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Notice to Strike Out.

New Jersey Court of Errors and Appeals.

WERNER SCHWARTZENBACH, ad-
ministrato*r ad prosequendum*,
etc., John Schwartzenbach,
deceased,

Plaintiff-Appellee,

v.

ERNEST ANTOINE,
Defendant-Appellant.

10

20

Take notice, that on Tuesday the nineteenth day of November, next at ten thirty o'clock in the forenoon, we shall move to strike out from the grounds of appeal served by you upon us, the fifth, sixth, seventh, eight and nine assignments, on the ground that the said assignments are not according to law and do not constitute ground for appeal and because the same are not in substantiation.

30

WARD & MCGINNIS,
Attorneys of Plaintiff-Appellee.

Sept. 14, 1918.

To

Pomerehne & Laible,
Attorneys of Appellant.

40

Notice of Appeal.

PASSAIC COUNTY,

CIRCUIT COURT.

(Filed August 3, 1918.)

10

WERNER SCHWARTZENBACH, ad-
ministrato*ad prosequendum*,
of the Estate of John
Schwartzenbach, deceased,
Plaintiff,

Action at
Law.

v.

ERNEST ANTOINE,
Defendant.

20

To

Filbert Rosenstein, Esq., or
Messrs. Ward & McGinnis, Attorneys of
Plaintiff,
2nd National Bank Building, Paterson,
N. J.

Sir:

30

Take notice that the defendant herein appeals
from the judgment and every part thereof, ren-
dered in the Passaic County Circuit Court, to
the Court of Errors and Appeals of the State of
New Jersey, and that he will, within the time re-
quired by law, file and serve upon you his
grounds of appeal in said case as required by the
rules and statutes in such case made and pro-
vided.

Dated, July 22nd, 1918.

40

POMEREHNE & LAIBLE,
Attorneys of Defendant.

NEW JERSEY COURT OF ERRORS & APPEALS

Werner Schwartzzenbach,
 administrator ad prosequendum)
 of the Estate of John Schwartz-)
 zenbach, dec'd.) Plaintiff Appellee,) Action at Law
 vs.)) GROUNDS OF APPEAL.
 Ernest Antoine,)
 Defendant Appellant.)

The above appellant, Ernest Antoine, hereby sets down his grounds of appeal, in the above stated cause as follows:-

1. Because the trial court refused to grant a non-suit in favor of the defendant and against the plaintiff.
2. Because there was no evidence in the entire case charging the defendant with negligence.
3. Because the plaintiff failed to prove any negligence against the defendant.
4. Because the evidence adduced by the plaintiff failed to show any negligence on the part of this defendant.
5. Because the Court refused to direct in favor of the defendant.
6. Because the verdict was contrary to law.
7. Because the verdict of the jury was contrary to the evidence in the case.
8. Because there was no evidence in the case sufficient to warrant a verdict in favor of the plaintiff.
9. Because the verdict was erroneous in divers other respects.

Pomerehne & Laible.
 Attorneys of Appellant.

OFFICE OF THE
SOLICITOR GENERAL

WASHINGTON, D. C.

The above named party, Plaintiff, do hereby certify that the number of copies of the above named document are as follows:

- 1. Three copies of the original to be filed in the office of the Clerk of the Supreme Court.
- 2. One copy of the original to be filed in the office of the Clerk of the District Court.
- 3. One copy of the original to be filed in the office of the Clerk of the Court of Appeals.
- 4. One copy of the original to be filed in the office of the Clerk of the Court of Claims.
- 5. One copy of the original to be filed in the office of the Clerk of the Court of Customs and Excise.
- 6. One copy of the original to be filed in the office of the Clerk of the Court of Criminal Justice.
- 7. One copy of the original to be filed in the office of the Clerk of the Court of Finance and Revenue.
- 8. One copy of the original to be filed in the office of the Clerk of the Court of International Trade.
- 9. One copy of the original to be filed in the office of the Clerk of the Court of Land and Natural Resources.
- 10. One copy of the original to be filed in the office of the Clerk of the Court of Maritime and Admiralty.
- 11. One copy of the original to be filed in the office of the Clerk of the Court of Military and Naval Affairs.
- 12. One copy of the original to be filed in the office of the Clerk of the Court of Public Health and Safety.
- 13. One copy of the original to be filed in the office of the Clerk of the Court of Social Security.
- 14. One copy of the original to be filed in the office of the Clerk of the Court of Taxation.
- 15. One copy of the original to be filed in the office of the Clerk of the Court of Veterans Affairs.

Attorney at Law

Judgment Record.

IN THE PASSAIC COUNTY CIRCUIT COURT.

WERNER SCHWARTZENBACH, ad-
 ministrator of the Estate of
 John Schwartzenbach, de-
 ceased,

Plaintiff,

v.

ERNEST ANTOINE,
 Defendant.

10

Ernest Antoine, the defendant in this cause was summoned to answer unto Werner Schwartzenbach, administrator of the Estate of John Schwartzenbach, deceased, the plaintiff therein, in an action at law upon the following complaint:

20

The plaintiff, Werner Schwartzenbach, residing at number 326 East 26th Street, in the City of Paterson, County of Passaic and State of New Jersey, as the administrator *ad prosequendum*, of the Estate of John Schwartzenbach, deceased, respectfully shows to this Court:

30

1. On the twenty fourth day of September, 1917, the Surrogate of the County of Passaic, in the State of New Jersey, duly appointed the plaintiff administrator *ad prosequendum*, of the Estate of John Schwartzenbach, deceased, for the purpose of enabling the said plaintiff to prosecute the claim of the children and next of kin of the said John Schwartzenbach, deceased, against the said defendant, for causing the death of the said John Schwartzenbach, deceased, by the wrongful

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Judgment Record.

act, negligence or default as hereinafter alleged, of him, the said defendant, and the plaintiff has accepted the same and qualified on said date as administrator, as aforesaid.

10 2. Said defendant resides at 654 Main Avenue, Clifton, New Jersey.

3. Plaintiff brings this action as administrator *ad prosequendum* as aforesaid for the benefit of the next of kin and statutory distributees, Mary Schwartzenbach, Ernest Schwartzenbach, Alfred Schwartzenbach and Gertrude Schwartzenbach, the children of the said John Schwartzenbach, deceased.

20 4. That at the time of the committing of the grievances hereinafter mentioned, to wit, May 29, 1917, there was situate in the City of Paterson, in the County of Passaic and State of New Jersey, a certain public street and thoroughfare known as River Street, which runs in a northerly and southerly direction and is intersected but not crossed by a certain other public street and thoroughfare known as Sixth Avenue, which extends in an easterly direction from River Street.

30 5. That at the time of the committing of the grievances hereinafter mentioned, to wit, May 29, 1917, the defendant was the owner of a certain automobile of the jitney bus type, which was known as Suburban Bus No. 2, and which was then and there being driven along River Street in a southerly direction, which automobile was then and there in charge of defendant's servant, agent and employee, Percy French, who was
40 then and there operating the same under the

Judgment Record.

directions and orders of the said defendant and in the course of his employment to manage the same for defendant in the course of defendant's business as a common carrier of passengers.

6. On May 29, 1917, the said John Schwartz-
bach was lawfully in and upon the said River
Street, in the City of Paterson, in the County
and State, aforesaid, at the point where the
said Sixth Avenue joins into and opens upon the
said public street and thoroughfare, namely,
River Street. 10

7. While the said Percy French, on the day
and year aforesaid was engaged in the per-
formance of his duties and functions as such
servant of said defendant, to wit, while driving
and operating the said automobile or jitney bus
of the said defendant along said public street
known as River Street, at the point where the
said street, Sixth Avenue, joins into and opens
upon the said River Street, the said defendant
by his said servant and employee at said time
and place, carelessly, negligently unskillfully and
improperly operated and managed said auto-
mobile with reckless disregard for the rights
and safety of other persons, including the said
John Schwartzbach, then and there lawfully
upon and using said public street and care-
lessly, negligently and improperly ran the same
at a high rate of speed and carelessly, negli-
gently and improperly failed to blow a horn
or give any other warning of the approach of
said automobile, and carelessly, negligently and
improperly operated and steered said automo-
bile, and well knowing or being in a situation
to know that the said Schwartzbach was 20
30
40

Judgment Record.

10 then and there in said public street and in front
of said automobile, carelessly, negligently and
improperly failed to check the speed of said
automobile or properly steer the same, so that
it would not come in contact with the said John
Schwartzzenbach, and carelessly, negligently and
improperly maintained said automobile in a
defective and dangerous condition, so that the
same could not be safely operated, and by rea-
son of the premises the said defendant by his
said servant and employee, drove into and struck
with great force and violence and ran over the
body of the said John Schwartzzenbach.

20 8. By reason and as a direct result of de-
fendant's negligence, by his servant as aforesaid,
and the wounds and injuries caused him, the
said John Schwartzzenbach, afterwards, and with-
in two years next before the commencement of
this suit, to wit, on May 29, 1917, died.

30 9. By reason and as a direct result of the
death of the said John Schwartzzenbach, as afore-
said, his estate as well as the said next of kin
all of whom are minors and were dependent
upon the said John Schwartzzenbach for support
and maintenance have suffered great pecuniary
injury and damages.

40 10. The plaintiff as administrator *ad prose-*
quendum as aforesaid for the benefit of the said
children of the said John Schwartzzenbach, ac-
cording to the statute in such case made and
provided, demands as damages sustained by the
said children the sum of \$20,000, together with
costs of suit.

WARD & MCGINNIS,
FILBERT ROSENSTEIN,
Attorneys for Plaintiff.

Answer.

The defendant answered as follows:

Ernest Antoine residing at 654 Main Avenue, Clifton, New Jersey answers the plaintiff's complaint in this action as follows:

1. This defendant has no knowledge or information sufficient to form a belief as to the allegations of Paragraph One of the complaint. 10
2. This defendant admits the allegations of Paragraph Two of the complaint.
3. This defendant has no knowledge or information sufficient to form a belief as to the allegations of Paragraph Three of the complaint.
4. This defendant admits upon information and belief the allegations of Paragraph Four of the complaint. 20
5. This defendant admits the allegations of Paragraph five of the complaint.
6. This defendant denies the allegations of Paragraph Six of the complaint.
7. This defendant denies the allegations of Paragraph Seven of the complaint.
8. This defendant has no knowledge or information sufficient to form a belief as to the allegations of Paragraph Eight of the complaint. 30
9. This defendant has no knowledge or information sufficient to form a belief as to the allegations of Paragraph Nine of the complaint.
10. This defendant denies that the plaintiff as administrator *ad prosequendum* is entitled to damages in the sum of \$20,000 from this defendant or in any other sum as alleged in Paragraph Ten of the complaint. 40

Answer.

FIRST DEFENSE.

This defendant was not guilty of negligence.

SECOND DEFENSE.

10 The agent and servant of this defendant were not guilty of negligence.

THIRD DEFENSE.

This defendant did not cause the injuries to the plaintiff as alleged in the complaint, nor did his servants or agents cause the said accident nor did they contribute in any manner whatsoever to the occurrence of the said accident.

FOURTH DEFENSE.

20 Whatsoever damages and injuries were sustained by the plaintiff through the death of John Schwartzenbach, deceased, at the time and place mentioned in the complaint were caused and contributed to by the negligence of the said John Schwartzenbach, deceased, in that he carelessly exposed himself to the risk of such an accident, and neglected to take precaution and to exercise care to guard and protect himself against such
30 an accident; moreover at the time and place mentioned in the complaint the said John Schwartzenbach, deceased, was conducting himself in a careless, negligent and reckless manner, and was not exercising care or taking proper precautions which negligence and carelessness on the part of the said John Schwartzenbach, deceased, was the contributory and proximate cause of the said accident.

40 Wherefore, the defendant demands judgment

Reply.

that the complaint herein be dismissed with the costs and disbursements in this action.

POMEREHNE & LAIBLE,
Attorneys of Defendant.

The plaintiff replied as follows:

10

The following is the replication of the plaintiff, in the above entitled cause;

1. The plaintiff hereby joins issue with the defendant in the first and second special defense to said complaint.

2. Plaintiff denies the matters in the third and fourth defense to said complaint.

WARD & MCGINNIS,
Filbert L. Rosenstein,
Attorneys of Plaintiff,
Paterson, N. J.

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This action was tried before Judge George S. Silzer, with a jury, in the presence of the counsel of the respective parties, at the Passaic County Circuit Court, on June 19th, 20th and 21st, A. D., 1918.

The cause having been heard and submitted to the jury, they returned their verdict as follows: Four thousand dollars (\$4,000.00), in favor of the plaintiff.

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Whereupon, it is adjudged that the plaintiff, Werner Schwartzenbach, administrator of the Estate of John Schwartzenbach, deceased, recover of the defendant, Ernest Antoine, the sum of four thousand dollars (\$4,000.00), and his costs, which are taxed at the sum of

Judgment entered and signed June 28th. A. D.,

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Certification of Judgment Record.

1918, at 10.30 A. M. Action No. 6471, Docket G,
page 402.

Clerk.

10 State of New Jersey,)
County of Passaic, { ss.:

I, John J. Slater, Clerk of said County, and
Clerk of the County Courts thereof, do hereby
certify: that the foregoing is a transcript of
the judgment record, in re: Werner Schwartzen-
bach, administrator of the Estate of John
Schwartzzenbach, deceased, plaintiff, *v.* Ernest
Antoine, defendant, as the same is taken from
and compared with the original entry thereof
in Book "Y" of Circuit Court Judgments for said
20 County, now remaining of record in my office.

In testimony whereof, I have hereunto
set my hand and affixed the seal
of the said Courts and County, at
(Seal) Paterson, this thirteenth day of
August, A. D., nineteen hundred
and eighteen.

JNO. J. SLATER,
Clerk.

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Marcelle Parmele, direct.

PASSAIC COUNTY CIRCUIT COURT.

WERNER SCHWARTZENBACH, Ad- ministrator, etc., <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;"><i>v.</i></p> ERNEST ANTOINE, Defendant,	}	10
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Before Hon. GEORGE S. SILZER, J., and a Jury.

Paterson, N. J., June 19th, 1918.

APPEARANCES: 20

FILBERT ROSENSTEIN, Esq., JOHN M. WARD, Esq., Hon. PETER MCGINNIS, for the Plaintiff.

GEORGE P. LAIBLE, Esq., BENJAMIN WEINBERG, Esq., for the Defendant.

A Jury being empanelled and found satisfactory, they were sworn.

Mr. Rosenstein opens for the plaintiff.
 Mr. Weinberg opens for the defendant. 30

MARCELLE PARMELE, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward:

Q. You reside in Paterson? A. Yes, sir, but I am at Camp Merrit now.

Q. What was your place of residence at the time this accident happened? A. Number 583 River Street. 40

Marcelle Parmele, direct.

Q. Do you remember the night when this accident happened? A. Yes, I cannot remember the date.

10 Q. Whereabouts were you on that evening just prior to the accident? A. I was in the saloon at the time.

Q. What number? A. Number 583 River Street.

Q. That same number? A. Yes, sir.

Q. Had you seen John Schwartzbach that evening before the accident happened? A. Yes, I saw him I guess it was about half-past six.

Q. Whereabouts? A. At the place.

20 Q. What was the purpose of his visit, if you know? A. He had left a phonograph record there with me at that hour, about half-past six, and he was to return for it and I had not seen him until they brought him in.

Q. Whereabouts did he live, do you know? A. I could not say.

Q. After six-thirty you did not see him then again until the time of the accident? A. No, sir.

30 Mr. Weinberg: He said until they brought him in after the accident.

Q. What kind of a night was it? A. It was a very dark night.

Q. And, with reference to the fact as to whether it was clear or not, what have you to say, was it a stormy or clear night? A. Just a little bit drizzly, it had been.

Q. River Street at that point, how is it paved? A. It is asphalt and Belgian Blocks.

40 Q. It is a well paved street, is it? A. Oh, yes.

Marcelle Parmele, direct.

Q. Is it straight or not, or are there any turns in it? A. No, not on River Street. It is straight.

Q. It is straight for a long distance back, that is, towards the north, for instance, how far down River Street? A. Oh, way to First Avenue.

Q. About how far is that? That would be how many blocks? A. About six or seven blocks.

Q. So that from First Avenue coming down south River Street is straight? A. Yes, sir.

Q. And the place where the accident occurred, is it straight there or not? A. It is straight on, but there is one hill there, it is hilly.

Q. That is quite a distance down further, is it not? A. Yes, sir.

Q. But it is straight? A. Yes, sir.

Q. Were there any electric lights on the street at that time? A. Yes, at Sixth Avenue there was an electric light.

Q. An ordinary city electric light? A. Yes, sir.

Q. What was the first intimation that you had that an accident had happened? A. We were talking there and I kind of heard a thump and I did not pay much attention to it right away for about probably a minute, and I thought I would take a walk out and see, and I opened the door and them two started to pick the man up.

Q. You say you heard a thump, what kind of a thump was it? A. A kind of a crash like.

Q. Whereabouts were you in the store? A. Sitting down near the pool table.

Q. Would that be in the rear? A. Well, it would be about thirty feet from the door.

Q. Was the door closed or open? A. The door was closed.

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Marcelle Parmele, direct.

Q. How wide is the sidewalk there, about? A. Twenty-five feet.

Q. No, the sidewalk, not the roadway? A. Oh.

Q. It is an ordinary sidewalk, is it? A. Yes, sir.

10 Q. And then how far out into the street from the sidewalk was the body lying as you saw it when you came out there and they were about to pick it up? A. How many feet it would be?

Q. About how many feet from the curb? A. Oh, about twelve or fifteen, something like that.

Q. Are there any street car tracks on River Street? A. Yes, sir.

Q. How many? A. There is four tracks.

20 Q. Four rails? A. Four rails, two tracks, that's right.

Q. With reference to the southbound track, that would be the track nearest to the westerly side of the street or the side upon which you were? A. The side upon which I was.

Q. How far is that car track from the curb about? A. Well, I judge about twelve feet, something like that.

30 Q. With reference to that car track, where was the body lying when you saw it there as they were about to pick it up? A. It was lying just, you might say, on the tracks.

Q. Was the crash that you heard distinctly audible to you and could it be heard distinctly in the position in which you were in that store? A. Yes, sir.

Q. The store to which you refer is on the westerly side of River Street is it not? A. Yes, sir.

40 Q. As soon as you got to the door and you saw this body and saw these men about to pick it up, what happened next? A. Well, then, I said

Marcelle Furmele, direct.

something to the other lads inside and they rushed out and they helped carry him in and they laid him on the floor.

Q. What transpired then? A. They tried to help him the best they knew and called up for an ambulance three or four different times and finally the ambulance came, it took about thirty-five minutes I should think, and it took him away. That is the last I know. 10

Q. Who brought him in the store? A. Officer Poole and the chauffeur.

Q. The driver? A. The driver, yes, sir.

Q. The driver of what? A. The driver of this bus.

Q. Did you know this driver before? A. Yes, sir. 20

Q. Do you know whether or not he was the driver of this bus? A. He was the driver of the bus, yes, I was sure of that.

Q. This bus line is a line which runs a bus up and down River Street? A. Yes, sir.

Q. What was Schwartzbach's condition as you observed it, or as you saw it, when he was brought into the store and laid down on the floor? A. Well, at the time being I did not think it was very serious. 30

Q. What did you observe about him, what did you see? A. I noticed his clothes were a little dirty and a little blood, but I could not stand looking at the man, I knew the man very well and I could not stand looking at the man.

Q. Was he conscious or unconscious? A. Oh, no, he was conscious.

Q. Why do you say he was conscious? A. Because one of the lads spoke to him, and he understood him, he answered him. 40

Marcelle Harmele, direct.

Q. What was said? A. He says to the man: "How do you feel?" The man said, "I feel like making water," I believe was the thing he said, and—

10 Q. Schwartzbach said that? A. Yes; and he tried, but he could not.

Q. Were there any marks on his clothes or on his body other than you have described about the blood and the little dirt? A. Not that I noticed.

Q. That is all you saw? A. Yes, sir.

Q. How long was he in the store there? A. Well, I should judge thirty-five or forty minutes.

Q. Did he seem to be conscious all that time? A. Yes, sir.

20 Q. When you went out of the store and you observed these two men about to pick up this body, did you notice the bus? A. Yes, sir.

Q. Where was the bus? A. I should judge about sixty feet from where he had struck the body.

Mr. Weinberg: I object to that and ask that it be stricken out. The witness has shown no knowledge as to the point where the bus struck the body. He can only say how far the bus was away.

30 The Court: It would seem to be so.

Q. How far beyond the place where the body was lying was the bus about? A. About how far.

Q. Yes? A. I should judge about sixty feet.

Q. In which direction? A. From the direction on the right, and it stopped in front of the library there on the corner of Sixth Avenue.

40 Q. What was its position on the road? In other words, which way was it headed and whereabouts was it standing? A. It was headed downtown, this way.

Marcelle Parmele, direct.

Q. That would be headed south? A. Yes, sir.

Q. What was its position in the roadway? How far was it from the gutter, for instance? A. How far was the bus?

Q. Yes? How far out was it from the curb? Was it in the centre of the road, the left hand side of the road or the right hand side of the road? A. On the right hand side.

10

Q. About how far, do you think, from the curb? A. Probably two or three feet.

Q. Was that bus in a line with the body? A. No, sir.

Q. A little more to the right, was it? A. Yes, sir.

Q. Could you see the bus distinctly as you came out there? A. Yes, sir.

20

Q. And the back of the bus was towards you? A. Yes, sir.

Q. As you opened the door and you saw the body of this man in the street that these two men were about to pick up could you see that body distinctly? A. No, I could not recognize the body.

Q. Could you see that it was the body of a man? A. Oh, yes, yes.

Q. You could see it was the body of a man? A. Yes, sir.

30

Q. As you came out in front of your store? A. Yes, sir.

The Court: How far away was that from the body?

A. I should judge about twelve or fifteen feet.

Q. There was the distance across the sidewalk, wasn't there? A. Yes, sir.

Q. Then the distance from the curb to the tracks? A. Yes, sir.

40

Marcelle Parmele, cross.

Q. Then the body lay in between those tracks you say? A. Yes, sir.

Q. Did anything else happen while this man was in the place there, in the store, before he was taken away? A. Did anything happen?

10 Q. Yes? Did he show any other symptoms? A. No, sir.

Q. I want to recall to your mind if I can. Did he vomit? A. No. Just the least bit of a slime, something came out of his mouth. Very little of it though.

Q. He spit slime? A. Very little of it though.

Q. Were you in a position where you could smell his breath? A. No, I was not. When he did open his mouth I was not where I could smell it.

20 Q. When he did talk, whatever talking he did, did he seem to be reasonably rational? A. Well, he did not do very much speaking, all he said was that what I have said before.

Q. Was what he said sensible? A. Yes; it seemed to be very sensible.

Cross examination by Mr. Weinberg:

Q. Just what sort of a place is this that you have been speaking about and referring to as the store? A. Why, it is a hotel, a saloon, a bar-room.

Q. And pool tables in the back of the bar-room? A. Yes, sir.

Q. About how long is the saloon proper? A. Just the barroom part?

Q. Yes? A. About forty-five feet.

Q. How large is the pool room part? A. The pool room is just in the rear of the bar, almost about seven or eight feet from the bar.

40

Marcelle Parmele, cross.

Q. How many tables were in the pool room?
A. One.

Q. Was anyone playing at the time that this occurred? A. No, sir.

Q. Did you say you were sitting by the pool table? A. Yes, sir.

10

Q. What were you doing? Talking to somebody? A. Just talking. Just having a conversation.

Q. With whom? A. With Mr. Torrey at the time.

Q. Is this saloon on a corner or is it in the middle of the block? A. No. It is in the middle of the block.

Q. Then there is no way that you can get out on the street except by going through the front door? A. We have a rear entrance too, but that is very seldom used.

20

Q. Does the rear entrance lead into an alleyway alongside of the saloon? A. Into East Twelfth Street.

Q. Well, to get out on River Street you would go out through the front door? A. Yes, sir.

Q. What I want to make clear is this: is there any areaway or any opening on the sides of this saloon? A. No, sir.

30

Q. It is flush up against the other buildings? A. No, not exactly, there is a little alleyway next door a private family lives there, but we don't use that entrance.

Q. What is there immediately adjoining this saloon on the north, we will say? A. A building, a three story brick building.

Q. And adjoining it on the south? A. Is a tenement house.

40

Marcelle Parmele, cross.

Q. And both of those buildings come right up to this other building? A. Yes, sir.

Q. Are there any windows that lead out of the side, or that open out of the side of the saloon? A. Open?

10 Q. Yes, open out of the sides of the saloon? Or are those solid walls? A. No, there is windows.

Q. Where do those windows lead to? A. Just the alleyway that is on the side out of this little alleyway there.

Q. On what side of the building is the alleyway? A. There is one on the south side, one window and three windows on the opposite side.

20 Q. I want to know on what side of the building is the alleyway? A. Well, on both sides, you might say, the hallway and the alleyway both.

Q. Then the buildings do not come flush up against the saloon? A. Not flush up against our building, no.

Q. On this night in question it was a rainy, drizzly sort of a night, wasn't it? A. Yes, sir.

30 Q. And those windows were closed? A. Yes, sir.

Q. And the front door was closed? A. Yes, sir.

Q. How many people were in the bar room? A. I believe there was four.

Q. How many people were in the poolroom part? A. No one, that was all.

Q. Mr. Torrey was in the poolroom part beside you? A. Mr. Torrey and I and a few others, yes, sir.

40 Q. And there were some people in the barroom? A. No, that was all.

Marcelle Parmele, cross.

Q. Then they were all in the poolroom, is that what I understand you to say? A. Just sitting there at a table close by the pool table.

Q. Close on to the pool table? A. Yes, sir.

Q. Were you playing cards? A. We had been playing cards, yes, sir.

10

Q. Had you finished the game? A. We had finished.

Q. What time was it when you finished playing? A. I could not say exactly what time it was when we finished the game, but we sat around talking quite a little while.

Q. Had you just finished? A. Yes, I should judge about a half an hour before.

Q. And you were just sitting there? A. We were just sitting there.

20

Q. And talking? A. Yes, sir.

Q. And smoking? A. Yes, sir.

Q. How long had you been in the saloon that night? A. I had been there all night.

Q. From when? From half-past six? A. From about four o'clock, half-past four in the afternoon.

Q. Where did you have your supper? A. There.

30

Q. You took your supper right there? A. Yes, sir.

Q. Did you live in the same building? A. Yes, sir.

Q. Upstairs? A. Yes, sir.

Q. You had been playing all evening? A. Oh, no, I should judge from about half-past nine or nine o'clock.

Q. And at half-past six Mr. Schwartzenbach left you? A. Yes, sir.

40

Marcelle Parmele, cross.

Q. And he was to come back a little later to get the phonograph record? A. Yes, sir.

Q. You did not see him back in that place that night? A. No, sir.

10 Q. Had you met him there frequently? A. Well, three or four times a week, something around that.

Q. What time was he to come back that evening? A. He did not say what time he would be back for the record.

Q. Were you to wait for him? A. Oh, no, not necessarily.

20 Q. Did I ask you, and did you say, what time it was when this occurred? A. At what time the accident occurred?

Q. Yes? A. Oh, I judge it was around twelve or a little after, I am not sure.

Q. The lights in the saloon had already been dimmed, had they not? A. Yes, sir.

Q. And there was nothing but a light burning in the rear of it? A. Well, yes, there was a number of electric lights burning in the barroom.

Q. Were the shades drawn in the front of the saloon? A. No, sir.

30 Q. Of course, being inside, you don't know whether any light was thrown into the street through the front door? A. No, I could not say there was any light.

Q. What were you doing at the time when you say you heard a sort of a thump or a kind of a crash as you put it? A. We were sitting talking; I forget what the conversation was.

Q. And can you describe this crash? A. At first I thought it was a motorcycle.

40 Q. Not what you thought it was, but just describe the sound if you can? A. It sounded to

Marcelle Parmele, cross.

me like a vehicle of some kind going off the track or something, a sort of a puncture.

Q. It sounded like a vehicle that had no tires on going off the track? A. Yes, sir.

Q. You have seen automobiles turning off the track haven't you? A. Turning off the track? 10

Q. Yes? You have seen automobiles and jitney busses? A. Yes, sir.

Q. Those that you have seen turn off the track never made any noise turning off the track did they? A. Well, it makes a kind of a noise on those cobble stones, there is cobble stones in the track there.

Q. What kind of a noise does it make, a metallic sound? A. A sort of a rattle.

Q. What rattles? A. The mudguards and one thing or another on the bus. 20

Q. Is that what it sounded like to you? A. Yes, a sort of a crash like hitting something.

Q. Did it sound as if two hard things had struck against each other? A. No. It did not sound very heavy to me. For that reason I did not go out right away, I waited for about probably a minute before I went out and opened the door.

Q. It was a sound something different from what you had ever heard? A. A little different, yes, sir. 30

Q. Wasn't it a ringing noise? A. No, sir.

Q. Like something striking a hard pavement? A. No, sir.

Q. All you heard was the rattling sound of the mudguard? A. There was a kind of a little jar with it.

Q. You could not hear the jar, could you? A. Well, I kind of heard a thump, yes, sir. 40

Marcelle Parmele, cross.

Q. You are not quite sure of that, are you?

A. I am positive.

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

Q. But you cannot tell us any more about it than what you have already said? A. No, I cannot.

10 Q. That is all you can describe of that thump?

A. Yes, sir.

Q. And you did not go out right away? A. No, sir.

Q. How long did you wait? A. Probably a minute before I went out.

Q. Who was the first one to go out that evening after the crash? A. I was.

Q. You had to open the door? A. Yes, sir.

20 Q. As you were outside, then what did you see? A. They had been picking the man up.

Q. Did you see them in the act of picking the man up or did you see somebody walking with the man, carrying him? A. They were in the act of picking him up.

