

INDEX

*Frank Parave, as Adm'r, &c. of Joseph Parave,
deceased.*

	Page
Notice of Appeal	1
Summons	2
Complaint	3
Amendment to Complaint	4
Answer	5
Reply	7
Judgment	7
Clerk's Certificate	8
Rule to Show Cause	9
Rule to make Rule to Show Cause absolute unless consent to the reduced verdict be filed	10
Consent to accept reduced verdict	12

*Frank Parave, as Adm'r, &c. of Peter Parave,
deceased.*

Notice of Appeal	14
Summons	15
Complaint	15
Amendment to Complaint	17
Answer	18
Reply	20
Judgment	21
Clerk's Certificate	22
Rule to Show Cause	23
Rule to make Rule to Show Cause absolute unless consent to the reduced verdict be filed	24
Consent to accept reduced verdict	26

*Josephine Raczak, Adm. &c. of Benjamin
Kurzensky, deceased.*

	Page
Notice of Appeal	28
Summons	29
Complaint	29
Amendment to Complaint	31
Answer	32
Reply	35
Judgment	35
Clerk's Certificate	36
Rule to Show Cause	37
Rule discharging Rule to Show Cause	38
Testimony	40
Motion to Dismiss Complaints	41
Motions for Non-Suit	239
Motions for Direction of Verdicts.....	301, 303
Charge of the Court	304
Defendant's Exceptions	318
Defendant's Requests to Charge refused	319
Grounds of Appeal	321
Grounds of Appeal	323
Grounds of Appeal	325

WITNESSES FOR PLAINTIFFS.

J. Owen Carter:

Direct	43
Cross	51
Recalled—Direct	123
Recalled—Cross	127

Frank Parave:

Direct	58
Cross	71

John Spatafore:

Direct	78
Cross	84
Recalled—Direct	129

	Page
George Karibjanian:	
Direct	88
Cross	91
Mrs. Anthony Cresci:	
Direct	92
Frank Newcomb:	
Direct	95
Cross	101
Frank De Castro:	
Direct	102
Cross	113
John B. Di Ppolito, 3rd:	
Direct	120
Cross	122
Frank Parave, Jr.:	
Direct	130
Cross	133
James Parave:	
Direct	134
Cross	135
Mary Parave:	
Direct	137
Cross	138
Thomas W. Burns:	
Direct	144
Arthur Moreni:	
Direct	145
Cross	155
Samuel Hewitt:	
Direct	187
William Waterman:	
Direct	189
Cross	194
Charles Allen:	
Direct	196
Cross	196
Frank Gallucci:	
Direct	197

	Page
Wanda Raczak:	
Direct	199
Cross	202
John J. Maliff:	
Direct	206
Cross	209
August Kurzensky:	
Direct	212
Cross	213
Corval Richmond:	
Direct	214
Cross	220
Josephine Raczak:	
Direct	224
Cross	228
Frank Morrell:	
Direct	231
Cross	232
Gustave A. Nageli:	
Direct	233
Cross	237
Earl L. Mulholland:	
Direct	238

WITNESSES FOR DEFENDANT.

Earl L. Mulholland:	
Direct	242
Cross	248
Harlan North:	
Direct	255
Cross	257
Earl Johnson:	
Direct	259
Cross	261
Michael Genovese:	
Direct	262
Cross	263

	Page
Norman Wigglesworth:	
Direct	264
Cross	266
Louis Liber:	
Direct	268
Cross	269
Recalled—Direct	292
Recalled—Cross	293
Allison Weatherby:	
Direct	271
Cross	273
Oscar Von Der Tann:	
Direct	275
Cross	277
Myrtle Von Der Tann:	
Direct	281
Cross	282
Mrs. Jennie Kulp:	
Direct	290
Cross	291
Mildred Liber:	
Direct	293
Cross	294

PLAINTIFFS' TESTIMONY IN REBUTTAL.

Trooper John J. Maliff:	
Direct	283
Cross	285
Nick Gorgo:	
Direct	294
Cross	295
Nick Di Matteo:	
Direct	297
Cross	298

PLAINTIFFS' EXHIBITS.

	Off'd Page	P't'd Page
P-3—Map	79	327
P-4—Picture of Ford car	88	328
P-5—Picture of Ford car	88	329
P-6—Picture of Ford car	88	330
P-7—Photo of Delsa Drive looking north	89	331
P-7—Photo of Delsea Drive looking north	89	332
P-9—Photo of Oak tree	90	333
P-10—Photo of broken down trees.	90	334
P-11—Photo of broken down trees.	91	335

DEFENDANT'S EXHIBITS.

D-1—Photo of bus	245	336
D-2—Photo of bus	246	337
D-3—Photo of intersection of Wil- liamstown Road and Delsea Drive	247	338
D-4—Northwesterly corner of inter- section of Williamstown Road and Delsea Drive	247	339
D-5—Photo of Ford car	255	340
D-6—Delsea Drive, looking north.	280	341

Notice of Appeal.

Filed July 21, 1931.

New Jersey Supreme Court

FRANK PARAVE, Administrator
ad Prosequendum of JOSEPH
PARAVE, deceased,

Plaintiff,

vs.

PUBLIC SERVICE INTERSTATE
TRANSPORTATION COMPANY, a
New Jersey Corporation,
Defendant.

Action at Law.

10

20

To: AVIS AND AVIS, ESQRS.,
Attorneys of Plaintiff,
Woodbury, N. J.

Sirs:

TAKE NOTICE that the defendant appeals to the
New Jersey Court of Errors and Appeals from the
whole of the judgment entered in the above entitled
cause.

30

Dated: July 13th, 1931.

Yours truly,

HENRY H. FRYLING,
Attorney of Defendant.

(Endorsed) Service of copy of within Notice of
Appeal acknowledged this 17 day of July, 1931.

AVIS & AVIS,
Attorneys of Plaintiff.

40

Judgment Record.

NEW JERSEY SUPREME COURT.

10	FRANK PARAVE, Administrator <i>ad Prosequendum</i> of JOSEPH PARAVE, deceased,	} Judgment Record.
	Plaintiff,	} Action at Law.
	vs.	
	PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, a New Jersey Corporation,	} On Postea & R. to S. C.
	Defendant.	} Avis & Avis, Attorneys.

20 Public Service Interstate Transportation Company, a New Jersey Corporation, the defendant in this cause was summoned to answer unto Frank Parave, administrator *ad prosequendum* of Joseph Parave, deceased, the plaintiff therein in an action at law upon the following complaint:

(Summons issued: December 10, 1930)

Complaint.

Filed December 17, 1930.

30 The plaintiff, Frank Parave, administrator *ad prosequendum* of Joseph Parave, deceased, of the Township of Franklin, County of Gloucester and State of New Jersey, say that:

40 1. On December 5, 1930, he was duly appointed administrator *ad prosequendum* of Joseph Parave, deceased, by Frank D. Pedrick, Surrogate of Gloucester County and authorized to prosecute this action against the defendant, and recover damages for the benefit of the next of kin of said Joseph Parave, by reason of his death.

Complaint.

2. On October 29, 1930, Joseph Parave, who was then nineteen years of age, was an occupant in and the operator of a certain Ford automobile which was being operated by himself in a southerly direction along the public highway known as Delsea Drive in the Township of Franklin, County of Gloucester and State of New Jersey. 10

3. At the same time and place, the defendant, by its agent and employee was operating an automobile passenger bus along the said Delsea Drive, proceeding in a northerly direction.

4. As the said automobile of which the said Joseph Parave, deceased, was the operator, and the automobile passenger bus of the defendant approached the intersection of said Delsea Drive with the public highway leading from the Delsea Drive to Iona, the defendant, by its agent and employee, carelessly and negligently operated said automobile passenger bus at a high and unlawful rate of speed, and without due regard for the rights and safety of other persons using said highway, and carelessly and negligently failed to have such automobile passenger bus in proper mechanical order, and failed to have the brakes of same in good, proper, working order, and carelessly and negligently operated said automobile passenger bus from the right or easterly side of said highway to the left or westerly side thereof, and into and against the automobile of which the said Joseph Parave was the operator. The collision aforesaid between said automobiles was caused solely by the negligent operation of defendant's automobile passenger bus. 20 30

5. As a result of said collision, caused solely 40

Complaint.

by defendant's negligence as aforesaid, the said Joseph Parave was killed.

