avenue? A. Yes.

Q. There was traffic on Bloomfield Avenue going both ways, wasn't there? A. Yes.

Q. Quite a lot of it? A. I wouldn't say a lot.
no.

Q. And you stopped before you got to this intersection? A. Yes.

Jennie M. Stein—cross

Q. How many cars were ahead of you? A. One or two.

Q. You can't recall whether there was more than that? A. No, that was all.

Q. One or two ahead of you. How long did you stand there? A. Well, I don't really know the exact number of minutes. It was just while the lights changed.

Q. You are familiar with that signal? A. 10
With the light system?

Q. Aren't you? A. Well, fairly.

Q. You know it is an automatic signal that works on a ? ? they call it, isn't it? A. I don't know.

Q. Aren't you familiar with it? A. No, I am not.

Q. I see. Well, while you were standing there, there was traffic going across in front of you, wasn't there? A. There may have been. I 20
wouldn't say.

Q. You can't recall whether there was or not? A. No.

Q. Now, you were at that time not an experienced driver, as I understand it? A. No, I was not.

Q. You were slow getting your car started, weren't you? A. Evidently, I guess I was. I just had been driving a month.

Q. Yes, and I think—weren't there two cars 30
ahead of you that started off before you got started? A. It may have been two. I am positive of one, and I am fairly sure of the other, but I wouldn't swear to that.

Q. Those cars got about a matter of fifty or sixty feet out before you started? A. Well, per-

Jennie M. Stein—cross

haps. I really didn't pay much attention to those other cars.

Q. And then you got going and you went right ahead? A. Yes.

Q. And the next thing you knew there was a noise of a collision over to your—A. Left.

Q. Left? A. Uh-huh.

Q. And then you saw it, you looked to your left and you saw the bus in contact with the car?

10 A. Yes.

Q. Then you looked ahead again and you were going right on; you didn't intend to stop? A. No.

Q. By the way, at what rate of speed would you say you were moving at that time? A. Very, very slowly. I was in first gear.

Q. Oh, I see. Then, this bus made a sort of a U turn, didn't it, and swung around back of you?

20 A. Yes.

Q. To the west? A. Yes.

Q. And then it turned back and sideswiped the front of your car as it came past you? A. Yes.

Q. And then went on into the curb? A. Yes.

Q. You don't know, of course, how far that bus went behind you before it started to swing back? A. No, I didn't see it going.

Q. The cars that were ahead of you went on, didn't they? A. Yes.

30 Q. That is, neither one of those turned either right or left; they went down the street? A. I wouldn't say that. I don't know.

Q. You don't know whether they did or not?

A. No, I do not.

Jennie M. Stein—cross

Q. You don't know what became of them? A. No.

Q. All you know is that they were about sixty feet ahead before you started? A. I wouldn't say the exact amount. I wouldn't say the exact amount. I know that they were ahead.

Q. Now, were you thinking in particular then about traffic coming in the opposite direction? A. No, I should say not.

Q. Do you know what there was in the way of traffic coming toward you? A. No, I do not. 10

Q. I suppose your attention was focused on the light and getting across the intersection? A. On my own car, yes.

Q. How long had you been driving a car at that time? A. Just a month.

Q. It was a new car too, wasn't it? A. Yes.

Q. I want to get your best idea of how far ahead of you the other car was when you started. A. Well, that I couldn't say. I don't know. 20

Q. Can you give us your best estimate?

Mr. Murner—If your Honor please, she said three or four times that she couldn't positively say.

Mr. Coult—She told me once she thought it was in the neighborhood of sixty feet.

Mr. Murner—She said she couldn't say for sure.

Mr. Coult—I don't want her to say for sure, but she is entitled to give her best estimate. 30

The Court—You may.

Q. Would sixty feet be the best estimate? A. I couldn't say at all, because I don't know.

Jennie M. Stein—redirect

Q. But you were slow getting started and the other cars got ahead of you? A. Yes.

Q. They got further ahead? A. Yes, they disappeared.

The Court—Disappeared.

Q. Did you say they disappeared? A. Yes, I didn't see anything of them.

10

Q. So that by the time you started those cars were out of your vision? A. Yes, I didn't see them at all.

By the Court:

Q. And you never saw the bus before the accident, did you? A. No.

The Court—All right.

20

By Mr. Coult:

Q. Did you notice the car that got hit before the accident? A. No.

Mr. Coult—That is all.

Redirect Examination by Mr. Rabinowitz:

Q. So you don't know whether or not one of the cars that was standing ahead of you was the Struyk car, or not, do you?

30

Mr. Coult—Oh, just a minute.

The Court—Objection sustained.

Q. Do you know that, Mrs. Stein?

Frank P. Eking—direct

Mr. Coult—I object to that.

The Court—Objection sustained.

Mr. Rabinowitz—On what ground?

Mr. Coult—Leading, practically putting in the witness's mouth—

Q. Mrs. Stein, do you know from what direction the Struyk car came? A. I didn't see their car until the collision.

10

Mr. Rabinowitz—That is all.

FRANK P. EKINGS, sworn.

Direct Examination by Mr. Rabinowitz:

Q. Doctor, you are a practicing physician of this city and state? A. I am.

Q. How long have you been engaged in your profession? A. Twenty-five years.

20

Q. At Paterson? A. Paterson.

Q. Do you know Rachel Struyk and Peter Struyk? A. Struyk?

Q. Yes. A. Yes, I know them as Struyk.

Q. How long have you known them, Doctor? A. Fifteen years, approximately.

Q. Were you the family physician? A. Still am.

Q. And did you examine Mr. and Mrs. Struyk recently, to determine the injuries they sustained? A. I did.

30

Q. What did your examination disclose with reference to Peter Struyk? A. I found that his—he had had a fracture of the right femur, that is the thigh bone; that the leg was shortened between an inch and a half and two inches; that he

Frank P. Ekings—direct

has a good deal of deformity at the site of the fracture; that he has great limitation of motion in the knee joint; and he has also limitation of motion in the hip joint.

Q. How do you account for limitation of motion in the knee joint, doctor? A. That is due to the fracture, due to the accident, the injury. Also due to the immobilization during the treatment.

10 Q. The immobilization during the treatment?

A. The immobilization during the treatment.

Q. By that you mean keeping the leg immobilized for a period of time? A. Yes, the length of time.

Q. What type of fracture or break was this?

A. Apparently—

By the Court:

20 Q. Only what you could tell from your examination, Doctor, unless there is no objection. A. Apparently it was a compound fracture.

By Mr. Rabinowitz:

Q. What is a compound fracture? A. A compound fracture is a fracture of the bones, where one end of the bone sticks through the skin and you have an open wound together with the fracture.

30 Q. The bone breaks and then sticks right through the tissues out to the outer surface of the body? A. It is.

Q. What bone did you say was fractured? A. The right femur.

Q. And where does the femur appear in the

Frank P. Ekins—direct

body? A. Extends from the hip to the knee, from the hip joint to the knee joint.

Q. How many bones are in that portion of the body? A. One bone in the thigh.

Q. Just the femur? A. Just the femur.

Q. Is that a large bone or a small bone? A. One of the largest in the body.

Q. Now, then, after the fracture, of course, there was two broken ends, were there, Doctor, or fragments? A. Yes. 10

Q. And were those fragments—did those fragments meet each other or were they overriding?

Mr. Coult—Just one moment, sir.

The Court—He didn't treat this man.

Mr. Rabinowitz—As to what he found.

Mr. Coult—I am wondering how he could know anything about it.

The Court—I have been wondering, too. 20

Q. I mean, at the time of your examination.

By the Court:

Q. You couldn't tell that, could you, Doctor, from your examination? A. I could tell something at the examination, yes.

By Mr. Rabinowitz:

Q. What can you tell us with reference to the position of the ends of the bone? A. The ends of the bone were surrounded by a large amount of callus, and that callus kept the two fragments, the two portions of the bone in opposition. I noticed that. I found that out by digital examina- 30

Frank P. Ekings—direct

tion and also by a study of the x-ray photographs.

Q. Can you tell us from your examination whether or not you found an overriding of the fragments?

Mr. Coult—I object to that, if the Court please, particularly if it is based upon the x-ray.

10

Mr. Rabinowitz—The answer is yes or no to that.

The Court—Objection sustained, unless he can tell from his own fingers.

Mr. Murner—He said he could.

Mr. Rabinowitz—That was my point.

The Court—If he can without the x-ray, he may answer it.

A. From my own fingers?

20

The Court—Yes.

The Witness—No.

Q. Did you measure his leg, Doctor? A. Yes.

Q. Can you tell whether there was an overriding from any observation that you made? A. From the length of the limb, compared with the well limb.

Q. How much was the limp?

30

The Court—He has told us that.

Q. An inch and a half to two inches, you say?

A. Yes.

Q. Would that indicate to you an overriding of the fragments? A. (No audible response.)

Frank P. Ekins—direct

By the Court:

Q. What is the answer? A. Yes.

By Mr. Rabinowitz:

Q. Doctor, did you have him walk to determine his ability to walk? A. Yes.

Q. What did you observe? A. He has a halt in his gait.

Q. What is that? A. He limps. 10

Q. And is the bone firm or not? A. I don't understand the question.

Q. What have you to say as to the strength of the bone? A. It is well united, the bone is well united, and has a great deal of callus to keep it in position, but the position is poor.