Q. Was he still on the ground? A. Yes, sir.

Q. Then they had not yet picked him up? A. No, sir.

30 Q. What were they about to do? A. They were bringing him towards me, towards the place.

Q. I mean, when you first saw them? A. They were picking the body up.

Q. They were just picking him up? A. Yes, sir.

Q. There were two men engaged in doing that at the time, were there? A. Yes, sir.

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

40 Q. You recognized Mr. French? A. I did as Mr. French came closer I recognized him but I did not at first.

Marcelle Parmele, cross.

Q. You did not recognize Mr. French when you looked out of the saloon? A. No, not until he got close onto me.

Q. Did you stand just where you were and wait until they brought the body up? A. Yes, I just stood about three feet, I stepped about three feet out from the door out near the sidewalk. 10

The Court: This noise that you heard had just occurred and that took you out?

The Witness: Yes, sir.

Q. You have told us that the bus at that time was about twelve to fifteen feet from the curb? A. Yes, sir.

Q. How far was it north or south of the entrance to the saloon? A. From the entrance to the saloon? 20

Q. Yes? A. Oh, it was about ten feet I believe, south, towards Town.

Q. It was twelve feet away from you and ten feet off to the south? A. Yes, sir.

Q. Is that as far as it was? A. Yes, sir.

Q. What did you do from that time on, after you saw the body ten feet away being lifted up? A. What did I do?

Q. Yes. A. I stood there and held the door open as they brought him in. 30

Q. That is all you did, waited until they brought the body in? A. Yes, sir.

Q. Didn't you go back and tell somebody that there was something the matter? A. Oh, yes, as I opened the door I said, "Someone got hurt," and the few that had been in the place rushed out.

Q. Did you go back and tell them? A. No, I held the door open, I just stood there with the door open. 40

Marcelle Parmele, cross.

Q. Did you have to yell that back there? A. Not very loud, no.

Q. You were forty or fifty feet away from them, weren't you, from the men in the saloon?

10 A. No, about twenty-five or thirty feet I should judge to the pool table from the door it is only about thirty feet.

Q. And you yelled in to those people that something had happened? A. Yes, sir.

Q. Did they go out to help the man in? A. They attempted to but they were bringing the man in.

Q. They did not bring the man in then did they? A. Just the officer and Mr. French.

20 Q. In your direct examination when you said that you said something to the lads and they rushed out and helped him in, did you mean the officer and Mr. French helped him in or did you mean the men in the saloon helped him in? A. I meant Mr. French and the officer helped him in.

Q. And the other man in the saloon did not go near the man? A. Not until they brought him inside.

30 Q. None of you made a move, neither you nor the other men moved until the body was brought in? A. Yes, sir.

Q. You called for help but the men did not go out? A. Yes, sir.

Q. That is right, is it? A. Yes, sir.

Q. Now, you say you found that his clothes were dirty? A. Yes; a little dirty.

Q. What do you mean by that? A. A little mud on his pants and his coat.

40 Q. What kind of a coat did he have on? A. Dark blue, I believe, dark blue, it was dark blue suit that he had on I believe.

Marcelle Parmele, cross.

Q. You could not make out whether it was dark blue or black? A. Black, I am not just positive, I am not sure.

Q. Did the trousers and coat both match? A. Yes, sir.

Q. Did he have a hat on? A. He had a derby hat on, if I am not mistaken. 10

Q. And the other dirt was on his trousers? A. Yes, his trousers and his coat.

Q. Whereabouts on the coat was there any dirt? A. Around the shoulder I noticed some.

Q. There was no dirt on his back? A. I could not say, because they laid him flat on his back.

Q. Of course, I am referring to the dirt that you did see, you did not see any dirt on his back? A. No, I did not see that. 20

Q. You did not see any dirt on his stomach? A. No, sir.

Q. You just saw some dirt on his left shoulder? A. On his sleeve, yes.

Q. Did you see his face? A. Well, the only thing I saw about the face was that he was foaming a little bit from the mouth.

Q. What do you mean by foaming from the mouth? A. As though he wanted to vomit or something and he could not. 30

Q. I did not ask you what he wanted to do, but I am asking you to explain what you mean by foaming a little bit from the mouth, what do you mean by foam? A. A little foam.

The Court: I think the explanation was proper.

The Witness: It was not very much, it was just around the lips the least bit.

Q. A sort of a white foam? A. Yes, white. 40

Marcelle Parmele, cross.

Q. Where was the blood that you saw? A. I did not exactly see where, I cannot say exactly where it was, I noticed a little blood, I am not just sure where it was, I could not say exactly where it was.

10 Q. Then how do you know you saw any blood if you did not see where it was? A. It is some time ago and I never thought of this thing before. I could not say exactly where I saw the blood on him.

Q. Then you do not want it to stand that you saw any blood on this man? A. I could not swear to it.

Q. He did not speak very much? A. No, sir.

20 Q. He said that he wanted to go to the closet didn't he? A. Yes, sir.

Q. Did he stand up? A. No, he did not stand up.

Q. Did you see anybody attempt to wash him while he was in the saloon? A. Yes, sir.

Q. Who? A. Mr. Camarano and Mr. Tooey.

Q. Did you see anybody give him liquor while he was in the saloon? A. Liquor? No.

Q. Didn't you see them force liquor down his throat? A. No, sir.

30 Q. Which caused him to vomit? A. No, sir.

Q. You did not notice that? A. No, sir.

Q. You were there all the time until he was taken out? A. All the time.

Q. Until he was taken out? A. Yes, sir.

Q. You think it was about a half an hour after he came there that the ambulance took him away? A. About a half an hour or thirty-five minutes.

40 Q. When you got out you saw the bus about sixty feet away from where the body was? A. Yes, something like that.

Marcelle Parmele, cross.

Q. And the body was about ten feet away from the front door? A. The body from the front curb I should judge was about twelve feet from the body to the first curb.

Q. But you said the body, as I understand you, was about ten feet to the south away from the front of the door? A. Yes, sir. 10

Q. And the bus was sixty feet beyond that? A. Yes, sir.

Q. So that the bus was about seventy feet away from the front door? A. Yes, something like that.

Q. And you said the bus was about two feet from the curb? A. Yes, sir.

Q. And the body was about ten feet from the curb? A. Yes, sir.

Q. To the east or west was the body lying? A. To the east. 20

Mr. Ward: To the east or west of that?

Mr. Weinberg: The bus, of course.

Q. About where did you say the body was with reference to the track themselves? A. Where the body was?

Q. Yes? When you first saw it? A. I imagine almost directly on the track, alongside of the track.

Q. Which track? The southbound or the northbound? A. The northbound. 30

Q. On the northbound track? A. Yes, sir.

Q. Are you quite certain about that? A. Yes, sir.

Q. Which way was the bus facing, north or south when you saw it? A. It was facing north.

Q. Are you quite sure about that? A. Yes, sir.

Q. So that from the appearances the bus was going in a northerly direction? A. Yes, sir. 40

Marcelle Parmele, redirect.

Q. And the headlights were facing north? A. Yes, sir.

Q. There is no question about that? A. Yes, sir.

10 Q. So that the bus was then on the east side of the street? A. The bus? Was on the right side of the street, yes, sir, coming north.

Q. On the right-hand side as you face north? A. Yes, sir.

Q. There would be no question about that? A. No, sir.

Redirect examination by Mr. Ward:

20 Q. In answer to a question you said the bus was facing north; now, with reference to the points downtown and uptown, you know what I mean do you not? A. Yes, sir.

Q. Down towards Main Street or up towards Hawthorne, that way? A. It was up towards Main Street.

Q. It was facing towards Main Street? A. Yes, sir.

Q. That would be south? A. Yes; I was not positive on that.

Q. That was south? A. Yes, sir.

30 Q. And with reference to the tracks upon which this body was lying, were they the tracks nearest your store or furthest away from your store? A. Nearest to my store.

Q. Some relative of yours was the proprietor of this saloon? A. My mother, and I was the proprietor of the place.

Q. Your mother and you ran the business, is that right? A. Yes, sir.

40 Q. You say that you opened the door and then turned and said something to those inside, will

Marcelle Parmele, recross.

you just tell what was said at that time by you and the other people?

Mr. Weinberg: Objected to.

Mr. Ward: They got a part of the conversation and I think I am entitled to all of it.

10

Objection sustained. Plaintiff excepts.

Q. Why did you wait after you heard this crash or this noise, why did you wait before going out? A. Well, I did not exactly think it was very serious or anything, I did not think it was anything very bad.

Q. You are now a private in the United States service? A. Yes, sir.

Recross examination by Mr. Weinberg:

20

Q. You say you did not think it was anything very bad when you heard the crash? A. No, sir.

Q. When did you make up your mind that it was something very bad? A. Till I saw them picking the body up.

Q. You did not see them picking the body up until you went out of the saloon? A. Yes, until I went out of the saloon is right.

30

Q. My question is, when was it that you made up your mind that something bad had happened and so go to the front door? A. I just kind of thought. I thought I would take a run out and see what that crash was.

Q. Why didn't you think of taking a run out and see what the crash was when you first heard it? A. I forget just what the conversation was we were interested in, so there was something and I did not go right away, I don't know the reason why.

40

Marcelle Parmele, recross.

Q. After the first crash everything was quiet?

A. Everything was quiet until I went out. I did not think so a minute after it had happened though.

10 Q. Why was it your curiosity was not aroused immediately after you had heard the crash? Why did you wait a minute before you went out?

A. I did not think it was anything very serious.

Q. When did you make up your mind that something serious had happened? That is what I want to know. A. Till I realized someone got hurt.

20 Q. What occurred to make you realize that something had occurred, seriously? A. I did not realize it until I seen them pick the body up.

Q. That is not my question. The only question I am asking you is, why was it that you waited a minute and went out, when you did not think when you first heard the crash that anything serious had occurred? A. I don't know why I did not go out; I could not say.

Q. You don't know why? A. No, sir.

30 Q. Is it not the fact that you did not go out at all, or that you were in the back of that barroom at the time when Officer Poole came in there with the man? A. That I did not go out?

Q. That you did not go out until after the man was brought in to the saloon? A. Oh, no.

Q. You insist that you went out? A. I did go out.

Q. And just stood there? A. Yes, sir.

40 Q. And did nothing? A. I opened the door, had to open both doors, had both doors open;

Marcelle Parmele, recross.

I undid the other door, there was a latch on the bottom.

Q. You did that after you saw the man, in order to let him in through the door, you opened it? A. Yes, sir.

Q. Isn't that the first time you went to the door? A. Yes, sir. 10

Q. When you opened it to let these men in? A. Yes, sir.

Q. You did not seem to understand my question as to whether the bus was facing North or South. A. I did not understand.

Q. Why didn't you tell me you did not know the points of the compass? A. I thought I was right.

Q. You thought you were right until you realized you were wrong? A. Yes, sir. 20

By Mr. Ward:

Q. At the time you went to the door and looked out and saw the body lying on the tracks and saw these two men about to pick the body up and bring it in, up to the time that they came in, how long was it? Up to the time they brought the body in. Do you understand my question? A. Yes. 30

Q. If you don't, don't try to answer it. A. From the time they picked the body up until the time they brought him in?

Q. From the time you went to the door, saw the man lying there and the officer and the driver were about to pick him up; from that time, how long was it until he was brought in?

Mr. Weinberg: I object to the question, because the question assumes facts which the witness has not testified to. 40

Michael Tooey, direct.

Mr. Ward: I would be glad if counsel would indicate what it is.

Objection overruled; defendant excepts.

Mr. Weinberg: If the last answer is right I insist this question is leading.

10 The Court: I cannot say the last answer is right; I will allow the question.

A. Oh, two or three minutes, I should think.

Q. Two or three what? A. Two or three minutes.

Q. When you went out and saw them about to pick him up, did they take him right away or not? A. Yes, they picked him up right away.

Q. They started right for the door with him?

20 A. Yes, they did.

Q. And did they bring him right in or not?

A. They brought him right in.

The Court then adjourned to tomorrow, June twentieth, 1918, at 10:00 o'clock A. M.

SECOND DAY.

Paterson, N. J., June 20th, 1918.

The trial was continued this day pursuant to adjournment.

30

MICHAEL TOOHEY, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. McGinnis:

Q. Where do you live? A. Number 34 Erie Street.

Q. What is your occupation? A. At present?

Q. Yes? A. Insurance agent.

Q. How long have you been a resident of the City of Paterson? A. All my life.

40

Q. Do you remember the evening of this acci-

Michael Tooley, direct.

dent which resulted in the death of Mr. Schwartz-
enbach? A. Yes, sir.

Mr. Weinberg: I object to the question,
as it assumes a fact which is not yet
proven.

The Court: Is there any doubt about it? 10

Mr. Weinberg: Yes, that is one of the
disputed questions, whether that accident
resulted in the death.

The Court: Do you remember the night
of the accident?

The Witness: Yes, sir.

Q. At that time, on that evening, where were
you at the time the accident is said to have oc-
curred? A. In Parmelee's Hotel. 20

Q. Where is Parmelee's hotel? A. It is pretty
near facing Sixth Avenue on River Street.

Q. Do you know the number of it? A. Num-
ber 583, I think, about that.

Q. River Street runs generally in a northerly
and southerly direction? A. That is towards
Main and Riverside.

Q. As you go south you are going towards the
City of Paterson, going towards the downtown
district, is that right? A. Yes, sir. 30

Q. As you come down towards the City of
Paterson, that is, towards the downtown district,
on which side of River Street is Parmelee's sa-
loon? A. On the right-hand side.

Q. On the right-hand side coming down? A.
Coming down towards the city.

Q. I am pointing now to the official map of
the City of Paterson and direct your attention
to River Street, this is what we have been de-
scribing as the north end of River Street up
where it says Steel Mill, coming down in this 40

Michael Tooey, direct.

direction towards the City of Paterson, coming towards the City of Paterson, I observe number 583 River Street, is that the number where I put my pencil? A. Yes, sir.

10 Q. That is on the right side of River Street as you are going towards the downtown section? A. Yes, sir.

Q. And the right side of River Street going in that direction is the side which is nearest the Passaic River? A. Yes, sir.

Q. Next to number 583 I see is a building not marked, then a blank space indicating a vacancy of some kind, and then a building near the corner of Sixth Avenue? A. The library.

Q. That building is the library? A. Yes, sir.

20 Q. You are familiar with that locality? A. Yes, sir.

Q. And you were in Parmelee's saloon at that time? A. Yes, sir.

Q. Who was in the saloon with you? A. Mr. Parmelee, Steger, Camarano and myself, there was only the four of us, Marcelle Parmelee, Steger, Nick Steger, and myself and Louis Camarano.

30 Q. In what part of the saloon were you? A. At the extreme end of the bar.

Q. What were you doing? A. Talking.

Q. At the time you were standing at this end of the bar was there anything that attracted your attention and the attention of anyone else? A. Why, it attracted us all, all our attention was drawn to the peculiar sound.

Q. What was that sound to which all your attention was drawn?

40 Mr. Weinberg: I object to the question; the witness can only state that his own at-

Michael Tooey, direct.

tention was drawn, he cannot state that somebody else's attention was drawn.

The Court: I think he may state his own and you may elaborate it.

Q. Was your attention then attracted to this sound? A. Yes, sir. 10

Q. What was that sound like? A. Well, I would say a thump, a sudden jar, as if the two things came in contact, and then there was a kind of a drubbing or shoving like as if something was shoved like.

Q. Upon that sound happening did anybody make any comment? A. Parmelee.

Q. After this comment was made did anybody in that crowd do anything? A. Parmelee jumped up and went to the door. 20

Q. And after Parmelee went to the door what next did he do or say? A. It was so short—

Mr. Weinberg: I object to what he said. What he did I cannot object to.

Q. When Mr. Parmelee got to the door was the door opened or not by him? A. He opened the door.

Q. After he opened the door was there anything said or done? Tell us what was said? Was there anything said? A. Yes, sir. 30

Q. As a result of anything being said what did you or anyone else in the crowd do? A. I stayed where I was.

Q. How long did you stay there? A. Till the thing was brought in, till the man was brought in.

Q. You did not go out then? A. I did not go outside, no sir. 40

Michael Tooey, direct.

Q. Did any of the other men go out? A. Parmelee went out.

Q. Did any of the other men go out? A. They went to the door, I cannot say if they went out.

10 Q. When the man was brought in did you recognize who he was? A. No, sir.

Q. Did you know John Schwartzbach in his lifetime? A. I did know him, but not by name.

Q. When he was brought in what his appearance? A. Lifeless.

Q. Did you do anything? A. Yes, sir.

Q. What? A. Laid him on the floor and started to give him first aid.

Q. Are you familiar with the methods of first aid treatment? A. Yes, sir.

20 Q. You learned them did you? A. Yes, sir.

Q. Who brought him in? A. Sergeant Poole and driver of the jitney.

Q. Who was this driver? A. France I think they call him.

Q. French? A. French or France.

Q. Did you know him to be the driver of a jitney on that street? A. Well, I did not know him outside of knowing he was a jitney driver, that is about all I was acquainted with him.

30 Q. When this man was brought in was he conscious or unconscious? A. He was unconcious.

Q. Then you started to render this first aid treatment? A. Yes, sir.

40 Q. Just describe the treatment you gave him and what result you had? A. I laid him on the floor and worked respiration on him and then he came to and moaned a couple of times and went off again and then I went at him again and brought him to, and he began to talk

Michael Tooley, direct.

and tried to get his name from him, we tried to get his name from him, he tried to tell it but he could not, so finally he says, "Take me away from here"—

Mr. Weinberg: We object.

10

Q. He spoke to you? A. Yes, sir.

Q. Continue? A. What I done. Then I tried to relieve him, and I did—

The Court: Just tell what happened?

The Witness: Then I worked on him and he began to talk, and we tried to get his name and he tried to tell it, but we could not understand it, and then he wanted to go away, he wanted to get up and be taken away and I would not let him be up, and then he wanted to go to the toilet, and I told him then, he could not move, and we got him in a position so there would be no further injuries done by moving—

20

Q. You were with him then till the ambulance came? A. Yes, sir.

Q. And the ambulance took him away? A. Yes, sir.

30

Q. When he was brought in was he bleeding or not? A. He was bleeding, yes sir, he was bleeding.

Q. What can you say as to the character of the blood, whether it was fresh blood or dried blood? A. Well, quite fresh, he was bleeding.

Q. What about the condition of his clothing? A. It was very dirty.

Q. Did you observe anything peculiar with

40

Michael Tooey, direct.

reference to the dirt marks on his clothing? A. Well, as a mark of—

10 Q. Are you acquainted with the marks made by automobile tires? A. Well, I could not just say, there was a mark of a wheel, you could see where it came up on the shoulder.

Q. You know what a wheel mark is? A. Yes, sir.

Q. How was that mark on his body? A. Plainly.

Q. That mark passed where? A. It came up like from the right side to the shoulder here, catacornered, (indicating) catacornered from the right hip over towards the right shoulder.

20 Q. Could you see from where the blood was flowing? A. From the right side of the forehead, below the eye, it was scratched, it was not cut hard, it was a mere cut and bleeding, (indicating) under the eye—no, that is wrong, the head is the cut, the right side of the head, above the eye, under the eye was a mere scratch, and the lip split, a cut lip.

30 Q. Where else did you see any evidence of any bruise or injury? A. I could not see until I located it on the lower part of his right side.

Q. Will you indicate on my body where you located that injury? A. Raise your right hand, (indicating) Right here. (The witness indicates back of the waist near the right hip down around the region of the right ribs.)

Q. Did you make any pressure there? A. Yes, sir.

40 Q. Did he complain of pain there? A. Oh, agony, as soon as I touched him.

Michael Tooey, direct.

Q. How long was he in the saloon? A. Probably thirty or thirty-five minutes.

The Court: Was there an autopsy in this case?

Mr. Ward: No, there was not, not so far as we can learn. 10

The Court: Do you know, Mr. Weinberg?

Mr. Weinberg: No, sir; I do not.

Q. In the course of your working upon him were you close to the man? A. Right over him.

Q. Was there any indication on him of drinking? A. Not as I could say, no sir.

Q. And what talking he did do with you, was that rational? A. No, sir. 20

Q. I say, was it rational or understandable, his talking? A. You could understand him, with the exception of his name.

Q. What kind of an evening was it? A. It was a rainy night, drizzley.

Q. At any time after this man was brought in did you go outside? A. Not until I went home, the man was down to the hospital then.

Q. Did you accompany him to the ambulane? A. No, sir. 30

Q. Did you give him any whiskey in the saloon? A. No, sir.

Q. Or any other drink? A. No, sir.

Q. Was there any liquor on his breath? A. Not that I smelled, no sir.

Q. You were close to him? A. I laid over him.

Q. Did he do any vomitting while you were treating him? A. A hemorrhage. 40

Michael Tooley, direct.

Q. Will you just describe that to the jury?

A. Well, a hemorrhage is a vomit of blood, it was all blood.

Q. You are familiar, I take it, with the locality up there? A. Quite so, yes sir.

10 Q. At the corner of Sixth Avenue and River Street is there or not an electric light? A. On Sixth Avenue there is one.

Q. By River Street? A. By River.

Q. On which side of Sixth Avenue? A. Well, it is about the centre. The post is on the right hand side going towards the east side, coming up Sixth Avenue.

20 Q. Is the post on the part of Sixth Avenue which is nearer to Riverside or the side of Sixth Avenue which is nearer to downtown? A. To downtown.

Q. Does that light reflect out into River Street? A. Yes, sir.

Q. How bright a light is it? A. A bright light, a good light.

Q. Does that reflect right out into River Street? A. Yes, sir.

30 Q. Was there any difficulty in seeing up River Street to Parmelee's saloon with that light? A. No, sir; you could see that distance down

Q. There is also a light, I believe, at Fifth Avenue, is there not, an electric light? A. Yes, sir.

Q. Does that light reflect also into River Street? A. Yes, sir.

40 Q. And Parmelee's saloon at number 583 River Street did that have lights burning in it at the time of this accident? A. Inside. The window lights were out.

Q. Did the lights inside reflect any out on the sidewalk or not?

Michael Tooley, direct.

Mr. Weinberg: Objected to. Unless he was outside he could not answer that.

Q. Did you go out that night? A. No, only when I was going home.

Q. To go home? A. That is all.

Q. Did you go in there from some place? A. From downtown.

Q. Did you go in at any time? A. I was only in about a half hour.

Q. Were there lights inside when you were in? A. Yes, sir.

Q. Did they reflect out on the street or not? A. They do when they are lit in the window.

Q. Going home did the lights reflect any out on the sidewalk? A. Not outside of the door-light, they did not reflect the lights from the windows.

Q. Did they reflect any outside? A. Oh, you could see, yes, you could see.

Q. Do you know where Prospect Park Borough is? A. I think I do. But I am not sure.

Q. I show you on this official City map of Paterson the words "Borough of Prospect Park" do you know the general direction of Prospect Park Borough? A. Yes, sir.

Q. Prospect Park Borough is reached by a bridge crossing the river called Sixth Avenue Bridge is it not? A. Yes, sir.

Q. Do you know where Christian's saloon is? A. I never seen it.

Q. If a person were on Sixth Avenue east of River Street, which would be over in this direction, across the Susquehanna tracks, and he wanted to go from Sixth Avenue at that point over into Prospect Park Borough, would the journey or not require him to cross River Street?

A. Yes, he would have to.

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Michael Tooley, cross.

Q. And do you know the ordinary course? Taking the ordinary or usual course, would he or not have to cross River Street in the vicinity of Sixth Avenue? A. That would be his direct direction.

10 Q. Did you see this bus after the accident?
A. No, sir.

Q. Did you hear the bus go by before the accident? A. I cannot say I did, no, sir.

Q. Aside from the weather being rainy, was there anything else particular about the weather that night? A. Drizzly like, dark.

Q. There was no difficulty, was there, in seeing objects on the street that night?

Mr. Weinberg: Objected to.

20 Q. Was there any difficulty in seeing objects on the street that night? A. Well, not too big a distance there was not.

Q. Standing up at this saloon of Mr. Parmelee's would you have had any difficulty in seeing from there for instance, down to the corner of Sixth Avenue?

Mr. Weinberg: Objected to. The witness cannot speculate on what situation might have existed.

30

The Court: Yes; I think that is objectionable.

Mr. McGinnis: The man was there that night and knows the conditions that existed.

The Court: You are asking for his information and he has not made any observation.

Cross examination by Mr. Weinberg:

40

Q. How long had you been in Parmelee's

Michael Tooey, cross.

saloon? A. Probably a half an hour, that is, before the thing had taken place.

Q. And all of the persons whom you have mentioned were in the saloon when you got there? A. Yes, sir.

Q. Where were they? In what part of the saloon were they? A. Well, they were about the centre of the bar. 10

Q. Standing up? A. Standing up.

Q. Drinking? A. That I could not say just now. They were standing at the bar anyway, talking, the same as Parmelee and I.

Q. Did you see Parmelee there? A. I was talking with him.

Q. Was he playing cards? A. Not while I was there, no, sir. 20

Q. Was he sitting down at a table? A. He was sitting talking to me, yes, sir.

Q. Who was standing up? A. Mr. Steger and Camarano.

Q. Two of you were standing up and two were sitting down? A. No. I was standing. There was only Parmelee sitting.

Q. He was sitting by the pool table? A. Yes, sir.

Q. That is quite some distance back from the front door is it not? A. Yes, it is at the extreme end of the bar. 30

Q. That barroom is quite a long one, is it not? A. Well, it is thirty or forty feet anyway.

Q. Back of the pool room there is another room, isn't there? A. Yes, but there is no pool room.

Q. I know there is no pool room, dining room, though? A. Just an adjoining room there, yes. 40

Michael Tooley, cross.

Q. Was that door open? A. Yes, sir.

Q. Was anybody in that back room? A. Not that I know of, no sir.

Q. Was that dining room lit up? A. Well, no, it was dark.

10 Q. The front window lights had been turned out? A. They were out.

Q. How soon before you heard this noise? A. What do you mean, the windows?

Q. How long before this occurrence had you observed the lights being turned out in the front window? A. They were out when I got there, that is, the window lights.

20 Q. The saloon was practically closed then wasn't it? A. Well, no, it was lit up inside, there were two or three lights inside.

Q. How many doors are there leading from the saloon into the street? A. Two.

Q. What do you mean by two? Two sets of doors? A. Well, like a vestibule, as I would call it. There is a door here that leads into the saloon, then there is a vestibule and then there is two doors here like we call storm doors I would say.

30 Q. There are two doors leading from the saloon? A. To the sidewalk.

Q. To a vestibule, and then there are two doors leading from the vestibule into the street? A. There is two double doors, that's all. Now, coming from the street you meet two doors; then you step in, then you get to two doors more that will lead you to the saloon.

Q. On the street if you open the door you find yourself in a vestibule? A. That is the idea.

40 Q. Then you have to open another door to get into the salon? A. Yes, sir.

Michael Tooey, cross.

Q. Were the inner and outer doors both closed?

A. The inner only.

Q. You are sure about that? A. Positive.

Q. The outer doors were not closed? A. They never are closed really when the business is open.

10

Q. Were they at that time? A. No, sir.

Q. How near to the front of the saloon or the windows were there any lights? A. Why, six or eight feet.

Q. Six or eight feet back? A. Yes, sir.

Q. You did not at any time that evening go outside to the sidewalk to see how far those lights in the saloon shined out onto the sidewalk did you? A. No, sir.

Q. You don't know whether there was any shine or glare onto the sidewalk at all, do you?

20

A. Not at that particular time, no, sir.

Q. You know from the nature of those nights that it would be impossible for them to shine out onto the sidewalk? A. Well, no, of course.

Q. I mean the inside lights? A. I know what you mean.

Q. There was a light inside but not outside?

A. There was a glare leading out any time at all, whenever the lights is lighted you can always see the reflection on the sidewalk.

30

Q. What do you mean by seeing the reflection on the sidewalk? A. The light, when the light is lit.

Q. You can see that? A. Yes, often, before he is closed and he has only got one light in front, then you can see if it is open or closed at the corner of Sixth Avenue by the reflection.

Q. Do you mean to say you can see the light if you are across the street and look into the

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Michael Tooley, cross.

place you can see a light burning there? A. No. You can see it on the same side of the street.

10 Q. Do you mean to say you can see the shine of the light coming out of the saloon if the window lights are darkened and there is nothing burning, but the lights six or eight feet back from the doors? A. Yes, sir.

Q. You can see the shine of the light? A. Yes, sir.

Q. When did you ever observe that? A. I am there thirty two years now and during that time I have seen it.

20 Q. And during those thirty-two years you have been around that saloon after the front lights have been darkened, have you? A. Not always, no.

Q. How often have you observed that the lights were out shining out onto the sidewalk from the inner lights? A. I will tell you how I got that.

Q. My question is how many times did you observe that? A. That I could not answer, how many times.

30 Q. How do you know how far you could see an object that evening out on the street? A. Why, when I was coming home and coming—

Q. When you were going home and coming, what do you know with respect to what you could see in that particular neighborhood? A. Why, I could see, I did see two men coming down the opposite side of the street about a block and a half away.

Q. In which direction? A. Coming towards me.

Q. Where were you going? A. Going home.

40 Q. In what direction? A. Towards Main Street.

Michael Tooley, cross.

Q. Going south? A. Yes, sir.

Q. You were near Parmelee's saloon? A. When I was about leaving Parmelee's.

Q. Were you near Parmelee's saloon when you observed these two men? A. On Sixth Avenue across there, crossing Sixth Avenue. 10

Q. I am directing your attention to conditions on River Street, not Sixth Avenue, and ask you how far you could have seen if you noticed an object on River Street in the neighborhood of Sixth Avenue north? A. Not north, south.