6. The said decedent, Joseph Parave, left him surviving as his next of kin, his father, Frank Parave; his mother, Mary Parave; and eight sisters and brothers, to wit: Mildred Parave, Frank Parave, Jr., Lucy Parave, James Parave, Lena Parave, Julia Parave, William Parave and Lewis Parave.

7. The next of kin of the said Joseph Parave suffered pecuniary loss by reason of the death of the said Joseph Parave in the sum of Twenty-five thousand dollars.

Plaintiff demands of defendant, Public Service Interstate Transportation Company, as damages, the sum of Twenty-five Thousand Dollars.

AVIS & AVIS,
Attorneys of Plaintiff.

Amendment to Complaint.

Filed June 19, 1931.

30 Application having been made for leave to amend Paragraph 1 of the complaint in this cause, and the Court being of the opinion that such amendment should be allowed:

It is, therefore, on this Fourth day of June 1931, ORDERED that paragraph 1 of the Complaint filed in this cause be amended to read as follows:

40 "1. On December 5, 1930, he was duly appointed administrator *ad prosequendum* of Joseph Parave, deceased, by Frank D. Pedrick, Surrogate of Gloucester County, and authorized to prosecute

Answer.

this action against the defendant, and recover damages for the benefit of the next of kin of said Joseph Parave, by reason of his death, and brings this suit within two years from the death of the said Joseph Parave."

HENRY H. ELDREDGE,

Judge. 10

Entered June 19, 1931.

On motion of

AVIS & AVIS,

Attorneys for Plaintiff.

Answer.

Filed January 13, 1931.

20

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

1. It has no knowledge of the truth of the allegations contained in paragraphs one and six sufficient to form a belief and therefore leaves the plaintiff to his proof.

30

2. It has no knowledge of the truth of the allegations contained in paragraph two sufficient to form a belief and therefore denies the same.

3. In answer to paragraph three it admits that defendant owned and operated the bus. It has no knowledge of the truth of the allegations contained in the balance of said paragraph sufficient to form a belief and therefore denies the same.

40

Answer.

4. It denies the allegations contained in paragraphs four, five and seven.

FIRST OBJECTION.

10 It avers that the facts set forth in the complaint do not set forth a cause of action in the plaintiff against this defendant, nor does it set forth a violation of any duty owing by the defendant to the plaintiff, nor does it specify wherein this defendant was negligent, and therefore it reserves the right to move to strike out the said complaint at the trial of this cause.

FIRST DEFENSE.

20 It avers that the negligence of the plaintiff's intestate Joseph Parave, contributed to the happening of the said alleged accident, in that he drove the said automobile in a reckless and negligent manner and at a fast and excessive rate of speed, and without keeping proper control thereof, and without making proper observations of the approach of other vehicles on the highway and without giving warning of his approach and in operating said automobile without proper appliances for
30 stopping and guiding thereof, and was otherwise negligent.

HENRY H. FRYLING,
Attorney of Defendant.

Reply.

Filed January 17, 1931.

The plaintiff, answering the defense set forth in the answer, says that:

He denies each and every allegation contained in the defense.

AVIS & AVIS, 10
Attorneys of Plaintiff.

Judgment.

Entered June 19, 1931.

This case was tried before Judge Henry H. Eldredge, with a jury at the Gloucester Circuit, on June 4, 5, 8 and 9, 1931. 20

The jury rendered a general verdict against the defendant and in favor of the plaintiff for Ten Thousand Dollars (\$10,000.00)

Subsequently to the rendition of said verdict a rule to show cause why the verdict should not be set aside and a new trial granted was allowed to said defendant, which said rule was argued before Henry H. Eldredge, Circuit Court Judge, and said Judge having ordered that if the plaintiff would consent to reduce his verdict as against the defendant to seven thousand five hundred dollars, said rule to show cause would be discharged, otherwise it would be made absolute, and the plaintiff having consented to accept said reduced verdict, 30

Whereupon it is adjudged that the plaintiff,

Judgment.

Frank Parave, administrator *ad prosequendum* of Joseph Parave, deceased do recover of the said defendant Public Service Interstate Transportation Company, a New Jersey Corporation the sum of Seven thousand and five hundred dollars damages together with his costs which have been taxed at the sum of making in the whole the sum of

10 Damages \$7,500.00
Costs \$

Judgment signed and entered June 19, 1931.

WILLIAM S. GUMMERE,
C. J.

20

Clerk's Certificate.

I, Fred L. Bloodgood, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

30 (Seal) In testimony whereof I have set my hand and the seal of said Court at Trenton, this sixth day of August A. D. nineteen hundred and thirty-one.

FRED L. BLOODGOOD,
Clerk.

40

Rule to Show Cause.

Filed June 23, 1931.

NEW JERSEY SUPREME COURT.

GLOUCESTER COUNTY.

FRANK PARAVE, Administrator
ad Prosequendum of JOSEPH
 PARAVE, deceased,

Plaintiff,

vs.

PUBLIC SERVICE INTERSTATE
 TRANSPORTATION COMPANY, a
 New Jersey Corporation,
 Defendant.

10

Action at Law.

Application having been made within six days 20
 after the rendering of the verdict in the above en-
 titled cause,

IT IS, on this 11th day of June, 1931, ORDERED
 that the plaintiff show cause before Honorable
 Henry H. Eldredge, at the Gloucester County
 Court House, in the city of Woodbury, New Jersey,
 on Wednesday the 17th day of June 1931, at ten
 o'clock in the forenoon (daylight saving time),
 why the verdict in the above entitled cause should 30
 not be set aside and a new trial granted the de-
 fendant, on the ground,

1. Because the damages awarded by the
 jury are excessive.

It is further ordered that all points raised by
 each and all of the exception taken at the trial of
 this cause be, and they hereby are, expressly re-
 served for the purpose of appeal and shall not be
 argued on this rule. 40

Rule to Show Cause.

And it is further ordered that pending the determination of the rule execution be stayed.

HENRY H. ELDREDGE,
Judge.

Let the above rule be entered.

10 On motion of
HENRY H. FRYLING,
Attorney for Defendant.

Rule to make Rule to Show Cause absolute unless consent to the reduced verdict be filed.

NEW JERSEY SUPREME COURT.

20

GLOUCESTER COUNTY.

FRANK PARAVE, Administrator
ad Prosequendum of JOSEPH
PARAVE, deceased,

Plaintiff,

vs.

PUBLIC SERVICE INTERSTATE
TRANSPORTATION COMPANY, a
New Jersey Corporation,

Defendant.

Action at Law.

On Rule to
Show Cause.

30

40 The rule heretofore granted in the above entitled cause, directing the plaintiff to show cause why the verdict heretofore rendered in the said cause should not be set aside and for nothing holden, having been duly argued by the respective counsel of the plaintiff and defendant, and the court having considered the same,

Rule to make Rule to Show Cause absolute unless consent to the reduced verdict be filed.

IT IS, on this 22nd day of June, 1931, ORDERED that the said rule to show cause be made absolute, and that the verdict heretofore rendered in the said cause, and any judgment entered thereon, be set aside and for nothing holden, unless the plaintiff shall, within ten days from the date of the service upon him or his attorney of a copy of this rule (which need not be certified) cause to be entered in the minutes of this court a rule consenting to a reduction of the verdict, and any judgment entered thereon in the said cause, to Seven thousand and five hundred dollars, (\$7,500.00). 10

HENRY H. ELDREDGE,
Judge.

Let this rule be entered in the minutes. 20

On motion of

HENRY H. FRYLING,
Attorney of Defendant.

(Endorsed) Service of copy of within Rule acknowledged this 22 day of June 1931.

AVIS & AVIS,
Attorneys of Plaintiff.

30

Consent to accept reduced verdict.

Filed June 30, 1931.

NEW JERSEY SUPREME COURT.