Q. Is the bone straight or crooked? A. The bone, as it has united, is crooked.

Q. Tell us what you have to say about the permanency of his condition, please. A. Well, as it is now, it is entirely permanent. 20

Q. Have you estimated the percentage of loss—Doctor, this injury was attended with pain, I presume? A. They usually are.

Q. Now, you examined his wife, Rachel Struyk, did you not? A. Yes, Mrs. Peter Struyk.

Q. And what did you find in her case? A. I find evidences of a fractured right arm, the humerus, that is the bone from the shoulder to the elbow. 30

Q. By a fracture, you mean a break, don't you? A. A break in the bone of the right arm, upper arm, near the upper end. That is what we call the surgical neck of the humerus.

Q. Anything else? A. Also a fracture of the

Frank P. Ekings—direct

tip of the bone in the right shoulder called the coronoid process.

Q. Of what bone? A. That is the scapula, the shoulder blade.

Q. And did you determine the function of the arm and her ability to use the shoulder? A. Yes; ability to use the shoulder.

10 Q. What did you find in that respect, Doctor?
A. I found that she can use her arm at the present time about two-thirds as well as she could be-
fore when I last seen her.

Q. How high can she raise her arm? A. She can raise it not quite to the level, the horizontal.

Q. And is that a permanent condition? A. That is permanent.

Q. Was that injury accompanied by pain? A. Undoubtedly.

20 Q. Now, did you know this lady before the accident? A. Yes.

Q. Did you treat her for anything? A. Yes.

Q. What condition? A. Bronchitis.

Q. And since the accident—A. Malaria she had at one time.

Q. Sir? A. She had malaria also at one time.

Q. Do you notice any change in the condition of her chest since the accident? A. She carries her right shoulder higher than the left.

30 Q. Has there been any change in her breathing? A. I wouldn't say any marked change.

Q. But this carrying of the shoulder higher, does that impair her ability to do her work or her health in any way? A. About thirty-three per-
cent, one-third, I estimate it.

Q. Doctor, can you tell us whether or not, in your opinion, assuming that this lady was involv-

Frank P. Ekings—direct

ed in an automobile accident, on May 25, 1929, sitting in the back seat of an automobile, and that automobile is struck by an automobile in Verona, the intersection of Pompton Turnpike and Bloomfield Avenue, as the result of which, the car in which she is riding turned over and immediately she suffers a fracture of the humerus of the right arm, together with a fracture of the tip of the coronoid process of the scapula, and is then confined in the Mountainside Hospital for a period of about five weeks, after her having had her arm elevated for about three weeks, and in a cast, and then is taken to her home and remains home for a period of time so that she is unable to do her housework for about two months and is since then unable to do her housework as fully as she used to do, and then develops this change in the line of the shoulder, whether or not that change in the shoulder is or is not a probable consequence of the injury she suffered on May 25, 1929, in your opinion? A. I would, yes.

Q. Now, Doctor, you say you relied on x-rays in some respects in making your diagnosis in these two cases? A. Yes.

Q. I show you two x-ray plates and ask you if those are the plates.

Mr. Coult—Now, of course, I—

Mr. Rabinowitz—I haven't offered them. I would like to mark them and they will be connected up later.

Mr. Coult—I understood the Doctor to say he did not use the x-rays in his diagnosis.

Frank P. Ekings—direct

Mr. Rabinowitz—He said he did and that is why you objected to the other question.

10

The Court—I understood he did not. I struck it out. I asked the question myself, whether he could tell from his fingers whether there was an overriding and he said he couldn't. Then, he finally said there was because of the shortening of the leg. Besides, this doctor is an examining doctor and not a treating doctor, and under the rule he can't even give you the history.

Mr. Rabinowitz—I am not asking for the history.

The Court—He is confined to what he found himself when he examined her.

Mr. Rabinowitz—Exactly, sir.

20

The Court—And he testified to everything without any x-rays.

By the Court:

Q. Is that right, doctor? A. I believe, your Honor, the question was asked me whether I could determine any overriding?

Q. Yes, without the x-rays, and you said you could. A. I said with my fingers I could not determine any overriding without the x-ray.

30

Q. But finally you concluded that there was an overriding because of the shortening of the leg? A. Yes.

Q. So that you have eliminated the x-ray? A. I saw the x-ray in examining, and examined it.

Q. Everything you have testified to, you could tell without the x-ray? A. I could.

Frank P. Eking—cross

The Court—All right.

Mr. Rabinowitz—That is all.

The Court—Cross-examine.

Cross-examination by Mr. Coult:

Q. Doctor, in the case of Mr. Struyk, you say there was a large formation of callus at the site of the fracture at the time of your examination?

A. Yes.

10

Q. And callus is a natural process, isn't it? A. That is the healing process in all fractures.

Q. I say, that is a natural process? A. Yes, yes.

Q. In other words, you would never get any union in any fracture if you didn't have callus, would you? A. Well, I wouldn't put it that way.

Q. I mean,—A. The callus is nature's way of healing broken bones.

Q. You would have to have Dr. Albee or somebody like that to make a carpenter job, wouldn't you, if you didn't have callus? A. Yes.

20

Q. And you can't get union in a natural way between two bones, without callus? A. Not without callus.

Q. And, as I understand, this callus is an exudate that lies around the site of the fracture and gradually becomes hard and eventually becomes bond? A. Yes.

Q. Is that correct? A. That is true.

30

Q. And it is also true, is it not, that after a proper amount of callus has formed and has calcified, so to speak, you have just as strong a bony union as you would have had if there had not been any fracture; is that true? A. Yes.

Frank P. Ekins—cross

Q. In fact, bones are stronger at the site of fracture than they are elsewhere, after nature gets through with her work? A. If that man's leg should break again, it would probably break in another place.

Q. So that there is nothing alarming or abnormal about the presence of callus that you found there, is there? A. No.

10 Q. That is a good thing to find, isn't it? A. No, you have to have callus.

Q. Yes, the callus itself doesn't constitute any disability here, does it? A. No, except from pressure.

Q. Well, in the ordinary course of things, if this man has a normal recovery from the time that you examined him, that callus will more or less disappear, will it not? A. Will you repeat that question?

20 Q. I will withdraw it. Maybe I was clumsy. At the time that you examined this callus it had not absorbed, had it? A. No.

Q. But you would expect it to in a normal recovery, wouldn't you? A. Not altogether.

Q. Well, so that there is a bony union instead of a callus union? A. That is true.

Q. Now, how long do you think that would take, Doctor, in his case? A. For it to absorb as fully as possible?

30 Q. Yes. A. Oh, a question of years.

Q. But it is a gradual practice, isn't it? A. Yes, yes, and slow.

Q. Now, you say he had a limitation of motion at both the knee and the hip joint? A. Yes.

Q. Would you attribute that to the treatment that he has had for this fracture? A. I would at-

Frank P. Ekings—cross

tribute it both to the accident and to the treatment.

Q. The treatment is the immobilization of the limb, and it is inclined to make the limb useless for a while, isn't it? A. Yes.

Q. Then, you have a stiffening of the joints, and you have an atrophy of the muscles, both, don't you? A. There was noise in the room at the time, I couldn't hear that question.

Q. So, in that treatment, you have both a stiffening of the joints and atrophy of the muscles? A. Exactly.

Q. In treating fractures, where you have a certain limitation of motion—A. Yes.

Q. (Continuing)—you would expect, in a normal recovery, that after the cast is removed, the limb would regain to a great extent its previous size and you would expect the difference of the joints, to disappear, wouldn't you? A. To some extent.

Q. Yes. A. Yes.

Q. Now, at the time you examined this man you would expect him to have stiffness in the joint, on account of the treatment of the fracture, wouldn't you? A. Not because of the immobilization of the joint necessarily.

Q. No? A. At this time, not because of the treatment.

Q. You say you examined him—when was it? A. Three or four days ago, four days ago.

Q. And the accident happened in May. Well, it is quite probable, is it not, that he has a temporary disability there which in the course of time will largely disappear. A. Hardly because of the treatment.

Frank P. Ekings—cross

10 Q. Well, regardless of what the cause of his disability is, that is something that is going to get better, isn't it? A. He is walking with—he is lame when he walks, and it would be much more probable if he had no halt in his walk, that that stiffness would all clear up, but that is one—that is a question that is hard to say, just how long, or how long it will take for stiffness to clear out of his knee joint, but the stiffness, in my judgment, is not due to a lack of mobility in the joints, not due to the treatment, not due to the mobilization entirely. It is due to the injury, to the injury that came, I suppose, at the time of the accident.

Q. What would you call the stiffness in that joint? What is it? Is it ankylosis? A. Yes.

Q. Ankylosis? A. Not a perfect ankylosis, what we call a partial ankylosis.

Q. Partial ankylosis? A. Yes.

20 Q. That is due to immobilization when you are having it treated? A. I can't tell in this case. Sometimes it does, and that, of course, is temporary when it is due to immobilization.

Q. Of course, the shortening of his limb is permanent, isn't it? A. Yes.

Q. In other words, that limb will never grow? A. Yes.

Q. But isn't that taken up largely by the tilting of the pelvis? A. Well, he has—I would like to answer your question in my own way, if I may.