Q. I said north? A. I did not go north.

Q. Then you don't know whether a person going south from the north could have seen an object for any distance at all between Sixth Avenue and that street to the north whatever it is, I don't know? A. I did not get that. On the north? 20

Q. Don't you know where north is? A. Yes, I know the directions.

Q. What street is north of Sixth Avenue on the west side of River Street? A. Sixth Avenue.

Q. I ask you what street is north of Sixth Avenue, what cross street is north of Sixth Avenue on River Street? A. West of Sixth Avenue and River Street, is that it? 30

Q. Yes. A. Is Sixth Avenue.

Q. Sixth Avenue jogs across River Street doesn't it? A. Yes, sir.

Q. It starts from River Street and goes east and starts on the other side of River Street and goes west? A. Yes, sir.

Q. It does not cross directly over? A. No, sir.

Q. It is not a right angle crossing? A. No, sir.

Q. It makes a circle, a jog? A. Yes, sir.

Q. My question is, what street is there that 40

Michael Tooley, cross.

intersects River Street north of Sixth Avenue on the west side? A. Thirteenth Street, I guess.

10 Q. What do you say with respect to conditions as to light or darkness between Thirteenth Street and Sixth Avenue on that night, at about twelve o'clock? Did you make an observation?

A. I made none to the north at all.

Q. You made no observation at all? A. No, sir.

Q. The electric light is how far south from that saloon? A. Well, there is the library and the one building.

Q. What? A. There is one building and then the library from the saloon.

20 Q. And then there is the width of the street? A. Yes, sir.

Q. About a hundred and fifty feet away from the saloon is it not? A. Well, I don't get those feet right, I am saying to you that there is a building and the library and then the street.

Q. You had not seen Mr. Schwartzbach that evening? A. Not prior to this.

Q. You had not seen him that night at all? A. No, sir.

30 Q. These two men that you saw a block and a half away who were they, that night? A. I don't know.

Q. You are pretty well acquainted in that neighborhood aren't you? A. Yes, sir, but I did not know them, that is why I noticed, they were on the opposite side of the street.

Q. You can't tell me how they were dressed, can you, those two men? A. Well, no, not outside of a small man, a small formed man.

40 Q. That is all you could make out? A. Yes, sir.

Michael Tooley, cross.

Q. Whereabouts was that, what neighborhood was it you saw them in? A. South, about a block and a half south of Parmelee's.

Q. What street were they near? A. That would be Sixth and May and Erie, they were between Erie and May.

10

Q. On what side of the street? A. On the left hand side.

Q. Where were you? A. On the right side, crossing Sixth Avenue under the electric light.

Q. You did not know who they were? A. I did not, no, sir.

Q. You say they were under the electric light? A. No. I was crossing Sixth Avenue.

Q. Will you describe what you mean by this thump and jar, etc? A. Well, the best I can tell, that sudden thump, I could hear the thump.

20

Q. You don't know how sudden it was? You did not see anything? A. I did not see anything, but I heard the sound.

Q. Now, you are a man of some intelligence, that is easily observed. Just describe that sound a little more accurately? A. A sudden thump.

Q. Did it sound like that (thumping his hands on the deck)? A. Almost as plain, yes, sir; it was like two things coming in contact, or something heavy going over something.

30

Q. Couldn't you distinguish between two such conditions? A. Yes, that is the best I can give you.

Q. Would you say it was a sound like two dish pans rattling together? A. No. No. It was more of a heavy obstacle sound, like some heavy thing going over, we will say, a stone or a hole, or something like that, thump, then there was a thrud after, a kind of brake or thrud.

40

Michael Tooley, cross.

Q. What does that mean? A. Like something that is shoved or stopped sudden like.

Q. You did not hear a noise like a shove? A. I heard it that night.

10 Q. What kind of a noise was it? A. Why it sounded, what it was I should figure—

Q. I don't ask you to figure.

Mr. McGinnis: The witness has been asked what it sounded like.

20 Q. What kind of a noise was it? A. As I say, it was a noise like if two things were coming in contact or something heavy going over something and that thump and then a kind of a thrud sound after which after I knowed what it was like the driver putting on all brakes and skidded and stopped sudden.

Q. It sounded like putting on the brakes? A. Like a thrud.

Q. Like shoving? A. Or breaking.

30 Q. I am free to confess I am not learned enough to know what the word "thrudding" means, therefore, I want to have a description if you can give it to me? A. Something just dropped or shoved, crumpled up like, shoved like, pushed.

Q. If I shove a desk over the floor would it sound like that? A. No, no, the sound of this was different.

Q. Do you mean it sounds something like you hear when a man changes gears on an automobile? A. Similar to that, yes, sir.

Q. That is what you mean? A. Yes, sir.

Q. A scraping of gears? A. Yes, sir.

40 Q. And the sound might have been the sound of something dropping in a hole or bumping over a stone? A. Yes, sir.

Michael Tooey, cross.

Q. The street was in pretty bad shape at that time wasn't it? A. Yes, there was some holes in it, yes, sir.

Q. There were a considerable number of holes?
A. I could not just say that particular place, the street in general you will find has holes. 10

Q. There are a number of depressions along there now? A. Not so much now, they have been fixed.

Q. That street is not so very wide over is it?
A. No, sir.

Q. It is the average street? A. It has the two lengths of cars.

Q. You say just as soon as that noise was audible, Parmelee jumped up and went right to the door? A. Yes, sir. 20

Q. He did not hesitate? A. He just says, "What is that" and jumped to his feet and went to the door.

Q. He did not hesitate, but went right to the door? A. No. It probably had not gone—

Q. Wait a minute—

Mr. McGinnis: I object. I insist the witness be permitted to answer the question.

Q. You remained just where you were? A. I did, yes, sir. 30

Q. And the other men remained where they were? A. That I could not say.

Q. I thought you did say? A. Well, I meant to say, remained where they were, I was the only one stayed where I was, the thing was concluded in my opinion for a minute and Parmelee without waiting for a word or nothing he ran to the door.

Q. And the other two men? A. Went to the door and did not go out. 40

Michael Tooev, cross.

Q. And you yourself remained inside of the saloon? A. Yes, sir.

10 Q. By the time Parmelee got to the door the two men were bringing the injured man in weren't they? A. Well, the first thing I got was —

Q. Please answer the question if you know; by the time Parmelee got to the door the two men were bringing the injured man in? A. Not yet.

Q. Did Parmelee go outside? A. Yes, sir. I don't know how far now, but he went outside of the door.

20 Q. Did he get beyond your sight? A. Well, no, he did and he did not, the door was open when he went out, and, of course you could see him, if he was outside, you could see him.

Q. Did you see him as he was outside? A. Yes, sir, outside of the front door.

Q. How far did he get? A. Well, outside, I cannot tell you the distance, probably he was at the end of the vestibule.

Q. Not probably. Just what you know. Was he in the vestibule when you saw him? A. Well, he was not, he probably got on the sidewalk.

30 Q. I want to know if you have any recollection of it? A. Yes, sir.

Q. From your recollection of that time was Parmelee in the vestibule or did he get as far as the sidewalk when you saw him? A. He might have been, from the distance, I say, it looked as if he got on the sidewalk or in the vestibule, he was not out of my sight.

Q. He might have been just on the line then? A. Yes, sure.

40 Q. And just then they came in with the in-

Michael Tooey, cross.

jured man? A. No, after that the first thing you know, one of the men told me, the first thing he said; do you want to know the first thing he said?

Q. Yes? A. Parmelee opened the door and said, "A man got hurt." Then everybody got busy. 10

Q. This man was laid on the floor? A. After he was brought in, yes sir.

Q. And who washed him? A. Mr. Camarano.

Q. Didn't you see Officer Poole do anything? A. Officer Poole carried him in.

Q. Did he do anything else besides that? A. Not at that moment, no sir.

Q. You say you saw blood on his right eye? A. Yes, sir. 20

Q. What was it coming from? A. From a cut about above it.

Q. What sort of a cut did he have? A. Quite a nice cut.

Q. That does not describe it to me? A. Well, as if it was a bruise. I guess he was hit here on the forehead.

Q. You know the difference between a bruise and a cut? A. This was a cut.

Q. How big was the cut? A. About like that (indicating). 30

Q. What do you say, an inch and a half? A. No. About like that (indicating).

Q. What do you say that is?

Mr. McGinnis: About an inch to an inch and a half.

Q. What? A. I say, about like that (indicating).

Q. You think that is about what? A. I think 40

Michael Tooley, cross.

if it is an inch it is about right. I don't know.

Q. Was it deep? A. Well, I could not just say.

Q. Was the blood gushing out of the wound?

A. No. Naturally flowing.

10 Q. You mean trickling? A. Yes, just coming down. Just trickling, yes, sir.

Q. It was not a very deep cut? A. Well, no, that don't always indicate cuts, the blood.

Q. Blood indicates a cut doesn't it? A. Why, not the depth always.

Q. If it is a deep cut it would naturally flow faster than if it was a shallow one? A. There is different ways to cut it.

Q. Was the man bruised besides, black and blue? A. No, I did not see it that night.

20 Q. Did you ever see a man who has been struck by another man cut that way? A. Yes, sir.

Q. Did it look something like that? A. No, sir, this was a clean cut.

Q. A clean cut? A. Yes, sir.

Q. Like a knife? A. More like that as I know.

Q. It looked like a knife wound? A. Yes, sir, clean, very clean.

Q. That is the nearest you can describe it? A. Yes, sir.

30 Q. A wound made by a sharp instrument? A. Something like that.

Q. That is the only cut you ever saw in his face? A. Outside of this.

Q. You are pointing further on the side; that was more like a scratch? A. That was a scratch and the lip split.

Q. The scratch under the eye was not bleeding? A. There was blood on it but it was not bleeding.

40 Q. And the lip was split? A. Yes, sir.

Michael Tooley, cross.

Q. What do you mean by split? A. Why, split.

Q. What do you mean by split? A. If you cut your lip in two it is split.

Q. Cracked? A. Split, cut, cut through.

Q. Was it bleeding? A. Yes, sir.

Q. Much? A. Yes, sir. 10

Q. Was that where the blood came from you say he vomited out? A. Oh, no.

Q. How do you know? A. Because I seen him before.

Q. You are not a physician are you? A. Not quite, no, sir.

Q. You don't know how long this blood had been going into his mouth? A. I don't think he got that much.

Q. You don't know? A. No, sir. 20

Q. Did you do anything to his lip to paste it up? A. No. I had nothing with me. I just simply cut the man back to consciousness with ospiration worked on him.

Q. In addition to those marks on his face you observed some marks on his clothing? A. Yes, sir.

Q. Will you describe, without characterizing, what those marks on his clothing were like? A. Well, all I seen was that mark of the wheel. 30

Q. I ask you not to characterize it please, just describe it? A. Here on the right side.

Q. What was on the right side? A. The mark.

Q. The mark of what? A. The wheel.

Q. Was it the mark of spokes there? A. No, sir.

Q. What does a wheel look like? What do you mean by the mark of a wheel if it does not show spoke marks? A. Ain't it got any rim?

Q. Then you mean it looked like the mark of a rim? A. Well, it was not spokes anyway. 40

Michael Tcoey, cross.

Q. You want to get out I suppose that it looked like the marks of an automobile tire? A. Well, I cannot say for I did not see it hit him and I did not say it.

10 Q. That is what you are hinting at? A. No, I did not even mean to hint that.

Q. Did you see marks as though it was a non-skid tire mark on him? A. No, it was a clean mark.

Q. What I mean is you saw the splash of dirt on him? A. No, it was a plain mark across here, from right here across up that way (indicating from the hip to the shoulder over the front of the body).

20 Q. There was a stripe of dirt across there? A. Yes, sir.

Q. That could be made by a number of things so far as you know? A. Yes, sure.

Q. A wheel would not be the only thing to make that? A. No, sir.

Q. So you don't want to leave this thing as being in a position where you are absolutely swearing that that mark was made by a wheel? A. Oh, no, no.

30 Q. Did you examine his right hip? A. Yes, sir.

Q. What means did you have? A. I was trying to locate his injury.

Q. What did you do? A. I went over his body, etc.

Q. Did you remove his clothing? A. Not outside of his collar and tie and his pants here (indicating at the waist).

Q. Did you unbutton his trouser? A. Just opened it there, I did not open it below.

40 Q. You did not see his flesh? A. No, sir.

Michael Tooley, cross.

Q. You don't know whether it was marked or not? A. No, sir.

Q. He was tender over the hip? A. I found a lump there.

Q. Where was that lump? A. As I say the lower part of the right ribs here. 10

Q. Do you know whether he had a lump there before or not? A. When I touched there he groaned and hollered.

Q. Did you touch the other parts of his body where this mark was that you described running over his shoulder? A. Yes, sir.

Q. How was he there, all right? A. He did not seem to show any agony there.

Q. He did not show any signs of being hurt there? A. No, sir. 20

Q. But it was only down by the hip? A. Yes, sir.

Mr. Ward: We have here a statement and the representative of a silk dyeing company in Paterson, New Jersey and would like to interrupt the examination long enough to introduce that testimony if counsel will not admit the statement.

The Court: Is there any necessity of putting the witness on to prove what was paid the deceased per week, when we have their statement here? 30

Mr. Weinberg: We are willing to admit that that paper is a copy of the books and therefore, you need not bring the books, we will admit that the statement shows just what the books will show.

The Court: This shows what the books would show, namely, what the deceased earned during that period? 40

Michael Toocy, cross.

Mr. Weinberg: Yes. We will take it to that extent. We will object to it though on a different ground, on the ground that it is not competent nor material.

The Court: It is not competent for what?

10

Mr. Weinberg: It is not competent on the question here.

The Court: Suppose you argue that now.

Mr. Ward: We offer in evidence statement from January 31st to May 28th, 1917, showing the different days and number of hours during which Mr. Werner Schwartz-
enbach was employed and the compensa-
tion he received.

20

Mr. Weinberg: We object to it as im-
material and for the reason that that is
not the test and does not comply with the
rule for the measure of damages; it must
be what his contributions were, not what
he earned. It may be some evidence, but
it should be connected up by some evi-
dence showing the contribution.

The Court: What is the period covered
in that?

30

Mr. Ward: It covers January thirty-first,
1917, to May twenty-eighth, 1917, about
four months.

The Court: Do you expect to introduce
any testimony in connection with that
showing what he did with the money?

Mr. Ward: Yes, sir. We can show what
he did with the money.

40

The Court: With that understanding I
will allow it to go in evidence. Of course,
Mr. Weinberg's statement that he does not
object to the form of the proof that is

Michael Tooey, cross.

to say having the paper produced in the place of the witness sworn who copied it from the books and producing the books.

Mr. Ward: I don't think we can show what was done with all of the money, but certain parts of it.

10

Mr. Weinberg: Of course it should be received subject to my objection on that ground.

The Court: Yes. You may renew your motion later if you want to.

Admitted and marked, "Plaintiff's Exhibit P1" of this date.

Q. You did not hear this bus approach or go by the place, did you? A. No, sir.

Q. And, of course, from where you were, you did not see it coming? A. I did not see it, no, sir.

20

Q. Did you hear any other noise passing the door while you were in the place? A. No, sir; outside of the trolley car.

Q. Did you hear any trolley cars? A. Oh, yes.

Q. How soon before the accident was this when you heard the trolley car go by? A. I know there is a trolley goes through there about five or ten minutes to twelve every morning.

30

Q. Did you hear that trolley go by that night? A. Yes, sir.

Q. How long was that before this time? A. Ten minutes,, twelve or fifteen minutes, anyway ten minutes before at least.

Q. You recall hearing the trolley go by? A. Yes, sir.

Q. You don't recall hearing any other bus or automobile going by? A. No, sir.

Q. Do you know in what direction that trolley

40

Michael Tooey, cross.

car was going that was due there at that time?

A. Well, now, I only heard, I could not see; of course, I do know but I did not see the car and I did not pay that much attention to it that night.

10 Q. You say you knew there was a trolley due to pass there ten minutes before this thing occurred? A. Yes, sir.

Q. In what direction would that trolley car be running?

Mr. McGinnis: Objected to as not cross examination and he simply heard the trolley and cannot testify to what was usual.

The Court: I don't think he is asked that; he is asked in what direction that car went.

20 Mr. Ward: He did not see the car. Counsel wants to know in what direction the car does usually pass at that time?

Mr. Weinberg: No, that was not the question.

Mr. Ward: He stated he did not see the car.

Mr. Weinberg: He stated as a fact he knew the car would pass there and I want to know in what direction it would go.

30 The Court: I will allow the question. Plaintiff excepts.

Q. In what direction? A. Going north, to Riverside.

By Mr. McGinnis:

Q. What time was it when you heard this crash about? A. Between twelve and five after probably.

Dr. Robert R. Armstrong, direct.

DR. ROBERT R. ARMSTRONG, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Ward:

Q. You are the County Physician of the County of Passaic? A. Yes, sir. 10

Q. And you have been for how long? A. For the past eleven years.

Q. And you have been practicing medicine how long? A. Since 1895.

Q. Was your attention called to an accident that happened to John Schwartzenbach which resulted in his death? A. I was notified of the death of this man in the Paterson General Hospital.

Q. Did you make any examination of him? A. I viewed the case. I don't know whether it was the day he died or the following morning, the night he died or the following morning. I don't remember just what time he died, but I viewed the case and made an inspection of it. 20

Q. You signed the death certificate? A. Yes, sir.

Q. Have you got it there? A. I have got a certified copy of the death certificate. 30

Mr. Ward: I offer this copy in evidence.
(The said offer is deferred until after the cross examination.)

Q. What did you find from your examination was the cause of the man's death? A. Why, he had multiple injuries and he died of internal hemorrhage as a result of those injuries.

Q. What marks, if any, did you find on his body, do you recall? A. I cannot recall now just what the marks were, because I see so many 40

Dr. Robert R. Armstrong, direct.

cases, but, as I recollect, at the time, his chest was crushed in.

Q. Were those injuries such as a man would suffer from if run over by an automobile?

10 Mr. Weinberg: Objected to as not proper hypothetical question. It does not include sufficient facts. A man might be run over by an automobile which passed over his head or his feet, and it might have been a light automobile or a heavy one.

Mr. Ward: Yes, I think I would have to elaborate that.

The Court: The condition of the chest which you found, could that be produced by a weight pressing on him?

20 The Witness: Yes, sir, it would.

Q. It has been testified that when this man was brought into a place, a saloon, after he had sustained these injuries that he vomitted blood or that blood came from his mouth, what did that indicate in your opinion? A. Internal hemorrhage.

30 Q. What was the cause of that internal hemorrhage? A. It is possible that the hemorrhage could have come from the lungs or, perhaps, from the stomach.

Q. What would be the direct cause, I mean, of the injury to the lungs or the stomach? A. Crushing of the ribs, fracturing of the ribs, crushing the chest.

Q. Could that be inflicted by a heavy body rolling over the body? A. Yes, sir.

40 Q. It has also been testified that this man wanted to go to the toilet, what is your opinion did that indicate? A. Symptoms of that kind

Dr. Robert R. Armstrong, direct.

following injury is usually an indication of shock, hemorrhage, the man suffering from shock.

Q. And if any heavy body came in contact with this man inflicting the injuries you found there would shock follow? A. Yes, sir.

Q. As County Physician do you investigate crimes, and so forth? A. Yes, sir. 10

Q. Was there ever any report to you of any foul play in this case? A. Never any evidence that I heard of; I usually consult the police in all of those cases.

Q. Was there any evidence of foul play that came to your attention? A. There was no evidence of foul play.

Mr. Weinberg: I object, he said there was no report made to him. 20

Q. Did you tell the police or consult the police in this case?

Mr. Weinberg: Objected to.
Objection sustained.

Mr. Weinberg: If the last answer made by the witness is interpreted to convey the idea that the police informed him that there was no such thing occurring, I think it should be stricken out. It is in such shape I could hardly have objected to the answer. I move that it be stricken out. 30

Motion denied: defendant excepts.

Q. Aside from the injuries to the man can you give us any evidence as to his usual physical condition, whether he was apparently a strong man in good health or not? A. One thing that brings this case a little clearer to my mind is that the fact that I visited the same home a short time previous; now, this is the man's 40

Dr. Robert R. Armstrong, cross.

brother, I do not recall whether it was his wife or the man's wife that died that I called there to issue the certificate for, but he was a man just about the same build as his brother.

10 Q. About the same build as his brother? A. Yes, sir.

Q. This is the brother sitting here? A. Yes, sir.

Q. Do you recall whether or not these are the children? A. I don't know.

Cross examination by Mr. Weinberg:

Q. Was he robust? He was not very robust, was he? A. Well, he was a kind of a small man as I have just described there.

20 Q. I am asking whether in your opinion you claim he was a robust person? A. It is pretty hard to tell after death what the general previous condition has been, but as I recall the man he was a man of fairly good physique.

Q. Did you ever attend him professionally? A. Never, no, sir.

Q. You have no means then of knowing the condition of this body and the various organs, etc.? A. From the physical standpoint, no, I have not.

30 Q. Of course, he may have had a number of ailments and you know nothing about it, not having attended the man? A. I know nothing about his condition outside of the condition I found his body in.

Q. Will you describe the injuries so far as you now recall them? A. I cannot describe the injuries for the reason that I have so many of these cases. He had multiple injuries. That is a certified copy of the certificate which we issue.

40 Q. This simply says multiple injuries followed

Dr. Robert R. Armstrong, cross.

by internal hemorrhage, that means a number of injuries he had? A. A number of injuries, yes, sir.

Q. There is no reference there to any particular portion of his body? A. As I recall this case the serious injuries were to his chest, his chest was crushed. 10

Q. What part of his chest? A. I do not recall whether it was the right side or the left side; two ribs were crushed in.

Q. Do you recall how extensive that crushing was? How far it extended? A. How far it extended.

Q. Yes? A. As near as I recall, I think there were two or three of his ribs fractured.

Q. And you think they were on the right side? A. I won't say as to whether they were or were not. 20

Q. Was what is usually called the chest bone, was that crushed too? A. Well, usually, when the ribs are crushed in the sternum or chest bone is usually crushed more or less.

Q. Do you recall that? A. I do not recall it.

Q. You do not remember that? A. No, sir.

Q. Did you observe any injury to his right hip or about his right hip? A. Well, I did not make particular note of all the injuries, I simply went over him and found that he had multiple injuries and so stated in the certificate of death. 30

Q. You were not attracted by any swelling or lump around his hip? A. Not that I recall.

Q. A crushed chest would cause internal hemorrhage? A. Yes, sir.

Q. Assuming that the man was run over by a heavy automobile so as to have his chest crushed, 40

Dr. Robert R. Armstrong, cross.

how long after that occurrence would the hemorrhage appear? A. How long after?

Q. Yes? A. It would all depend upon the amount of hemorrhage that was taking place.

10 Q. You have spoken of hemorrhage here, how much hemorrhage did he have to your knowledge? A. I did not visit him at all at the time he was injured. I only saw him after he had died.

Q. Then if you say here he had internal hemorrhages you mean that is a matter that you have been informed of? A. I usually go by the history of the case more or less and then the condition of the body as I find it afterwards.

20 Q. But when it comes to internal hemorrhages that is the result of the report made to you or information given to you by way of history? A. Yes, sir.

Q. You had no personal knowledge then that he had any internal hemorrhages? A. That is only from the history of the case and the condition of the body.

30 Q. Observe what I said. I say you have no personal knowledge of his having had internal hemorrhages? A. I could not see any hemorrhage because the man was dead when I saw him.

Q. So that you do not know except what you have been told that he had internal hemorrhages? A. I am pretty positive that he must have had hemorrhage.

Q. I understand that, as a medical man you might know, that is so, but, I say, as a physical fact you cannot swear that he had internal hemorrhages?

40 The Court: You did not see the man die?
The Witness: I did not see the hemor-

Dr. Robert R. Armstrong, cross.

rhage, but usually in making our diagnosis we go by the history of the case.

Q. You only know the man's chest was crushed and the hemorrhage from the history? A. Yes, sir.

Q. How soon after a man's chest was crushed would any hemorrhage occur? A. It would depend upon the amount of irritation produced in the lung vesicles. 10

Q. The amount of what? A. Irritation.

Q. Did you determine how much irritation there was in the case? A. How could I determine that.

Q. You could not tell that either? A. The man was dead when I saw him.

Q. You could not observe the condition? Or didn't you make any such examination? You made no autopsy? A. I did not perform any autopsy. The cause of death was so evident that really an autopsy was not necessary. 20

Q. If there were sufficient irritation to cause much hemorrhage at all,—if it is an intelligent enough way to put the question,—how long after the irritation would the hemorrhage occur? A. It would all depend upon the amount of hemorrhage into the lung tissues. Naturally when you get hemorrhage into the tissues it will start pain and cause a strain and as a result of that you will have if your hemorrhage was not severe you would not have the vomit and only if it was severe would you get it more readily. 30

Q. What would you say would be the closest period a man would have hemorrhage of blood from a crushed chest? A. That is a question I could not answer.

Dr. Robert R. Armstrong, cross.

Q. You cannot answer that? A. No, sir.

Q. You don't know whether a man would have hemorrhage from a crushed chest say within two or three or five minutes after he received the injury? A. It is possible, yes, sir.

10 Q. And if he did have such hemorrhage would it be a severe one or a very slight one? A. That would all depend upon the amount of blood that was exuded into those tissues. For instance, if a man had a severe hemorrhage into those tissues he would expectorate or give out a considerable quantity of blood; if the hemorrhage was not so severe there would not be so much come out. If he had a hemorrhage in the stomach and the hemorrhage was severe naturally it would cause the raising of some blood from the stomach.

20

Q. I am referring now to the severity of the injury which produced the hemorrhage rather than the amount of hemorrhage which produced the vomiting? A. You can sometimes have a very severe injury and not have so much hemorrhage.

Q. Is it possible for a man to have a crushed chest from which he died and not cause a hemorrhage at all? A. Yes. It would all depend upon the lung tissues. If the lung tissue is torn, naturally you are going to have your hemorrhage. If the lung tissues are not torn possibly you won't have any.

30

Q. In this case, of course, you cannot tell us whether the tissues were torn or not? A. I did not do any autopsy.

Q. Is hemorrhage usually followed by coughing? Or is it naturally preceded by coughing? A. It depends upon where the hemorrhage is coming from.

40

Dr. Robert R. Armstrong, cross.

Q. Coming from a source which would be produced by a crushed chest? A. I would say so, or the hemorrhage might be so profuse that really it would gush out.

Q. Sort of suffocated or half suffocated by it? A. I think a man suffering from shock is half suffocated anyway. 10

Q. You would expect quite a considerable flow of blood wouldn't you? A. If the ruptured lung tissue was severe, yes, sir.

Q. With the crushed in condition you found, the chest—you would expect to find considerable rupture there? A. If the lung tissue was seriously torn, yes.

Q. That, of course, you could not determine? A. Not exactly, no, sir. 20

Q. But you could surmise from the external evidences that you saw couldn't you? A. From the history of the case and the external evidences.

Q. From that you determined that he must have had a hemorrhage? A. I presumed he had a hemorrhage, yes, sir.

Q. A severe one? A. It would not be necessary for him to expel the blood at all to have a hemorrhage.

Q. Then we laymen would not know he had a hemorrhage if he did not expel it then would we? A. No, sir. 30

The Court: You call it an internal hemorrhage?

The Witness: Yes, sir.

The Court: And that could be had without showing it externally?

The Witness: Oh, yes, he could have an internal hemorrhage without showing it externally at all. His abdomen might have 40

Dr. Robert R. Armstrong, cross.

been filled with blood for all I could tell you, if his liver was ruptured which is quite probable also on account of the crushed condition.

10 Q. That is probably why I have not been able to make myself clear. I have been referring always to hemorrhage that we can see, which would be evidenced by the blood coming from the mouth, that is the kind of hemorrhage I have in mind, not an internal one? A. The only hemorrhage that would come from the mouth would be that flowing from the stomach or the lungs, if he had the hemorrhage as a result of the rupture of the liver naturally it would be in the abdominal cavity or the other organs in that connection.

20 Q. Did you observe any cuts on this man's head? A. I cannot recall all of the injuries he had; the most serious wound was this wound on his chest.

Q. Your certificate is based on the history of the case given to you you say? A. From the history and from my observation.

30 Q. And the part referring to internal hemorrhages is based upon the history? A. The history and my observation.

Q. From the history and your observation, I ask you then, can you give me an idea as to what sort of a hemorrhage the man might have had?

The Court: You mean that he died from?

Mr. Weinberg: Before he died. From the history and your own observation?

40 The Witness: You mean as to the extent of hemorrhage, as to the character?

Dr. Robert R. Armstrong, cross.

Q. Yes? A. Which do you wish?

Q. Both please? A. Well, I did not see him have any hemorrhage.

Q. You considered the information and the evidence of your own eyes sufficient for you to report that he died of internal hemorrhage? A. Yes, sir. 10

The Court: Now, counsel wants to know what that was?

The Witness: Well, from the history of the case and from the observation and inspection, crushing of the chest, it is possible that he may have had a rupture of the liver which would also cause hemorrhages into the abdominal cavity which would be entirely separated from the chest cavity. Now, if he vomitted blood as this gentleman states he did, he undoubtedly had a hemorrhage into the lungs, but he could have had both and there would be no evidence of the abdominal hemorrhage unless he was opened up, outside of the symptoms which he showed. 20

Q. Assuming that he had a hemorrhage as a result of this irritation caused by the crushing of his chest, how soon would that result, that hemorrhage, manifest itself after receiving the injuries? 30

Mr. Ward: I think we have gone all into that. I think the doctor said it depends upon so many circumstances.

The Witness: I answered that question a few minutes ago. You asked me if it could occur in three or five minutes and I stated yes. 40

Dr. Robert R. Armstrong, cross.