10	FRANK PARAVE, Administrator <i>ad Prosequendum</i> of JOSEPH PARAVE, deceased,	{ Plaintiff, vs. PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, a New Jersey Corporation, Defendant.	} Action at Law. } On Rule to } Show Cause.
----	--	---	---

20 Whereas a rule to show cause was heretofore granted in the above entitled cause, directing the plaintiff to show cause why the verdict heretofore rendered in the said cause, should not be set aside and for nothing holden;

30 And whereas the Court, by rule dated June 22, 1931, has ordered that said rule to show cause be made absolute, and that the verdict heretofore entered in said cause and the judgment entered thereon be set aside and for nothing holden unless the plaintiff shall, within ten days of the date of service upon him or his attorney of a copy of said rule, shall cause to be entered on the minutes of this Court a rule consenting to a reduction of the verdict or any judgment rendered thereon in the said cause from Ten Thousand Dollars to Seven Thousand Five Hundred Dollars;

40 And whereas the said Frank Parave, administrator *ad prosequendum* of Joseph Parave, deceased, is desirous of consenting to the reduction of said verdict and any judgment entered thereon to

Consent to accept reduced verdict.

said sum of Seven Thousand Five Hundred Dollars;

Therefore, the said Frank Parave, administrator *ad prosequendum* of Joseph Parave, deceased, does hereby consent to the reduction of the verdict rendered in this cause and the judgment entered thereon from the sum of Ten Thousand Dollars, to the sum of Seven Thousand Five Hundred Dollars. 10

IN WITNESS WHEREOF, the said Frank Parave, administrator *ad prosequendum* of Joseph Parave-deceased, has hereunto set his hand and seal, this 29th day of June, Nineteen Hundred and Thirty-one.

FRANK PARAVE (L.S.)

Signed and sealed in
the presence of

E. Milton Hannold, 20

State of New Jersey, }
Gloucester County, {ss.:

Be It Remembered that on this 29th day of June Nineteen Hundred and Thirty-one, before me a Notary Public of New Jersey, personally appeared Frank Parave, who I am satisfied is the person named in and who executed the within consent, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified. 30

E. MILTON HANNOLD,
Notary Public of N. J.

Notice of Appeal.

Filed July 21, 1931.

NEW JERSEY SUPREME COURT.

10	FRANK PARAVE, Administrator <i>ad Prosequendum</i> of PETER PARAVE, deceased, Plaintiff, vs. PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, a New Jersey Corporation, Defendant.	}	Action at Law.
----	---	---	----------------

20 To: AVIS AND AVIS, ESQRS.,
 Attorneys of Plaintiff,
 Woodbury, N. J.

Sirs:

TAKE NOTICE that the defendant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the above entitled cause.

Dated: July 13, 1931.

30

Yours truly,

HENRY H. FRYLING,
 Attorney of Defendant.

(Endorsed) Service of copy of within Notice of Appeal acknowledged this 17th day of July, 1931.

AVIS AND AVIS,
 Attorneys of Plaintiff.

40

Judgment Record.

NEW JERSEY SUPREME COURT.

FRANK PARAVE, Administrator <i>ad Prosequendum</i> of PETER PARAVE, deceased,	Judgment Record.	
Plaintiff,	Action at Law.	10
vs.	On Postea & R. to S. C.	
PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, a New Jersey Corporation,	Avis & Avis, Attorneys.	
Defendant.		

Public Service Interstate Transportation Company, a New Jersey Corporation, the defendant in this cause was summoned to answer unto Frank Parave, administrator *ad prosequendum* of Peter Parave, deceased, the plaintiff therein in an action at law upon the following complaint. 20

(Summons issued: December 10, 1930)

Complaint.

Filed December 17, 1930.

The plaintiff, Frank Parave, administrator *ad prosequendum* of Peter Parave, deceased, of the Township of Franklin, County of Gloucester and State of New Jersey, say that: 30

1. On December 5, 1930, he was duly appointed administrator *ad prosequendum* of Peter Parave, deceased, by Frank D. Pedrick, Surrogate of Gloucester County, and authorized to prosecute this action against the defendant, and recover damages for the benefit of the next of kin of said Peter Parave, deceased, by reason of his death. 40

Complaint.

2. On October 29, 1930, Peter Parave, who was then thirty years of age, was an occupant in a certain Ford automobile which was being operated by Joseph Parave in a southerly direction along the public highway known as Delsea Drive in the Township of Franklin, County of Gloucester and State of New Jersey.

3. At the same time and place, the defendant, by its agent and employee was operating an automobile passenger bus along the said Delsea Drive, proceeding in a northerly direction.

4. As the said automobile in which the said Peter Parave, deceased, was a passenger, and the automobile passenger bus of the defendant approached the intersection of said Delsea Drive with the public highway leading from the Delsea Drive to Iona, the defendant, by its agent and employee, carelessly and negligently operated said automobile passenger bus at a high and unlawful rate of speed, and without due regard for the rights and safety of other persons using said highway, and carelessly and negligently failed to have such automobile passenger bus in proper mechanical order, and failed to have the brakes of same in good, proper working condition, and carelessly and negligently operated said automobile passenger bus from the right or easterly side of said highway to the left or westerly side thereof, and into and against the automobile in which the said Peter Parave was a passenger. The collision aforesaid between said automobiles was caused solely by the negligent operation of defendant's automobile passenger bus.

5. As a result of the said collision, caused sole-

Complaint.

ly by defendant's negligence as aforesaid, the said Peter Parave was killed.

6. The said decedent Peter Parave, left him surviving as his next of kin, his father, Frank Parave; his mother, Mary Parave; and eight sisters and brothers, to wit: Mildred Parave, Frank Parave, Jr., Lucy Parave, James Parave, Lena Parave, Julia Parave, William Parave and Lewis Parave. 10

7. The next of kin of the said Peter Parave suffered pecuniary loss by reason of the death of the said Peter Parave in the sum of Twenty-five Thousand Dollars.

Plaintiff demands of defendant, Public Service Interstate Transportation Company, as damages, the sum of Twenty-five Thousand Dollars. 20

AVIS AND AVIS,
Attorneys for Plaintiff.

Amendment to Complaint.

Filed June 19, 1931.

Application having been made for leave to amend Paragraph 1 of the complaint in this cause, and the Court being of the opinion that such amendment should be allowed: 30

It is therefore, on this Fourth day of June 1931 ORDERED that paragraph 1 of the complaint filed in this cause be amended to read as follows:

"1. On December 5, 1930, he was duly appointed administrator *ad prosequendum* of Peter Parave, deceased, by Frank D. Pedrick, Surrogate of 40

Answer.

Gloucester County, and authorized to prosecute this action against the defendant, and recover damages for the benefit of the next of kin of said Peter Parave, deceased, by reason of his death, and brings this suit within two years from the death of the said Peter Parave."

10

HENRY H. ELDREDGE,
Judge.

Entered: June 19, 1931.

On motion of
AVIS AND AVIS,
Attorneys for Plaintiff.

Answer.

20

Filed January 13, 1931.

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

1. In answer to paragraph one, it has no knowledge or information thereof sufficient to form a belief and it therefore leaves the plaintiff to his proof.

30

2. In answer to paragraph two, it has no knowledge or information thereof sufficient to form a belief and it therefore denies the same.

3. In answer to paragraph three, it admits that the defendant owned and operated the bus. It denies the balance of said paragraph.

40

4. It denies the allegations contained in paragraphs four, five and seven.

Answer.

5. In answer to paragraph six, it has no knowledge or information thereof sufficient to form a belief and it therefore leaves the plaintiff to his proof.

FIRST OBJECTION.

It avers that the facts set forth in the complaint do not set forth a cause of action in the plaintiff against this defendant nor do they set forth a violation of any duty owing by the defendant to the plaintiff nor do they specify wherein this defendant was negligent, and it therefore reserves the right to move to strike out the same at the trial of this cause. 10

FIRST DEFENSE.

It avers that the plaintiff's intestate, Peter Parave, was engaged in a common enterprise with the operator of the automobile and that the negligence of the said operator contributed to the happening of the said alleged accident in that he operated the said automobile in a reckless and negligent manner and at a fast and excessive rate of speed and without keeping the proper control thereof and without making proper observations of the approach of other vehicles on the highway and without giving warning of its approach and in operating said automobile without proper appliances for the stopping and guiding thereof and was otherwise negligent. 20 30

SECOND DEFENSE.