Q. I am perfectly agreeable. A. He has a one-inch apparent shortening, and he has between an inch and a half to two inches actual shortening. That means the tilting of his pelvis has accommodated three-quarters of an inch, approximately, in the shortening of the leg

Frank P. Ekings—cross

Q. How did you measure that, doctor? A. With a tape measure.

Q. I mean, from where to where? A. Why, his actual shortening, I measured from the anterior exterior spine of the ilium to the tip of the internal maleolus on both legs, right and left.

Q. In other words, you took the point of the hip to the tip of the heel? A. Tip of the ankle.

Q. The tip of the ankle? A. Yes.

Q. And in that way you get the actual shortening? A. Yes.

10

Q. How did you get the apparent shortening? A. Why, from the navel to the maleolus and the ankle.

Q. I see. Does he wear a lift on his shoe? A. I didn't notice.

Q. Would that help him? A. I don't know. Does he wear it?

Q. Yes. A. I don't know.

20

Q. Well, if he did wear it that would help him, wouldn't it? A. Yes. Oh, yes.

Q. In other words, if he took up the difference in the actual shortening by a lift in the shoe, that would improve his limp? A. That is the way to treat it.

Q. Yes. The lady, Doctor, had a simple fracture of the humerus, didn't she? A. Yes. Apparently she had a clean, what I believe was diagnosed as an impacted fracture of the right humerus.

30

Q. And did that heal normally? A. Apparently it has healed pretty well.

Q. That hasn't produced any shortening of that limb? A. No.

Q. And you say at the time of your examination she couldn't lift her arm any higher than you illustrated?

Frank P. Ekings—cross

Q. What is the actual cause of that condition?

A. That is due to deformity, deformity in the shoulder joint, and that deformity is due undoubtedly to some accident.

Q. Do you think any part of that disability that she complains of will—is the result of—withdraw that. Do you think any part of the disability that she complains of is going to clear up in the future? A. Oh, I wouldn't say it is about now as it will be.

10

Q. Why do you say that, doctor? A. Because I believe that the loss of function in her shoulder joint is due to the break, to the fracture of the bone.

Q. Isn't it true, doctor, that when you have a fracture of this kind that there is a temporary stiffness that comes after the—A. Oh, yes.

Q. (Continuing)—union? A. Yes.

20

Q. In fact, the presence of callus in that joint itself would be enough to produce a disability, wouldn't? A. That is what I am referring to, that is due to the accident.

Q. Yes. Well, you say the break is due to the accident and the callus is due to the break and that the callus produces the lack of motion; isn't that right? A. Yes, the callus helps to produce lack of motion, but the deformity of the bone as it unites, it is not in the same position as before it was broken. They both tend to interfere with the function.

30

Q. I believe, doctor,—suppose, doctor, there wasn't any of that deformity at all and suppose there was the normal amount of callus, that you would expect to find in a fracture of that kind, she

Frank P. Ekins—cross

would have limitation of the shoulder, wouldn't she? A. I don't get that.

(The question was read by the reporter.)

Q. I will withdraw it.

The Court—He has withdrawn it.

Q. In other words, if there was no deformity and she had just a callus that you would expect to have from a fracture, she would have, at the time you examined her, some lack of motion due to the callus, wouldn't she? A. Yes.

Q. And as that dissolved her condition would improve, wouldn't it? A. Yes.

Mr. Coult—All right. I think that is all.

Mr. Rabinowitz—I have two doctors who have been called, your Honor. They ought to be here.

The Court—They don't seem to be here.

Mr. Rabinowitz—I would like to rest except for their testimony, if I may. I know Judge Coult has his doctor here. We probably could take up the time with him. Just one point. I would like to offer in evidence the copy of the record of the Court of Chancery permitting the institution of the suit against William L. Griffin, as receiver of the Boonton-Caldwell—New York Bus Company.

10

20

30

Motion for Non-suit

Mr. Coult—We don't deny that that was done.

The Court—Very well.

Mr. Rabinowitz—Then I won't offer it. That is all.

The Plaintiff rested.

10

MOTION FOR NON-SUIT

Mr. Coult—Now, if the Court please, I move in this case for a judgment of non-suit so far as the plaintiff, Peter Struyk, is concerned. I might as well concede now that my right to a judgment of non-suit so far as Mrs. Struyk is concerned would be dubious, so I won't press it. I may make a motion later with regard to her.

30

I am pressing the motion with regard to Peter Struyk upon the ground that there appears to be here on the whole case, evidence of contributory negligence, which raises an irresistible conclusion and creates a situation where the minds of reasonable men would not differ.

(Mr. Coult argued.)

The Court—I will hear you.

(Mr. Rabinowitz replied.)

20

The Court—In my opinion, the motion should be granted. The argument that you make has to do almost entirely with the negligence of the defendant. I am not concerned with that here. The testimony of the plaintiff is clear and unequivocal that

Motion for Non-suit

he never saw the bus. He drove directly into the path of the bus, and I think there is no question of fact for the jury at all. Under the circumstances, if this is not carelessness and contributory negligence, I never heard of it or saw it.

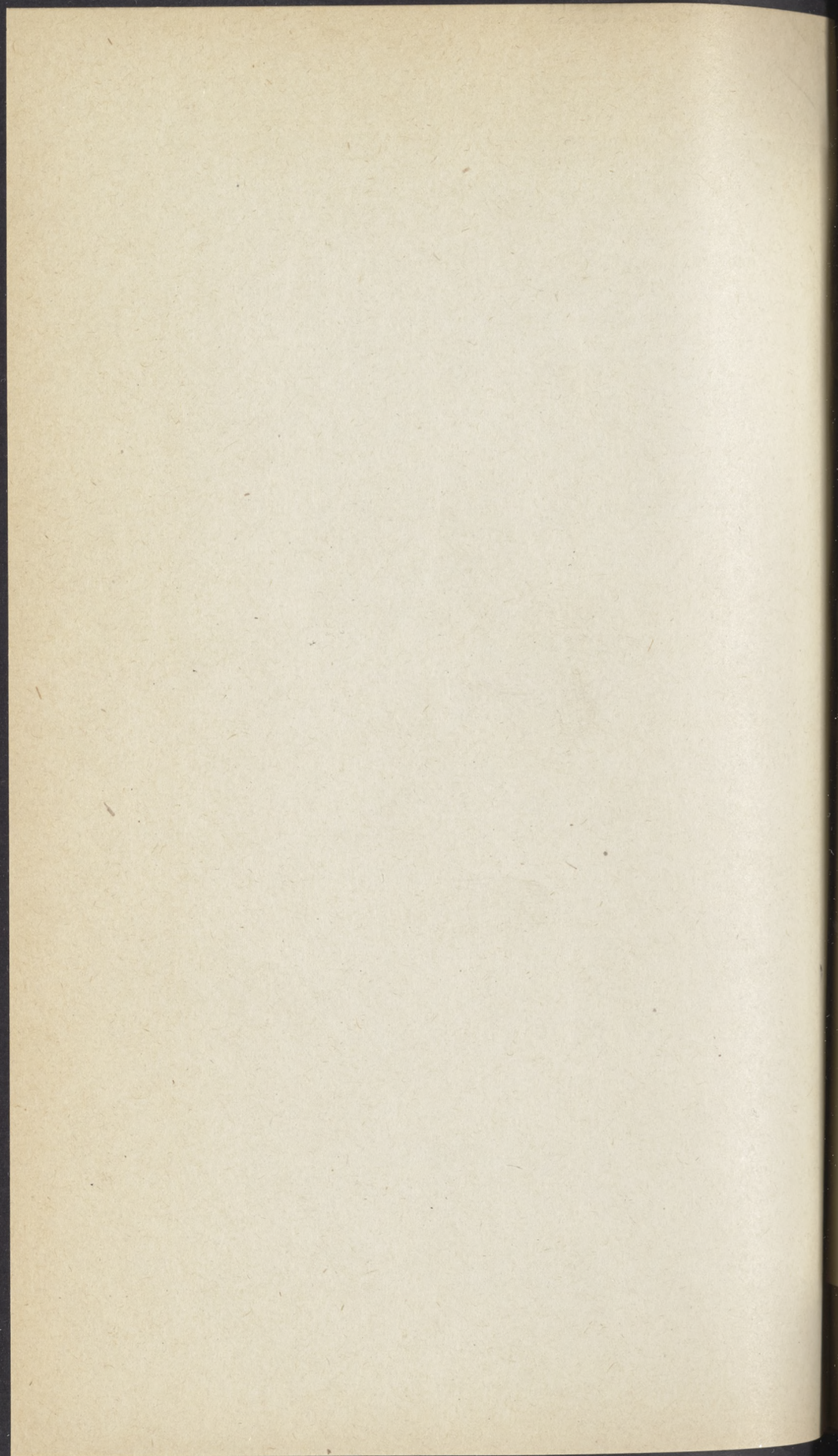
The motion is granted.

Mr. Coult—I have not moved as to the wife. I am going to reserve that for a motion to direct. 10

Mr. Rabinowitz—I ask an exception, if the Court please.

The Court—You may have it.

(Adjourned until Monday morning, January 27, 1930.)