10 Q. I understood you to say to me right along that you had not any evidence of any hemorrhage and wanted to know so many things from me. Now, I have supplied the only evidence in the case as to hemorrhage, and ask you from that whether you can state? A. I did not see any hemorrhage at all.

Mr. Ward: I object to the question. Counsel has not supplied the only evidence of hemorrhage there is. There is other evidence, the crushed condition of his body and the other conditions.

The Court: Let us have the next question.

20 Mr. Weinberg: I am not sufficiently learned to give an opinion on that but I thought the hemorrhage was the result of the crushing.

The Witness: That was the cause of the hemorrhage.

Mr. Ward: I now offer the certificate in evidence.

Mr. Weinberg: I object to it. It appears to be the result of hearsay.

30 Mr. Ward: I believe the act provides for that. It is evidential, irrespective of the manner in which it is made up as proof of its contents.

Mr. Weinberg: Whether it is hearsay or not?

Mr. Ward: Yes, sir.

The Court: I will hold the offer until I consult the statute. In the meantime it may be marked for identification.

40 The said certificate is marked "Plaintiff's P2" for identification, of this date.

Fred Gundy, direct.

FRED GUNDY, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Rosenstein:

Q. Where did you reside at the time of this occurrence? A. Number 310 Fifth Avenue, corner of Madison. 10

Q. Did you know John Schwartzbach in his lifetime? A. Yes, sir.

Q. Did you see him on the night of May twenty-eighth, 1917? A. I did.

Q. Where was that? A. In Mr. Christian's saloon, corner of Sixth Avenue and Madison Avenue.

Q. Did he leave the place before you or did you leave before him? A. We both left together. 20

Q. About what time was that? A. About five minutes to twelve.

Q. Do you know where Parmelee's saloon is on River Street? A. I do.

Q. Can you give us some idea about how long it would take a man to walk from Christian's saloon down to Parmelee's? A. Well, I should judge between eight, seven to eight or nine minutes.

Q. When you left the saloon with Mr. Schwartzbach that night, how far did you go with him do you know? A. I went with him to the corner of Sixth and Madison, his saloon is built a little bit back from the corner and we walked to the corner, I lived on the following block. 30

Q. On which side of the street were you walking when you left Christian's saloon? A. Going west on the right-hand side.

Q. That is, as you were going down River 40

Fred Gundy, cross.

Street you were on the right-hand side? A. Yes, sir.

10 Q. When you left Mr. Schwartzbach did you take notice on which side of the street he continued down Sixth Avenue? A. Yes, sir, on the right-hand side.

Q. Will you tell us what kind of a night it was? A. The night was a little drizzly, but it was not foggy or anything.

Q. What was the condition of Mr. Schwartzbach when you left him, whether he was sober or intoxicated? A. When I left him he was perfectly sober.

Q. Do you know where Mr. Schwartzbach lived? A. He lived over in Prospect Park.

20 Q. And you say that the saloon at which you both had been was on Sixth near Madison Avenue? A. Yes, sir.

Q. And he continued down the right-hand side of Sixth Street after you left him? A. Yes, sir.

Cross examination by Mr. Weinberg:

Q. How long had he been in the saloon? A. When I got there?

30 Q. How long had you been in the saloon? A. How long had I been in the saloon? I should judge that I had been in there two or three hours.

Q. And during the two or three hours that you were in the saloon how long had Mr. Schwartzbach been in there? A. He was not with me.

40 Q. During the two or three hours that you were in the saloon how long had Mr. Schwartzbach been in there? A. Well, I should judge about an hour, an hour and a half or two hours, we were playing pinochle.

Fred Gundy, cross.

Q. That is all you were doing? A. That is all.

Q. You took nothing, of course, you took nothing to drink in there? A. Why outside of we had a glass of beer every time we finished a game, which took may be a half an hour or a little longer, perhaps, when we finished a game.

10

Q. You did not do it every time somebody melded a hundred and fifty? A. No, sir.

Q. That would be coming a little too fast? A. Well, it just depends upon whether it is warm weather or not.

Q. What were you playing a thousand point game or a hundred? A. A thousand point game.

Q. When Mr. Schwartzbach left did you still stay in the saloon? A. No, sir, I left with him.

20

Q. Did the saloon close up at that time? A. Well, I suppose he would close up, we left about five minutes to twelve and we stopped about a second on the corner to chat a little and I bid him good night and I went down to my home and he went to his home.

Q. Did you look at your watch when you left the saloon? A. I did not have any to look at that night.

Q. How do you know it was five minutes to twelve? A. By the saloon keeper's time.

30

Q. What? A. By the clock in the saloon.

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

Q. Did the barkkeeper say, "It is time for everybody to get out." Or something like that? A. No, sir.

Q. You are sure you looked at the clock? A. Positive.

Q. And it was five minutes to twelve? A. Yes, sir.

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Luigi Camarano, direct.

Q. Was it raining then? A. Well, a sort of a drizzle.

10 Q. Was it drizzling at that hour? Was it drizzling at the time you left or had it drizzled when you went in the saloon? A. Why, I don't remember.

Q. And you walked down how far? A. Oh, I should judge about fifty feet.

Q. And then you left him? A. Yes, sir.

Q. How far was the point where you left him from River Street? A. Oh, about six blocks, I should judge; in that neighborhood.

Q. You went those six blocks alone? A. Yes, sir.

20 The Court thereupon adjourned until tomorrow, June twenty-first, 1918, at 10:00 o'clock A. M.

Paterson, N. J., June 21st, 1918.

The trial proceeded this day pursuant to adjournment.

LUIGI CAMARANO, sworn as a witness on behalf of the plaintiff, testifies as follows:

30 Mr. Rosenberg: Before we proceed with the case in order to place upon the record the ownership of the bus at the time of the accident, I should like to read the first interrogatory.

The Court: Is there any dispute about that.

Mr. Weinberg: I think it is admitted in the pleadings.

40 The Court: If it is not, you admit it now.

Luigi Camarano, direct.

Mr. Weinberg: Yes, sir, it it is not admitted in the pleadings, we admit it now.

The Court: It is admitted that the defendant owned the bus at the time of the injury and it was being driven by their servant.

10

Mr. Weinberg: Yes, sir.

Direct examination by Rosenstein:

Q. Where do you live? A. Number 589 River Street.

Q. Were you living there on the night of May twenty-eighth, 1917? A. Yes, sir, at Number 589 River Street.

Q. At the same place? A. Yes, sir.

Q. There is where you maintained a barber shop? A. Yes, sir.

20

Q. If you were standing on River Street looking in a southerly direction, that is down towards Main Street, on which side, the left or the right, would that barber shop be? A. On the right.

Q. That is directly opposite the junction of Sixth Avenue and River Street? A. Yes, sir.

Q. Did you know John Schwartzenbach in his lifetime? A. Yes, sir, I went to school with him.

30

Q. Where were you on the night of May twenty-eighth, 1917? A. I was in Parmelee's saloon.

Q. On that night while you were in that saloon, at about twelve o'clock, did you notice anything unusual? A. Yes. I was sitting at a table with my face towards the street and a bus came past at an awful speed and I heard a bunk like that (illustrating).

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Luigi Camarano, direct.

Mr. Weinberg: Did you see the bus pass?

The Witness: Yes, sir.

10 Q. After you heard this bunk of which you speak, what happened then? A. Then we jumped up and says, "Something got hit," and so we ran and Parmelee ran and I ran right after him and we ran right out to the street and we saw a policeman and this driver pick up this fellow, this Schwartzbach.

Q. What was done with the body? A. They brought him into the saloon.

20 Q. Did you recognize the man then? A. I knew him always as Hans Butzer, I never knew him as Schwartzbach until this case, I went to school with him, that is how I know him under that name. So as they brought him in I says to Parmelee, "Who is it?" He says, "I don't know." So I go over when the policeman lays him down and I see him and I says, "It's Hans."

30 Q. What was his condition when the policeman laid him down on the floor? A. He was in pain, he kept moaning, he had blood all over his face and I leaned over and I asked him if he knew me, I says, "Hans, do you know me." Before that I says, "What's the matter, Hans?"

Mr. Weinberg: I object to any conversation.

Mr Ward: This is not as to the accident; it is simply to show his consciousness at the time.

The Court: Was he conscious?

The Witness: Yes, sir. At the time he knew me. I asked him if he knew me,

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Luigi Camarano, direct.

he says, yes. "You are Luigi." He says, so we washed him off and he wanted to get over and he says he wanted to go to the toilet.

The Court: Where is there any necessity for repeating this? It is quite evident and I don't suppose it will be denied that the man was brought into the place and was injured and subsequently died.

10

Mr. Ward: In view of the opening of the defence and their questions tending to show that these injuries might have been sustained at some time prior to the bus getting there, I think it is somewhat important. And it is important in view of the opening that the blood upon him was old blood and was blood from another injury.

20

The Court: Yes, I suppose that is important.

Q. Can you tell us whether the blood upon his face was old blood or fresh blood? A. It was fresh, because I took out my handkerchief and wet it on the faucet and I washed him off and then he says he wanted to go to the toilet and I did not think he was able to, I tried to raise him up, he could not get up, so he says, "I want to go to the toilet." I says, "What do you want to do, sit down?" He says, "Make water." So I seen he could not get up, so I took out his private myself and I says, "Go ahead, right where you are." And he did, but not much came from it. So then the ambulance came and took him away.

30

Q. How long did the ambulance come after he was brought in? A. Quite a while. I should

40

Luigi Camarano, direct.

judge about a half an hour, anyway between a half hour and an hour when he was took outside.

10 Q. When you saw the bus go by could you hear anything from the bus, any signal? A. What do you mean, a horn or that?

Q. A horn or anything like that? A. No, I don't think I did hear any horn at all.

Q. When you saw the bus go by and heard it move by, could you form an opinion as to how fast it was going?

Mr. Weinberg: The question is whether he did form an opinion.

Q. Yes? A. Yes. How fast it was going?

20 Q. Yes? Could you form an opinion?

Mr. Weinberg: I object to the question. Objection overruled. Defendant excepts.

A. Yes, the three of us—

Q. How fast did you think it was going? A. Between thirty and thirty-five miles.

Q. An hour? A. Yes, sir.

Q. Between thirty and thirty-five miles an hour? A. Yes, sir.

30 Q. What kind of a night was this? A. Well, it had been raining but at the time it was not raining.

Q. I believe you said that after Mr. Parmelee had rushed first to the door that you rushed afterwards? A. Yes, sir.

Q. At that time did you look out into the street? A. Yes. We were watching the policeman and this bus driver picking him up, and as they were carrying him in we held the door

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Luigi Camarano, cross.

open, I held the door open so that they could come in.

Q. Did you see the bus, where the bus was standing? A. After they struck this fellow.

Q. I mean when you came out? A. Yes, sir.

Q. Where was it standing? A. Near the corner of Sixth Avenue. 10

Q. About how far away from Parmelee's was that? A. About between sixty and seventy feet.

Q. Will you tell us how far you could see ahead of you looking out on the street? A. Why, for at least a half block there you could see.

Q. How is River Street lighted there at that point? A. Why, there is an arc light on the corner Butler and Sixth Avenue that throws a reflection into River Street and there is one corner of Sixth Avenue and River Street that throws a reflection this way also. 20

Q. Come down to the map. This is the official map of the City of Paterson, this is River Street, this is Sixth Avenue and where is the Parmelee store? A. (Showing) here.

Q. So that one block up from River Street in Sixth Avenue is Butler Street and there was a light which threw some light down into River Street? A. Yes, sir. 30

Q. Then on this corner of Sixth Avenue and River Street there is another arc light? A. Yes, sir.

Cross examination by Mr. Weinberg:

Q. You said that there was one arc light at the corner of Sixth Avenue and River Street on the same side of the street as Parmelee's saloon? A. Yes, sir. 40

Q. Where did you say the other one was? A.

Luigi Camarano, cross.

At the corner of Butler Street and Sixth Avenue.

Q. How far is Butler Street from River Street?

A. One block.

Q. How large a block? How long a block?

A. Well, it is two city lots, say two hundred feet.

10 Q. Do you know that both those lights were burning that night? A. Yes, sir.

Q. How do you know? A. Why because I have the reflection of one light going into my rooms and I have two children and they wont go to sleep if I don't have a light for them and I use this light.

Q. That light is burning every night then?

A. Well, I use it.

20 Q. Then you never have any trouble with your children not having any light as long as the City of Paterson gives it to you? A. Well, that is it.

Q. Whereabouts are your rooms? A. At Number 589 River Street.

Q. What is Parmelee's number? A. Number 583.

Q. And do you get lights from that street lamp on Sixth Avenue? A. Yes, sir.

30 Q. You don't get it from the light on River Street? A. No, sir, because that is up in the middle of the block.

Q. You are sure you have a flood of light coming in your house a block or more away have you? A. Yes, sir.

Q. Where do you live, Number 589 River Street? A. Yes, sir.

Q. How long have you lived there? A. All my life.

40 Q. How old are you? A. I will be thirty-one my next birthday.

Luigi Camarano, cross.

Q. How long have you known this man? A. Since a boy.

Q. What name have you known him under?

A. Hans Butzer.

Q. You went to school with him? A. Yes, sir.

10

Q. And in all that time you never knew him by the name of Schwartzbach? A. Not until now.

Q. How do you know we are talking about Schwartzbach? A. Because they told me the name Schwartzbach is the man's name, that Butzer is not his name. I did not know that.

Q. Were you in the same class with him? A. Well, I could not say that. I don't remember.

Q. Whether in school or out of school, you never heard his real name nor heard him known as anything but as Hans Butzer? A. Yes, sir.

20

Q. Have you been quite intimate with him? A. Friendly, yes.

Q. I said intimate with him, as a man? A. Yes, I have.

Q. You have gone out a great deal with him? A. No, sir, never.

Q. You never went out with him? A. I never went out with him, I just happened to be in his company different times.

30

Q. Then you would be in his company quite frequently? A. Not often, occasionally when we would meet, because he had only been back from London here maybe about a year.

Q. How frequently had you met him in Parmelee's saloon? A. How often?

Q. Yes. A. Oh, a couple times, two or three times.

40

Luigi Camarano, cross.

Q. How many? In Parmelee's saloon? You have been there many times? A. Yes, sir.

Q. Had you met Mr. Schwartzbach in Parmelee's saloon on this particular night? A. Only after he was hit.

10 Q. You had not seen him there earlier in the evening? A. No, sir.

Q. What time did you get there to the saloon? A. About between nine and ten, something like that.

Q. And you remained there until the accident? A. Yes, sir.

Q. What did you do during that time? A. Why, we were sitting at a table talking.

20 Q. Is that all you were doing, talking? A. That is all.

Q. You were not drinking? A. No. May be we would have a drink.

Q. Parmelee did not make very much money out of you fellows that night? A. Well, it is according; sometimes he makes, sometimes he does not.

Q. You were just talking there in his place and so were the other men with you? A. What is that.

30 Q. The other men who were with you they were just talking in there? A. Sitting at a table talking, yes, sir.

Q. There was no drinking going on? A. Not often, no, you don't have to be in a saloon to keep on drinking all the time.

Q. Not to keep on drinking, I did not say that? How many drinks do you suppose you had? A. I could not tell you.

40 Q. So many or so few that you have forgotten? A. I could not tell you. I drink when I feel dry, if I don't feel dry I don't drink.

Luigi Camarano, cross.

Q. You have no recollection at all of how often this thirst period occurs? A. No, sir, that don't hit me very often.

Q. It don't hit you often? A. No, sir.

Q. When it did hit you though it hit you hard, I suppose? A. No, sir. 10

Q. And then you went on a bat, I suppose? A. No, sir.

Q. You were sitting on the pool table were you? A. On a chair by the pool table.

Q. Didn't you say you were sitting on the pool table? A. By the pool table.

Q. Wasn't it a chair by the pool table in the back room where you were sitting? A. Yes, sir.

Q. Were the doors closed to the saloon? A. Yes, sir. 20

Q. And the lights were out in the window? A. Yes, sir.

Q. The nearest light to the front was one about six or eight feet away? A. Yes, sir.

Q. And, sitting in the back room, looking through the door, you judge the automobile was passing at the rate of about thirty miles an hour? A. Yes, you could see that.

Q. For how long a distance did you have this automobile in view? A. Well, say, between eighteen and twenty feet. 30

Q. Where do you get that distance from? A. From the length of the windows.

Q. The length of the windows? A. And the door, including the door.

Q. Then you would have to see it from one corner of the window and follow it with your eye to the next corner of the last window before you could see eighteen feet? A. Yes, sir.

Q. Do you mean to say you did that? A. Why, it shot past, yes. 40

Luigi Camarano, cross.

10 Q. I did not say anything about shooting past. I am asking you whether you looked through the corner, the left-hand corner of the window and followed it all the way down, so to speak, throughout that stretch of eighteen feet? A. Well, I won't say I started at the beginning of the window, but I see the flash shoot right past.

Q. All you saw was the flash? A. Because I could not say I watched for it, for that I would have to be posted, it was going by, passing; I would have to be watching for it if I wanted to see it right at the beginning, but I saw it pass.

Q. You were not watching for it? A. No. We did not know it was going down.

20 Q. Now, what I want to know is what you did see. Now what you expected to see? A. The lights on the automobile shot past.

Q. How long did they take to shoot past? A. A couple of seconds, I guess, two or three seconds.

Q. When was it that you formed an estimate of the speed of the automobile? This morning? A. No, sir; that same night.

30 Q. Did anybody ask you about the speed of that automobile that night? A. This Steger and this Parmelee boy, after we seen what occurred we stood in the back so we formed our opinion, we asked another, "How fast do you think that was going?" And one of them says, "An awful speed." "An awful clip."

Q. You discussed that thing immediately did you? A. Yes, sir.

Q. Did anyone ask you to? A. No, sir.

40 Q. Whereabouts in the saloon were you, now, and how were you sitting? A. At a table facing River Street.

Luigi Camarano, cross.

Q. The table is a little round table? A. Yes, sir.

Q. In the back room? A. Yes, sir, at the end of the bar facing in the back room, it is not in the back room, it is in one back room.

Q. Well, the bar takes up part of it then you go in the place? A. Yes, sir. 10

Q. There is no partition between them? A. No, there is no partition between.

Q. There is a large round table in there isn't there? A. Yes, sir.

Q. Where is the pool table, back of this table or beside it? A. Right back of it, right close to one another.

Q. You were sitting facing toward the front, the street? A. Yes, sir. 20

Q. Was anybody else at the table? A. This Parmelee and Nick Steger.

Q. They were sitting at the table? A. Yes, sir.

Q. Was anyone facing you? A. No, sir.

Q. Were you playing cards? A. No, sir.

Q. Had anybody been playing cards? A. No, sir.

Q. Parmelee had not been playing cards that night had he? A. No, sir.

Q. Do you mean to say that for two or three hours he just sat at the table in there neither drinking nor playing cards? A. Yes, sir. 30

Q. Just doing nothing, just talking? A. Just talking.

Q. And you were facing straight ahead of you were you? A. Sitting the way I am sitting at the present time, yes, sir.

Q. Sitting just that way, and you were looking out through the Court room doors? A. Yes, sir. 40

Luigi Camarano, cross.

Q. The saloon doors are no wider than the Court room doors? A. No, sir.

Q. And they would be in the same relative position as the door in that saloon? A. Yes, sir.

10 Q. And you would be just about the same distance from Parmelee's front door as you are from these Court room doors? A. Yes, sir.

Q. And the automobile bus passed how far from the front doors in the street? A. About ten feet, ten or twelve feet.

Q. On the tracks? A. From the doors to the street is ten or twelve feet.

Q. Was the machine on the tracks? A. I could not say that.

20 Q. And you would look a distance approximately from where you were out to where the rail is beyond this Court room door? A. Was I looking.

Q. You would be looking the distance approximately that you were like from here to the rail which is in the corridor of the Court House here is that right? A. From where I was? I could not see that car.

30 Q. I don't mean you were seeing that far out into the street. I mean the total distance from where you were sitting in the saloon to where the bus was? A. Would be from here to the rail in the corridor?

Q. Yes, out here in the hallway? A. Well, about that, yes.

Q. Those doors were shut? A. Yes, sir.

Q. There is a lot of woodwork in the frames, of course? A. Not a lot of woodwork, about a four foot panel.

40 Q. The same as you find in any store here, wood and open glass? A. There is a lot of glass

Luigi Camarano, cross.

there, there is the big glass and above that there is also glass.

Q. Of course the glass is set in framings, is it not? A. On top of that there is still another glass, above.

Q. That is the transom? A. No, all along the front. 10

Q. There is a frame up there too isn't there? A. What do you mean?

Q. Do you know what the framing is where the glass sets in? A. There is glass above that, about a foot or a foot and a half, and below that there is big plate glass.

Q. What do you mean? A. A four-foot mantel.

Q. What do you say about a four foot mantel? A. Saloon panels. 20

Q. Where are they? Right on the windows.

Q. In the window? A. Yes, sir.

Q. You were sitting down in the back and the four foot panels were ahead of you? A. Yes, sir.

Q. You could see over those panels? A. Yes, sir.

Q. Would the relative heights of the panels and the chair as they existed that night correspond to the height of the panel in the jury box where I am sitting now? By panel I mean this front facing? A. They would be a little higher than that. 30

Q. And I, if I were you that night, I would have to look over this panel out into the street in order to see what was occurring? A. Yes, sir.

Q. In addition to which I would have the framing in the doors and the windows to obstruct part of my view? Yes, sir. 40

Luigi Camarano, cross.

Q. Nevertheless you mean to say you saw this automobile fly by? A. Yes, sir.

Q. Now, the bar itself, also extends out into the barroom doesn't it, the serving bar? A. Yes, sir.

10 Q. Something like this table, only considerably higher? A. Yes, sir.

Q. Were you sitting at a table which is located somewheres in the position where I now am, which would be slightly back of the table or bar that I am referring to? A. The table would be back of the bar.

Q. Yes? A. Oh, yes, about three feet further to four feet.

20 Q. So that the bar itself would obstruct your view to the left wouldn't it? A. No. It would not interfere.

Q. The bar is considerably higher than your head, is it not? A. No, sir.

Q. If you were sitting down on a chair it is? A. Yes, it is.

Q. You were sitting down? A. It is wide enough that you can climb over.

30 Q. I am not talking about the width or whether you can climb it or not, I am asking you now as to whether this bar was not high enough so that it was higher than your head as you sat there? A. It was higher, but it would not interfere with my seeing.

Q. I was not asking you that. I ask that be stricken out, Now, only as to the height of the bar—how long is the bar itself? A. About twenty-five feet.

40 Q. And will you say if you can how high the serving bar is, the front bar? A. About four feet.

Luigi Camarano, cross.

Q. From the floor? How high would it be? Have you measured it with the witness box where you are sitting, about as high as that witness box rail? Would the bar just about be this high as it is to me now? Or a little higher or a little lower? A. No, about like that (indicating). 10

Q. You say it was quite a bad night didn't you? A. Yes, it had been drizzling, raining.

Q. What do you mean by it had been drizzling, raining, was it drizzling? Then or not? A. No, sir.

Q. How do you know? A. Because we stood outside after the accident and watched this fellow back his bus out in front of Parmelee's place and then a few minutes after another bus comes down, going toward Riverside. 20

Q. You stood there all that time, did you? A. Yes, sir.

Q. Then it was a nice night at that hour? A. Yes, sir.

Q. It was not a bad night? A. Yes, sir.

Q. That is right? A. Yes, sir.

Q. It was clear? A. I could not say clear.

Q. Had the moon come out? A. No, sir.

Q. Sure? A. Certainly.

Q. The stars were not shining? A. I don't think so. 30

Q. You did not notice that? A. No, sir.

Q. How does it come you did not notice that? A. What is that?

Q. How does it come you did not notice that the stars and moon were out? A. Because I ain't watching the stars and the moon.

Q. You were not watching for them? A. No, sir.

Q. You were just watching for this automobile? A. No, I was not watching for the automobile at all. 40

Luigi Camarano, cross.

Q. How long after this automobile flashed by did you hear any noise? A. Why, quick as that (snapping his fingers), I don't know, say a couple of seconds.

10 Q. Just as quick as you could snap your finger? The instant you saw the bus in front of the saloon door the thing happened? A. Well, it appeared to me like that, yes.

Q. Well, of course, you are testifying to what you saw, and that is what you saw and that is what you concluded right from that, just as quick as you could snap your fingers? A. There was that crash, yes, sir.

20 Q. You did not see anything crash in front of the saloon, did you? A. There was that smash.

Q. You did not see anything smash in front of the saloon did you? A. No, we did not.

Q. Do you know how to account for that? A. Because I was not outside.

Q. But you were inside and you could see outside very clearly? A. I could not see that.

Q. Could you see who was in the bus as it went by? A. I did not see.

30 Q. And you say you saw lights on the bus, what lights did you see? A. The lights that is on the bus.

Q. What? A. The lights that is on the bus.

Q. You did not see the headlights? A. No. I could not see them.

Q. Why not? A. Because they are too low.

Q. Too low down for you? A. Yes, sir.

Q. All you could see was the top of the car and you saw the lights in the top of the bus? A. Yes, sir.

40 Q. Are you positively certain of that that you saw the lights in the bus? A. Yes, sir.

Luigi Camarano, cross.

Q. That is the only way— A. I saw them shoot right past, yes.

Q. That is the only way you knew it was a bus passing by the lights that were in it? A. No, because I came outside and they jumped off the bus and took this fellow in, picked this fellow up after he hit him that is how I know it was a bus. 10

Q. I don't mean after he hit him, I mean as it went by, that is the only way you knew it was a bus, by the lights? A. Yes, that way and then the other way when we came out I identified that it was a bus had stopped.

Q. I am not asking about the bus after he had stopped, I am asking about the bus as it passed the saloon. You said on your direct examination and you repeated it in the cross examination that you saw the lights of the automobile as it passed you? A. Yes, sir. 20

Q. And those were not the lights from the headlight? A. No, sir.

Q. They were the lights used to light this bus up? A. Yes, sir.

Q. As it passed you did you know it was a bus or did you think it was a limousine touring car? A. I did not know it was a bus, I did not think it was a limousine touring car, but I knew it was a bus after I got outside. 30

Q. When it passed you what did you think it was with lights in it? A. I did not know what it was.

Q. You did not think it was a railroad coach going along the street? A. I did not know what it was. I seen the thing shoot past with lights and make a hit and we went out.

Q. You would not change that answer that you 40

Luigi Camarano, cross.

saw the lights in the bus would you? A. No, sir.

Q. Who was the first one who went outside?

A. Parmelee.

Q. How far did Parmelee go? A. Why, he just stepped outside of the door.

10 Q. How far did you go? A. We stood at the door.

Q. You just went to the door and stood there?

A. Yes, and opened the door for them as they were bringing him in, they were picking him up in the street.

Q. Were they picking him up in the street coming in the door as you got there? Which was it? A. Picking him up.

Q. As you got to the front door? A. Yes, sir.

20 Q. How far away were you from the body as they were picking him up? A. About twenty-five feet, including the sidewalk.

Q. Do you mean twenty-five feet straight ahead of you or to the right? A. Just a little side glancing.

Q. What do you mean by that? A. Sideways.

Q. Were those twenty-five feet measured when you come in say ten or twelve feet sidewalk and from the sidewalk to the first rail ten feet more? A. Yes, sir.

30 Q. That is it? A. Well, about ten feet and about four or five feet or thereabouts from the tracks.

Q. Which way? A. Towards that other side of the street, he ran between there.

Q. Was it directly in front of Parmelee's saloon door in the street? A. No, between the two buildings they picked him up.

Q. To which, to the north or to the south? A. To the south.

40 Q. Between the two? You mean on the prop-

Luigi Camarano, cross.

erty line, like on the property line which divides the saloon? A. Number 581 and 583, yes, between them.

Q. Do you mean the saloon comes right up flush to the building on the right side on the outside? A. Yes, sir. 10

Q. Right up straight smack against it? A. Yes, sir.

Q. Was it right up against that building next door? A. Well, there is the doors there, two doors, one going to Number 581 and one going to Number 583, and he laid between those doors. I would not say in front of which one, but between them.

Q. How was he lying? On his back when you saw him? A. I could not say that either. 20

Q. Why? A. Because.

Q. Why didn't you notice that? A. It did not draw my attention I guess.

Q. You were not afraid to go up and look at the man were you? A. Certainly not.

Q. Did you see the man? A. Certainly.

The Court: He said he did not pay any particular attention to that.

Q. You did not recognize him did you? A. Recognize what? 30

Q. The man? A. What way he laid?

Q. No. Recognize the man, who it was? A. Not at the time, no, I did not know him.

Q. When did you recognize him? A. After they brought him in I heard and seen who it was.

Q. Didn't you recognize him when he was being carried in? A. No. Because they had him by the back here and his head was sunk down like that (indicating). 40

Luigi Camarano, cross.

Q. And it was only after they brought him in and laid him down on the floor that you knew who it was? A. Yes, sir.

Q. Somebody asked who it was? A. Somebody asked me who he was?

10 Q. No. Didn't somebody in the crowd ask who is it? A. I says to Parmelee, "Who is it?" He says he did not know and I went over and I looked and I sees it was Butzer who is the man Schwartzenbach.

Q. Did you see Mr. Tooley there that night? A. Yes, sir.

Q. Did he wash him off? A. Well, I was washing and Tooley he says he took a course in the first aid treatment.

20 Q. I am not asking you what he said, I am asking you whether he washed him off? A. No, he did not wash him.

Q. Where did you see any blood on this man? A. It came out of his nose and his mouth and his ears.

Q. His nose and mouth and ears? A. Yes, sir.

Q. You are quite certain that it came out of his ears? A. Yes, sir.

30 Q. Did you see any blood on any other portion of him? A. No, up over here (indicating the forehead) he had a little scar.