It avers that the negligence of the plaintiff's intestate contributed to the happening of the said alleged accident in that he failed to keep a proper lookout and to warn the operator of the automo- 40

Answer.

bile in question of the approach of the bus in question.

THIRD DEFENSE.

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

HENRY H. FRYLING,
Attorney for Defendant.

Reply.

Filed January 17, 1931.

30 The plaintiff, answering the defenses set forth in the answer, says that:

He denies each and every allegation contained in the first, second and third defenses.

AVIS & AVIS,
Attorneys of Plaintiff.

Judgment.

Filed June 19, 1931.

This case was tried before Judge Henry H. Eldredge, with a jury at the Gloucester Circuit on June 4, 5, 8, and 9, 1931.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for Ten Thousand Dollars (\$10,000.) 10

Subsequently to the rendition of said verdict a rule to show cause why the verdict should not be set aside and a new trial granted was allowed to said defendant, which said rule was argued before Henry H. Eldredge, Circuit Court Judge, and said Judge having ordered that if the plaintiff would consent to reduce his verdict as against the defendant to seven thousand five hundred dollars, said rule to show cause would be discharged, otherwise it would be made absolute, and the plaintiff having consented to accept said reduced verdict, 20

Whereupon it is adjudged that the plaintiff, Frank Parave, administrator *ad prosequendum* of Peter Parave, deceased, do recover of the said defendant Public Service Interstate Transportation Company, a New Jersey Corporation, the sum of Seven Thousand and five hundred dollars damages, together with his costs which have been taxed as the sum of making in the whole the sum of 30

Damages \$7,500.00
Costs

—————
\$

Judgment signed and entered June 19, 1931.

WILLIAM S. GUMMERE,
C. J.

Clerk's Certificate.

I, Fred L. Bloodgood, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

10 In testimony whereof I have set my
(Seal) hand and the seal of said Court at
Trenton, this sixth day of August
A. D. nineteen hundred and thirty-
one.

FRED L. BLOODGOOD,
Clerk.

20

30

40

Rule to Show Cause.

NEW JERSEY SUPREME COURT.

GLOUCESTER COUNTY.

FRANK PARAVE, Administrator <i>ad Prosequendum</i> of PETER PARAVE, deceased, Plaintiff,	}	10
vs.		
PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, a New Jersey Corporation, Defendant.		

Action at Law.

Application having been made within six days 20
after the rendering of the verdict in the above en-
titled cause,

IT IS, on this 11th day of June, 1931, ORDERED
that the plaintiff show cause before Honorable
Henry H. Eldredge, at the Gloucester County
Court House, in the city of Woodbury, New Jer-
sey, on Wednesday the 17th day of June, 1931, at
nine o'clock in the forenoon (daylight saving
time), why the verdict in the above entitled cause 30
should not be set aside and a new trial granted the
defendant, on the ground,

1. Because the damages awarded by the
jury are excessive.

It is further ordered that all points raised by
each and all of the exceptions taken at the trial of
this cause be, and they hereby are, expressly re-
served for the purpose of appeal and shall not be
argued on this rule. 40

Rule to Show Cause.

And it is further ordered that pending the termination of the rule execution be stayed.

HENRY H. ELDREDGE,
Judge.

Let the above rule be entered.

10 On motion of
HENRY H. FRYLING,
Attorney for Defendant.

Rule to make Rule to Show Cause absolute unless consent to the reduced verdict be filed.

Filed June 23, 1931.

20 NEW JERSEY SUPREME COURT.
GLOUCESTER COUNTY.

FRANK PARAVE, Administrator
ad Prosequendum of PETER
PARAVE, deceased,

Plaintiff,

vs.

30 PUBLIC SERVICE INTERSTATE
TRANSPORTATION COMPANY, a
New Jersey Corporation,
Defendant.

Action at Law.

On Rule to
Show Cause.

The rule heretofore granted in the above entitled cause, directing the plaintiff to show cause why the verdict heretofore rendered in the said cause should not be set aside and for nothing holden, having been duly argued by the respective coun-

Rule to make Rule to Show Cause absolute unless consent to the reduced verdict be filed.

sel of the plaintiff and defendant, and the court having considered the same,

IT IS, on this 22nd day of June, 1931, ORDERED that the said rule to show cause be made absolute, and that the verdict heretofore rendered in the said cause, and any judgment entered thereon, be set aside and for nothing holden, unless the plaintiff shall, within ten days from the date of the service upon him or his attorney of a copy of this rule (which need not be certified) cause to be entered in the minutes of this court a rule consenting to a reduction of the verdict, and any judgment entered thereon in the said cause, to Seven thousand five hundred dollars, \$7,500.00). 10

HENRY H. ELDREDGE, 20
Judge.

Let this rule be entered in the minutes.

On motion of

HENRY H. FRYLING,
Attorney of Defendant.

(Endorsed) Service of copy of within Rule acknowledged this 22 day of June, 1931.

AVIS & AVIS, 30
Attorneys of Plaintiff.

Consent to accept reduced verdict.

Filed July 30, 1931.

NEW JERSEY SUPREME COURT.

10	FRANK PARAVE, Administrator <i>ad Prosequendum</i> of PETER PARAVE, deceased, Plaintiff,	}	Action at Law.
	vs.		
	PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, a New Jersey Corporation, Defendant.	}	On Rule to Show Cause.

Whereas a rule to show cause was heretofore granted in the above entitled cause, directing the plaintiff to show cause why the verdict heretofore rendered in the said cause, should not be set aside and for nothing holden ;

And Whereas the Court, by rule dated June 22, 1931, has ordered that said rule to show cause be made absolute, and that the verdict heretofore entered in said cause and the judgment entered thereon be set aside and for nothing holden unless the plaintiff shall, within ten days of the date of service upon him or his attorney of a copy of said rule, shall cause to be entered on the minutes of this Court a rule consenting to a reduction of the verdict or any judgment rendered thereon in the said cause from Ten Thousand Dollars to Seven Thousand and Five Hundred Dollars ;

And Whereas the said Frank Parave, administrator *ad prosequendum* of Peter Parave, deceased, is desirous of consenting to the reduction of said

Consent to accept reduced verdict.

verdict and any judgment entered thereon to said sum of Seven Thousand Five Hundred Dollars;

Therefore, the said Frank Parave, administrator *ad prosequendum* of Peter Parave, deceased, does hereby consent to the reduction of the verdict rendered in this cause and the judgment entered thereon from the sum of Ten Thousand Dollars, to the sum of Seven Thousand Five Hundred Dollars. 10

IN WITNESS WHEREOF, the said Frank Parave, administrator *ad prosequendum* of Peter Parave, deceased, has hereunto set his hand and seal this 29th day of June, Nineteen Hundred and Thirty-one.

FRANK PARAVE (L.S.)

Signed and Sealed in

the presence of

E. Milton Hannold,

20

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

Be it Remembered that on this 29th day of June, Nineteen Hundred and Thirty-one, before me a Notary Public of New Jersey, personally appeared Frank Parave, who I am satisfied is the person named in and who executed the within consent, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified. 30

E. MILTON HANNOLD,

Notary Public of N. J.

NEW JERSEY SUPREME COURT.

10 JOSEPHINE RACZAK, Administra-
trix *ad Prosequendum* of BEN-
JAMIN KURZENSKY, deceased,
Plaintiff,
vs.
PUBLIC SERVICE INTERSTATE
TRANSPORTATION COMPANY, a
New Jersey Corporation,
Defendant.

Action at Law.

20 To: AVIS AND AVIS, ESQRS.,
 Attorneys of Plaintiff,
 Woodbury, N. J.

TAKE NOTICE that the defendant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the above entitled cause.

30

HENRY H. FRYLING,
Attorney of Defendant.

AVIS & AVIS,
Attorneys of Plaintiff.

Judgment Record.**NEW JERSEY SUPREME COURT.**

JOSEPHINE RACZAK, Administra- trix <i>ad Prosequendum</i> of BEN- JAMIN KURZENSKY, deceased, Plaintiff,	Judgment Record. Action at Law.	
vs.		
PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, a New Jersey Corporation, Defendant.	On Postea & R. to S. C. Avis & Avis, Attorneys.	10

Public Service Interstate Transportation Com-
pany, a New Jersey Corporation, the defendant in
this cause was summoned to answer unto Joseph-
ine Raczak, administratrix *ad prosequendum* of
Benjamin Kurzensky, deceased the plaintiff there-
in in an action at law upon the following com-
plaint: 20

(Sumons issued; December 10, 1930)

Complaint.