STOP

52

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EXHIBIT-P-1



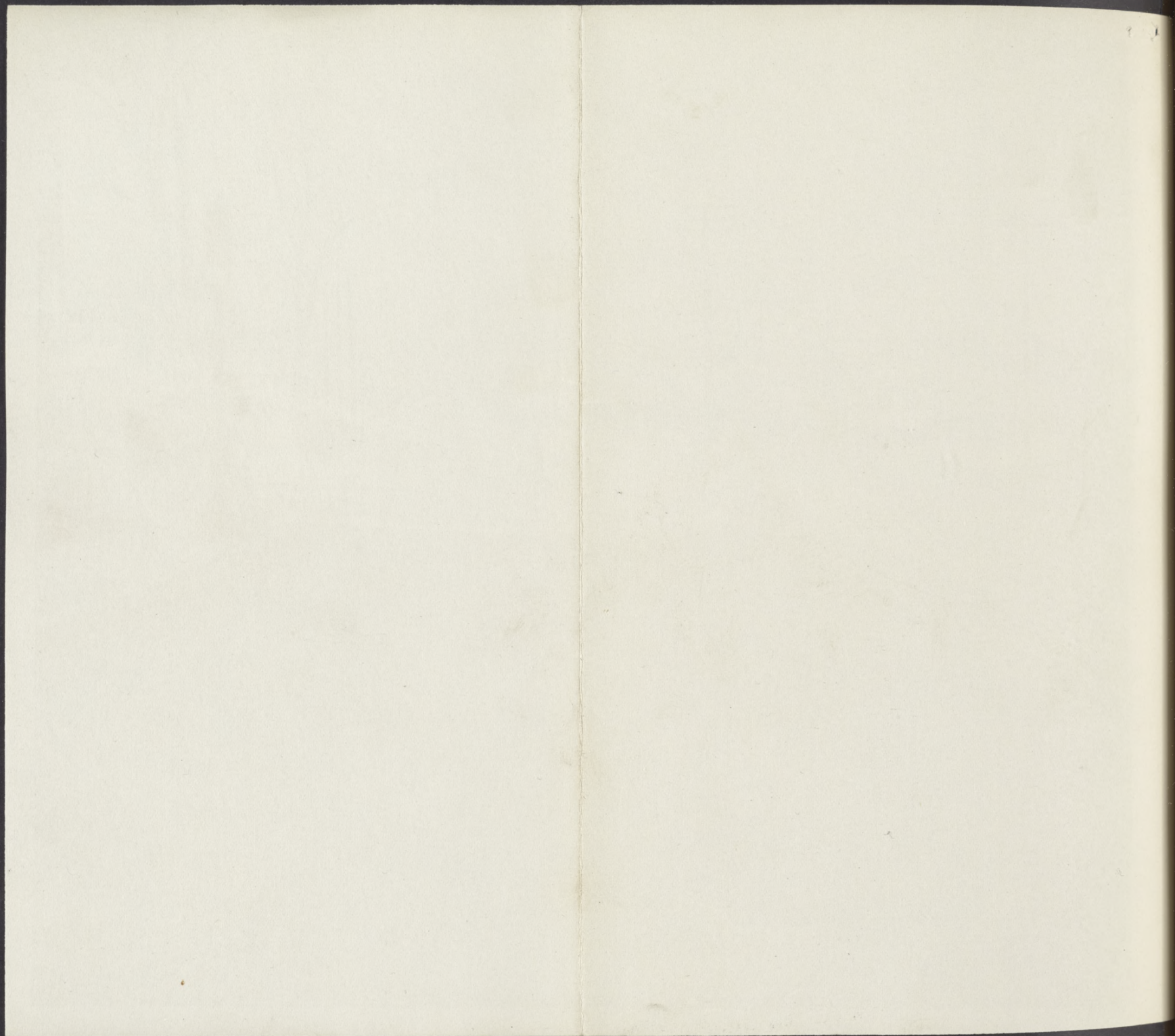


EXHIBIT - P-2





EXHIBIT-P-3



New Jersey Court of Errors and Appeals

Peter A. Struyk (and Rachel Struyk his wife), Plaintiff-Appellant, vs. William L. Griffin, Receiver of Boonton-Caldwell-New York Bus Company, a corporation, Defendant-Respondent.	}	Action at Law. On Appeal from Supreme Court.
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BRIEF FOR PLAINTIFF-APPELLANT, PETER A. STRUYK

This case was tried on January 23, 24 and 27, 1930, at the Passaic Circuit, before Judge Newton H. Porter, with a jury, and resulted in a judgment of non-suit against appellant, Peter A. Struyk (Case, pages 102 and 103 and page X) and a verdict for \$6,000 for his co-plaintiff, Rachel Struyk. It is before this Court on the appeal of Peter A. Struyk from the judgment of non-suit (Case, page XI.) The foundation for his appeal was duly laid, exception to the granting by the trial court of defendant's motion for non-suit having been regularly made and allowed (Case, page 103, lines 12-14.)

STATEMENT OF CASE

The suit grew out of a motor vehicle accident which occurred on May 25, 1929, at the junction of Bloomfield Avenue and Pompton Turnpike, in Verona, Essex County, New Jersey, between a Chevrolet Sedan owned and driven by appellant and

a passenger bus belonging to and operated by defendant and driven by his agent. The accident happened at about 5 o'clock on a Saturday afternoon, in clear weather and with dry roads.

Bloomfield Avenue runs east and west, and Pompton Turnpike north and south. Pompton Turnpike intersects Bloomfield Avenue on the north side of the latter road. A road entering Bloomfield Avenue on the south side may be regarded as a practical continuation of Pompton Turnpike, although bearing another name. Bloomfield Avenue runs on a long sloping grade from the east (where it reaches its crest on the "first Mountain" in Montclair,) to the west down past Pompton Turnpike into Verona.

At the intersection of these roads, signal lights regulate the flow of traffic, a red light halting all vehicles—both east and west bound—on Bloomfield Avenue, and a green light allowing the movement of all traffic—both east and west bound—thereon. Appellant, who was on a pleasure ride with his wife (the plaintiff, Rachel Struyk) and Mr. and Mrs. Stappert (misnamed "Studer," in the record) as his guests, had been driving east on Bloomfield Avenue and was making, at the time of the accident, a left hand turn into Pompton Turnpike. Defendant's passenger bus was driving west on Bloomfield Avenue, down the long slope. When the front wheels of appellant's automobile were entering, or about to enter, into Pompton Turnpike, defendant's bus struck the car on the right side and overthrew it, injuring appellant, and his wife, Rachel Struyk, and Mrs. Stappert, and causing the death of Mrs. Stappert's husband. The bus then swung to its left and swept in a sort of loop or semi-circle, completely across the intersection, striking another car on the

way, and came to a standstill with its front wheels on the south sidewalk of Bloomfield Avenue and facing practically in the same direction (east) from which it had come.

The ground, and only ground, of the motion for non-suit, was that appellant was guilty of contributory negligence, and the motion was granted upon that sole ground, the Court saying:

The testimony of the plaintiff is clear and unequivocal that he never saw the bus, that he drove directly into the path of the bus, and I think there is no question of fact for the jury at all. Under the circumstances, if this is not carelessness and contributory negligence, I never heard of it or saw it. The motion is granted. (Case, pages 102 and 103.)

The only question involved is the legal correctness of that action of the trial court; and that question is raised by the exception thereto duly taken and allowed, as hereinbefore pointed out, and by stating it as his ground of appeal in the notice of appeal.

GROUNDS OF APPEAL

The ground of appeal is embodied in the notice of appeal (Case, page XI) and runs:

The Trial Court directed a judgment of non-suit against the plaintiff, Peter A. Struyk, and in favor of the defendant when thereunto moved by counsel for the defendant, whereas said Court should have denied said motion and should have submitted to the jury for decision the questions involved in the issues between said Peter A. Struyk and the defendants.

ARGUMENT

The mere statement of the evidence shows that the trial court misconceived its purport and effect, and that it furnished him with no legal justification for withdrawing appellant's case from the consideration of the jury.

The evidence is that the accident happened on account of the headlong speed with which defendant's passenger bus came down the Bloomfield Avenue grade, with only **one** operating brake instead of **two** and with its rear wheels eight or ten inches out of alignment with its front wheels, and that appellant was free from fault or blame; that the collision between his automobile and defendant's bus occurred when the front wheels of appellant's car had reached the throat of Pompton Turnpike; and that **when appellant's car had made a left turn and arrived at the centre of the intersection of Bloomfield Avenue and Pompton Turnpike, . . . only twenty-five feet south of the point of contact between car and bus., the bus was then 150 feet away.** The evidence is clear that appellant made proper observation when, after pausing four feet west of the line of intersection of Bloomfield Avenue and the cross-road upon his right, the red light changed to green, and he set his automobile in motion; and that **he then looked up Bloomfield Avenue a distance of 300 feet or more, and there was no bus or other vehicle coming west within that space.** There was nothing, in fact, in this case which made it singular, and took it out of the ordinary rule requiring motor vehicle accidents at street intersections to be submitted to the jury.

Cases of collision on highways almost invariably involve questions of concurrent negligence on the part of both actors **and in these cases the questions are in a peculiar sense cases for a jury.** Riechman vs. Public Service Transportation Company, 6 Misc. (N.

J.), 636; I Thompson on Negligence, 1322.

Appellant, a carpenter journeyman by occupation and about fifty-two years of age (Case, page 10, lines 8-11), was riding with his guests for pleasure (Case, page 3, lines 23-26, page 19, lines 24-27 and page 21, lines 1-3); and in the course of the ride, drew near these intersecting roads. We quote from the record;

“Q. What did you do at the intersection of Pompton Turnpike, if anything? A. When I got to the Turnpike, the lights were red, against me, and I stopped at a dead stop, and I waited until they turned green, I looked up the road, there was—(here his answer was interrupted by an other question) (Case, page 4, last 2 lines, and page 5, lines 1-4).