Q. What do you mean by that? A. I imagine where he had been hit.

Q. I did not ask you what you imagined; I asked you to describe the scar? What do you mean by a scar? What was it? A. Like I recollect it appeared to me like where he had been hit with the automobile.

40 Mr. Weinberg: I ask that that be stricken out. Motion granted.

Luigi Camarano, cross.

The Court: What did it look like? Was it a cut or a bruise or what?

The Witness: It looked like a cut.

Q. Was it a cut? A. Yes, sir.

Q. Was that wound bleeding? A. Yes, sir.

Q. Did the blood run down his face from that wound? A. There was not much blood come out of there. 10

Q. Was there any came down after you had wiped it off? A. Yes, from his nose. Well, from the cut, yes, there was.

Q. That is what I am referring to, just from the cut? A. Yes, sir.

Q. You did not see any blood on his face at all? A. No, sir.

Q. What did you have to wash off, some dirt on his face? A. Yes, it was mud. 20

Q. On his face? A. Yes, sir.

Q. Was his clothing soiled? A. Yes, sir.

Q. Where? A. Over his breast where you could see where the wheel run over, the rubber tire.

Q. You have not been speaking about this accident to anyone have you? A. Yes, sir.

Q. Who? A. This man here came down to my place one night (indicating). 30

Q. I don't want to know what the attorney spoke about. Anybody else besides the attorney? A. Yes, sir.

Q. Have you gone over this matter with Mr. Tooley? A. No, sir.

Q. Sure? A. Yes, sir.

Q. Nor Mr. Parmelee? A. No, sir.

Q. Nor the other man who was on the stand? A. No, sir.

Q. You have been in court all week with them 40

Luigi Camarano, redirect-recross.

here? A. No, I just came, and I would ask them if the case was going to start and they would say to me no, and I would say I am going back to my place of business.

10 Q. You held no conversation with them whatsoever? A. No, sir.

Redirect examination by Mr. Rosenstein:

Q. Did you see Mr. Tooley do anything to Mr. Schwartzenbach as he laid there? A. Yes, he worked over his body.

Q. Gave him first aid treatment? A. Yes, that is the reason he says he was doing it for and I thought he understands something about it.

Recross examination by Mr. Weinberg:

20 Q. Will you just describe the kind of glass that is in the window and doors of that saloon?

A. Why, on the top frame is Florentine glass and plate glass, and there is plate glass below, and Florentine, and there is plate glass on the doors.

Q. Is there any colored glass in the window at all? A. No, sir.

Q. What? A. There is a colored glass, what do you call that, ivory, that what they place on windows.

30 Q. The glass that is imitation stained glass like oilcloth? A. Yes, sir.

Q. That is in there? A. Yes, but that is about from the frame of the door about say, two feet, then that leaves a space above clear.

Q. How high would the clear space begin? How high from the floor would the clear space begin? A. About even with the panels of the window.

40 Q. And those panels you have mentioned before? A. Yes, sir.

Henry Steiger, direct.

HENRY STEIGER, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Rosenstein:

Q. Did you know John Schwartzenbach in his lifetime? A. I did not know him by name, I knowed him by sight. 10

Q. Where were you on the evening of May twenty-eighth, 1917? A. In Parmelee's hotel.

Q. About twelve o'clock that night did you hear or see anything unusual? A. I heard a noise like an automobile, or a bus, whatever it was, coming up River Street, that is when it got near the place, then I heard a kind of a rattle and a dull jar.

Q. Then what happened after that? A. Well, we were sitting by a table, me and Mr. Parmelee and Luigi Camarano, and Mr. Camarano jumped up and he ran to the door and he hollered, "Fellows, somebody got hit with the bus." So by that time I got there. 20

Mr. Weinberg: I object to that and ask that that be stricken out.

Mr. McGinnis: I object. It is in.

Motion granted. 30

Q. After Mr. Parmelee had run to the door, what did you do? A. I did not get up right away, about a half minute I got up and went to the door.

Q. What did you see? A. I seen Mr. Poole and the driver, I don't know him by name, they were just carrying him in.

Q. Did you see where the bus was? A. Well, I did not go out right away, then a little while after I went out and the bus was standing about by the library, just this side of the library. 40

Henry Steiger, cross.

Q. Where is the library? A. Well, the library, I guess it must be from Parmelee's door to where it was standing, I should judge about forty feet, forty or forty-five feet.

10 Q. What kind of a night was it? A. Oh, it had been raining, and when I was standing out on the sidewalk it was clear, that is, it was dark, the sky was dark, but it was not raining then at that moment.

Q. Did you see the body when it was brought in? A. When Mr. Poole and the driver had hold of it do you mean?

Q. Or when they laid it down? A. When they laid it down, yes.

20 Q. Did you see it then—the body? A. He was laid down there and we got some newspapers and put them under his head, there was blood on his face.

Q. Was that fresh blood or stale blood? A. It was fresh blood, you could see it.

Q. Was he conscious or unconscious? A. He was unconscious and when they brought him in he came to a little while after.

30 Q. Did Mr. Tooley do anything to him there? A. Mr. Tooley kind of worked on his stomach like with the thumbs and hands.

Q. Did you notice any marks on his clothes?

Q. There was some dirt alongside of his chest, they just turned him over a little and there was some dirt like on the side of his coat.

Cross examination by Mr. Weinberg:

40 Q. You mean his clothing was clean except where there was a mark over him? A. Well, I won't just say it was clean, it looked just like a little dirty, but on the side it seemed as though there was a mark there, whatever it was, I don't

Henry Steiger, cross.

know, but it seemed as though there was a mark there left from something, I don't know what.

Q. Wasn't his clothing all soiled and all dirty?

A. No, his clothes was not all dirty.

Q. The streets were wet? A. I could not tell you that.

10

Q. You know they were wet? It had been raining, you say? A. It had been raining, but it had stopped when I was outside, it was not raining, I don't know what it had been before that, it looked to be wet.

Q. You don't know if the streets were wet or not then? A. Well, they were not dry, I seen that.

Q. Will you just tell me how you were sitting at that table? What your position was and the other men? A. Well, I could explain it to you, like the pool table is here and then there is an old table here, and I was sitting about facing the door, the end of the door from where the bar stops.

20

Q. You were looking toward the door? A. If the window was there (indicating) I was sitting the same about as I am now.

Q. Were you looking toward the front? A. No, sir.

30

Q. That would be looking sideways toward the door you would be yourself? A. About sideways like, I guess.

Q. Where was Parmelee sitting? A. He was sitting on the side where the bar is across the way from me.

Q. Which way was he facing? A. He was facing the front, the back of his chair was up against the pool table.

40

Henry Steiger, cross.

Q. He was facing the front? A. Well, pretty near the front, almost to the front.

10 Q. How was Camarana sitting? A. Well, that I just could not tell you, that there; I would not say which way he was sitting, he was sitting there, but I would not say which way he was sitting, because I am not positive of it.

Q. But you are sure Parmelee was facing the front? A. He was facing the front more than sideways, I won't say he just was directly facing the front.

Q. He was facing front more than any other person there, wasn't he? A. He was facing it more than I was. I don't know about them other two persons.

20 Q. What had you been doing at the table, playing? A. No. We were sitting there and we were talking.

Q. You had not played at all that night, you three men? A. Well, I could not tell you for sure.

Q. Why? Have you forgotten? A. Because. My boarding in that place, and different nights we played and some nights we would not play cards.

30 Q. Do you think you had been playing that night? A. Well, I could not tell you that either way, I could not tell you whether I was or whether I was not, because I am not sure.

Q. Can you tell us what you were doing for two hours there? A. We were sitting by the table reading the paper maybe and conversing.

Q. What time did you get in the saloon? A. Well, I am boarding there and after supper generally take a little walk and then come back.

40 Q. You did not board in the barroom, you

Henry Steiger, cross.

boarded upstairs? A. I board upstairs and had my meals down in the dining room.

Q. What time did you go in the barroom that night? A. I could not tell you, it might have been eight, it might have been nine o'clock, I could not tell you for sure.

10

Q. What time did this accident happen? A. It must have happened just a little bit after twelve o'clock.

Q. You say Parmelee turned out the lights in the saloon window? A. Before the accident, yes, sir, that is, the window lights.

Q. And during those three hours you cannot tell me what you were doing there? A. Well, sitting there, reading the paper and talking about something.

20

Q. That is all you did? A. Yes, sir.

Q. Did you hear this machine come by? A. I heard it, yes, sir, I did not see it.

Q. You did not hear the machine come by, did you? A. I heard the noise of the machine, yes, sir.

Q. What kind of a noise did you hear? A. Well, like a motor running.

Q. And did you hear anything else besides the noise of a motor? A. Just as I heard the noise of the automobile, or whatever it was, I did not know it at that time, I heard a sort of a dull bump, and then a rattle like a mudguard.

30

Q. A bump and a rattle and then Parmelee went to the door? A. He ran to the door.

Q. And what did you do? A. I just about stood there, maybe about a half a minute and I got up after he hollered, "There is somebody hit with a bus." Then I got up and by the time I got to the door they were just carrying him in.

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Henry Steiger, cross.

Q. So that neither you nor Tooley nor this other man, Camarano, went outside at all? A. Oh, after they had got in then we went out, yes.

Q. I mean before the body came in? A. No, not before the body came in, no, sir.

10 Q. Mr. Parmelee did not get off the sidewalk, did he? A. Well, I could not tell you that; he was outside, but whether he was off the sidewalk or not I could not see from where I was.

Q. You did not sit there in all this excitement, did you? A. When he opened the door and he hollered somebody got hit with a bus he went out on the sidewalk. Whether he went out on the street or on the sidewalk, I don't know, I could not see him from where I was.

20 Q. Why couldn't you see him? A. Because the windows are there.

Q. And that prevented you from seeing who was on the sidewalk? A. Yes, it does.

Q. There is no question about that? A. There is no question about that. You cannot see a person there, no.

Q. Can you see a person passing on the sidewalk? A. No, sir.

30 Q. You could not? A. Oh, I see, a person passing?

Q. Could you? A. If the door is open.

Q. If the door was shut as it was then? A. No, you could not.

Q. You are sure about that? A. I am positive of that.

Bernard Schwartzenbach, direct.

BERNARD SCHWARTZENBACH, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Rosenstein:

Q. You are the plaintiff in this case, are you not? A. Yes, sir. 10

Q. You are a brother of John Schwartzenbach, you were a brother? A. Yes, sir.

Q. How old was your brother in May, 1917? A. Thirty-two years and ten months.

Q. Can you give us some idea about the health of your brother, whether he was a sickly man or a healthy man? A. He was always healthy.

Q. Where was your brother living in May, 1917? A. In the same house where I live.

Q. In May, 1917? A. In the same house where I live, upstairs. 20

Q. In May, 1917? A. He lives over in Prospect Park.

Q. Come down to the map here, this is the official map of the City of Paterson; this is River Street; this is Sixth Avenue; if a man were on Sixth Avenue and wanted to go home, which would be the most direct route?

Mr. Weinberg: That is not clear in that it does not appear just where he would go in order to get home. 30

Q. Supposing a man were on Sixth Avenue near Madison Avenue and wanted to go in a direct route home and he lived in Prospect Park Borough, what would be the most direct route?

A. He would have to go down Sixth Avenue, across River Street on the Sixth Avenue Bridge to Prospect Park. 40

Bernard Schwartzenbach, direct.

Mr. Weinberg: Is Prospect Park to the west of the River Street.

Mr. Rosenstein: Yes, to the west.

Q. Did your brother have any children at the time he died? A. Yes, sir, four.

10

Q. He was a married man? A. Yes, sir.

Q. Was his wife living at the time he died? A. No, his wife died ten months before.

Q. Did he leave any children? A. Yes, sir, he left four.

Q. Are these the children (showing four children)? A. Yes, sir.

Q. What is this boy's name? A. Ernest.

Q. How old is he? A. Eleven years old.

20

Q. And what is this little boy's name? A. Adolph.

Q. And how old is he? A. Five years old.

Q. What is this girl's name? A. Mary.

Q. How old is she? A. Twelve years old.

Q. And what is this little girl's name? A. Gertrude.

Q. How old is she? A. Four years old.

Q. Where were these two girls living at the time your brother died?

• 30

Mr. Weinberg: I think these questions may be answered if every person appears in his and her proper place in the courtroom.

The Court: Yes, they may take their places.

Q. Where were these two little girls living at the time your brother died? A. With me.

Q. They were living with you? A. Yes, sir.

Q. Did he pay you anything for their support?

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A. Yes, sir, he paid me six dollars.

Bernard Schwartzenbach, cross.

Q. Six dollars a week for the board of these two girls? A. Yes, sir.

The Court: Where were the boys living?

The Witness: With a sister.

10

Q. Besides paying you for the board, did your brother buy clothes for the girls? A. Yes, sir. No, sir.

Mr. Weinberg: I object to the witness being led.

Q. Who bought the clothes for the girls? A. I bought the clothes.

Q. You did? A. I bought the clothes for the girls.

20

Q. What occupation did your brother work at? A. Machinist.

Q. He was a machinist where at? A. Down at Weidmann's.

Q. Where was your brother born? A. By a friend of mine up in Prospect Park.

Q. Where was he born? A. In Switzerland.

Cross examination by Mr. Weinberg:

Q. You say the children were living with you? A. Yes, sir, two of them.

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Q. Your brother did not live with you? A. No, sir.

Q. What end of the city were you living in? A. It is up on East Twenty-sixth Street.

Q. Did you know just where your brother was living? A. Yes, sir.

Q. Where? A. Up in Prospect Park.

Q. What is the name of the street and number? A. I think it was number 841 Browns Avenue.

40

Bernard Schwartzbach, cross.

Q. Was he keeping house or boarding? A. No sir, he was in board there.

Q. How long had the children been with you before your brother's death? A. Pretty near a year.

10 Q. Your brother had not lived with you any part of that time? A. No, sir, when his wife died he lived in the same house till February.

Q. The question is whether your brother lived with you at any time after his wife died? A. He have a room upstairs where I was living.

Q. In your home where these children were living, I mean, was your brother living there with you at any time after his wife died? A. Yes, sir.

20 Q. For how long a period? A. Well, for about three months.

Q. So that for about seven or eight months before his death he had not lived with the children in your home, had he? A. Yes, he is living in the same house, he was boarding with me right after his wife died, he was boarding with me, then around between Christmas and New Year's a lady comes from out west and they also keeps the house for two months or three months then she goes out west again.

30 Q. But after that time your brother did not live with you? A. After that time?

Q. Yes? A. No, sir.

Q. Had you seen your brother the day of his death? A. No, I see him the day before.

Q. Do you know what day he was hurt. What day of the week it was? A. It was Monday night.

40 Q. You had not seen him Monday, but you saw him Sunday? A. I saw him Monday in the shop.

Bertha Willy, direct.

Q. In the shop? A. Yes, sir.

Q. Did you work in the same shop with him?

A. Yes, sir.

Q. He had not been to your house that day?

A. No, sir.

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BERTHA WILLY, sworn as a witness on behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Rosenstein:

Q. Where were you living on May 28th, 1917?

A. At Number 114 North Tenth Street.

Q. You are a sister of John Schwartzbach?

A. Yes, sir.

Q. Before your brother died do you know where these two little boys were living? A. Yes, sir.

20

Q. Do you know? A. Yes, sir.

Q. Where were they living? A. By his father.

Q. Before he died? Before the father died? Who did the two little boys live with? A. With his father.

Q. Where were they living? A. Number 326 East Twenty-sixth Street.

Q. After the mother died, after his wife died, where did he put these two little boys? A. He gives them into my house, by my sister-in-law, he says to my brother.

30

Q. After that did he give the two boys to you? A. Yes, sir.

Q. How much did he pay you for their support? A. Six dollars a week.

Q. For the two boys? A. Yes, sir.

Q. What kind of a father was your brother to his children? A. He was all right.

Q. A good father? A. Sure.

40

Argument.

Q. Who bought the clothes for the two boys?

A. I do.

No cross examination.

Mr. Ward: We offer in evidence the letters of administration *ad prosequendum*.

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(Admitted and marked "Plaintiff's Exhibit P3" of this date.)

Plaintiff Rests.

Mr. Weinberg: If the Court please, I feel that in this case a motion for a non-suit is proper.

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Without reviewing any of the proof, and admitting the proposition that the deceased is not presumed to be negligent, and is, therefore, not chargeable with contributory negligence unless such negligence is proven by the defendant, yet, I feel, that inasmuch as the negligence itself and the proximate cause of negligence is the foundation for a cause of action similar to this, I consider, as far as I can recall the proofs in the case, that no negligence together with the proximate result of such negligence has been shown.

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Up to the time when the witness, Mr. Camarano, took the stand there was certainly nothing in the case to indicate that the accident was caused by the automobile owned by the defendant.

The Court: Your point is that there is no evidence of negligence.

Mr. Weinberg: That is it.

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The Court: Are not these the facts as they appear at the present time, till the

Argument.

defendant's case is in? A man starts for home, say, five minutes to twelve, starts to go to his home and in doing that he has to pass across River Street, this particular spot; five minutes after twelve, which would give a reasonable time for him to walk that distance he is found on the street after an automobile has gone by, which one witness said went at a rapid rate of speed, and at a place where he could be seen. Now, are not those facts sufficient at least to put the defendant upon his proof, from which the jury might infer if the man could be seen for a block and a half, I think one witness said, and varying distances the others, is not that sufficient to put the defendant upon his proof? In other words, the fact that you ran into the man under those conditions existing there, is not that sufficient for the jury to say there may or may not have been negligence? 10

Mr. Weinberg: Just for a moment—when your Honor—I won't say interrupted me, because the Court never interrupts a lawyer—but at the time when your Honor made the remark which caused me to cease my argument, for a time, I was about to say, there was nothing to indicate any negligence at all except as it might appear from Camarano's testimony. Now, if there is any credible proof in the case it must go to the jury. There is no doubt about that. And if the Court feels that however the jury might consider the proofs from Camarano or what- 20 30 40

Argument.

10 ever I might think of it, still they might believe that there is something in his story which might be believable, and which might indicate negligence, of course, the motion cannot prevail, but it does seem to me that at times witnesses cannot be permitted to make such statements as they want and have the Court accept them. I realize, perhaps, as keenly as anybody else, the requisites upon which to found a motion for non-suit—

20 The Court: You see, if this were a case of first impressions I would be very much inclined to agree with your view, but there seems to be a case of *Merkeley* which is almost parallel with this.

Mr. Weinberg: The principle seems to be well understood in our State now, but, notwithstanding that, there must be some proof of negligence.

30 The Court: The Court of Appeals said in that case, where the man was crossing the track in order to reach home and the evidence was that there was sufficient light in which the motorman could see him and his body was found on the track and the way he was mutilated shows that the car must have been going very rapidly, that is to say, the car passed him after hitting him, and the Court there held that those were all facts from which the jury might draw the inference of negligence. In other words, the man was walking along the street and the defendant as the driver of the car could have seen him and still avoided the accident, the jury

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Argument.

might draw the conclusion of negligence from that; and so if the man had fallen in the position where he might be seen the jury might draw the inference of negligence.

Mr. Weinberg: Yes; but I don't think the Court has ever gotten away from the principle laid down in the case of *Nugent v. Electric Company*, and *Stump v. D. L., & W.*, in which this principle is laid down, which may be stated as a general principle, that the burden rests on the plaintiff to prove the defendant was negligent and such negligence was the proximate cause of the injury.

In other words, negligence is not presumed, but it must be proved; the difficulty of proving the negligence here does not affect the principle.

The Court: But you see, in this *Merkeley* case, the Court held the motorman was traveling along in his car and it was for the jury to say whether he was exercising proper precautions, whether he looked out and saw what was ahead of him, and if he had done so whether he would not have seen the man who necessarily must have been crossing the track on his way home, or perhaps might have fallen in a faint or something else, and the Court left it for the jury in that case to say whether the motorman was negligent or not in having struck the man, whether he could have avoided it by the exercise of reasonable care, there being evidence that the man was on his way

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Argument.

home, crossing the track, that there was light there, and also as to the speed of the car. The Court has gone a long way, I will admit, but the decision is there.

10 Mr. Weinberg: I will, for the time being, abandon the argument on that point, I don't want the record to show that I abandon the point, I will say I abandon the argument for the moment on that point, and I will go to the question of contributory negligence.

The Court: That is never presumed in death.

20 Mr. Weinberg: It is never presumed except where the circumstances are clear on their face to indicate that the person must have been guilty of contributory negligence.

The Court: Where is there anything of that kind here, as it stands now?

30 Mr. Weinberg: As it stands now, they are swearing to having seen and being able to see a considerable distance. The testimony of Camarano is that he saw some men a block and a half away. It was light enough for a person to see another person on the highway. Certainly the conditions were such as to permit a traveller upon the highway to see a lighted bus coming along the street, and all the evidence indicates that, and the irresistible conclusion is that a person crossing the pathway of a moving vehicle which is lighted up and which he could see and which he collided with in the highway, must have been guilty of contributory negligence in going into its path.

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Percy French, direct.

The Court: I think that might be addressed to the Court more properly after the defendants case is in, but on the present condition of the case I don't think there are sufficient facts from which to infer that.

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Mr. Weinberg: We had intended to make those proofs but the plaintiff seems to have made them, now I simply make the motion, that is all I can do.

Motion denied: defendant excepts.

PERCY FRENCH, sworn as a witness on behalf of the defendant, testifies as follows:

Direct examination by Mr. Weinberg:

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

Q. Where do you live? A. Number 195 Hamilton Avenue.

Q. In Paterson? A. Yes, sir.

Q. How long have you lived in Paterson? A. Eighteen years.

Q. What are you doing now? A. Driving a car, chauffeur.

Q. Driving what? A. Driving an automobile.

Q. How long have you been driving an automobile? A. About nine years I am licensed.

30

Q. What were you doing in May, 1917? A. Driving an automobile bus.

Q. Driving an automobile bus for the defendant in this case? A. From the Surburban Bus Company, Ernest Antoine.

Q. Where was your route on the twenty-ninth of May, 1917? A. From the City Hall to Riverside.

Q. What streets would you traverse on that route? A. From the City to Riverside?

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Percy French, direct.

Q. Yes. A. Take Main Street to Broadway, Broadway to Bridge and Bridge to River Street, and from Bridge Street right through to the end of the line.

10 Q. Part of your route took in River Street in the neighborhood of Sixth Avenue? A. Yes, sir.

Q. Do you remember the night of May twenty-ninth when something occurred on River Street? A. I remember the latter part of May I had an accident.

Q. Do you remember the night? I don't mean the date. Do you remember that night? A. Yes, I remember that night.

20 Q. How late were you out that night with your bus? A. I was on my last trip, it was midnight, about midnight.

Q. And on that last trip where were you going? A. I was going to the garage on Warren Street.

Q. Did you have anybody in your bus before you approached Sixth Avenue? A. No, sir, I had refused one passenger on Fourth Avenue on account of going into the garage.

30 Q. Did you have anybody in your bus at the time you reached Sixth Avenue? A. No, sir. At Sixth Avenue? Yes.

Q. Who did you have in the bus? A. Officer Kyle.

Q. Where had Officer Kyle got on your bus, at what point? A. At Fifth Avenue and River Street.

Q. How far is Fifth Avenue and River Street from Sixth Avenue and River Street? A. Well, that is, the first part of Sixth Avenue or the—

40 Q. Well, from the nearest end of Sixth Avenue, which is the end on the east side of the street?

Percy French, direct.

A. Well, there is Fifth Avenue, Thirteenth Street and then the nearest side of Sixth Avenue.

Q. About two blocks? A. About two blocks.

Q. What kind of a night was this? A. It had been raining all night and at the time it was drizzling.

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Q. Did you have a windshield on your automobile? A. I did. The upper part of the windshield was about two feet square and below that there was a space about nine and a half or nine inches I should think of glass.

Q. The windshield is composed of two panels, is it? A. Two panels, yes, sir, the bottom one is stationary and the upper part you can open if you want.

Q. Were either of those panels open? A. The top panel was closed on account of the rain, but the bottom panel had been cracked and that glass had fallen out.

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Q. How much of the glass had fallen out? A. I should judge about half of it, across this way (indicating).

Q. On which side? A. You mean how it was? On a kind of an angle.

Q. On which side? A. On the left side.

Q. What drive was your machine, left or right? A. Left..

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Q. With respect to where you sat on the automobile, where was this opening in the windshield? A. Directly in front of me. I was wet from the rain that had been coming in during the night.

Q. Did you have any lights on your car that night? A. Yes, sir, I had headlights, I had dim lights, in the car we always have dim lights.

Q. Were the dim lights burning in your car

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Percy French, direct.

as you were going along River Street and before you approached Sixth Avenue? A. Not after I left Fifth Avenue, no.

10 Q. What caused the lights to go out or to be put out after you left Fifth Avenue? A. When I reached Fifth Avenue, that is, coming towards
Main Street, that is south from River Street, Of-
ficer Kyle stopped me at Fifth Avenue and he
jumped on the bus and said that some young
fellow had told him that there was two suspi-
cious characters going down River Street carry-
ing a bundle, he says, "And I want you to wait."
He says, "I will ride up with you and see if you
can see anything of them." He says, "Take your
time so that I can keep a look out for them."
20 And he says, "Better turn your dim lights out
so that they can't see me in the bus."

Q. Did you do that? A. I did that then, yes,
sir.

Q. Where did Officer Kyle take his position in
the automobile? A. Almost directly opposite me,
that is a left hand drive and there is an open
doorway here and the seat comes right up against
the doorway of the bus and Officer Kyle sat right
there so that he could look out of the door.

30 Mr. Ward: I ask that the last be stricken
out, "So that he could look out of the
door," as a conclusion.

Motion denied.

The Court: He means he was in a posi-
tion where he could look out.

The Witness: He could not see through
the window; the rain was on the side
windows and it just drips down and he
could not see through the side windows.

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Percy French, direct.

Q. How far was Officer Kyle from the door in front of the automobile? A. I should say just about a foot or so, so that the rain would not drive in, as close to the door as he possibly could get.

Q. Was the door open or closed? A. The door was open, it was fastened, in fact, I had a bolt to hold the door open. 10

Q. It was always open? A. Well, in the summer time, yes.

Q. So that people could get in and out without opening the door? A. Yes, sir.

Q. Is River Street a straight street at that point? A. Yes, sir.

Q. For how long a distance is it a straight street? A. Why, it is a straight street from what they call the lip, that is, First Avenue and River Street until you reach say a block this side of Paterson Street, that would be Lawrence Street. 20

Q. Approximately how long a stretch is that? A. Why, it is practically the entire length of River Street with the exception of a few blocks. I should say River Street is straight, there is a curve there just before you reach Paterson Street, that is the only turn I know of. 30

Q. Won't you give me an idea of the length of it? I am a stranger, I don't know. Tell me?

A. Well, the distance from the City Hall to the end of the line is two and a quarter miles and I should say this street was over two miles.

Q. Is it straight in the neighborhood directly north and south of Sixth Avenue on both sides of River Street? A. On both sides, yes, sir.

Q. Can you tell us anything about the speed you were going at on the night of May twenty- 40

Percy French, direct.

ninth after you picked up Officer Kyle? A. Not above ten miles an hour, I should say ten miles an hour.

Q. Was the ground wet? A. Oh, yes.

10 Q. Had it been wet? A. It had been wet all night.

Q. What were the conditions as to your being able to see objects in the street at that point? A. At Sixth Avenue?

Q. Before you came to Sixth Avenue and right in that neighborhood? A. Well, it was very dark that night. I had to keep watching myself all the way through, it was a very dark night.

Q. What do you mean by that? A. There was no moon out and no stars and it was drizzling.

20 Q. What do you mean by the remark that you had to watch yourself all the way through?

Mr. Ward: I object to the question.

Objection overruled; plaintiff excepts.

A. Why, I mean that I had to take it easy, I could not go along at my regular speed because I could not hardly see, it was so dark, conditions were that way.

Q. What do you say about the lights along that highway, were there any? A. Between—

30 Q. In the neighborhood of Sixth Avenue and if so where? A. Well, there is a light at Thirteenth Street and the next light is at the far side of Sixth Avenue.

Q. Were there any lights in any of the stores along the street there? A. No, sir, they were all closed.

Q. Did you see any lights shining out of any store along that line? A. No, sir.

40 Q. Do you know where Parmelee's saloon is? A. I do.

Percy French, direct.

Q. As you came along there could you see any lights shining from inside of the saloon out into the street? A. No, sir, no lights whatever.

Q. Will you tell us what happened from the time Officer Kyle got on the automobile until you stopped it after having passed Parmelee's saloon? A. Why, I was riding the tracks, I had been riding the tracks from the end of the line—

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The Court: Are the tracks in the middle of the street.

The Witness: No, my right-hand track.

The Court: There is two tracks?

The Witness: Yes, I was riding right on the track, naturally, on the right, until I reached Officer Kyle, then Officer Kyle got on at Fifth Avenue and River Street and told me to take it easy that he was looking for these two men that had been reported to him were carrying the bundle and were suspicious characters and then we proceeded and I still stayed on the tracks until I reached I should say the near side of Sixth Avenue, and the reason I got off the tracks there is just by the far side of Sixth Avenue is a grade that goes up River Street and if I had been in the main speed I could continue on the tracks and go right on over it, and if I go in slow I have to swing off the tracks in order to get the traction, if I don't my wheels will spin on the tracks, that is when the tracks are wet, and so just about the near side of Sixth Avenue I swung off the track, and then I straddled

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Percy French, direct.