Filed December 17, 1930.

The plaintiff, Josephine Raczak, administratrix
ad prosequendum of Benjamin Kurzensky, deceas- 30
ed, of the Township of Franklin, County of
Gloucester and State of New Jersey says that:

1. On December 8, 1930, she was duly appoint-
ed administratrix *ad prosequendum* of Benjamin
Kurzensky, deceased, by Frank D. Pedrick, Surro-
gate of Gloucester County, and authorized to pros-
ecute this action against the defendant, and recover
damages for the benefit of the next of kin of said
Benjamin Kurzensky, by reason of his death. 40

Complaint.

2. On October 29, 1930, Benjamin Kurzensky, who was then thirty-three years of age, was an occupant in a certain Ford automobile which was being operated by Joseph Parave in a southerly direction along the public highway known as Delsea Drive, in the Township of Franklin, County of Gloucester and State of New Jersey.

3. At the same time and place, the defendant, by its agent and employee was operating an automobile passenger bus along the said Delsea Drive, proceeding in a northerly direction.

4. As the said automobile in which the said Benjamin Kurzensky, deceased, was a passenger, and the automobile passenger bus of the defendant approached the intersection of said Delsea Drive with the public highway leading from the Delsea Drive to Iona, the defendant, by its agent, and employee, carelessly and negligently operated said automobile passenger bus at a high and unlawful rate of speed, and without due regard for the rights and safety of other persons using said highway, and carelessly and negligently failed to have such automobile passenger bus in proper mechanical order, and failed to have the brakes of same in good, proper working condition, and carelessly and negligently operated said automobile passenger bus from the right or easterly side of said highway to the left or westerly side thereof, and into and against the automobile in which the said Benjamin Kurzensky was a passenger. The collision aforesaid between said automobiles was caused solely by the negligent operation of defendant's automobile passenger bus.

5. As a result of said collision, caused solely by

Complaint.

defendant's negligence as aforesaid, the said Benjamin Kurzensky was killed.

6. The said decedent, Benjamin Kurzensky, left him surviving as his next of kin, his mother, Josephine Raczak and six brothers and sisters, to wit: Wanda Kurzensky, August Kurzensky, Stella Kurzensky, Celia Kurzensky, Frances Negri and sigmund Kurzensky. 10

7. The next of kin of the said Benjamin Kurzensky suffered pecuniary loss by reason of his death in the sum of Twenty-five thousand Dollars.

Plaintiff demands of defendant, Public Service Interstate Transportation Company, as damages, the sum of Twenty-Five Thousand Dollars.

AVIS & AVIS, 20
Attorneys of Plaintiff.

Amendment to Complaint.

Filed June 12, 1931.

Application having been made for leave to amend Paragraph 1 of the complaint in this cause, and the Court being of the opinion that such amendment should be allowed: 30

It is, therefore, on this Fourth day of June 1931, ORDERED that paragraph 1 of the complaint filed in this cause be amended to read as follows:

"1. On December 8, 1930, she was duly appointed administratrix *ad prosequendum* of Benjamin Kurzensky, deceased, by Frank D. Pedrick, Surrogate of Gloucester County, and authorized to prosecute this action against the defendant, and re- 40

Answer.

cover damages for the benefit of the next of kin of said Benjamin Kurzensky, by reason of his death, and brings this suit within two years from the death of the said Benjamin Kurzensky."

HENRY H. ELDREDGE,
Judge.

10 Entered: June 12, 1931.

On motion of
AVIS & AVIS,
Attorneys for Plaintiff.

Answer.

20 Filed January 13, 1931.

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

1. It has no knowledge or information thereof sufficient to form a belief as to the allegations contained in paragraph one and it therefore leaves the plaintiff to her proof.

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

3. In answer to paragraph three it admits defendant owned and operated the bus. It has no knowledge or information thereof sufficient to form a belief as to the balance of said paragraph and it therefore denies the same.

40

Answer.

4. It denies the allegations contained in paragraphs four, five, and seven.

5. It has no knowledge or information thereof sufficient to form a belief as to the allegations contained in paragraph six and it therefore leaves the plaintiff to her proof.

10

FIRST OBJECTION.

It avers that the facts set forth in the complaint do not set forth a cause of action in the plaintiff against this defendant, nor does it set forth a violation of any duty owing by the defendant to the plaintiff, nor does it specify wherein this defendant was negligent, and therefore it preserves the right to move to strike out the said complaint at the trial of this cause.

20

FIRST DEFENSE.

It avers that the said plaintiff's intestate was engaged in a common enterprise with the operator of the automobile and that the negligence of the said operator contributed to the happening of the said alleged accident in that he operated said automobile in a reckless and negligent manner and at a fast and excessive rate of speed and without keeping the proper control thereof and without making proper observations of the approach of other vehicles on the highway and without giving warning of its approach and in operating said automobile without proper appliances for stopping and guiding thereof, and was otherwise negligent.

30

SECOND DEFENSE.

It avers that the negligence of the plaintiff's intestate contributed to the happening of the said al-

40

Answer.

leged accident in that he failed to keep a proper lookout and to warn the operator of the automobile in question of the approach of the bus in question.

THIRD DEFENSE.

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

HENRY H. FRYLING,
Attorney of Defendant.

Reply.

Filed January 17, 1931.

The plaintiff, answering the defenses set forth in the answer, says that:

She denies each and every allegation contained in the first, second and third defenses.

AVIS & AVIS, 10
Attorneys of Plaintiff.

Judgment.

Entered June 12, 1931.

This case was tried before Judge Henry H. Eldredge with a jury at the Gloucester Circuit, on June 4, 5, 8 and 9, 1931. 20

The jury rendered a general verdict against the defendant and in favor of the plaintiff for Ten Thousand Dollars (\$10,000.00).

Subsequently to the rendition of said verdict a rule to show cause was allowed, wherein the plaintiff was ordered to show cause before Honorable Henry H. Eldredge in the Gloucester County Court House, in the City of Woodbury, Gloucester County, New Jersey on the seventeenth day of June, 1931, why the verdict in the above entitled cause of ten thousand dollars in favor of the plaintiff and against the defendant should not be set aside and a new trial granted on the ground that the damages awarded by the jury were excessive and the court, on the return of said rule, after considering same, ordered that the said rule to show cause be discharged and that said verdict be upheld. 30 40

Judgment.

Whereupon it is adjudged that the plaintiff Josephine Raczak, administratrix *ad prosequendum* of Benjamin Kurzensky, deceased, do recover of the said

Damages \$10,000.00
Costs 67.82

10

\$10,067.82
Costs of R. to S.
C. \$

Interstate Transportation Company, a New Jersey Corporation the sum of Ten thousand dollars damages together with her costs which have been taxed at the sum of Sixty-seven dollars and eighty-two cents, making in the whole the sum of Ten Thousand and sixty-seven dollars and eighty-two cents.

20

Judgment signed and entered June 12, 1931.

WILLIAM S. GUMMERE,
C. J.

Clerk's Certificate.

30

I, Fred L. Bloodgood, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this first day of August, A. D. nineteen hundred and thirty-one.

(Seal)

40

FRED L. BLOODGOOD,
Clerk.

Rule to Show Cause.

NEW JERSEY SUPREME COURT.

GLOUCESTER COUNTY.

JOSEPHINE RACZAK, Administra-
trix *ad Prosequendum* of BEN-
JAMIN KURZENSKY, deceased,
Plaintiff,

vs.

PUBLIC SERVICE INTERSTATE
TRANSPORTATION COMPANY, a
New Jersey Corporation,
Defendant.

10

Action at Law.