Q. What was your intention after the light turned from red to green, to turn right or to turn left on Pompton Avenue? A. My intention was to turn left, and get on the Avenue, and go home (Case, page 5, lines 20-24.)

. . . . Q. Then as you started to make the turn, upon the green light appearing, what did you do? A. I looked forward to see if the road was clear, and which it was Q. What did you see, if anything? A. Nothing. . . Q. How far could you see ahead of you? A. Somewhere in the neighborhood of about 300 feet, or

probably a little more than that." Case, page 5, lines 27-35.)

Appellant then testified that the road (Bloomfield Avenue), up which he looked, is "a gradual grade" away from Newark and towards Verona, out of which latter town he had just come (Case, page 6, lines 1-19.) His examination proceeds:

"Q. When you saw nothing, what did you do? A. I stuck my hand out and proceeded; I got on the westbound track, swung to go across. Q. Did you get across? A. I got across pretty well, with the front wheels, pretty near to the curb line. Q. What curb line? A. The northerly curb line. Q. Is that the other curb line, on the other side of the street, from the side you were on? A. Yes, sir. Q. That is the far side curb line? A. Far side curb line. Q. Then what happened? A. I was hit. (Case, page 6, lines 10-24.) Q. What side of your car was struck? A. The right hand side." Case, page 7, lines 1-2.)

When asked the distance which he travelled between the time he started upon getting the green signal until struck, he answered "somewhere in the neighborhood of about fifty feet"; that he was in first gear when starting, and shifted to second when he "got to the centre of the street," and was in second when hit, moving "between six and eight miles an hour"; that when he first started while he remained in first gear, his speed was "not much more than about three—about two or three, probably", and that his maximum speed from the time he put his car in motion until it was overthrown, was "somewhere in the neighborhood of six or seven miles an

hour" (Case, page 7, lines 7-33).

After describing his injuries and expenses resulting from the accident, he was asked to indicate on photographs of the intersection, exhibits P-1 and P-3, the location of his car at successive intervals of time. On Exhibit P-1, he marks the place at which his car stood while stopped for the red light, with an X, and draws a line tracing his approximate course in making a left turn across the intersection, and indicated by "S-2" the point of collision (Case, page 14). On exhibit P-3, which shows the intersection with the camera, pointing in the reverse direction from that in which it pointed when exhibit P-1 was taken, he indicates with an X where his car was while awaiting the change of the light from red to green, and draws a line showing the approximate course of his car from that point to the point of the collision (Case, page 15-16).

"Q. Mr. Struyk, as you were standing at the intersection of Pompton Avenue and Bloomfield Avenue, waiting for the red light to turn green, how far back from the intersection were you standing? A. Approximately about four feet. Case, page 16, last 5 lines.) Q. Now, when you stopped, you were, as I understand it, four feet back of the point where this concrete road comes in on your right? A. Yes, sir." (Case, page 24, lines 9-12.)

"Q. And how long did you wait there before the light turned green? A. About a minute." (Case, page 17, lines 1-2.)

"Q. Now, Mr. Struyk, after you looked up the hill, and saw that the road was clear, what did you do? A. I looked through my

mirror to the rear to see if there was any cars to pass me, and I saw there wasn't any, and I stuck my head out and looked out the window and proceeded across." (Case, page 18, lines 7-14.)

The cross examination of appellant suggests that defendant's counsel entertained the theory that appellant had come out into the south side of Bloomfield Avenue (about opposite the entrance of Pompton Turnpike) from the road on his right (the road entering Bloomfield Avenue on the south and being in a sense the continuation of Pompton Turnpike), but the record discloses no legal evidence in support of it. Appellant stated on his direct examination that before arriving at the intersection in question, he had been travelling "for about a mile" in an easterly direction along Bloomfield Avenue (Case, page 4, lines 27-34). To this he adheres, under cross examination:

"Q. You say, Mr. Struyk, that you were going east on Bloomfield Avenue? A. Yes, sir. Q. And at the time of the accident, you were not crossing Bloomfield Avenue in a northerly direction? A. No, sir." (Case page 19, lines 13-17.)

He testified that he had started from his home in Prospect Park (near Paterson), and could not recall "just which roads I rode that afternoon" (Case, page 20), explaining that "I didn't take such particular notice. It was just a pleasure ride". He locates certain places which he passed, and says that he finally got into Bloomfield Avenue after leaving the Eagle Rock Road (Case, page 21).

Defendant's counsel asks him whether he did not start a suit on June 11, 1929, for this same cause of

action, against Boonton-Caldwell-New York Bus Company, Lakeland Stages, Inc., and Elwyn Jacqus, in which Mr. Rabinowitz was his attorney, and he assents (Case, page 27, last 8 lines). Counsel then asks appellant whether he was aware that the following claim was made in that former suit:

“Plaintiff, Peter A. Struyk, was on said day the owner of a certain automobile and was driving the same on and along said Pompton Avenue, in a northerly direction approaching the intersection of Bloomfield Avenue, and had with him as a passenger in said car, the plaintiff, Rachel Struyk, his wife” (Case page 29).

After some discussion between the court and counsel, the question was reformed:

“Q. Do you know that in that suit the claim was made that you were driving your automobile along Pompton Avenue in a northerly direction approaching the intersection of Bloomfield Avenue? A. No, sir. Q. You didn't know that at all? A. I didn't drive there. The Court—No, the question is, Do you know that that is what the papers in the suit say? A. I do not.” (Case, page 30.)

The witness said that he only saw the attorney once “before this suit was brought” (and it is not clear whether the reference was to the present or the former suit) and that the witness still then lay in the hospital and was in such pain that he left the matter to his son. The present suit was started on July 16, 1929, and the witness testified that he did not see his attorney between the time of the discontinuance of the former and institution of the

present suit (Case, page 31). The original complaint in the present suit contained a statement corresponding to that in the former suit, that is, that plaintiff was driving his car "on and along Pompton Avenue in a northerly direction, approaching the intersection of Bloomfield Avenue", which statement was subsequently amended. An argument followed when appellant was asked whether that statement in the original complaint in the present suit was true, at the end of which the court said:

"The Court—The question is a proper one. I will allow it. The question is, whether the original complaint, as it was just read to him, was correct or not. The Witness—That is not true." (Case, page 32 and page 33, lines 1-4.)

He was then cross-examined with reference to a supposed conversation with the Chief of Police of Verona, and says he did talk with him when still in a wheel chair (Case, page 33).

"Q. Have you a recollection at all as to whether or not you told him you were driving your auto from St. Cloud over the cement road that leads across Bloomfield Avenue to the Newark-Pompton Turnpike? A. No, sir. Q. Will you say that you did not tell him that? A. Yes." (Case, page 34, last 7 lines.)

Appellant said that the traffic in Bloomfield Avenue at the time of his arrival at the intersection was "not heavy"; that he was "about half a block" down the road when he observed that the signal light turned red (Case, page 22); and that he stopped for "one minute, about" just back of the intersection, until the light turned green (Case, page 23). His cross examination then went on:

“Q. And, in fact, when you started to make your lefthand turn you could see all the way to the top of the hill, commonly known as the Montclair hill, and there was nothing in sight; is that correct? A. That is correct. Q. You then started to make your left-hand turn; is that correct? A. After I looked. Q. After you looked, yes. And at that time, when you started to make your turn, everything was clear to the east, as far as you could see? A. Yes, sir.”

In his examination in chief, appellant stated that he covered “somewhere in the neighborhood of about fifty feet” from the time he started up to the time of the collision (Case, page 7, lines 7-12 and page 15, lines 9-17). On cross examination, he testified that in making his turn to the left, he “kept just about on the right of” the center line of Pompton Turnpike and Bloomfield Ave. (Case, page 25, last 9 lines and page 26, lines 1-17) and that there was nothing ahead of him to obstruct his passage across the road, and that his car had a good “pick up”, “because I had just had it overhauled” (Case, page 26, lines 21-25).

His wife, Rachel Struyk, testified:

“Q. How long were you riding on Bloomfield Avenue before you got to Pompton Turnpike? A. Well, I should judge, about a mile.”
(Case, page 58, lines 8-10.)

This corroborates the testimony of appellant, and refutes defendant’s theory that the Struyk car had entered Bloomfield Avenue on the south at a point nearly opposite the junction of Pompton Turnpike on the north. And again she says:

"Q. And you went a mile before the accident? A. Yes, sir. (Case, page 59, lines 8-11.) * * *

"Q. Then you approached Pompton Turnpike? A. Yes, sir. Q. Now, what did you do, or, rather, what did your husband do as he got to Pompton Turnpike? A. We stopped for the red light. Q. Then what did he do? A. When the light turned green, we went across the road going to the Pompton Turnpike. Q. Did anything happen to you? A. Yes, sir, we were turned over * * * Q. By what? A. By a bus." (Case, page 59, line 19 to bottom.)

The Struyk car was struck on the "right side". (Case, page 60, lines 1-4.) The vital part of her testimony follows:

"Q. Did you see the bus before the accident? A. Yes, I did. Q. Can you tell us, Mrs. Struyk, about how far away it was from you when you first saw it? A. About one hundred and fifty feet. Q. And how close were you at that time to where the accident happened? A. About twenty-five feet. Q. And were you going fast or slow? A. Slow. Q. Was the bus going fast or slow? A. Fast." (Case, page 60, lines 8-17.)"