10 the track, one wheel on the amicite toward the curb and the other wheel on the cobbles, the Belgian blocks, and, I should say a few feet beyond the near side of Sixth Avenue, or so, I felt a twitch on my wheel, that sort of throwed me to the left and when that happened Officer Kyle says—

Q. Never mind what he said, what happened?

A. I just felt this twitch on my wheel, that is what happened at that time.

Q. Go right on from then on? A. Well, can I tell?

Q. Not what was said? What happened? What was done?

20 The Court: He said something, then what did you do?

The Witness: When I struck an object, I threw my clutch out and after that I had gone a short distance and then is when Officer Kyle spoke to me, is where we struck this object whatever it was and I cannot go any further unless I say what he said—

30 The Court: Not what he said. After he said something then what did you do?

The Witness: I stopped the car right where it was, that is, astraddle of the track and Officer Kyle got out of the bus and ran back and as soon as I stopped my car he got out and he hollered for me to come back too. I got out of the car and I ran back there and I seen this man lying in the road when I got to him, I could not distinguish that it was till I got right near him, and Officer Kyle takes

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Percy French, direct.

this man by the shoulder and I took him by the feet and we carried him into Parmelee's saloon and laid him on the floor. Then we went outside afterwards and removed my bus from the centre of the tracks over to the curbstones by the library on the far side of Sixth Avenue, I pulled the car into the curb in order to get it off the tracks. Then I went back to the saloon. 10

Q. How far were you away from Sixth Avenue when you left the tracks and started to straddle them as you said? A. Well, I should say just about the time I reached Fifth Avenue was when I swung off.

Q. When you reached Fifth Avenue? A. Sixth Avenue, just about the time I reached Sixth Avenue. 20

Q. The upper side or the lower side? A. That is the near side, to Riverside.

Q. In what direction were you looking before you felt this jar? A. Straight ahead, through this little opening in the shield.

Q. Did you see anything? A. Nothing at all.

Q. From your experience as an automobile driver can you say what occurred to make that steering wheel twitch or jerk in your hands? 30

Mr. Ward: Objected to as calling for a conclusion.

Objection overruled; plaintiff excepts.

A. Why, I have had it happen a number of times to me in my time, any object, any stone or hole or piece of wood would cause that sudden twitch in the wheel, and a flat tire will work it that way too, if anything happens to 40

Percy French, direct.

either one of the wheels it will naturally throw it to the side where you touch that object. Right to that side.

10 Q. Where would the object have to be on the roadway in order to make your steering wheel switch around? A. Well, in that case of a swing toward the left it would have to be on the left-hand side.

Q. Would it be something that was high or something that was low down? A. Oh, no, it would have to be under the wheel.

20 Q. It would have to be under the wheel? A. It would have to be under the wheel. It just felt something like that (indicating swinging forward). It was not a distinct bounce, it was more of a drag than anything else, that is the best I can describe it, it pulled the wheel that way and then pulled the wheel this way (indicating first to the left and then to the right). It was more of a push, it seemed as if something grabbed it just like somebody grabbed hold of the wheel and held onto it, and then I would naturally straighten it up.

Q. Did you have any front mudguards over your wheels? A. Yes, sir.

30 Q. How far from the wheels did your mudguards extend? A. Why, I should say a foot or so, beyond the tire.

Q. What make of machine did you have? A. A Reo.

Q. Was it the regular type of Reo car? A. It was the regular type three-quarter ton bus.

40 Q. How large was the bus? A. It is classed as a sixteen passenger bus body, that is about, I think, twelve foot body, if I am not mistaken, twelve foot long by about five feet wide.

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Q. And I suppose the seats run lengthwise?

A. The seats run lengthwise, yes, sir.

Q. After you stopped your automobile, what did you and Officer Kyle, or either one of you do, until you got the man in Parmelee's saloon? Not what you said? What you did? A. Why, Officer Kyle was the first to get out of the bus and as he got out he called me he said, "You better come back and give me"— 10

Mr. Ward: I object.

Q. Don't give the conversation? A. When Officer Kyle got out I followed him and went back and picked this man up, Officer Kyle picked him up by the shoulders and I picked him up by the feet, if I am not mistaken, and I think I walked in backwards, or kind of sideways in order to carry him, Officer Kyle carried him by the shoulders and we took him in Parmelee's and as we reached the doorway, I think Mr. Parmelee stood in the door way and I know he went back and telephoned and he held the door open as we were coming and then he telephoned and we took the man and laid him on the bar-room floor, that was when I saw Mr.—I forget his name, started to work over him. 20

Q. Was anybody out on the sidewalk there when you got there with the body in front of Parmelee's saloon? A. Outside of Parmelee? I could not say there was, I did not notice. 30

Q. Where was Parmelee? A. As near as I can remember he was holding the doors open to come through so we could carry the body through.

Q. Which door? A. The door of the saloon.

Q. In side or out? A. Inside.

Q. The inside doors? A. Yes, sir. 40

Tercy French, direct.

Q. How about the outside doors? A. I think the outside doors were open.

10 Q. Then you mean that Parmelee was in the inside doorway holding that door open and not on the outside doorway? A. He might have possibly have stood in the vestibule, he was holding these doors open, whatever position he was in I don't remember.

Q. After you got this man in the barroom what did you do? A. Why, we laid him on the floor, then this witness, I forget his name, he started to—

The Court: Mr. Tooey?

20 The Witness: Mr. Tooey, he started to do all he could for him and I went outside to see if I could see anything of the ambulance. The ambulance was so long in coming; it was telephoned for but it was so long in coming and we telephoned for it again and right after that I went out to take my bus away, I was told to take my bus from the middle of the street and pull it in to the curbstone so the trolley car could go through or anything else that wanted to. So I turned it, I went out and I took my bus and I pulled it over the far side of Sixth Avenue, and that would be 30 on the corner where the light was beyond the library, that is where I finally stopped the bus.

Q. How far was your bus away from where the body laid when you got out of your bus? A. Where the bus stopped after hitting this object?

Q. Yes? A. Say from twenty to twenty-five, about twenty-five feet.

40 Q. Then from that point on did you take the

Percy French, direct.

automobile further up the street? A. Yes, I got it in on a slant because I had to, from the tracks to the other curb and then I stopped at the corner right up against the curbstone.

Q. Did you observe Mr. Schwartzbach then when you were in the saloon with him? A. Well, there was so many over him. I seen him. The only thing I noticed was a little blood was trickling down here below the nose and the lips, it seemed to be a mixture of blood and something else.

10

The Court: Down where?

The Witness: Down the side of his lip here, just oozing or running over the edge of his lip.

20

Q. When did you notice that? A. While he was laying on the floor.

Q. Was it before or after he had been washed? A. I don't remember his being washed, because I just went in, laid him on the floor then I went out and moved my car and then I came back in again and then they told me to look for the ambulance for there was two ways for the ambulance to come he could come down through Madison Avenue or Sixth Avenue and River Street and I was to watch both ways and I walked down so I could see up Sixth Avenue to see if I could see anything of him and tell him which way to go.

30

Q. Did you observe anything else on him? A. No, I did not. They were all over him. Mr. Tooley laid over him and officer Kyle was working around him and three or four men there in the crowd and I could not very well see.

Q. Did you wait till the ambulance got there? A. Yes. If I am not mistaken, I think I helped put him in.

40

Percy French, cross.

Q. Did you notice how many men were in the barroom when you got in there? A. No, I did not pay much attention to it.

Q. You did not notice that? A. No, sir.

10 Q. Nobody was doing anything in particular at that time, I suppose, when you got in the barroom? A. I did not notice that.

Q. You were a little excited? A. Naturally I was. I went in, laid him on the floor and I went and moved my bus.

Cross examination by Mr. Ward:

Q. You were not around him all the time, were you, after he was taken in the saloon? A. No, I was in and out at different times, to see if they called up.

20 Q. You were going to your garage? A. Yes, sir.

Q. Whereabouts was your garage? A. In Goetschius's garage, Warren and River Streets.

Q. Did you intend going to the City Hall before going to your garage? A. No, sir.

Q. To make any report there? A. No, just to the garage. That was my last trip.

30 Q. You were wet? A. I was damp from the rain coming in through this little opening, that was one reason I turned in early, I did not work to the usual time, but I would run till about half past twelve if it was the usual time.

Q. So you were anxious to get through this night? A. Not any more so than any other time.

40 Q. You were turning in a half hour earlier than usual, that shows you were anxious to get through? A. We had no stated time to turn in, some nights we turned in early and some nights we turned in late.

Percy French, cross.

Q. You just said you usually turned in about twelve thirty, is that correct? A. Well, sometimes I have been out, of course, later even.

Q. Is that correct, just answer yes or no? A. Yes, I have been out later also.

Q. You had refused a passenger, had you not? A. Yes, sir. 10

Q. That was because you did not care to take the passenger to his destination? A. Yes, sir.

Q. You wanted to get home? A. Yes, naturally I was going home.

Q. And this wind shield to which you refer, on those busses there are glass fronts, are there not, or windows? A. A partition right through the center, a partition about that wide (indicating), right through the centre, the front, then there is— 20

Q. That divides the width of the windows in front into two parts, that is correct, is it not? A. That is right.

Q. Then the part on the right, that is in two panes, is it not? A. Yes, sir.

Q. And that is usually cut glass? A. That is glass.

Q. Then in front of the driver, do I understand you, was the lower part of the window or wind shield, as we might term it, which is stationary? A. Yes, sir, that is, we can open and close, I should say it is nine or ten inches in height, the full width of the shield, about nine or ten inches in height. 30

Q. Nine or ten inches in height and about this wide? A. The same width as the shield, I should say about two feet, then a little wooden strip.

Q. Across the top of that, and then the wind 40

Percy French, cross.

shield is above that, is it not? A. Yes, sir.

Q. And you say part of this two feet of the glass in this lower part of this piece ten inches and two feet in width was broken out? A. That has been out for quite a while.

10 Q. How much of it about? A. It came across from the top down to the corner, I should say it was about like that (indicating), eighteen inches almost half of it, I should say, almost half of it, like that (indicating in a slanting direction).

Q. The wind shield was down? A. Yes, the upper shield was closed.

Q. This sash which you speak of which holds the nine inch wide glass, how high is that from the floor of the bus? A. I never measured it, I could not say just how high it is.

20 Q. About? Imagine you are sitting down there are your feet upon the clutch or clutches and brake, etc., is it not the fact that the bottom of that window, you might term it such, or the sash that holds this lower glass nine inches wide is about as high as your hand? A. Oh, no.

Q. Lower than that? A. No, it is higher than that.

Q. How much higher? A. It is, I don't know, I have not been in a bus for over six months.

30 Q. How long did you run that bus? A. That and others close onto two years.

Q. That one? A. About a year and a half, I should judge.

Q. That bus is still in existence? A. Oh, yes, running on Park Avenue.

Q. You have seen the bus since you quit, haven't you? A. Not to pay any particular attention to it. I have seen it just as I have seen hundreds of others.

40 Q. In view of the fact that you have seen it

Percy French, cross.

since then and run it, just please try to place yourself back in the position of running that bus and tell us if you can how high above the floor of that bus that window was, the bottom part of that window was? A. Well, when I am sitting in my seat—

10

Mr. Ward: I withdraw the question.

Q. Would it be possible for you to see the bus between one and two o'clock today? A. That I could not say.

Q. Are you willing to try?

Mr. Weinberg: I object to this as wholly improper to request this witness to do that. If they want to have anybody examine the bus they may do so, but certainly it is an improper request to make of this witness for one party to supply them with proof that may be desirable to them and which if they want it they can get it.

20

Mr. Ward: I don't want to take up the time of this court presenting that proof if it is possible for this witness to ascertain and bring it here.

The Court: You may make your own private arrangements, but just now he is under cross examination.

30

Q. Right now can you tell us how high in your opinion that wind shield is above the floor of the bus? A. No, I could not.

Q. Give us your best idea? A. As I see back—and as I sit there in the—

Q. Just give us your best idea?

The Court: You started to say as you were sitting there?

40

Percy French, cross.

10 The Witness: As near as I can remember this strip runs between the upper half and the lower half, this strip runs across the windshield, and, of course, in my view there is no top sash to that, that window just drops in and the upper half is slid open and closed, and as near as I can remember the way I sat my eyes were about level with this strip that runs across this shield, as near as I can remember.

Q. Your eyes were about on a level with the top of this sash? A. That was the bottom of this top sash that divides the lower half from the upper half.

20 Q. The top is the windshield? A. Yes, sir.

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

Q. Don't you know that windshield and part of that pane that is joined onto that windshield is low enough to give you entire vision of the road and see right down in front? A. What part of the windshield are you talking about?

30 Q. I am speaking of the pane you refer to as the windshield? You can raise or bring forward and also let it down to protect you from the elements? A. I did not say it was not.

Q. The bottom of that windshield with reference to your eyes, how far below your eyes coming out straight is the bottom of the windshield when it is open? A. The bottom of the upper half?

Q. Yes? A. Maybe six to ten inches, which piece do you mean, the windshield or this ten inch piece?

40 Q. I am speaking of the windshield, the upper

Percy French, cross.

half as you have just said, or upper part, when it is closed down, whereabouts is the bottom of that windshield with reference to your eyes or straight line of vision, your eyes?

Mr. Weinberg: The witness has answered that twice already. 10

The Witness: I can see through any part of the shield.

Q. I am not asking what you can see through. If you don't understand me, tell me. This windshield is something which hangs on hinges, is it not? A. Yes, sir.

Q. You can push it up that way, can't you? A. Yes, sir.

Q. Or, when it is down, it is that way, is it not? A. Yes, sir. 20

Q. I am asking you when that windshield is down, the bottom of it, or when the windshield is down, whereabouts is the bottom of that windshield with reference to your direct line of vision? Is it right in front of your direct line of vision or below or above it? A. That I could not say, I have never paid any particular attention to that.

Q. Why didn't you pay particular attention to that, every time you drive your car if it is up or down? A. Certainly, I do not. 30

Q. Weren't you paying particular attention to it that night when it was closed down? A. I was looking through this little place, the only place I could look through.

Q. That was the only place you could look through, wasn't it? A. Yes, sir.

Q. The rain and the mist were on the upper part of that windshield, weren't they? A. I would not say there was any mist. 40

Percy French, cross.

Q. Well, rain? A. Naturally there was rain on the window.

Q. That prevented you seeing through it, didn't it? A. No, sir.

10 Q. Didn't you just say the little place where the glass was out was the only place you could see through? A. No, I did not.

Q. Didn't you just a minute ago say the only place you could see through was where the glass was out, this little place? A. No, sir.

Q. Where were you looking through? A. I was looking straight ahead.

20 Q. Through what part were you looking? A. Through both, I could see in a general way through the rain the same as I was seeing in any storm.

Q. I did not ask you that. You just answer the questions and don't be so anxious to get in those remarks.

Mr. Weinberg: I object to any such remark from counsel to the witness.

The Court: Yes, that is not proper.

30 Q. Can you tell us now, or tell this Court and jury whether you were looking through this aperture or this part in front of you where the glass was out or whether you were looking through the glass itself? A. As I said before, both.

Q. So then your attention was so little directed to where you were driving, or, at least, what was ahead of you that you cannot tell us now whether you were looking through this little opening or through the glass? A. As I said I was looking straight ahead, that is all I can say to you.

40 Q. Now, is it not a fact that the glass part of

Percy French, cross.

the windshield in front of you was so covered with rain that you could not see distinctly through it? A. No, sir, the side windows were but not the windshield.

Q. Didn't you testify that Officer Kyle took the position where he could look out of the door so that he could see through the open doorway? A. Certainly he did, as the side windows were so you could not see through them. 10

Q. He had his window right in front of him? A. I don't know the officer's mind.

Q. You knew where he was sitting? A. Yes, sir.

Q. Didn't he have the window directly in front of him almost, the right half of the front that I have been describing? A. Yes, that window, but there was a sign in it. 20

Q. Wasn't that covered with rain? A. Naturally it would be if the other was.

Q. Do you know why he sat so that he could look out of the front door? A. What he told me, yes.

Q. He sat there to see wasn't that it? A. I know what he told me, I remember what he told me.

Q. Didn't you say a moment ago that the reason the door was open was because the window in front there was covered with rain, the window in front on the right hand side? A. I don't remember saying anything about the window in the front on that side, I said the side windows of the bus had rain trickling on them and that you could not see through them on account of those rain drops. 30

Q. Don't you know that with a driving rain the most of it collects in the front? A. Yes, and 40

Percy French, cross.

then it runs down the side and it collects in drops there.

Q. Doesn't it obstruct your vision? A. Somewhat, yes, sir.

10 Q. To a great extent? A. That all depends upon whether or not it is a driving rain or not.

Q. It was a dark night wasn't it? A. Yes, it was a very dark night.

Q. This was a dark place you say? A. This was a dark place on River Street.

Q. Your windshield was down? A. Yes, sir.

Q. With the rain on it? A. Yes, sir.

Q. That obstructs your vision over that road? A. Not any more than any other time.

20 Q. Well, it partially obstructs your vision in looking through the glass? A. Yes, sir.

Q. And yet you say you were looking through both? A. I was looking straight ahead.

Q. Through both this glass with the rain on it and through the opening? A. I had been doing it all night.

Q. I did not ask you about all night, I ask you about the time of this accident? A. Certainly.

30 Q. So then your attention was not diverted or at least was not concentrated right on this opening where you could see through without looking through the rainy glass? Yes or no now? A. As I said before, I was looking through both, is my answer.

Q. And you were not then looking through this opening? A. I did not say I was not.

Q. Alone, I say? A. I say I was looking through both.

Percy French, cross.

The Court: He said he was looking through both.

Q. As a matter of fact is not that bottom pane that you have described as being nine inches, so low that you cannot see through it any distance ahead without bending your head down that way? A. No, I would not say that. 10

Q. You would not say that— A. On this car—

Q. Never mind now—

Mr. Weinberg: No, I don't think you want to make a statement and shut the witness off.

The Witness: I will explain that if you want me to.

Mr. Ward: Counsel can explain it for you. 20

The Court: He has answered the question.

Mr. Weinberg: He started to answer, but he was stopped and I insist that he should be permitted to answer.

The Court: I think he had already answered the question and the next question may be put.

Q. You were not on that night in a position with your head bent down, were you? Yes or no? A. I don't remember whether I was or not. That is a year ago. 30

Q. Don't you remember how you sat there to look out through both of those glasses? A. I sat as I generally sat. I don't know that that impressed itself upon my mind particularly. I sat as I generally sat and I did not notice how I sat on any particular night.

Q. You had headlights? A. Certainly. 40

Percy French, cross.

Q. Bright headlights? A. Ordinary headlights.

Q. Good headlights? A. With a scatter lense on them.

Q. With them you could see how far ahead?

A. I don't remember whether I had them on dim or bright.

10 Q. You don't remember that, eh? A. No, I do not.

Q. So you don't know, on this dark and rainy night, and you don't know whether you were running through there with lights that were sufficient to let you see the road or not? A. Certainly.

Q. Were they sufficiently bright to let you see the road? A. In the city limits we always run dim.

20

Q. Were the lights sufficiently bright to let you see the road? A. Yes, sir.

Q. And let you drive down that roadway in safety? A. It had been all the rest of the night.

Q. All the rest of the night as you had them on how far could you see with those headlights? A. I could not just state.

30

Q. Didn't you tell Mr. Rosenstein and myself and tell Senator McGinnis that you could see forty feet with those headlights? Now just think, young man? A. I don't know. I don't remember that I did.

Q. Didn't you tell Mr. McGinnis and Mr. Rosenstein and myself, when you found fault that we had served a subpoena on you, didn't you tell us, when we asked you, that you could see at least forty feet with your headlights that night?

40

Mr. Weinberg: I submit that such a question is absolutely unfair. If there is a purpose here to contradict this witness

Percy French, cross.

the proper foundation should be laid and we should know who did the talking, when it occurred, where it occurred and all those details. I think we are entitled to that information.

Mr. Ward: I withdraw the question. 10

Q. Do you recall when you came to us and found fault about a subpoena having been left at your home? A. That is when you sent for me.

Q. Yes, when you found fault with the fact and the conversation that took place when you found fault about the subpoena? A. The way it was served, yes, sir.

Q. And during the same conversation you found a great deal of fault with the lawyers— 20

The Court: Let us get right down to the point.

Q. You remember occasion and what we had to say then—

The Court: He says he remembers the occasion.

Q. Do you remember at that time saying you did not see why the deuce they brought this matter up now? 30

Mr. Weinberg: Saying to whom?

Mr. Ward: To the three of us there together?

A. I don't know. You said quite a lot there. I don't remember about that.

Q. Do you remember us all telling you what we wanted in this case, the only thing was to give us the exact truth. Do you remember saying that, or me saying that to you? A. No, I 40

Percy French, cross.

don't know. I don't know what cause you had to say it.

10 Q. Do you remember Senator McGinnis then asking you what kind of a night it was? A. If I am not mistaken Senator McGinnis was in the other room talking to somebody else.

Q. Don't you know after you had found fault, as you did and after I had talked to you that I left the room and turned you over to Senator McGinnis? A. It was either one of you left the room, I don't know who it was.

Q. That is only about a month ago is it not? A. I did not pay any attention to that.

20 Q. Your recollection is just as clear about what occurred there as what occurred this night over a year ago? A. I remember talking to this gentleman here (indicating Mr. Rosenstein), I think you left me to talk to him.

The Court: He wants to know whether you said that time you could see forty feet?

The Witness: Not that I remember; no.

Q. Have you told today on the stand everything that you remember about that accident?

30 Mr. Weinberg: I object to the question. It is certainly improper. He does not have to. He simply has to answer questions.

The Witness: I have answered everything that has been asked.

Mr. Ward: I ask him that on cross examination so that I may limit or extend my examination as I may see fit to do so depending on his answer.

The Court: I think it is proper.

40 Mr. Weinberg: I object to the question for the reason that it calls for a conclusion

Percy French, cross.

of the witness, he may think that he has told everything that is material; it is not a question we would all understand in the same way. If you want some more information ask him the questions directly.

Q. Have you told on the stand here today everything that you told in our office that day?

10

A. No. I have not. Shall I?

Q. You answer my questions. Now, I ask you again, if you can tell this jury and this Court, with your headlights on that night as they were, how far you could see? A. I could not by feet, no, I never measured. In fact, I never—

Q. Tell us any distance in this room then Mr. French? A. As I said before—

The Court: How far in this room, can you tell? In this room.

20

The Witness: Well, if they were on dim or they were bright, I could not say, in the City limits we generally hold our lights on dim. I did anyway.

The Court: He wants to know how far you could see that night at the time of the accident? How far could you see ahead?

The Court: With your lights the way they were?

30

The Witness: About thirty feet, I should judge.

Q. When officer Kyle got on your automobile he told you about two suspicious characters, men on River Street, did he? A. Yes, sir.

Q. Did he tell you how long before that they had gone down? A. No, I don't think he did.

Q. He was anxious to catch those men? A. I don't know.

40

Percy French, cross.

Q. Well, that was his object in getting in, wasn't it? A. I only know what he told me.

Q. He wanted to overtake them, didn't he? From what he said do you know whether he wanted to overtake them?

10

Mr. Weinberg: Objected to.

Objection sustained; Plaintiff excepts.

Q. Did he or not tell you that he wanted to overtake those men? A. Do you want the conversation?

Q. I want an answer to my question, yes or no, did he tell you that? A. I cannot answer it that way.

Q. Did he say anything to you in effect that he wanted to overtake those men? A. Yes, sir.

20

Q. And then you say that the dimlights were turned down? A. Yes, sir.

Q. The red lights on the bus in front? A. No, sir.

Q. On the corner? A. No, sir.

Q. Was there any light on the right hand corner, a red light of any kind? A. No, sir.

Q. Was there any light in front? A. No, sir.

30

Q. Didn't you say in our office to Mr. Rosenstein and Mr. McGinnis and myself in answer to our question that the light inside of the bus was lighted? A. No, sir, I did not.

Q. You did not say that? A. Not when I started from the end of the line, then it was, yes.

Q. At the time the accident happened? A. No, certainly not. My lights would be out. I always turned them out anyway.

40

Q. Didn't you say to us that anyone crossing that street could have seen your automobile coming because there was light inside of it? A. No, sir.

Percy French, cross.

Q. You did not say that to us? A. No, sir, I did not.

The Court: Did you see whatever you struck before you struck it?

The Witness: No, sir the first I knew of it was by this sudden twitch towards the left hand side when it pulled my wheel over. 10

Q. Then you got down to Sixth Avenue you say? A. The near side of Sixth Avenue.

Q. And then you turned, I believed you said on your direct examination that you were just about entering Sixth Avenue or on the near side of Sixth Avenue when you turned to your right?

A. In that neighborhood. 20

Q. Can you tell us how near? Whether you were right on the corner of Sixth Avenue or just going into Sixth Avenue or how near to Sixth Avenue you were when you turned to your right?

A. I could not say. As near as I remember now about Sixth Avenue, it might have been the next side, it might have been a few feet further, I could not swear just how many feet.

Q. Weren't you paying attention that night?

A. Why, yes; but I have not measured the distance. 30

Q. Weren't you looking out to see where you were? A. Yes, sir.

Q. Then why can't you tell us? A. I did not run over Sixth Avenue when I turned out of the tracks.

Q. As you said a moment ago you could look through the corner of your windshield down here and look through the door? A. Certainly.

Q. And your range of vision being like that why can't you tell us where you were then? A. 40

Percy French, cross.

Because, my purpose in turning out of the tracks was to make this hill, that is the only purpose I had in turning out of the tracks.

10 Q. You know there is an electric light on Sixth Avenue? A. On the far side of Sixth Avenue, yes.

Q. But in River Street? A. It is the longest block in Riverside.

Q. It is in River Street is it not? A. Yes, sir.

Q. Can you tell us whether you came to the electric light or not when you turned out? A. Turned out of where?

20 Q. What are you referring to when you say you turned out? A. I was riding the rails all the way until I struck around Sixth Avenue, then I turned off the rails and straddled the near rail to the curb.

Q. Now what I mean by turning out to the right you understand? A. From the track itself you mean?

Q. Yes? A. Yes.

Q. Had you come to that electric light when you turned out? A. No, sir, I had not.

30 Q. How far were you from it? A. I was only just half on Sixth Avenue, the light is on the far side.

Q. Is there not a light on Sixth Avenue? A. Yes, sir.

Q. That was when you turned out? A. Yes, sir.

40 Q. After you turned out how far did you go before you felt this jar or whatever it was? A. As I said, as near as I can remember, it was a few feet beyond the near side of Sixth Avenue, right in that neighborhood, it might have been on the opposite corner.

Percy French, cross.

Q. After you turned out to your right from the car tracks as you have said, how far did you go after you turned out and straddled the right hand rail, how far did you go from the place where you turned out to the place where you struck something? A. As near as I can remember a few feet beyond the front of Parmelee's. That is beyond the far side of Sixth Avenue, that is as near as I can place it. 10

Q. How many feet from Parmelee's? A. I could not say how many feet, a short distance.

Q. You were looking you said? A. I did not see the object.

Q. About how many feet from Parmelee's? A. Well, when I went back, that is the only way I can remember it, I did not look the minute I struck the object, just where I was; when I went back again I seemed to have went cata-cornered the way we carried the body into Parmelee's, that is as near as I can remember. 20

Q. Parmelee's is number 583, do you know how the numbers run there? A. Yes.

Q. Well, was this body lying between about number 583 and 581, which would be next to Parmelee's? A. Number 581, that is nearer to Main Street? 30

Q. Yes, that is near to Main Street? A. Yes, it was in that direction as near as I can remember. The officer was there with the man first. Can I look at that map?

Q. Yes, I wish you would. Come down here. Here is number 583, Parmelee's, there is Sixth Avenue, this is the light to which you refer? You are sure that you remember that? A. What do you mean?

Q. The electric light about which I asked you 40

Percy French, cross.

at Sixth Avenue and River Street. A. Whether I remember it on that particular night?

Q. Whether you have a general knowledge of it? A. Where do you mean?

10 Q. You remember where the electric light is? A. Yes, I have seen that hundreds of times.

Q. That is on the right-hand side of River Street going down towards Paterson? A. On the far side of Sixth Avenue.

Q. Suppose this is River Street and here is Sixth Avenue on your right, the light is over here, is it not? A. It is on the far side of Sixth Avenue, the nearest side to Main Street.

Q. You say that you got half way across there? A. Half way across where?

20 Q. Sixth Avenue, before you turned to your right? A. You switch me around on the map. I said I came from Riverside to the near side of Sixth Avenue from Riverside, what I said is that.

Q. Do you mean the near corner? A. Let me show you.

30 Q. No. You sit down there, please. Do you mean Sixth Avenue on your right or on your left as you came down from Riverside on River Street? A. That would be Sixth Avenue on the west side of River Street coming south, on the east side.

Q. Which do you mean? A. On the east side. You got me twisted on that map. You showed me on the outside entirely. If you will let me see it again I will tell it to you.

40 Q. Which is it, on the left-hand side or on the right-hand side? A. As I am coming on River Street, coming south, that is toward Main Street, the near side of Sixth Avenue would be on the east side.

Percy French, cross.

Q. That would be your left-hand you are indicating? A. Yes, on my driving side, that is the near side of Sixth Avenue.

Q. Then it was not down where the electric light was? A. Positively not, no.

Q. It was somewhere near Parmelee's, was it not, that you turned to your right? A. Yes, before I reached Parmelee's, as I said, as I reached the near side of Sixth Avenue I swung from the tracks. 10

Q. Then you ran down, you said, after striking this man, you believe, about twenty to twenty-five feet, is that it? A. As near as I can remember, yes.

Q. Whereabouts was your bus when you stopped? A. The first time it stopped? 20

Q. Yes? After hitting this object? A. It was right in the tracks.

Q. Where was it with reference to River Street, Parmelee's and Sixth Avenue? A. Well, I cannot tell you the feet, I can tell you then the condition of things, that is all.

Q. Wasn't it right up opposite the library, right opposite to Sixth Avenue? Which is to your right? A. I explained that to you before.