Application having been made within six days after the rendering of the verdict in the above entitled cause, 20

IT IS, on this 11th day of June, 1931, ORDERED that the plaintiff show cause before Honorable Henry H. Eldredge, at the Gloucester County Court House, in the city of Woodbury, New Jersey, on the 17th day of June, 1931, at nine o'clock in the forenoon (daylight saving time), why the verdict in the above entitled cause should not be set aside and a new trial granted, on the ground, 30

1. Because the damages awarded by the jury are excessive.

It is further ordered that all points raised by each and all of the exceptions taken at the trial of this cause be, and they hereby are, expressly reserved for the purpose of appeal and shall not be argued on this rule.

40

Rule to Show Cause.

And it is further ordered that pending the determination of the rule execution be stayed.

HENRY H. ELDREDGE,
Judge.

Let the above rule be entered.

- 10 On motion of
HENRY H. FRYLING,
Attorney for Defendant.

Rule Discharging Rule to Show Cause.

Filed July 15, 1931.

NEW JERSEY SUPREME COURT.

20

GLOUCESTER COUNTY.

JOSEPHINE RACZAK, Administra-
trix *ad Prosequendum* of BEN-
JAMIN KURZENSKY, deceased,
Plaintiff,

vs.

PUBLIC SERVICE INTERSTATE
TRANSPORTATION COMPANY, a
New Jersey Corporation,
Defendant.

30

Action at Law.

- 40 A rule to show cause having been granted in this cause dated June 11, 1931, wherein the plaintiff was ordered to show cause before Honorable Henry H. Eldredge, in the Gloucester County Court House, in the City of Woodbury, Gloucester County, New Jersey, on the Seventeenth day of June, 1931, why the verdict in the above entitled cause

Rule Discharging Rule to Show Cause.

of Ten Thousand Dollars in favor of the plaintiff and against the defendant should not be set aside and a new trial granted on the ground that the damages awarded by the jury were excessive;

And the Court, on the return of said rule, after considering same, and being of the opinion that said rule to show cause should be discharged; 10

It is, therefore, on this 13th day of July, 1931, ORDERED that the rule to show cause heretofore entered in this cause be discharged.

HENRY H. ELDREDGE,
Judge.

Let the above rule be entered.

On motion of

AVIS & AVIS,

Attorneys of Plaintiff. 20

30

40

Testimony.

NEW JERSEY SUPREME COURT.

GLOUCESTER COUNTY.

10	JOSEPHINE RACZAK, admx, &c., Plaintiff, vs. PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, &c. Defendant.	May Term, 1931. #5. Action at Law.
20	FRANK PARAVE, adm'r, &c., Plaintiff, vs. PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, &c. Defendant.	May Term, 1931. #6. Action at Law.
30	FRANK PARAVE, adm'r, &c., Plaintiff, vs. PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, &c. Defendant.	May Term, 1931. #7. Action at Law.

June 4th, 5th, 8th and 9th, 1931.

Before—ELDREDGE, J., and a Jury.

APPEARANCES:

For the Plaintiffs, AVIS & AVIS, ESQRS.,
(JAMES B. AVIS, ESQ.)

For the Defendant, HENRY J. SORENSON,
ESQ.

Motion to Dismiss Complaints.

Mr. Sorenson: In view of the fact that all these cases are to be consolidated and tried as one, the consolidation being for the purposes of trial, I move for a dismissal of each one of the complaints, on the ground that in no single one of the complaints is there an allegation that the suit was instituted within twenty-four months after the death occurred. In other words, there is no allegation setting forth that the cause of action accrued within the statutory time, as required under the death Act. 10

Mr. Avis: If your Honor please, I prepared an order along the same line. I did ask to amend all three of them, and I prepared orders along that line. 20

The Court: I guess I had better sign them, Mr. Sorenson. 20

Mr. Sorenson: You permit the amendment?

The Court: Yes.

Mr. Sorenson: I pray an exception.

The Court: The amendment will be permitted and an exception entered for Mr. Sorenson.

(Exception noted for the defendant). 30

Mr. Sorenson: May I note on the record that I have asked permission of the Court to ask the question whether or not any members of the jury have had an accident in which the defendant, Public Service Interstate Transportation Company, was a defendant, and objection was made, which objection has been sustained, and I desire an exception? 40

Colloquy.

The Court: All right.

(Exception noted for the defendant).

10

Mr. Sorenson: I would like to ask one more question. The question I desire to ask is whether or not any of the members of the jury have been so unfortunate as to have anybody killed in an automobile accident, which circumstances would bias or prejudice them in the trial and conduct of this case.

Mr. Avis: I won't object to it.

The Court: All right.

20

Mr. Sorenson: Have any of you ladies and gentlemen of the jury been so unfortunate as to have a death occur in your family or in reference to a close relative, arising out of an automobile accident, which circumstance would so interfere with your judgment that you could not render a verdict in this case on the evidence which you are going to hear, or so that you would be biased or prejudiced in rendering a verdict? Now, when I hear no answer and see nods of the head, I presume the answer is no. Perhaps I haven't stated the question clearly; I will ask it again in a different form. Have any of the ladies and gentlemen upon this jury been so unfortunate as to have a death in their family caused by an automobile accident, which circumstance would create a bias or prejudice against any person who should be involved in the causing of death?

30

(No answer from the jury).

40

(Jury Sworn).

J. Owen Carter—Direct.

(Mr. Avis opens the cases to the jury for the plaintiffs.)

(Mr. Sorenson opens the cases to the jury for the defendant.)

THE CASES FOR THE PLAINTIFFS.

10

J. OWEN CARTER, sworn.

Direct-examination by Mr. Avis:

Q. Mr. Carter, where do you live? A. Woodbury, New Jersey.

Q. What is your business or profession, Mr. Carter? A. Civil Engineer.

Q. And have been for how long? A. Twenty 20 years.

Q. And are you duly licensed by the State of New Jersey? A. I am.

Mr. Sorenson: I will admit Mr. Carter's qualifications.

Mr. Avis: All right.

Q. Mr. Carter, at my request did you make a map or plan of a portion of the Delsea Drive below Franklinville, at a point where the highway is intersected by the old Williamstown Road? A. I did. 30

Q. When did you make that plan, as near as you can tell? A. I have it on the map, if I am permitted to look at it.

Q. Surely. A. February 7th, 1931.

Q. Mr. Carter, is that the plan that you made? A. It is.

Q. And does it show the conditions at that point at that time? A. Yes, sir, at that time. 40

J. Owen Carter—Direct.

Q. Now, Mr. Carter, referring to this map, will you point out on the map which is north and which is south? A. The upper right corner would be north. The north and south line appears on the right hand side.

10 Q. And does the arrow point toward the north on the plan? A. Yes, sir.

Q. Now, will you point out which is Delsea Drive on the map, please, Mr. Carter?

20 Mr. Sorenson: I object to any reference to the map at this particular time, because as the map is presented before the jury, there are some marks in the green section which are pointed in a general northwesterly direction, which is marked "Broken underbrush."

Mr. Avis: "Broken off and bent over," I think it is marked.

Mr. Sorenson: Yes.

Mr. Avis: Of course, my contention is that shows what the condition is there.

The Court: If that is the condition of it at the time the map was made, why shouldn't it show it?

30 Mr. Sorenson: Then I object to it, because there is no proof that is the condition of it at the time of the accident.

Mr. Avis: No, but I will have some proof on that. I thought first I would get my map in evidence so it would be more intelligent to try the case. There is no reference to this automobile or anything else; it is merely a condition found on the land.

(After further argument):

40 Mr. Sorenson: I object to it on the ground that it outlines an area there—

J. Owen Carter—Direct.

The Court: Well, I will overrule the objection.

(Exception noted for the defendant).

(Question repeated).

A. The gray shaded area represents the concrete road leading from Franklinville toward the shore. 10

Q. Now, you referred to this as the "gray area."

A. Yes, twenty foot wide concrete.

Q. What is the brown? A. Gravel shoulder.

Q. That appears outside on each side of the gray? Mr. Carter, will you indicate the Williamstown Road, so-called, upon the plan, please? A. Williamstown, this direction, overtoward Porchtown.

Q. I note on the map or plan a mark, "Tle pole"—what is that? A. Telephone pole. 20

Q. Can you tell me the distance that telephone line is from the westerly edge of the Delsea Drive?

A. From the elge of the concrete or the edge of the gravel?

Q. The edge of the gravel road to the pole? A. Three feet from the edge of the gravel to the center of pole.

Q. Then I see on the map "18 maple"— what does that represent? A. Eighteen inch diameter maple tree. 30

Q. Will you give me the distance of that maple tree from the side of the Delsea Drive, first of all? A. You mean the edge of the gravel when you say "edge of Delsea Drive?"