Under cross examination, defendant's counsel inquired whether she had been interviewed by the Chief of Police of Verona about the accident, and she answered that she had been, but that he only asked her whether she was hurt and she replies "Yes". "That is about all". She added that he asked whether she had been in the car, but that he did not

inquire of her for the particulars of the accident (Case, pages 67-68).

“Q. Now, at the time of the accident, were you paying particular attention? A. No. Q. I see. Now, you say that you remember that you had a red light when you came to the crossing? A. Yes, I remember that. I do watch lights. Q. If you never paid particular attention and left all that to your husband, how is it that that stands out in your memory? A. Because, I always look at the lights. Q. This is one of the things you didn't leave to your husband? A. I leave them to him to a certain extent, but of course I watch them. I am in the car.” (Case, page 72, lines 9-23.)

She testified that she was sitting on the rear seat directly back of her husband (Case, page 57, lines 25-28), and that Mrs. Stappert was on the back seat with her, and that they had been talking together, but were not conversing just before the accident (Case, page 72, lines 23-32). She was watching traffic and stopped talking (Case, page 72, last four lines).

She said that there was no trolley car that went across the street ahead of the bus, and that she saw no vehicle save the bus. (Case, page 73, last 6 lines.)

She testified that when the car was crossing the intersection, she was looking, not ahead up the street, but sideways (Case, page 74, last 3 lines). This is apparently right, because when crossing toward Pompton Turnpike, she could not have looked east on Bloomfield Avenue without looking “sideways”. She testified that she did not notice the bus

when it first came up from the Montclair hill, but saw it when on the slope coming down.

“Q. How far from the place where the accident happened? A. About one hundred and fifty feet, I judge. Q. How far away was your car from the place where the accident happened when you saw this? A. About half the road. Q. That is, had you gotten over the center of Bloomfield Avenue yet? A. When we were hit? Q. No, when you saw this bus? A. Well, then we were half way across the road. Q. Had you got to the center of the road yet? A. Yes. Q. Had you gotten over the—had you gotten over the first line of trolley tracks when you saw this bus? A. Yes. Q. Had you gotten over in that second line of trolley tracks when you saw this bus? A. Well, I can't say sure. Q. Well, don't you know where your car was when you saw this bus one hundred and fifty feet away? A. We were about in the center of the road.” (Case, page 75, and page 76, first 2 lines.)

She testified that it was going fast,—“it came an awful speed” (Case, page 76, lines 5-10 and lines 30-35).

Phillip Bott, who has been an automobile mechanic for the past fifteen or sixteen years (Case, page 38), and was employed by defendant as mechanic superintendent at the time of the accident (Case, page 39) and for some two or three months before (Case, page 44, lines 28-30) and for a short while afterwards (Case, page 46, lines 6-10) said that he was familiar with the bus in question and gave its

number. His duties were "to see that the busses were in mechanical condition, keep the time of the mechanics and keep the pay roll" (Case, page 39, lines 9-12). *HE EXAMINED THE BUS* ~~44, lines 7-11~~). It was then bound east for a New York trip (Case, page 44, lines 18-25). The examination was made before the accident (Case, page 40, lines 19-22), and he found that the bus "only had one brake and it had poor hubs, poor rear hubs, axle shaft hubs" and the sleeves were slightly but not dangerously bent. The bus was originally equipped with two brakes, one on the rear wheels (foot brake), and the other a hand brake, working on the propel shaft (Case, page 40, last 15 lines). The hand brake was on the right hand side of the driver. The foot brake had been repaired under the night foreman's supervision, and having no new parts to put into it, he welded it fast, and failed to "get it cenral, and disconnected it altogether". The consequence was that at the time of the accident "there was no foot brake at all" and this was known to the driver of the bus (Case, page 41 and page 42, lines 14-15). Mr. Bott called the attention of other officers to the condition of the brake (Case, page 42, lines 20-24). The whole body was out of alignment about a foot (Case, page 43). On cross examination he said that the bus had been in the same condition for about three weeks, and that he had reported it to the bosses and could not do anything more (Case, page 45, last 7 lines), and warned them that he would not be responsible if they sent it out (Case, page 46, lines 1-5). He added that he could not repair the brake for want of parts (Case, page 48).

Jenny M. Stein was driving her automobile east on Bloomfield Avenue at this intersection at the time of the accident, and stopped west of the intersection to wait for the light to turn green, and then started her car (Case, page 77). The accident happened while she was crossing. She heard the collision between the Struyk car and the bus and "just saw the car turning over. That is all I did see" (Case, page 78, lines 1-6). The bus then swung around and turned toward the witness, and came across the street over to her (the south) side, and "as the bus swerved around, it crushed my front fender and bumper", and she was then in the center of the intersection (Case, page 78). After striking her, the bus continued "up on the side walk in between the two posts",—the far side walk.

Q. So that the bus after the accident turned left, came all the way across to you, which was on the other side of the street?

A. Yes. Q. And then continued to turn left until it jumped the curb and went on the side walk? A. Huh-huh. (Case, page 79.)

Under cross examination, she testified that there was one car ahead of her when she was at a standstill west of the intersection, awaiting the change in the lights, and that having been driving only a month, she was slow in getting started after the shifting of the light and that perhaps the car in front of her got a start of fifty or sixty feet before she started (Case, page 83 and 84, lines 1-2). Then she heard the noise of the collision to her left, and glancing in that direction, saw the bus in contact with the Struyk car (Case, page 84). The car or cars which were in front of her when she was standing west of the intersection, "disappeared"; she did

not notice them in her concentration on her own car, and could not tell whether the Struyk car stood ahead of her west of the intersection, or not (Case, page 86).

The testimony of Mrs. Struyk that the bus, when perceived by her, one hundred and fifty feet to her right up the Bloomfield Avenue slope, was moving with great velocity, is corroborated by the course it took and the distance it travelled after striking the right side of the Struyk car, as that course and that distance are described by Mrs. Stein.

The testimony of these last named two witnesses makes probable also the testimony of Mr. Struyk that when he started his car, there was no vehicle westbound on Bloomfield Avenue within the three hundred or more feet toward the east which his vision then commanded. He was then only four feet west of the intersection, and was in the act of driving across the road into Pompton Turnpike, with Bloomfield Avenue completely clear of traffic for one hundred yards or more on his right.

In these circumstances, the least favorable thing that can be said, is that the contention that he should have looked again east, up Bloomfield Avenue, raises a question for the jury and not for the court.

In *Purcell vs. Pollock*, VI N. J. Advance Reports 1431, 143 Atl. Rep. 426, the relevant facts were that plaintiff was driving along Broad Street, Bloomfield, New Jersey, approaching the intersection of Watchung Avenue. Plaintiff's car slowed down at the crossing and the driver looked down Watchung Avenue where he could see for a distance of some one hundred ninety-five feet as he approached northerly along Broad Street. He saw nothing of de-

fendant's car. He started to cross the street going about twelve miles an hour and after proceeding about sixty-five feet and reaching a point some six feet beyond the traffic beacon, defendant's car came rushing up and crashed into it. Quoting from the opinion we read:

"Defendant further contends that the court should hold as a matter of law that a man who is approaching a street intersection down which he can see one hundred ninety feet and sees nothing coming **and then going sixty-five feet without making an observation**, and is hit by a motor vehicle which he has not observed at all, is guilty of contributory negligence. We have, however, heretofore held that the mere failure to observe an automobile approaching an intersection but at a considerable distance away therefrom, does not render one who starts to cross the intersection in such a situation guilty of contributory negligence."

Thomas vs. Metzendorf, 101 N. J. Law, 346.

A driver of an automobile is not required to extend his observation beyond a point where vehicles moving at a lawful speed would threaten his safety.

Wilson vs. Kuhn, 3 (N. J.) Misc., 1032, at 1035.

The first point argued is that there was error in not granting the defendant a direction, because the plaintiff was guilty of contributory negligence as a matter of law. The

essential facts were that plaintiff looked as she approached the street intersection; that she traveled fifty feet to the point of the collision, while the defendant traveled one hundred fifty feet. From these facts the defendant argues that the plaintiff was negligent in not stopping her car, since had she looked, or looked effectively, she would have seen defendant's car approaching. This situation presented a question of fact for the court sitting as a jury.

Dobbin vs. Rattiner, 6 (N. J.) Misc., 117.

The question to be determined was whether the decedent was not justified, if he saw the defendant's car approaching, in presuming when it first came within his view that he would not attempt to pass in front of him, in violation of the statute; or if the decedent failed to observe defendant's car to determine whether it was not so far away that he was not negligent in failing to observe its approach. These matters are clearly for the determination of the jury and not for the court.

Carey vs. Deems, 101 N. J. Law, 419, at page 421.

The record contains nothing in support of the trial court's observation that appellant "rode directly into the path of the bus." On the contrary, the bus, which had not yet come in sight when appellant commenced his passage across the road, and which was still one hundred and fifty feet to his

right when his car had arrived at the central point of these cross roads, drove head on into the car, and struck it when its front wheels were within the lines of Pompton Turnpike.