Q. Yes or no? A. The first time it stopped? 30

Q. Yes? A. No, it was not.

Q. Wasn't it up to the curb after you crossed Sixth Avenue, after you crossed Sixth Avenue and haven't you testified to that on your direct examination? A. That is where I finally took it, yes.

Q. Then if you were on this side of Sixth Avenue why couldn't you run it right up to the curb on this side of Sixth Avenue? A. I could not tell you why I could not.

Q. But you did something which finally got 40

Percy French, cross.

that bus from the position where it stopped to the curb up beyond Sixth Avenue? A. I did.

10 Mr. Weinberg: Which Sixth Avenue? It appears that there is a jog in the street, Sixth Avenue, and the witness should be given a chance to state.

Q. That is where it was? A. There is a hydrant on the corner and I had to go across the street, that is the law.

The Court: Which corner of Sixth Avenue?

Mr. Ward: Don't look at counsel.

20 Mr. Weinberg: Yes, don't. You can look at counsel if you want to, but don't get into a wordy battle with counsel.

Mr. Ward: Don't you think you ought to get on the stand?

Mr. Weinberg: I think if I took the rights you are taking I would do it, but I seem limited.

Mr. Ward: Are those the only instructions the counsel for the defence has to give me?

30 The Court: Don't answer the question unless you understand. Proceed with the examination.

Mr. Ward: Your Honor asked a question when counsel interrupted.

Mr. Weinberg: I objected.

The Court: Which Sixth Avenue was it, the first as you come along or the second as you are going on River Street?

The Witness: What do you mean, the first Sixth Avenue in reference to what?

40 The Court: Isn't there a jog in Sixth Avenue?

Percy French, cross.

The Witness: Yes, there is. I have explained that time and again.

Q. Of course you have, but your counsel was not satisfied. Now, when you go down River Street south towards the centre of Paterson you testified on your direct examination that you stopped your bus near the corner of Sixth Avenue? A. Yes, I say so yet.

10

Q. Now, which Sixth Avenue do you mean? On your right or on your left? A. The left. The near side of Sixth Avenue to the end of the Riverside line. Do you understand that?

Q. So then you want us to understand, when you say that coming down River Street— A. I cannot see it from here.

Q. Then come to the map; going south and striking this object, where were you? A. Where are you coming now?

20

Q. Coming south? A. This is the end of the line?

Q. There is Sixth Avenue there, there is the other part of Sixth Avenue? A. You did not point to that before. You got me to mark that here.

Q. Now I want you to answer the questions and the Court will instruct you not to argue with counsel?

30

The Court: Yes, just answer the questions; if you do not understand, just ask counsel.

Mr. Ward: Now the Court just instructed you not to argue with me.

Q. Coming down Sixth Avenue, passing Parmelee's, striking this object between Parmelee's and the next building, about there, and running

40

Percy French, cross.

on twenty-five feet, and you stopped your bus you say? A. Yes, sir.

10 Q. Now I ask you about how far you were at that time from the Sixth Avenue which ran off to your right? A. Well, I did not pay any attention to that, my object in stopping there was to get out and help this man, I did not stop to figure the feet at that time.

20 Q. Can you give this Court and jury any idea of how far you were from the corner of Sixth Avenue which runs to your right, on that night, at the time you stopped your bus, after first coming in contact with something? Can you or not? If you cannot, all right? If you can, give it to us? A. You mean when I first stopped the bus, how far I was from the electric light on the far side of Sixth Avenue?

Q. Yes? Or the street itself, not the electric light? A. That is where I finally stopped, on the far side of Sixth Avenue (indicating).

The Court: How far away?

The Witness: The library is a double lot, I think that is fifty feet and the store twenty-five feet, I should judge about sixty feet.

30 Q. About sixty feet from the corner of Sixth Avenue that ran off to your right? A. Where the electric light is, yes.

40 Q. Then, if that is true, I ask you again, in order to get your bus on the right hand curb, why it was necessary for you to cross Sixth Avenue and stop on the other side? A. Well, if I remember rightly, there is a hydrant on the corner of this side of Sixth Avenue, and I was not going to stop in front of that hydrant.

Percy French, cross.

Q. That is on the corner on the other side?

A. Yes, sir.

Q. Take ten feet off from the hydrant, that still leaves you fifty feet, why couldn't you draw up in fifty feet? A. I don't know why I could not.

10

Q. Is it not because you ran after striking this object right down to the corner of Sixth Avenue and stopped there right near the corner, isn't that the reason? A. Well, no, sir, I stopped in the middle of the street after hitting this object.

Q. The middle of what street? A. Astraddle the near rail from the curb, that is where I came in contact.

Q. You stopped in the middle of what street? A. River Street.

20

Q. Didn't you just mean Sixth Avenue when you said that; when you said you stopped in the middle of the street? A. No, sir, I stopped right where I was, right two wheels on the Belgian block and two wheels on the amicite, the near wheel to the curb on River Street.

Q. How did you describe the sensation or what occurred when your car came in contact with something? A. As I said, just like that (indicating) twitching.

30

Q. You mean it twisted your wheel? A. It twisted my wheel.

Q. Nothing else? A. Yes, sir, there was a jarring of the car at the same time.

Q. Why didn't you tell us about that on your direct examination? A. I think I did.

Q. Wasn't it like running over a log? A. Yes, a stick or a stone or a hole in the road.

Q. Didn't you tell the police in the first state-

40

Percy French, cross.

ment you gave them, the first thing you knew was when your wheel twisted and it felt like running over a log?

10 Mr. Weinberg: I object to that, this style and this form of putting the question, it is indefinite and an improper way of putting the proof on record.

The Court: Yes, I think so.

Q. You remember giving a statement to the police and signing it, don't you? A. I do.

Q. You remember that? A. Yes, sir.

The Court then ordered a recess until two o'clock this day.

After recess.

20 The trial was continued pursuant to adjournment.

PERCY FRENCH, resumes the stand.

Cross examination continued by Mr. Ward:

Q. Why didn't you mention on your direct examination bumping over some object? A. I think I did; didn't I say there was a bump?

30 Q. When you were asked to describe what had happened why didn't you mention that, besides your wheel being pulled in your hand the way it was, that you had bumped over something or run over something? A. I think I did state it was a twist and a bump.

Q. Did that indicate to you that you had run over something then at that time? A. Yes, sir

Q. And something pretty large? A. I could not say that.

40 Q. It was a pretty heavy bump, wasn't it? A.

Percy French, cross.

No, not enough to throw me out of the road, no, just a twist.

Q. Are you referring to the twist in the wheel or the bump? A. Both at the same time.

Q. It did not throw you very much out of the road, did it? A. No, it did not. That is the reason I did not think it was so much. I thought maybe it might have been a stone or a hole or— 10

Q. What kind of a bump was it you felt? A. As I say, like running over a stone, or over a hole, or a piece of wood, anything like, I could not tell what it was.

Q. Wasn't there two distinct bumps, like this, bump, bump (indicating)? A. Not that I remember. The only thing that I remember was this twist and this bump. 20

Q. When your wheel twisted, wasn't there a bump, bump, like that, as you went over this object? A. No, there was a bump. I don't remember there being two bumps.

Q. It was sufficient to lead you to believe you had run over something, wasn't it? A. Oh, yes.

Q. And your wheel, you say it felt to you, the way the tug was at the wheel, as though someone had grabbed your front wheel? A. Or something was under it, I don't know. 30

Q. Or your front wheel was striking something? A. Yes, sir.

The Court: A kind of a drag on it, I think he said.

Q. Something under it? It was as though something had struck that front wheel too, wasn't it? A. Something the front wheel had struck. yes, sir.

Q. When you got out and went back, where did you find this body? A. I don't just remem- 40

Percy French, cross.

ber what position it was in but the officer reached there before I did, I think he turned the body over by the time I got there.

Q. With reference to the tracks where was it?

10 A. As near as I can remember it was between the north and the south bound track, between the up and down track, I could not swear just in what position it was because I don't well remember that.

Q. Between the two sets of tracks, is that what you mean? A. I think it was, yes, sir.

Q. When you started down on this return trip, where did you start from? A. From what they call the loop, that is the end of the line at First Avenue and River Street.

20 Q. How fast did you go down there until you reached Fifth Avenue? A. At the ordinary rate of speed, I don't know just what my rate was that I was making.

Q. You had been driving an automobile for years, don't you know how fast you were going that night before you met the officer? A. I was going ten or fifteen miles an hour, I might have been going twenty miles an hour.

30 Q. Was there any reason for you to hurry? A. No, sir.

Q. Before you met the officer, I mean? A. No, sir.

Q. About these statements, you remember making a statement to the police at the police station, do you not? A. Yes, I remember.

Q. And signing it? A. I signed the statement.

Q. Do you remember saying in that statement that it felt to you as though you had run over a log? A. Well, yes.

40 Q. And that you did not know what you had hit until after the accident? A. Yes, sir.

Julius Kyle, direct.

Redirect examination by Mr. Weinberg:

Q. Something has been said about conversations that took place at the office of Ward & McGinnis, how did you get there? A. I was called over to Ward & McGinnes's office.

Q. Were you subpoenaed then? A. The subpoena was served to meet them at my home, I was not home at the time.

Q. You were told to come over to their office? A. Yes, the man I am working for at the present time, I think he had ben in Ward & McGinnis's office and he came back and he told me they wanted to see me and I went over.

10

JULIUS KYLE, sworn as a witness on behalf of the defendant, testifies as follows:

20

Direct examination by Mr. Weinberg:

Q. You are connected with the Police Force of the City of Paterson? A. Yes, sir.

Q. And you have been for how long? A. Six years the first of July.

Q. What are you? A. A Belgian.

Q. Are you a patrolman or what? A. A patrolman.

Q. What was your beat on May twenty-ninth 1917? A. From Godwin Street to Fifth Avenue, from East Eighteenth Street to the River.

30

Q. What hours were you on duty at that period? A. From eight to half-past four in the morning.

Q. Have you a pull box in the neighborhood of River Street and Sixth Avenue? A. Yes, sir.

Q. How near to that point? A. Why, I pulled at Fifth Avenue and River Street two minutes to twelve.

40

Julius Kyle, direct..

Q. What time did you pull the box that night before anything happened? A. 10:16 o'clock.

Q. Where from? A. Sassafrass Street and River Street.

10 Q. What time were you in the neighborhood of River Street and Sixth Avenue on that night? A. Before the accident?

Q. Yes? A. I should judge may be a little after eleven o'clock at the corner of Sixth Avenue and River Street.

Q. Which way were you going at that time? A. I was stopped there by a young man or a boy who was afraid to go home, and he told his father a lie about a job—

20 Q. Never mind that. When next were you on Fifth Avenue or on River Street near to Sixth Avenue? A. Maybe a little after the accident, about a quarter to one.

Q. Do you know this bus that was driven by Percy French? A. Yes, sir.

Q. Did you get on that bus at any time? A. Yes, sir.

Q. When and where? A. I got on about twelve o'clock at Fifth Avenue and River Street, I should judge around that time, twelve o'clock.

30 Q. Where were you going? A. I was going after two men who were supposed to be carrying bundles and acting in a suspicious manner.

Q. What kind of a night was it? A. It was a bad night, very bad.

Q. What do you mean by that? A. It was raining in showers, then it stopped and then it started again, a very dark night.

40 Q. How was River Street in the vicinity of Sixth Avenue with respect to being light or dark at that time? A. That is a very dark corner, Sixth Avenue and River Street.

Julius Kyle, direct.

Q. How was it at that time, on that night?

A. Very dark, on the one corner in this section.

Q. Do you know where the electric light is on the corner of Sixth Avenue and River Street?

A. Yes, sir.

Q. What would you say about the amount of light that would be thrown north from that? 10

A. Well, that night would throw about seventy-five feet this way.

Q. When you say "this way" what point do you mean? A. I mean towards the saloon, towards Parmelee's saloon, going, I would say, north.

Q. I don't think it has been fixed in the evidence what the distance is between the upper side of Sixth Avenue and Sixth Avenue on the west side, has it. Mr. Ward? 20

Mr. Ward: I don't think it appears excepting from the map.

Q. Do you know how many houses there are or what the distance is between the upper side of Sixth Avenue on the left-hand side and the lower side of Sixth Avenue on the right-hand side?

A. How many houses on the left-hand side from where Sixth Avenue is to the next corner where the continuation of Sixth Avenue runs? 30

Q. Yes? A. I guess about seven, six or seven. I cannot just remember now. I know there is Burkhardt's, there is a drugstore, next Burkhardt's, then a feed store, used to be anyway, then there is a drugstore, Malaprops and then A. & P., and then comes a candy store that is about facing Sixth Avenue and then a tailor shop right next to it.

Q. After you got on the bus with Mr. French, and, by the way, what point was it that you got 40

Julius Kyle, direct.

on there? A. I got on just at Fifth Avenue and River Street, I got on the bus.

10 Q. After you got on the bus at that point, how was Mr. French's bus going with respect to speed? A. I was just pulling my box as I saw his machine was coming down and I hauled him up, I called him and told him the conditions—

Mr. Ward: Never mind what you said to him.

Q. You told him something? A. About the two men carrying the bundles.

Q. Did you tell him anything about his automobile? A. No, I just wanted to get so I could see where I was going looking out in front.

20 Q. Do you know whether any lights were lit, burning in the bus? A. It was dark inside when I jumped in, the jitney was dark inside when I jumped in, I did not notice any lights in there at all.

Q. How did you proceed along from the time you got on the bus? A. The man was going very slow.

30 Q. In what part of the street? A. On the right hand side of the street, running on the right all the way down in the trolley tracks, all the way down, just as soon as he put me on the car.

Q. Whereabouts did you take your position in the bus? A. On the right hand side of the jitney.

40 Q. How near to the front or back? A. About, I should judge, about maybe three or four feet, about a foot or two feet back of the chauffeur, sitting on that right cushion, on that right side of the jitney. He was in front of me, and I was like this (indicating) on this side of him.

Julius Kyle, direct.

Q. Had you any reason for getting in that bus?

A. Yes, doing police duty, to shadow those fellows up and get them if I could get them.

Q. Why didn't you make—why didn't you walk down there—

Mr. Ward: Objected to as irrelevant and immaterial.

10

(Question withdrawn.)

Q. Was there anything said about the lights in the car?

Mr. Ward: Objected to.

(Question withdrawn.)

Q. You say, I believe, that you did not observe any lights in the bus at all? A. I did not notice any lights lit at all, only on the front of the jitney.

20

The Court: Inside you are speaking of?

The Witness: Inside, no, sir.

Q. How about the lights in front? A. They were dim lights.

Q. What do you mean by that? A. Like dim lights. They were not bright lights. Not a bright light, but anybody could see if they were waiting for a jitney.

30

Mr. Ward: I ask that the last part of of the answer be stricken out.

Motion denied; plaintiff excepts.

Q. How far was this bus away from you when you saw it approaching you? A. It was just coming over the track.

Q. How far could you see the lights? A. I could see the lights very fine.

Q. How far? A. A hundred and fifty feet, I

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Julius Kyle, direct.

should judge, the railroad track and Fifth Avenue and River Street.

Q. Did you notice this bus before it got to the railroad track or not? A. No, I did not notice it.

10 Q. Did you hear it coming? A. Well, I could not answer that question hardly, to tell the truth.

Q. Will you tell us just what occurred from the time you got onto the bus until after the accident? A. Well, the way it was, when I got on this jitney I told this—

Mr. Ward: Never mind that.

20 The Witness: I was riding in the jitney and the first thing I noticed was a shaking of the wheel as if the car struck something of some kind, I knew that, and threw this man off his guard, wiggled his wheel, and the car bounced like a couple of bumps on the left side of the jitney. I said, "What the hell is that?" Just like that. I asked that question, and so he stopped right away and I gets out and I looked around and I finds that man laying in the centre of the road.

30 Q. How far back of the jitney after it was stopped? A. I should judge about twenty-five feet.

Q. Which way were you facing as you sat in the jitney bus? A. Right straight ahead.

Q. Were you looking ahead? A. Yes, sir, I was looking ahead.

Q. Did you see anything in front of that car before you felt that bump? A. No, sir, I did not.

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Julius Kyle, direct.

Q. How far do you think you could have seen with those headlights in front of the car?

Mr. Ward: Objected to.

Q. How far did you see that night, if you observed? A. Well, I could see everything in front of me, with that electric light, as I say, my eyes watched that light, the light was very bright, when you get to that corner it was quite dark at that one section there, and it is pretty hard to see a man, if he is laying down on that one corner. 10

Mr. Ward: I ask that the statement as to its being pretty hard to see a man if he is laying down be stricken out.

Mr. Weinberg: The plaintiff has proved that in his own case how far they could see a man that night. 20

The Court: You may proceed.

Q. You say you could not see a man, but you do not say within what distance you could not see a man? A. If there was a man in front of that car that I was on I certainly could have seen him, but I could not see anything from the side on account of the weather was so dark and drizzly and the water was running down from the rain, from that drizzling rain. 30

Q. Did you observe how much light was shed by the headlights? A. I did not notice much about the headlights, I was looking ahead for these two men carrying the bundles.

Q. You did not find them that night, did you? A. No, I did not, no, sir; I did not know which way they went.

Q. After you had stopped and gone back to the 40

Julius Kyle, direct.

man, what did you do? A. Why, I carried him in the saloon with the chauffeur and laid him on his back.

Q. How did you get in the saloon? A. We carried him in through the front door.

10 Q. Who opened the door, if anyone? A. Parmelee was standing at the door as I entered and there was two other fellows standing in front of the door.

Q. Which door are you now referring to? A. I mean the inside door, the regular saloon door, the storm doors like in front and there was two men standing in front of that door when I started to carry this body in. I remember Stieger was one of them, I could not identify the other one, who it was.

20 Q. Did you see this man on the sidewalk? A. No, I did not, no, there was not anybody at all around when I got out of the jitney, there was not a man on the street to be seen.

Q. By the time you reached the entrance to the saloon was anybody yet on the sidewalk?

A. No, I did not see anybody till we went in the saloon, inside, while I was carrying the body in, they met me and let me in with the doors open, with the aid of the chauffeur.

30 Q. What was done after you got in there? A. One of the men who was inside, Tooley and myself, we worked on him, he was lying on his back and we began to work on his stomach until we got him conscious, as he was lying on the floor, he came to, and we asked him if he could not tell us how the accident occurred.

Q. Did you do anything there? A. Well, yes, they washed his face, this Camarano washed his face off.

40

Julius Kyle, direct.

Q. Who did? A. Young Camarano, that is the lad there, Camarano, his face was all full of sand where he was lying in the street.

Q. Did you observe anything on him? A. You could see that he had been bleeding, he was bleeding, but when they started to wash his face off, it opened that sore and it started to bleed again, around here, on the right-hand side of his face, that was naturally bruised, where he slid— 10

Q. Did you see him slide? A. Did I see him slide.

Q. Yes? A. No, sir.

Q. You are only permitted to state what you saw? A. I know. That is the way it looked to me, it looked as if the man was scratched like on account of having slid. 20

Q. Did you notice any blood on his face? A. There was blood on his face. You could see where his face had been bleeding and dried.

Q. Where was that, what was dry? A. You could see where he had been bleeding right around his lip, that was wiped off by Camarano, that is the only blood I noticed on his face.

Q. Is that the blood you say was dry? A. Well, I did not notice. You could see dry like, like it is stopped bleeding, kind of thick. 30

Q. Did you see any other cuts on his face? A. Just bruises, marks and scratches.

Q. That is all you saw? A. That is all I could see, yes.

Q. How was his clothing? A. They were wet and dirty.

Q. How much? A. Why, only on the back, and I said how he laid, his back was all dirty, because he was laying with his back up when I 40

Julius Kyle, direct.

grabbed him to turn him over on his back, I felt that dirt, but it was quite dark and I could not just see how much was on him.

10 Q. When you first got to him, how was he lying, face down or face up? A. Face down, back up.

Q. Lying on his stomach? A. With his face down to the ground, lying on one side of his face like this (indicating.)

Q. With reference to the tracks, where was he lying? A. He laid in between the two tracks, the second and third, in between the second and third track, right in the centre of the road.

Q. You mean the second and third rail? A. Yes, sir.

20 Q. There are only two tracks in the street? A. Well, there is four tracks.

Q. Four rails? A. Four rails.

Q. You mean he was between the up and downtown tracks? A. Yes, sir.

Q. That is what you mean when you say he was between the second and third tracks? A. Yes, sir.

30 Q. Which way was he facing? In what direction was his head? A. His head laid facing Sixth Avenue on the other side, like east, we will say, and his feet in this direction, right across.

Q. With reference to north and south as you are coming to Paterson here, the heart of Paterson? Which way was his head? A. He was lying right across, across the street, his body was lying like up and down the street, up River Street, lying right across the street.

40 Q. Not parallel with the tracks? A. No, it laid right across the tracks, with his feet on one rail.

Julius Kyle, direct.

Q. What part of him was nearer to the tracks upon which your bus was running? A. His head was on one side of the rail and his feet on this.

Q. Was his head nearer to the east side or the west side? A. His head was on the east side.

Q. Can you tell us just what the course of this automobile bus was from the time you got into it until you stopped finally? A. What do you mean, the speed? 10

Q. No, the course of it? How did it go? A. Just as soon as this object—

Q. Before that, at the time you got on the bus, how did it run? Over what part of the street? A. It ran right in the tracks, all the way down the tracks, till we got right in front of where this body was hit, then it swerved and rattled over a lot of stones, Belgian blocks and stones as we struck this object. 20

Q. What rattled? A. I guess the car, everything on the car was rattling, making a lot of noise.

Q. Then where did the car stop the first time? A. The first time the car stopped was about twenty-five feet just about on the rails above the body, about from the library.

Q. Did the car move again after that? A. Yes. I told the driver to move the car off the tracks on account of the trolley cars or fire apparatus might come down any minute and steer it on the side nearer the curb and leave it there. 30

Q. Over where? A. He put it about just about across the street from Sixth Avenue where the electric light pole stands, that is just across the way from the library by an empty lot.

Q. On the southerly side of Sixth Avenue? A. The right hand side of the street. 40

Julius Kyle, cross.

Q. Near the curb? A. Near the curb.

Q. How long did you wait around there? A. Well, I was there, I guess, may be till a quarter to one or ten minutes to one before I left that section.

10

Cross examination by Mr. Ward:

Q. You had been told that these suspicious characters had gone down River Street? A. Yes, sir.

Q. You say it was a rainy night? A. Yes, sir.

Q. Were you sitting on the right hand side of the bus or on the left side? A. On the right hand side of the jitney, sideways.

20

Q. That is, you were as I am, facing on this side? A. On the right side of River Street, going sideways.

Q. Going downtown? A. Going downtown, yes, sir.

Q. And the front of the bus right in front of you, was it, the right half of the glass front? A. Yes, sir.

Q. That was covered with rain? A. Yes, there was a little rain on it, I suppose.

30

Q. The side windows were covered with rain so that you could not look out? A. Yes, sir.

Q. You were looking out through the door, is that right? A. I was looking right straight ahead.

Q. Were you looking through the door at all? A. No, I never looked through the door. I was looking ahead that was all, through the doorway.

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Q. You were looking through the part then that was in front of you, the glass in front of you? A. I was looking through both parts, as much as I possibly could, just looking with my

Julius Kyle, cross.

eyes all the time ahead to see if I could not see these gents carrying this bundle.

Q. The bus kept right on coming down the street on these railroad tracks? A. The south-bound tracks, yes, sir.

Q. And the bus did not change its course until it struck this object? A. Not as I remember. 10

Q. And then when it struck this object there was a sound of striking and then two bumps? A. Well, I don't remember that. I cannot say striking, I guess so. The first thing I noticed, it came so sudden, with a jar and wiggled this wheel that the chauffeur was holding then the bumps followed with it.

Q. So that the wheel sort of twisted or jerked? A. Yes, and threw him right off the rails and onto those rough stones, Belgian blocks. 20

Q. Then the two bumps? A. Then the two bumps on that side of the car and rattled everything on the car.

Q. Then the car ran on from that place down in front of the library, is that correct? A. Well, just about the starting of the front of the library, yes, sir.

Q. And the library is on the corner of Sixth Avenue and River Street? A. That is the starting of the library, yes, sir. 30

Q. That is the northwest corner of Sixth Avenue and River Street? A. Yes, sir.

Q. As soon as you got out of the bus you saw that there was no one on the street? A. I did not see anybody on the street.

Q. No people walking or anything of that sort? A. I did not see anybody at all.

Q. You could have seen them if they were there? If there had been anybody? A. If there 40

Julius Kyle, cross.

had been anybody I naturally would have seen them, if they were standing up especially.

Q. I don't mean that. You say as soon as you got out of the bus there was no one on the street? A. No, I did not see anybody.

10 Q. That is standing up, walking? A. I did not see anybody at all.

Q. You were facing towards Parmelee's then, weren't you, at that time? A. I was sitting like this (indicating).

Q. Say this is the door of the bus, this is ahead of us, pointing down River Street, River Street running the same as this, as soon as you got out did you swing yourself to the rear so as to go back to see what was struck? A. What do you mean?

20 Q. Did you face around towards the rear of the bus? A. To see what was struck?

Q. Yes? A. Yes, sure. I went right back towards the back of the jitney.

Q. As you swung around to the back you were looking towards Parmelee's? A. Yes, as I was going looking for the body, there was not a soul on the street at that time, I looked around to see if I could see somebody to see what the accident was.

30 Q. So you could see down to Parmelee's from there, from where your bus was, couldn't you? A. I could see down to Parmelee's. I know Parmelee's place so well I could almost go there blind too, I could see a reflection from the inside of the place through this front glass.

Q. You could see, as you have just sworn, that there was nobody there too, couldn't you? A. When I got out, yes.

40 Q. So if there had been anyone there it was

Julius Kyle, cross.

bright enough, light enough for you to be able to see them? A. I guess I could. I could see a man if he was standing in front of the place.

Q. Or anywheres between your bus and Parmelee's place? A. While I was on the street I could see any figure at all, yes, sir.

10

Q. Going in the direction in which the bus was going before the accident, that is southbound towards Paterson, there was the added advantage in having the light, the electric light down on the corner of Sixth Avenue and River Street which reflected up towards you? A. Yes, that is right.

Q. I believe you said, that you could see, before you got on the bus, a hundred and fifty feet away? A. I did not say that, I says about seventy-five feet.

20

Q. You said a hundred and fifty feet on your direct examination? Before you got on the bus, as the bus was coming down?

The Court: When the bus was coming towards you and you could see the lights of the bus?

The Witness: I could see the lights of the bus.

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Q. When you swung off of this bus and looked back and you could see no one in front of Parmelee's, no one on the street there, or you saw at least that there was no one there, did you then see this object lying in the road? A. Did I see anybody lying in the road?

Q. Yes? A. After I got to the road I could, yes. After I got right to him I did, yes, sir.

Q. As you got off the bus and looked down and saw that there was no one on River Street? A. I did not see anybody at all.

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Julius Kyle, cross.

Q. That is what I say. Did you then look to see what object it was lying in the road? A. I looked the man over, yes.

10 Q. When you got off the bus, now, I mean. When you got off the bus and went to the rear to make your observation, and you saw that there was no one on River Street, you could see that there was no one on River Street, no one in front of Parmelee's, did you then see this object in the road? A. I noticed it after the jitney—

Q. Please answer me yes or no? A. I told you I could not see anybody while I was getting off the jitney.

20 The Court: After you were off and looked back, did you see the body lying on the ground?

The Witness: I seen the body just as soon as I got right by him.

The Court: He did not ask you that; he wants to know, when you got off the jitney and looked back did you see the body?

30 The Witness: I had to go back to almost the back of the jitney to find the body.

Q. How far were you away from the body when you first saw it? A. I should judge may be about five feet or ten feet, as I was going around looking for it, I seen that black object.

40 Q. If that is true you had to get within five or ten feet of this figure— A. I did not know that it was Johnny, until I got to that man, I seen the object lying there and naturally I went there, but I did not know what it was until I looked him over, and I could not see the man's

Julius Kyle, cross.

face, almost, it was so dark. It was quite dark there, in the road, but you could see that figure lying there when I got around the jitney.

Q. He was lying on his face, wasn't he? A. Face down.

Q. As you turned him over you felt this mud on his back? A. I felt that as I grabbed the man and turned him over, yes, sir. 10

Q. Of course, French gave no warning as he approached this place? He did not blow any horn or anything of that sort? A. He was going very slow, I know that.

The Court: Did he give any warning?

The Witness: Yes, he did.

Q. What? A. He blew his horn before he got to Sixth Avenue. 20

Q. How far was he from Sixth Avenue? A. As he was coming down the track, I guess the other side of the crossing, just the other side.

Q. Which crossing? A. The Sixth Avenue crossing.

Q. Do you mean the railroad crossing? A. No, I mean the street crossing.

Q. Sixth Avenue does not cross straight there, does it? A. No, it goes right a continuation on one end. 30

Q. There is quite a bend there? A. About I should judge a hundred and fifty feet or two hundred feet down.

The Court: Did he give the warning before he struck this jog?

The Witness: Well, I can't remember that, it is a year ago, the thing came so sudden, I cannot remember that. 40

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Q. When the car came to a stop after this bump, your main object was to get off right away and run back, wasn't it? A. Yes, sir, I says, "What the hell is that?"

10 Q. You don't know just exactly where the car stopped when you got off do you? A. As I got off the jitney?

Q. Yes? As you got off it, your attention was concentrated, wasn't it, in going back and finding out what had happened? A. Yes, sir.

Q. So you did not pay any particular attention as to just where the jitney did stop, did you? A. I did after I found the body, then I looked at it and see about getting it to the car.

20 Q. Then you found the jitney about twenty-five feet away? A. Yes, sir.

Q. And in front of the library, that is right? A. Yes, sir.

Defendant Rests.

TESTIMONY CLOSED.