Q. The edge of the gravel, that is what I mean, yes, sir. A. Eight feet to the center of the tree.

Q. Now, I note "24 maple"— is that likewise a tree? A. That is a maple tree twenty-four inches in diameter. 40

J. Owen Carter—Direct.

Q. How far is that from the edge of the gravel shoulder of the Delsea Drive? A. Seven feet to the center of tree.

Q. Mr. Carter, have you marked the center of the intersection of the Franklinville and Williamstown Roads? A. I have.

10 Q. That is, the intersection of the center lines of those two highways? A. The intersection of the center lines of the two roads.

Q. Will you tell me the distance from that center line to the telephone pole and the eighteen inch maple and the twenty-four inch maple?

Mr. Sorenson: Will you take one at a time?

20 Q. Yes, let's have the telephone pole first. A. Twenty-six and one-half feet from the intersection of center lines to the telephone pole.

Q. How about the next tree, the eighteen-inch maple? A. First tree heretofore mentioned is thirty-four feet from the intersection of the center lines of the roads to the eighteen inch maple, and forty-four feet from the intersection of center lines to the twenty-four inch maple.

30 Q. Now, Mr. Carter, referring to "warehouse shed"— they were what, buildings? A. Yes, sir, frame.

Q. Frame buildings; now, what you have marked "Dwelling" and "Porch" lying on the westerly side of the Delsea Drive, and to the northwest of the Porchtown Road, is that likewise a dwelling or building there? A. Dwelling, unoccupied, frame.

40 Q. What is the area on the map that you have marked "scrub sumac?" A. The dwelling to which you pointed is unoccupied, and the area designated by the green shading is a grown-up condition of

J. Owen Carter—Direct.

scrub oak. I feel it is sumac, not exceptionally large trees, but varying in diameter from little bushes one-half inch up to three or four inches in diameter.

Q. How wide is the Delsea Drive— first of all, the concrete portion of it? A. Twenty feet.

Q. And how much shoulder? A. Five foot gravel shoulder on each side. 10

Q. Mr. Carter, can you tell me the distance from the southerly edge of the Williamstown-Porchtown Road to a point opposite the northerly portion of the warehouse marked on the plan? A. Measured right along the center line of the Delsea Drive?

Q. Yes. A. Seventy-six feet.

Mr. Sorenson: That was from just about where to— 20

The Witness: I took the range of the southerly side of the Porchtown-Williamstown road and scaled the distance down the center line of Delsea Drive to a point in range with the northwesterly side of the warehouse.

Q. That map is made to scale, is that right, Mr. Carter? A. Yes, sir.

Q. What scale? A. Each inch on the map represents ten feet on the ground. 30

Q. Mr. Carter, in proceeding along the Delsea Drive toward Franklinville, as you approach the intersection of the Williamstown-Porchtown Road, looking to your left, can you see down the Porchtown Road?

Mr. Sorenson: Well, now, I object to that, unless the time and place is fixed. 40

J. Owen Carter—Direct.

Q. Well, could you see there in February, when you were there making this plan?

Mr. Sorenson: That is objected to as irrelevant.

The Court: I suppose that would be immaterial.

10

Mr. Avis: The only thing is, if the Court please, I will show the condition remained the same from the accident to this time, but I won't insist on it.

20

Q. Mr. Carter, what is the condition of the grade along the Porchtown road to the west of the Delsea Drive, with reference to this roadway, that is, the Porchtown-Williamstown Road? A. Will you repeat the question?

Mr. Avis: I will withdraw the question. Maybe I can put it in a little better language.

Q. When you were there in February, did you notice this road on the westerly side of the Porchtown Road? A. I did. Westerly side of Delsea Drive, you mean?

Q. Yes. A. I did.

30

Q. What have you to say as to the grade of the road, in comparison to the grade of the land immediately adjoining it on the south?

Mr. Sorenson: I object to that, unless it is connected up to show there have been no changes from the date when this took place.

Mr. Avis: I will show that, if your Honor please.

Mr. Sorenson: No objection, then.

40

J. Owen Carter—Direct.

A. The gravel road known as Porchtown-Williamstown Road, also the Delsea Drive, were approximately—considering that whole area between the warehouse and the intersection—a foot and a half, an average of a foot and a half lower than the land. Within the intersection, the roads are depressed to a small extent.

10

Q. Mr. Carter, did you notice on the map “scrub oak eight inches to twelve inches high?” A. That is feet.

Q. That is eight inches, is that right? A. Eight feet.

Q. It says eight inches to twelve inches high—you were there and made the map—you saw that— “Scrub oak” so-called. Is that correct—is it eight to twelve inches high? A. It is feet. That symbol is feet.

20

Mr. Sorenson: I object to that condition being testified to. Here a man makes a map in February of this year and—

The Court: I didn’t hear that question.

Mr. Avis: Well, I won’t insist on that question. Apparently he put “scrub oak, eight inches high.” It is apparent it is in error. It ought to be eight feet. Anybody knows scrub oaks eight inches high, you are not referring to scrub oaks, but I won’t press it. It makes no difference.

30

Q. Mr. Carter, in approaching this intersection, proceeding from the south to the north—that is, proceeding toward Franklinville— what have you to say as to the grade of Delsea Drive as you approach this intersection, as to whether it is down grade or up grade or level? A. It is not a hill,

40

J. Owen Carter—Direct.

but there is a slight down grade for a quarter of a mile as you travel north and approach this intersection.

10 Q. How about a point beyond that in a southerly direction, after the quarter of a mile, how about the grade then? A. At the quarter of a mile is the crest or top of the hill; then the grade tapers or there is a down grade toward Malaga.

Q. As I understand you, in approaching this intersection from the south, there is an up grade and then to a point a quarter of a mile below this, and then there is a slight down grade to a point a quarter of a mile below the intersection? A. That is right.

20 Q. Mr. Carter, calling your attention to this area which appears as part of the green and is marked "Area broken off and bent over"— what do you mean by that? What was the condition with relation to that?

Mr. Sorenson: Well, now, I object to that on the ground it is too remote.

Mr. Avis: It won't be too remote before this case is over, if your Honor please.

30 Mr. Sorenson: I certainly don't think it is proper to portray conditions which are not matters that regularly come within the realm of expert testimony. This man is produced here as an expert to portray conditions which existed here along these lines, as an expert engineer. Now, he has indicated one particular portion, and not only indicated it, but outlined it. I object to any testimony as to what that portrays or what it means or what it indicates.

40 The Court: I will sustain the objection to that question until there is testimony to

J. Owen Carter—Cross.

the effect that the conditions are the same.

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. Mr. Carter, will you tell us what is the distance between the two trees which you have indicated to be on the map? A. In the clear, or center to center? 10

Q. Well, approximately. From center to center, if you can. A. Approximately fifteen feet.

Q. Now, when you say that the telegraph pole is three feet from the edge of the gravel, is that actually so or is it not a fact that the telegraph pole is right on the corner? A. There is dirt, I presume— I don't remember distinctly that one particular point, but the general line of the shoulder is five feet wide, and our measurements were from the concrete right to the various points, and I am satisfied that the regular paving, five foot gravel width, does not extend all along as far as the pole. There may be some dirt. There is no fence, or anything like that, but it is not the regular gravel. 20

Q. There is no well-defined shoulder there, is there? A. There is a defined shoulder, but irregular line. It is dirt on off the side, of course, but it is not good gravel all the way back beyond the pole. The pole sits back beyond the curb line. 30

Q. Isn't it a fact at this particular corner here it goes around like that, and the road goes right close to the telephone pole? A. Within two or three feet of it, yes, sir, as shown on there.

Q. So that when you say the telegraph pole is three feet from the edge of the dirt shoulder, that is not accurate, is it? A. To the center of the pole, yes, sir. 40

J. Owen Carter—Cross.

Q. To the center of the pole? A. That is where my measurements were made.

Q. Well, we will say from the outside of the pole, then. From the outside of the pole to the dirt shoulder is there any distance? A. There is dirt in there, but not gravel shoulder.