The bus was equipped with one brake only, and with a brake operated by the hand of the driver, requiring him to loose his grip on the steering wheel with his right and more efficient hand. The Motor Vehicle Act (Chapter 110, P. L. 1928) requires two braking systems on every motor vehicle, and further requires that both shall be maintained in good working order.

To paraphrase, with every courtesy, the language of the trial court, we may say: Under the circumstances, if this is not a jury case, we never heard of it or saw it. We think the judgment of non-suit should be reversed.

Respectfully submitted,
ISADORE RABINOWITZ,
Attorney for and of Counsel
with Appellant.

~~Of Counsel.~~

New Jersey Court of Errors and Appeals

PETER A. STRUYK,

Plaintiff-Appellant,

vs.

WILLIAM L. GRIFFIN, Receiver
of Boonton - Caldwell - New
York Bus Company, a cor-
poration,

Defendant-Respondent.

*Action
at Law.*

*On Appeal
from
Supreme
Court.*

BRIEF FOR DEFENDANT-RESPONDENT.

This appeal questions the propriety of a judgment of non-suit granted at the conclusion of the plaintiff's case at a trial in the Passaic Circuit. The motion for non-suit (S. C., p. 102, l. 12) was put upon the ground that there was evidence in the whole case of contributory negligence leading to an irresistible conclusion as to which the minds of reasonable men would not differ. "The Statement of Case" contained in the brief of the plaintiff-appellant, is in the main a correct one, but we wish to call the Court's attention here to the fact that the intersection of Bloomfield avenue with the Pompton Turnpike is not a right angle intersection, nor does the street referred to in the State of Case as the concrete road, constitute a direct continuation of the Pompton Pike, but comes into Bloomfield avenue diagonally from the southwest at a point considerably to the west of the point where the Pompton Turnpike enters Bloomfield avenue from the north.

Unfortunately, the map which was used in evidence in the trial of this case was offered

by the defendant when the Court proceeded to try out the issue between Rachel Struyk and the defendant. It is, therefore, not a part of the record in this case and cannot be used, but the photographs, Exhibits 1, 2 and 3, attached to the State of Case exhibit the so-called intersection and the surroundings with sufficient accuracy to make clear just what occurred. These photographs, which were in evidence, were no doubt the controlling factor in impelling Judge Porter in coming to the conclusion that the conduct of the plaintiff, Peter Struyk, in the operation of his automobile was so clearly inexcusable that the jury, if reasonable men, could not be justified in absolving him from partial responsibility for his own injuries. Photograph 3 shows Bloomfield avenue in the direction from which the bus approached the point of accident. The Pompton Pike is on the right-hand side of the picture; the concrete road leading to St. Cloud is on the left. The photograph shows that the northwest corner of Bloomfield avenue and the Pompton Pike is about opposite the southeast corner of Bloomfield avenue and the concrete road.

Struyk had stopped his Chevrolet sedan, east-bound, at a point four feet west of the pole near the southwest corner, about four feet from the curb line on Bloomfield avenue. He stood there waiting for the traffic lights to turn from red to green. When they shifted, he started forward in the course indicated by the line appearing on the photograph, Exhibit P. 1. The collision occurred when he had completed the long swinging curve indicated on P. 1 and had reached a point almost completely across Bloomfield avenue where his front wheels were entering the Pompton Turnpike. He testified that before

starting he could see east on Bloomfield avenue about 300 feet; that he traveled in all after making his stop about 50 feet before being struck. Mrs. Struyk, who was in the car with him, testified that when they had got to the center of Bloomfield avenue, about 25 feet from the point of collision, she saw the approaching bus traveling west on Bloomfield avenue at an exceedingly high rate of speed about 150 feet away. Struyk did not see the bus at any time before the collision with it. He said he had driven his car at the rate of 3 miles an hour until arriving at the center of the intersection and had then increased his speed to from 6 to 8 miles an hour in making the balance of the crossing over Bloomfield avenue.

Upon these statements of speeds and distances, the plaintiff-appellant argues that the non-suit should not have been granted. The main difficulty with the plaintiff's contention, however, is that the estimates of distances given by the witnesses cannot possibly be made to agree with the incontestable physical facts as shown by the photographs.

The accident happened at 5:30 in the afternoon on Saturday, May 25, 1929. The weather was clear and the road was dry (S. C., p. 3, l. 20). Bloomfield avenue at this point is a wide thoroughfare. Plaintiff estimated the width at about 50 feet "probably a little bit more" (S. C., p. 5, l. 15).

The only witnesses called by the plaintiff in the trial below who throw any light on the happening of the accident, were the plaintiffs Peter Struyk and Rachel Struyk. Peter Struyk testified that before starting to make this left turn he looked forward to see if the road was clear

and that he saw nothing and that he could see ahead of him "Somewhere in neighborhood of about three hundred, or probably a little more than that" (S. C., p. 5, ll. 15-35); that after looking he put his hand out and proceeded and when he got on the westbound car tracks, swung to go across; he got pretty well across with the front wheels pretty near the northerly curb line when he was hit (S. C., p. 6, ll. 10-25); his car was struck on the right-hand side after traveling about fifty feet; he was going between six and eight miles an hour when struck; that he had been in first gear when he started, continued in first gear until he got to the center of the street; that while in first gear he was not going more than two or three miles an hour; that his maximum speed was in the neighborhood of six or seven miles an hour (S. C., p. 7, ll. 10-30). Later, on direct examination he was asked how far he would see ahead when he was standing and had looked ahead. He replied: "I judge about three hundred and a little bit more feet up the road" (S. C., p. 15, ll. 1-10). He said further he could see to the top of the hill.

On cross examination, Peter Struyk testified that he had seen the traffic light turn from green to red when he was about half a block west of the intersection; when he arrived at the intersection there were no cars ahead of him and no traffic waiting to go either east or west (S. C., p. 22, l. 20; p. 23, l. 2). He waited for a full minute for the lights to change and during the whole of that time there was no traffic in either direction waiting to cross the intersection; that in fact there was no traffic that had appeared going west on Bloomfield avenue; he could see all the way to the top of the hill, commonly called the "Montclair Hill" and there was noth-

ing in sight (S. C., p. 23, ll. 10-30). In making the left turn the witness kept to the right of the center of the intersection of Bloomfield avenue and Pompton Turnpike. In that regard the plaintiff testified as follows (S. C., p. 26, ll. 1-15):

Q I want you to be perfectly clear on this so that I am not confusing you at all. Taking the center line, the center line of Pompton Pike, right through the marker, and carrying it right across Bloomfield avenue, and taking the center line of Bloomfield avenue right between the trolley tracks, did you go to the right of the point where those two lines would intersect? A I kept just about on the right of it.

Q On the right of it? A Yes.

Q So that you made a turn which would bring you first out on Bloomfield avenue up to the point where these two center lines would intersect, and then a left-hand turn into the Pompton Pike; that is right, isn't it? A Yes, sir.

In describing the rate of speed at which he traveled while going east on Bloomfield avenue and before making the turn which he had described, he said (S. C., p. 26, l. 28; p. 27, l. 10):

Q And you say when you were in first speed you were going very slowly? A Yes, sir.

Q How fast, about? A Approximately about three miles.

Q That would be a little slower than an active man can walk? A Yes, sir.

Q How long did you keep going at the rate of three miles an hour? A Till I struck, probably the center of the road, and then I shifted in second.

Q So that you went at the rate of three miles an hour from the time when you started to make the turn, until you got out to the center of the intersection? A Pretty near.

Q And then you shifted into second? A Yes, sir.

When he made the left turn he shifted into second and went a little faster, between six and eight miles an hour (S. C., p. 27, l. 15). He never knew what collided with him until after the accident happened (S. C., p. 27, l. 25).

Rachel Struyk, on direct examination testified that her husband stopped for the red light and that when the light turned green, he went across the road and was going into the Pompton Turnpike when the car was turned over (S. C., p. 59, l. 20); the car was struck by a bus which hit it in the front part of the right side (S. C., p. 60, l. 5); she saw the bus about 150 feet away when she was about 25 feet from the point where the accident occurred (S. C., p. 60, ll. 10-15). On cross examination, she said she saw the bus coming down the slope of the hill about 150 feet away from the place where the accident happened and that plaintiff's car was then about half the road from the place where the collision occurred (S. C., p. 75, ll. 10-20); she said later they were in the center of the road (S. C., p. 75, l. 35; p. 76, l. 5); the bus "came an awful rate of speed" (S. C., p. 76, l. 5); it was going as fast as a railroad train (S. C., p. 76, ll. 4-10). Witness "gave a yell" when the bus hit the car but did not say anything when she saw it coming very fast (S. C., p. 76, ll. 12-18). She said further in referring to the speed of the bus: "It was going an awful rate of speed" (S. C., p. 76, l. 30).

A glance at the photographs will demonstrate that much of Peter Struyk's testimony was so widely at variance with the physical facts as to be impossible of belief. From the point marked S. 1 on Exhibit P. 1, where the plaintiff stopped to make his observation, there was a perfectly clear view to the top of the Montclair Hill.

The plaintiff said that he could and did look as far as the top of the hill and that there was no traffic of any description in sight. The distance, however, instead of being 300 feet as the plaintiff puts it, is nearly 800 to 900 feet. The telegraph poles on the right side of the photograph, P. 1, appear to be approximately 100 feet apart; there are seven of them between the southeasterly corner of Bloomfield avenue and the concrete road and the top of the Montclair Hill; the last two are nearly in line because of the slight curve to the right at the top of the hill, but the 7th is easily discernible about at the peak of the rise; between the point where the plaintiff was standing and the first telegraph pole is the entire width of the concrete road which, as we have pointed out comes in diagonally and therefore makes a break in the south side of Bloomfield avenue much greater than the width of the concrete road itself. This is demonstrated by Exhibit P. 2 which shows the length of span between the second telegraph pole on the southeast corner and one on the northeast corner.