30 Mr. Ward: With reference to the wages, as I understand, the defendant does not object to the statement as such, but he objects to its being evidential on the theory that it is not evidential of the value of this man to his estate.

Mr. Weinberg: Yes, I object to it on the ground that it is not evidential.

Mr. McGinnis: That is to say, it may be treated as though the original books were actually brought here?

Mr. Weinberg: We have in evidence the amount of the contributions now.

40 The Court: Mr. Weinberg does not contend that the statement does not show what the man

Argument.

earned, he contends, however, that it does not show what the man was worth to his family.

Mr. McGinnis: It is a factor though.

Mr. Weinberg: Why?

The Court: It is evidential for the purpose of showing how much the man earned. The jury will have to get the other facts from the evidence before them. 10

Mr. Weinberg: Then I think that in order to get the benefit of what may be deduced from that statement that it ought to be read in the record the same as a bookkeeper would read his proof in the record.

Mr. Ward: I am willing to do that, yes.

(The statement should here be taken in, as it was not furnished to the stenographer and was not read in.) 20

Mr. Weinberg: If it please the Court, I feel that I ought to make at this time a motion for a direction of a verdict upon the grounds advanced in my motion for a non-suit, that there was no negligence, and that if the testimony of the witnesses who testified to the negligence is to be believed, the conditions then existing point conclusively to the fact that the deceased must have been guilty of contributory negligence, the argument to the jury on the subject being simply a legal argument, there is no dispute that the headlights on the bus could have been seen for some distance, Officer Kyle who does not say how far they could be seen, merely testified that he did see them at about a hundred and fifty feet away. 30

Now, with the conditions then prevailing, a person who attempted to cross in the path of a vehicle being driven at almost any rate of speed 40

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which would indicate to his mind that there was danger present, it seems to me must certainly be guilty of contributory negligence.

10 I make this motion sincerely and earnestly, not merely for the sake of the record, and I feel that your Honor will give it the same consideration as though I had elaborated on it at length.

The Court: Yes. I have been thinking about it all through the case, because I know I have to meet these situations so I think of them as I go along.

Motion denied; defendant excepts.

Mr. Weinberg then sums up for the defendant.

Mr. Ward then sums up for the plaintiff.

20 The Court then charged the jury as follows:

30 Gentlemen of the jury, this suit is brought under the so-called Death Act in this State, which provides that in case of death resulting from neglect or wrongful act, an action may be brought to recover compensation. So you see the whole basis of the action is neglect or wrongful act, and the plaintiff alleges that there was such wrongful act or neglect on the part of the driver of this bus in the way that he operated his car, and claims that that resulted in the death of Mr. Schwartzenbach.

40 The burden of satisfying you that there was negligence on the part of the driver is on the plaintiff. The duty of the defendant upon the highway, acting through his driver, was to exercise reasonable care, the care which a reasonably prudent man would exercise in the same circumstances. Now, "in the same circumstances" means, under all the surrounding conditions, considering the time of night, the kind

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of weather, the condition of the pavement, the surroundings as to light and so forth.

Your first question is, did the driver of this bus exercise reasonable care for the safety of other persons who were also lawfully using the highway?

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The plaintiff contends that he did not; that if the driver had been exercising care in the manner and method of driving this car and in observing what was going on in the highway, that this injury would not have occurred. The plaintiff contends that that is so whether the man was walking at the time he was struck or whether he was lying on the ground at the time he was struck. Of course, in either event the duty of the driver was to exercise reasonable care, the care that an ordinarily prudent man would exercise driving upon that street at that time.

20

The defendant contends that the driver was exercising reasonable care under the conditions which existed there. That in all the conditions, the night was dark, the weather was bad and he was looking out, and that he could not see this object which was lying on the ground. So you see it becomes purely a question of fact in which the Court can give you very little assistance.

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Did this driver exercise reasonable care, the care that you would expect an ordinarily prudent man to exercise? If he did, then, of course, there can be no recovery in this case. If he did not exercise that care, then you take up the second question, and that is the behavior of the deceased. The rule of law is that when a person, as in the case of this man, is found dead, there is no presumption that he is guilty of any

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negligence, negligence has to be proven or inferred from the facts. So your second question is to take up all the facts and ascertain whether the deceased was negligent in his conduct and by that negligence contributed to the accident?
10 Of course, if he did, there could not be any recovery; or, if the deceased and the driver were both careless there could not be any recovery, and, in either of those events your verdict would be no cause of action.

On the other hand, if you find the deceased was not negligent, and that the driver of the bus was negligent, then, of course, you take up the question of damages.

Now, our statute provides the method by which you are to assess the damages, if you find the responsibility exists. The statute provides:
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“The Jury may give such damages as they shall deem fair and just with reference to the pecuniary injury resulting from such death to the widow or next of kin of the deceased.”

You will observe, gentlemen, that the statute employs the term “pecuniary injury.” That simply means nothing more than the money loss to the next of kin. Under the statute there can be nothing awarded, or even considered, by way of sentiment, or feeling or anything of that kind. It is put on a purely pecuniary basis.
30 What is the money loss to the next of kin? You have heard the testimony here of the age of the deceased, the age of the children, the health of the man; you have seen the children, and you have heard how much his wages were and how much he contributed to the children. It is a very difficult matter to get down to a mathematical certainty, but, as you will note, the
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statute says "what the jury shall deem fair and just under the evidence of the case" the pecuniary injury that has been suffered.

Now, another element that you ought to consider in that connection is this, that, if you award a sum to the plaintiff, that sum would be immediately paid to and for the benefit of the children, while, if the deceased had lived, those children would get it from time to time and week to week; so that they would now and here get in one lump sum what would cover years if they received it each week or received the benefit of it each week, so that in getting one lump sum they also get the benefit of that sum and of the interest that accrues on it, so that you will have to consider the question of discounting that as well as you are able to do it and the courts have put it in this way:

"What the plaintiff is entitled to recover, if he recover at all, is a capital fund, so to speak, which shall represent the present value of all the pecuniary loss which will fall upon the widow and next of kin by the premature taking off of the intestate; a capital fund which represents the present value of the pecuniary loss. That fund is to be ascertained by taking into account all the possibilities. The intestate might have died by the course of nature shortly after the accident. He might, if he lived, have suffered financial reverses. His wife and children, had he lived, might have died long before he did; so might his next of kin. And nothing is to be added for loss of society or wounded feelings or anything else which cannot be measured by money and satisfied by pecuniary recompense."

So you see those are all elements, gentlemen,

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Charge.

10 that you will have to take into consideration. How long would the man have lived? Would he have lived a year or would he have lived to be nearly seventy? It is a very difficult thing to determine; you will have to get at it the best way you can if you come to the question of damages; determine what is the pecuniary loss that has been suffered by these children by the premature taking off of the father.

20 I think that is all the help the Court can give you, gentlemen. Take the case, determine first whether this driver was negligent. If he was not, then your verdict should be no cause of action. If the deceased was negligent, and that negligence contributed to the injury, then your verdict should likewise be no cause of action. On the other hand, if the deceased was not negligent, and the driver was negligent, the responsibility arises and then, of course, you assess as damages such sum as you think proper under the instructions I have already given you.

Are there any exceptions?

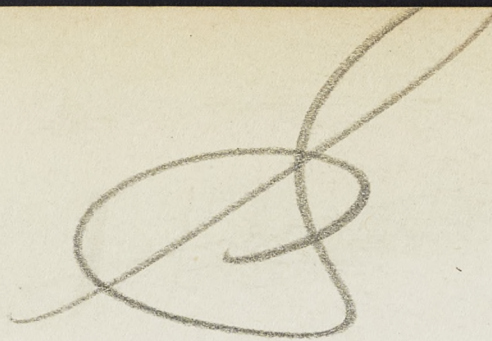
Mr. Ward: No exceptions.

The jury then retire.

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New Jersey Court of Errors and Appeals

WERNER SCHWARTZENBACH, Ad-
ministrato*r ad prosequen-*
dum of the Estate of John
Schwartz**enbach**, deceased,
Plaintiff-Respondent,
vs.
ERNEST ANTOINE,
Defendant-Appellant.

} On Appeal
from Passaic
Circuit.

STATEMENT OF FACTS

The appellant seeks to reverse a judgment recovered in the Passaic Circuit for damages for the death of John Schwartz**enbach**, caused by the negligence of the defendant. Both at the trial and in his brief, the defendant bases his application for reversal on the refusal of the Court to (1) nonsuit and (2) to direct a verdict.

The accident occurred on River Street in Paterson, N. J., in front of the saloon of one Marcelle Parmelee. River Street runs in a general northerly and southerly direction, Parmelle's saloon being on the westerly side of the street. Almost opposite this saloon, Sixth Avenue opens into River Street, but does not intersect it. Instead, it crosses River Street on a jog, opening off from the westerly side of that street at a distance of about 100 feet southerly from the saloon.

Plaintiff's intestate visited the saloon of Parmelle at 6:30 on the night of May 28th, 1917. While there, he left a phonograph record, for which he said he would return later (P. 12, L. 18-22). Subsequently, on that same evening, he was at the saloon of one Christiano on Sixth Avenue (P. 75, L. 16-17). From that saloon, westerly to

the scene of the accident, would be the direction decedent would have to take if he was going directly to his home in Prospect Park Borough, or if he wished to secure the phonograph record (P. 107, L. 33-40; P. 43, L. 35-40). To walk that distance, that is from Christiano's saloon to the scene of the accident, would take about seven or eight minutes (P. 75, L. 25-29). He left Christiano's in a sober condition (P. 75, L. 14-17) at five minutes of twelve that evening (P. 75, L. 21), and all evidence is to the effect that the accident occurred between twelve and five minutes after twelve that evening.

There was evidence that the night was foggy and wet; that the street was straight for a considerable distance north and south of the place of the accident (P. 13, L. 5-20); that the automobile bus of the defendant came by at a high rate of speed, estimated by one witness at 35 miles; that his lights were burning; that the driver did not see deceased; that he felt a bump or crash and immediately brought his machine to a stop at a point of 70 feet beyond the accident. That the deceased was found lying behind the bus this distance with marks of an automobile tire across his chest with his chest crushed in, this injury causing his death an hour after; that there was no smell or other indication of his having been drinking any liquor; that an electric light was burning at the point in question, and no reason whatsoever was offered as to why the driver of the bus did not see deceased.

We contend that the Court was justified in overruling the motions to non-suit and to direct a verdict, as the case clearly indicated negligence and a lack of proof of contributory negligence, and fell within a class of cases typified by *Merkl v. Jersey City, etc., Ry. Co.*, 75 New Jersey Law 564; and

Suburban Electric Co. v. Nugent, 58 New Jersey Law 658, except that the case at bar possessed certain features of strength lacking in the cases cited.

POINT I.

Proof of Negligence on the Part of Defendant.

Although no one actually saw the bus pass over decedent's body, there was evidence of circumstances justifying the conclusion (1) that the bus did pass over his body; (2) that the passing over was due to the negligence of defendant, and (3) that the intestate's death was the proximate result of defendant's negligence. This evidence comes largely from four disinterested witnesses, who were at midnight, May 28th, in Parmelle's saloon, which is, in important respects, corroborated by defendant's own witnesses.

The four witnesses mentioned testified that they were in the rear of the saloon (P. 36, L. 29), about 40 feet from the front door (P. 13, L. 37-38; P. 45, L. 30-34), not as defendant's brief argues, in a *back room*. The lights in the window had been turned out, but the window shades were not pulled down (P. 22, L. 27-28), and the lights in the saloon were still burning (P. 22, L. 24-26). These facts vary considerably from the version in defendant's brief that the "saloon was closed for the night and which was, and had been, darkened preparatory to being closed up." About 12 o'clock that night, all four witnesses agree that they heard a noise which attracted their attention and induced two of them, Parmelle first (P. 13, L. 25-32), and then Cammarano, to run to the street

(P. 80, L. 8-14). Cammarano, before running to the street upon hearing the noise, had seen something flash by the saloon (P. 80, L. 4-6), and then, in less time than it takes to snap the fingers, came the noise which all heard (P. 94, L. 5-8), and described variously as a crash, thump, bump. These two witnesses before leaving the street were able to discern, almost in front of the saloon, the body of a man lying in the street some seventy feet from where the bus was standing (P. 15, L. 28-33), and the police officer and the bus driver picking the body up. Then they saw the driver and the officer take it into the saloon (P. 14, L. 39-41; P. 15, L. 14-23).

(1) That the bus passed over intestate's body is shown by the following facts:

In the second place, the County Physician testified that death resulted from multiple injuries followed by internal hemorrhage (P. 63, L. 34-37); that the most serious injury was that his chest was crushed in (P. 67, L. 8-10), and that this could have resulted from a bus passing over him (P. 64, L. 32-37). (1) Decedent must have arrived not more than one or two minutes before the crash referred to above. (2) At 11:55 p. m. he left Christiano's saloon, a place seven or eight minutes' walk to the scene of the accident; between 12 and 12:05 p. m. (P. 62, L. 34-36). (3) All the evidence shows that his body was found almost in front of Parmelle's saloon. (4) No trolley cars or buses passed the vicinity for some ten minutes before the crash (P. 61, L. 23-39). (5) The bus driver, although trying to give the impression that he went over something that might have been a log, or stone, admitted that he took the unusual course of stopping his bus, and

going back with the officer until they found the body (P. 124, L. 31-38). (6) He was taken into Parmelle's saloon, where fresh blood was found on him, his clothes were dirty (P. 39, L. 34-39) and upon his coat was the mark of an auto tire (P. 99, L. 23-26; P. 40, L. 7-19).

(2) That defendant was negligent when his bus passed over the body of the intestate is shown by the following evidence:

(a) Excessive speed on the part of the bus. Cammarano says that the bus came passed at an "awful" speed (P. 79, L. 35-40). The bus "went thirty to thirty-five miles an hour" (P. 82, L. 25-29). On cross-examination he testified that he formed his estimate of the speed of the car that same night; that after what had occurred, he, Parmelle and Steger discussed the speed of the car, and one of them said "an awful speed, an awful clip" (P. 88, L. 23-35).

Appellant terms Cammarano's evidence unworthy of belief, on the ground that he had no reasonable opportunity to observe the bus and estimate its speed. He concedes that questions of credibility are for the jury, and then calmly proceeds to argue that one of the clearest jury cases imaginable should be taken from the jury. He maintains that, where the story is inherently incredible, it should not be submitted to the jury. Respondent admits this proposition, but respectfully maintains that it does not apply to Cammarano's testimony. His testimony is not absurd or conclusive against itself. It raises a question for the jury to picture the facts he describes, together with his means of observation, and then

to decide whether he had the opportunity to see what he says he saw.

He was one of a number of men sitting in a back part of a saloon, lighted up, except for the lights in the window. Some light was thrown into the street from the saloon (P. 48, L. 7-16). He sat facing the door, and some light was reflected into River Street from the arc light at the corner of Butler Street and Sixth Avenue. From his seat he was able to look over the bar and over a four-foot panel of the windows into the street. When he says he saw the bus pass, even if his vision was partly obstructed, it was possible for him to see the top of the bus, which was a considerable distance from the ground. On page 94 (L. 37-39), he himself says all he could see was "the top of the car." "I did not know it was a bus, but I knew it was a bus after we got outside. I did not know what it was. I seen the thing shoot past with lights and make a hit and I went out" (P. 95).

Seeing the top part of the bus shoot by the front windows and front doors for a distance of twenty feet, and hearing the noise it made in passing, would be sufficient for him to form an opinion that it was going very rapidly.

Cammarano's testimony as to the speed of the bus is corroborated by the testimony of the driver of the bus, that he had finished his day's work and was on his way to the garage to put up the machine and go home, and that he was going home earlier than usual because he was damp and wet from the rain. The jury were perfectly justified in inferring from this that he supposed that the streets were clear of pedestrians and hurried

along, guided by the thought that the sooner he got to the garage the sooner his day's work was done.

There was a further consideration that the driver testified that he brought the bus to a stop as soon as he felt the jump or crash, yet the distance he travelled was approximately 70 feet, an incredible distance if he was driving at a moderate speed. Thus, Cammarano's evidence made it a very proper question for the jury to say whether or not, although with a possibility of exaggeration, the witness was really telling the truth, when he says the bus passed at a great rate of speed, which, under the circumstances of that night, was negligent.

But, irrespective of testimony as to seeing the bus go by at a great rate of speed, there was other evidence raising a question of negligence proper to submit to the jury.

(b) The bus travelled a distance of 60 or 70 feet after striking the body in question before it could be stopped by the driver. Percy French, defendant's driver, testified that he stopped the bus as soon as he could after running into the body; that he left it standing where he first stopped it, until he and the officer moved the body into the saloon, and not until then did he go out again into the street and move the bus further on (P. 124, L. 22; P. 125, L. 14; P. 128, L. 21-34; P. 129, L. 24-26; P. 130, L. 12-14). Cammarano and Parmelle both testified that when they came to the door after hearing the crash, the body was just being approached by the officer and the driver (P. 80, L. 9-15), and that the distance between the body and the location of the bus was then 60 to 70 feet (P.

16, L. 32-34; P. 83, L. 12-13). Therefore, any question as to the distance the bus ran after striking the body was settled by the testimony of French, leaving it a conceded fact that the bus continued for 60 or 70 feet after striking the deceased.

(c) There is considerable evidence of loud noises made by the machine as it approached the scene of the accident. These noises could be heard by the four witnesses in the rear of the saloon, who were 40 feet distant from the front door and with the windows closed. These same witnesses, in the situation in which they were, also heard distinctly and marked the crash, or bump or thump, which they heard almost immediately preceding the bringing of the body into the saloon (P. 14, L. 32-36). The noise of the machine as it approached the saloon and the noise of the contact with the body made it a proper question for the jury to ask themselves if the bus would have made any such noise that it could have been heard by four men in the situation of these witnesses had it been travelling at a proper rate of speed that night.

(d) A proper question of negligence was raised for the jury, when the driver testified that his speed prior to the accident was eight to ten miles an hour; that his head-lights were burning and allowed him to see a distance of 30 feet in advance of the bus; that he was looking straight ahead, and yet was not even aware of the presence of deceased on the roadway. The jury were justified in asking why not.

And, considering also the evidence, at the cor-

ner of Sixth Avenue and Butler Street, an arc light threw a reflection into River Street (P. 83, L. 19-23), and that there was another arc light on the corner of Sixth Avenue and River Street, and that there was some reflection from Parmelle's saloon into River Street, the jury had even more evidence from which to conclude that a prudent man would have seen deceased at some time before the accident.

(e) Defendant supplies motives for excessive speed on the part of the driver. Thus, the driver, Percy French, testified: "That was my last trip. I was damp from the rain coming in through this little opening, *that was one reason I turned in early*. I did not work to the usual time, but I would run till about half past twelve if it was the usual time" (P. 130, L. 28-33). "I was wet from the rain that had been coming in during the night" (P. 119, L. 34-36). "I was on my last trip; I had refused one passenger on Fourth Avenue, on account of going into the garage" (P. 118, L. 26-28).

(f) Officer Kyle testified that he got on the bus at Fifth Avenue and River Street, and that he was going after two men who were supposed to be carrying bundles and acting in a suspicious manner (P. 158, L. 26-31). The driver says he was told this by the officer (P. 144, L. 19-18). The jury could find from this that French accelerated his speed. Before the officer got on, the speed was from ten to fifteen miles an hour—perhaps twenty. And that was probably why the officer mounted the bus to overtake the suspicious characters.

In this connection the jury might have believed that the driver's attention was directed like Kyle's, to the sidewalk as he rode along, in the hope of assisting in the arrest of the suspicious characters.

It was a question for the jury to say, if the driver did not increase the rate of speed he was going before the officer mounted the bus (20 miles an hour (P. 156, L. 24-28), when he was damp and wanted to get home) to 25 miles an hour to oblige his friend, the officer. This would show Cammarano's minimum estimate of 30 miles an hour to be not far out of the way.

All this testimony, whether or not Cammarano's be included is more than sufficient if believed by a jury to spell out defendant's negligence.

(3) That the intestate's death was the proximate result of the defendant's negligence was shown by the following evidence:

The intestate was a man of fairly good physique (P. 66, L. 21-24); he was just under 33 years of age, and was always healthy (P. 107, L. 15-18); there was no evidence of foul play that came to the attention of the County Physician (P. 65, L. 16-18), and he might be expected to be on the alert for evidence of foul play, because in his official capacity he investigated crime in the county (P. 65, L. 10-11). The "cause of death was so evident that really an autopsy was not necessary" in the opinion of the County Physician (P. 69, L. 21-24); the cause of death according to the County Physician's examination

was "multiple injuries, and he died of internal hemorrhage as a result of those injuries (P. 63, L. 35-37); his chest was crushed in, and the condition it was in would be produced by a weight pressing on him (P. 64, L. 35-36); the flow of blood from the intestate when he was brought into the saloon could be from the lungs or the stomach, which would be injured by a crushing of the ribs, crushing the chest, which in turn, could be inflicted by a heavy body rolling over the body (P. 64); that intestate's desire to go to the toilet was usually an indication of shock, which would follow if a heavy body came in contact with intestate and crushed his ribs (P. 64, L. 37; P. 65, L. 9).

Did the intestate deliberately seek to commit suicide? There is no evidence to that effect in the case, and the law presumes the contrary.

Thus, the case contains evidence of circumstances justifying the inference that defendant's bus ran over the intestate, that such running over him was the consequence of defendant's negligence, and that the proximate cause of intestate's death was defendant's negligence. And, when the legal presumption against suicide, the evidence of intestate's youth and good health, the absence of evidence of foul play, concur to exclude the theory of any other cause of the intestate's death, it is respectfully submitted that the test of this Court in *Suburban Electric Company v. Nugent*, 58, N. J. L. 658, has been fully met, and the action of the Trial Court in denying a motion for a non-suit was proper.

POINT II.**Absence of Proof of Contributory Negligence.**

Defendant, in his brief, says: "If, therefore, this automobile could be seen as it came along River Street, which was a straight street at that point, under the testimony, and the deceased on a dark, drizzly night, stepped into the path of this oncoming bus, the case is one of contributory negligence in law, and for that reason there should have been a direction of a verdict in favor of the defendant."

This conclusion of contributory negligence is founded upon the assumption (1) that the automobile could be seen, and (2) *that deceased stepped into the path of this oncoming bus.*

It is respectfully contended that the second assumption is erroneous and therefore, the conclusion, erroneous; where is there one word of evidence in the case showing that deceased stepped into the path of the oncoming bus?

True from the evidence, a jury might just as well have reached the conclusion that deceased started to cross the street before the bus was in sight, and that he stumbled in the street, and lay there stunned or that he fainted (in fact, the evidence shows that when carried into Parmelle's saloon he was unconscious (P. 38, L. 14) and had to be revived), or that he started to cross the street when the bus was in sight, but, at such a distance, that a reasonable person might conclude there was ample time to cross in safety; yet that he was suddenly struck because, when nearing him, the bus accelerated its speed so greatly that

he could not escape, or that the bus changed its course and ran him down. Here are four inferences that can be drawn—three favorable to plaintiff and one to defendant. The rule is well settled that, on a motion for a non-suit or a directed verdict, every inference that can be drawn from the evidence favorable to the plaintiff must be so drawn. Yet defendant says the contrary and asks the Court to say that, out of four inferences, the only one unfavorable to plaintiff shall be taken as if proved—in other words, assumed as a matter of law.

This is the same error that defendant fell into in the case of *Suburban Electric Co. v. Nugent* (*supra*). There plaintiff's intestate was a patrolman covering his beat at the time of his death. His dead body was found about three feet from the base of one of the electric light poles of defendant on a street corner. As in the case at bar, no one saw the actual death. On the pole about even with the top of a man's head was a reel around which was wound a wire rope used to raise and lower electric lamps of defendant. The wire was poorly insulated and was heavily charged with electricity. Plaintiff maintained that his intestate came to his death through negligence of defendant in leaving the wire in its poor condition so accessible to people who must use the public streets of Elizabeth. Defendant maintained that if the death of plaintiff's intestate occurred through contact with this electric wire, the very contact was negligence on the intestate's part and, contributing to his death, would bar the plaintiff from recovery.

The Court said:

“Nor is the objection that decedent's own

carelessness contributed to the injury which caused his death more tenable. There was nothing in the plaintiff's case to show under what circumstances he received the shock which killed him and nothing therefore, upon which his negligence could be predicted. It did not appear that he had knowledge that the wire was not properly insulated, or that it was charged with electricity, and he, as well as every other member of the public, was justified in presuming that this company had so constructed its electric light line and was so maintaining it, that it would not be a source of danger to persons using the street.

“Whether decedent was guilty of negligence in coming in contact with the live wire depended entirely upon the circumstances under which it was done. Such negligence can not be presumed from the mere fact of his having done so, and, as there was nothing else in the plaintiff's case to indicate carelessness on the part of his intestate, the motion for non-suit was without support on this ground also.”

In other words, when a man may have come to his death in one of several ways, and a particular one of those ways show contributory negligence, the Court will not assume in the absence of evidence showing that he met his death in that particular way, that the intestate did meet his death in that one way which would show contributory negligence. Contributory negligence must be proved, and may not be assumed.

A case peculiarly in point with the case at bar is that of *Merkel vs. Jersey City R. R. Co.*, 75 N.

J. L., p. 654. From a careful examination of this case one would be struck with the strong similarity of both cases. In the Markl case "no witness, except perhaps the defendant's motorman, ever saw him upon the tracks before the accident or witnessed its occurrence." In this respect, it is exactly on all fours with the case at bar. In each case the operator of the vehicle claimed to be running at a moderate speed and looking ahead. In each case the driver of the vehicle was unable to tell how the deceased came in front of his vehicle. In the Merkl case the motorman saw immediately in front of him a dark object as he was about to run over it, but could not tell what it was. In the case at bar, the driver went over an object which he described as feeling like a log. In each case the vehicle went a considerable distance after running over the man. In each case the avenue where the accident occurred was straight for a long distance in the direction from which the vehicle came. In each case the deceased was last seen leaving a certain premises sober and with the intention of going home. In the Merkl case, the Court asked this question:

"Q. Are we justified in drawing a legal
"inference that the intestate did voluntarily
"so place himself? If so, it must have been
"for a suicidal or criminal purpose. His
"situation between the rail was, it seems to
"me, as consistent with an involuntary fall
"or position (while asleep for instance; or in
"a fit; or from intoxication, or from an acci-
"dental misstep in abortive efforts to cross,
"or from being thrown down there by the
"violence of others) as with a voluntary
"prostration on his part. The circumstance
"was as reconcilable with a cause which was

“beyond his control as with one over which
“he had complete control. The law presumes
“innocence rather than guilt. It also as-
“sumes, until the contrary appears, that
“every man intends to preserve his life
“rather than to destroy it” (P. 656).

Every remark made by the Court in its quotation in the foregoing case, applies to the case here. The inference as to how Merkl got on the track is precisely the same as the case at bar. Merkl had left a public dance hall to go home and his way home called for his passage across the street at the point in question. In the case at bar, the deceased left Christiano's saloon for the purpose of going home and was obliged to cross the street at the point where the accident happened. If there be a difference it is in our favor in this respect, that in the Markl case the time of travel from the dance hall to the point where the accident happened was a period of one or two minutes, but deceased had been away from the hall fifteen minutes when the accident happened. In this case, there was no loss of time, from the time he left the saloon to the accident. As in the Merkl case where there was no proof as to how the deceased got upon the tracks, we insist that every inference that the Court said could be drawn from the Merkl case could be drawn in the case at bar, namely, “that he fell in a fit; that he fell from accidental misstep in abortive efforts to cross, or thrown down by the violence of others.”

In the Merkl case there was no proof that the deceased was alive at the time the car ran over him, and the fact that he lay upon the trolley tracks would have left a justifiable inference that he might have been injured by another trolley

car, but in the case at bar, immediately after the accident the deceased was carried in the saloon still alive. In the Merkl case with the facts as stated, the Court held that they raised no legal presumption that the deceased had been guilty of contributory negligence as would bar recovery in the action. We ask where, then, are the facts that justified a different inference as he had raised. An abortive attempt is made by counsel for appellant to distinguish, that in the Merkl case, it appeared that the deceased was in a helpless condition at the time he was run over, but in view of the fact that in the case at bar, the defendant's driver testified that he did not see the deceased in front of him and did not know he had run over him until he felt the bump. Where can the inference be drawn beyond that the deceased did not lay prostrate in front of the car, precisely as in the Merkl case? To sustain the appellant's contention that there is a difference the Court would have to find as a matter of law beyond all question, that the deceased was not prostrated in front of the automobile at the time he was run over. Such an inference is impossible from the evidence in the case.

A sample of appellant's loose statement on the point is the following:

“Plaintiff took great care to point out by witnesses and circumstances that the deceased was not * * * unconscious at the time he was struck, as in the Merkl case.”

This statement is untrue. There is not a line of evidence to support this charge.

What the Court insisted upon in the Merkl case—proof that the intestate was conscious of his danger and could remove himself from the scene of danger before contributory negligence could be established—is lacking in this case. The plaintiff, in the case at bar, did not show that his intestate was conscious when struck; nor did defendant, upon whom the burden lay.

It is not contributory negligence for an unconscious man to lie on the railroad tracks; it is not contributory negligence for a conscious man, whose foot is caught and held fast in the railroad track, to be in the path of the onrushing train. Plaintiff must be shown, either by his own witnesses, or by defendant's, to have been conscious and able to exercise his will. Then first is the defense of contributory negligence established.

The Trial Court committed no error when it submitted to the jury, for performance of its proper function, namely, the determination of questions of fact, this case, which carries so much evidence of negligence and is so free of contributory negligence.

CONCLUSION.

It is respectfully submitted that no error was committed by the Trial Judge, and that the judgment entered in favor of the plaintiff should in all respects be affirmed.

November Term, 1918.

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