If the plaintiff is to be believed, the bus must either have been within his vision when he made his observation or must have been out of sight over the top of that hill when he started. The plaintiff then proceeded forward on the right-hand side of Bloomfield avenue going in a direction almost precisely opposite to that of the approaching bus. He had to traverse the distance representing the full width of the concrete road intersection, plus half the width of the Pompton Turnpike before starting across Bloomfield avenue. This is demonstrated not only by his testimony in which he clearly said he went to the right of the intersection of the two highways, but also

by the mark on Exhibit P. 1, placed where made by the plaintiff himself. Taking again, the span of wires across the concrete road as shown in P. 1 and P. 3 and the width of the west half of the Pompton Pike as exhibited in P. 2, it is obvious that the Chevrolet car must have proceeded more than 100 feet on Bloomfield avenue in a direction opposite to the bus at the rate of three miles an hour, or as the plaintiff conceded, slower than an active man can walk (S. C., p. 26, l. 33) before going into the westbound half of Bloomfield avenue at all. During the whole of this time the driver had a clear view of all of Bloomfield avenue between himself and the top of the Montclair Hill, yet he never saw the approaching bus. After arriving at the center of the intersection, the plaintiff shifted into second gear and still proceeded at a rate of speed which was about twice as fast as a man would walk across that portion of Bloomfield avenue where westbound traffic might be anticipated, without making any observation to see whether or not he was driving into the face of danger. This is precisely the point where Mrs. Struyk says she saw this bus coming down a steep grade, traveling at an "awful rate of speed." The plaintiff, however, without changing the rate at which he was traveling and having one-half of Bloomfield avenue, which it is conceded is at least 25 feet, plus the length of his car, to traverse before being completely out of danger, drove into the path of the bus and the collision ensued.

Judge Porter very properly took the view that a user of the highway with nothing to distract his attention, with no obstruction to a clear view, who travels the distance covered by this plaintiff in an automobile at a rate of speed which was

little more than a crawl, directly into the face of and then across the path of another vehicle, which was obviously being operated either in ignorance of his presence or in violation of his rights, must necessarily have contributed to his own injuries as the result of his failure to use his powers of observation.

It is true, as has frequently been held, that the failure to look is not in all cases necessarily negligence. There is no case which holds that such failure may not be negligence *per se*. Each case depends upon its own circumstances, and if it appears, as it does here, that the failure to make an effective observation must necessarily have been one of the contributing causes to the injuries complained of, the Court is entirely justified in withdrawing the case from the jury.

In *Brigden v. Pirozzi*, 97 N. J. L. 535; 117 Atl. 602, Mr. Justice Katzenbach speaking for the Court of Errors and Appeals, said:

“There is perhaps no principle of law better settled than that if it clearly appears that the plaintiff’s conduct did contribute to the accident, then the court should exercise control of the case and grant a non-suit or direct a verdict for the defendant, but if the case presents a fairly debatable question whether the negligent act of the plaintiff did so contribute to the accident, then the question of the plaintiff’s contributory negligence is one for the determination of the jury. *Central R. R. Co. v. Moore*, 24 N. J. L. 824; *Penn. R. R. Co. v. Righter*, 42 N. J. L. 180; *Mahnken v. Freeholders of Monmouth*, 62 N. J. L. 404; 41 Atl. 921.”

It is to be borne in mind that the present case does not involve a right angle crossing. The plaintiff was making a left turn and in doing so the course which he took gave no notice to westbound traffic of his intention to cut in from

the left until he actually embarked on his turn which took place when he was opposite the center of the Pompton Pike and beyond the southeast corner of Bloomfield avenue and the concrete road. Yet, even in cases where the driver of a motor vehicle has come out of an intersecting street and his intention to cross the road is obvious, it has been held that the failure to look creates a proper justification for non-suit.

Sharpe v. Public Service Rwy. Co., 103 N. J. L. 583; 137 Atl. 526, was a case in which the trial court ordered a non-suit when it appeared that the driver of a motorcycle attempted to cross a highway without having first made an observation in the direction from which a trolley car was to be expected, and as a result ran into the side of the car. In disposing of an appeal by the plaintiff, Mr. Justice Lloyd said:

“In the early days the highways were used by pedestrians, equestrians and drivers of horse-drawn vehicles. The high-powered motor in automobile and trolley car had not yet appeared. The cases involving the operation of the horse-drawn vehicle of necessity dealt with a factor which is not present in the automobile or a motorcycle, namely, the independent volition of the horse, and to some extent this independent volition and its want of complete controllability have entered into the reasoning upon which an absolute duty to look has not always been imposed, on the theory that the driver's attention must necessarily be in large measure devoted to the control of his animal. The advent of automotive power measurably eliminates this element, and want of complete control of the horse in contract to the more amenable motor is recognized in our traffic laws in that while an automobile is permitted to run at the rate of 30 miles per hour on the open highway, the horse is limited to 12 miles per hour along a public road. The

rule respecting pedestrians has been uniform that they must use their powers of observation before crossing trolley tracks (Newark Passenger Railway Co. v. Block, 55 N. J. L. 605, 27 Atl. 1067, 22 L. R. A. 374; Jewett v. Railway Co., 62 N. J. L. 424, 41 Atl. 707; Shuler v. Railway Co., 75 N. J. L. 824; 69 Atl. 180; 127 Am. St. Rep. 834), and the same rule has been applied to the rider of a bicycle (Passman v. W. J. & S. R. R., 68 N. J. L. 722; 54 Atl. 809; 61 L. R. A. 609; 96 Am. St. Rep. 573). The automobile and motorcycle are scarcely less effectively controllable than one's own limbs or a bicycle, and the reasoning which dealt with horse-drawn vehicles we think should not be extended beyond the exigencies which those conditions required."

While the above case involved collision with a street car which was bound to follow a fixed course and is permitted no lateral motion on the highway, yet, what the Court had to say with regard to the duty of motorists to make reasonable observations and to act in such manner as to avoid injury to themselves ought surely to apply to the present case where certain danger ought to have been apprehended if the driver of the automobile had looked in the direction where danger was to be anticipated, before he committed himself to the enterprise of traversing the westbound portion of the highway.

Counsel for the plaintiff cites a number of cases in the brief, none of which strikes us as in point.

Thomas v. Metzendorf, 101 N. J. L. 346; 128 Atl. 162, involves injury to an elderly man who was crossing a highway on the crosswalk, at night time and saw the defendant's automobile about a block away and was struck when near the opposite curb of the street.

Carey v. Deems, 101 N. J. L. 421; 129 Atl. 191, was a death action. Whether the decedent looked and if he looked, what he saw were questions of surmise and determinable only by the circumstances, hence necessarily a jury question.

In *Purcell v. Pollock*, 143 Atl. 426, 6 Adv. R. 1431, the accident occurred at a right angle intersection where the plaintiff's vision on approaching the corner was limited to 196 feet; he then started over the crossing at 12 miles an hour; traversed one half of the street and was beyond the beacon in the center when he was struck by a car coming out of the intersecting street from his left. This situation is quite different from a left-hand turn. The plaintiff's intention to avail himself of his right-of-way would have been apparent when he entered onto the crossing and it would be a question for the jury as to whether or not his right-of-way should be respected by another vehicle approaching from his right which was more than 196 feet away when the plaintiff first made his intention to cross the street apparent, nor was there in this case any evidence to show that the car which collided with the plaintiff was being recklessly operated and constituted a menace to the plaintiff when he was still in a place of safety and in a position to avoid collision by the exercise of reasonable care. In other words, had the colliding car been visible to the plaintiff in that case when it was within a radius of 150 feet and had it been apparent to him if he looked that the car was being operated at a highly excessive rate of speed, on a steep downgrade, there would have been presented to the Supreme Court quite a different situation.

The Supreme Court case of *Dobbin v. Rattiner*, 6 N. J. Misc. 117; 140 Atl. 32, is a similar case

involving only the question of right-of-way at a street intersection.

The present case we submit involves unusual elements. As is stated in the plaintiff's brief on page 8, the cross examination was directed to the support of a theory that the plaintiff had driven out of the cement road and disregarded a red light and attempted to steer a diagonal course across Bloomfield avenue through traffic. This theory was based upon the pleadings in another suit brought by the plaintiff against the bus company and on the allegations in the original complaint in the present suit (which was not made part of this record) and also upon certain statements made by Struyk in an investigation by police after the accident. The change of the plaintiff's position in the present case in asserting in his amended complaint that he was going east on Bloomfield avenue with the green light in his favor and turning left into the Pompton Turnpike, might perhaps account for the striking discrepancies in the distances testified to by Mr. and Mrs. Struyk and the actual layout of the land. In any event, we earnestly urge that this accident could not possibly have occurred in the manner described by the plaintiffs in this case, no matter how great the negligence of the driver of the bus unless there was a manifest lack of care on the part of the plaintiff Struyk which contributed to his injuries.

We respectfully submit that the judgment of non-suit should be affirmed.

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