10 Q. So that really the dirt— A. There is dirt on up to the pole.

Q. So really the dirt is part of the gravel shoulder? A. No, sir, dirt isn't gravel.

Q. Well, we will put it this way. So that the dirt is really part of the shoulder of the road? A. The road was only built with a five foot shoulder. There is a little dirt lying between the regular road as built and on up to the pole. In fact, dirt the other side of the pole, I guess.

20 Q. But when you were up there to make this, did you not see it to be a fact that this portion which you have just described to be three feet was used by vehicles in making those turns? A. Yes, sir. Not the whole three feet, but part of it. Three feet would take in the center of the pole.

Q. Now, how great of a distance which you have just measured and approximated to be three feet is used as part of the highway? A. The measurements I gave are only three feet from the edge of the road as built, five foot gravel shoulder to the center of the pole. A car could not use over a foot and a half of that or they would be knocking the pole.

30 Q. So that we can start out then with the supposition that at least a foot and a half of this three feet is used by traffic? A. I wouldn't say it is used by traffic. It could be, without hitting the pole.

40 Q. If they went beyond that foot and a half,

J. Owen Carter—Cross.

they would strike the pole, in your judgment? A. Right.

Q. So that it really means this, that that pole is about as far out on the corner as it possibly could be? A. Just back of the curb line.

Q. Now, as an automobile is coming from this side of the map, which direction would that be, west? A. No, it is northeast. 10

Q. Well, say the east. An automobile coming from the east on the Williamstown Road, traveling to the west— would there or would there not be a stop sign on the corner which he first reaches before he gets to the Delsea Drive? A. You mean is there one or was there one at that date?

Q. Yes. A. Yes, sir, there was one there on February 7, 1931.

Q. Now, that stop sign is located how far east of Delsea Drive? A. Center of the road? 20

Q. No, we will take the edge of the dirt shoulder. A. Fifteen feet.

Q. Fifteen feet? A. Fifteen feet.

Q. How did you measure that, dropping a perpendicular across? A. Dropping the perpendicular from the edge of the concrete, which it would be five more feet over what I gave.

Q. If you were to extend out the northerly edge of the dirt shoulder of the Williamstown Road approaching Delsea Drive, and if you were to measure from a point where that strikes the easterly side of Delsea Drive, how far back would it be from that point? A. Twenty-two feet. 30

Q. Now, if you were to drop a perpendicular from the northeast corner of the intersection of the Williamstown Road and the Delsea Drive to the other side of the street, how far would that corner, that is, the northeast corner, be further 40

J. Owen Carter—Cross.

north than the northeast corner of Delsea Drive and Williamstown Road? I want to find out how far further north the northeast corner of the Williamstown-Porchtown Road is— A. You mean north, or up and down the road?

10 Q. Well, if north is up, up the road from the northwest corner. Do you follow me? A. No. I think I know what you mean.

Q. Well, I will ask that question over again, because I want to get it accurately. It is quite obvious from your map that the one corner is further north than the other. A. Yes.

20 Q. I want to find out how far further north the one is than the other. A. I want to answer you yes or no, and the only way I can definitely give the distance is by being more explicit than your question. If you will permit me to answer it in that way—

Q. You mean if I were to ask the question more specifically, you could understand it? A. I don't want to give you the wrong distance, and the corner is a big thing, when you are considering the circle and I mean the range of two lines carried out. If you will point to me what you call the corner, I will give you the measurement.

30 Q. Well, I am not an engineer. A. Here is what I mean. This is what I call the corner. This range and this range carried down constitutes this corner. A while ago you spoke of the pole and the whole thing as the corner.

Q. The corner which constitutes the northeast corner. A. Formed by the intersection of the north side of this road and the east side of this road?

40 Q. That is right. A. The northeast corner is thirty feet northerly along the State highway than the northwest corner.

J. Owen Carter—Cross.

Q. Now, if you were to drop a perpendicular from that corner which you have marked to be the northeast corner, so that the perpendicular would strike the westerly side of Delsea Drive, would it strike a point in between the trees or would it strike a point further north of the trees? A. It would strike a point between the trees.

10

Q. All right. Will you mark that on the map?

A. Drop a perpendicular across there?

Q. Yes, sir. A. (Witness marks map.)

Q. Now, what is the distance from that point where that line, that perpendicular line meets the westerly side of Delsea Drive to the second tree which you designate to be the twenty-four inch tree? A. Between twelve and thirteen feet to the center of the tree.

20

(At this point, the further hearing of the cause was adjourned until 1:30 o'clock P. M.)

Trial of the cause resumed at 1:30 o'clock P. M., pursuant to adjournment, in the presence of counsel for the respective parties.

J. OWEN CARTER, resumed.

30

Cross-examination (continued) by Mr. Sorenson:

Q. So that, Mr. Carter, we can understand your testimony, the northeast corner is further north than the northwest corner? A. Right, sir.

Q. And the northeast corner is thirty feet further north than the northwest corner? A. Thirty feet northerly along the road. Not strictly north, but what we are calling northerly.

40

J. Owen Carter—Cross.

Q. Understanding that the Delsea Drive runs north and south? A. Right.

Q. So when I asked you the question, "The north-east corner is thirty feet further north than the northwest corner?" that is correct? A. Yes, sir.

10 Q. Now, in approximating this distance of thirty feet, I understand that you extended the dirt edge of the shoulder until they met. Now, on the north-east corner, how far back is the edge of the dirt shoulder from the point which you made where these two dirt shoulders intersect? A. Ten feet.

Q. Will you indicate on the map what you mean by that? A. I carried this range and this range until they intersected, or here, and it is ten feet distant from here, a rounded drop. The distance from this range to this range is ten feet, back to
20 here.

Q. In other words, the actual road goes back ten feet beyond that point? A. That is right.

Q. Now, would you mind giving us the same measurement on the northwest corner, as to how far back the road is from the point where those two lines would intersect? A. The gravel is rounded off on the northwest corner to the extent of five feet back from the intersection of the two edges.

30 Q. Now, would you mind telling us what the width of the Williamstown Road is? A. It isn't well defined.

Q. Well, say approximately, east of Delsea Drive? A. Sixteen feet of travelled area.

Q. Now, is that a road which is built with a crown in the road so that it tapers down toward each side, or is it one which is comparatively level? A. It is only a dirt road. It is crowned in the center to some extent.

40 Q. Can you tell us this: Is it or is it not a fact

J. Owen Carter—Cross.

that the edge of the usable portion of the northeast corner is just about even with the second tree, which you call the twenty-four inch tree? A. It is hard for me to tell just what you mean by the northeast corner. The whole area constitutes the corner.

Q. I mean the usable portion of that intersection in the region of that corner. A. I would say it was directly opposite a point midway between the two maple trees, midway between your two maple trees, and there is your area you are speaking of (indicating.) 10

Q. Coming from the easterly direction along the Williamstown Road approaching Delsea Drive, is it down grade, up grade, or what character of grade is it, or is it a series of rolling short hills? A. Practically level. It is a little lower— approximately three hundred feet east of Delsea Drive it is a little lower than it is at Delsea Drive, and then it starts to rise as it goes nearer Williamstown, as near as I can remember. I don't take levels. Here it is down and over about here it starts to rise. 20

Q. Is it not a fact that about 100 to 150 feet back from Delsea Drive there is a rise in the road, which brings that rise above the level of the Delsea Drive? A. I didn't take any levels. As I remember it, it is approximately level, the whole road is approximately level. A little depression about three or four hundred feet back, I do recall. It may be a foot higher two hundred feet back, but I think not more than that. 30

Q. Now, will you tell us at what angle the Williamstown Road intersects the Delsea Drive, approximately? A. Approximately sixty degrees, here, the acute angle of approximately sixty degrees. 40

J. Owen Carter—Cross.

Mr. Sorenson: That is all.

By Mr. Avis:

Q. Mr. Carter, will you give us the distance from the intersection of the center lines of these two roads to that portion marked on your map as "Area broken off and bent over?"

10

Mr. Sorenson: Well, now, I object to that, if the Court please. I certainly object to any measurements taken from any given point to another region which is generalized and marked as area where there is broken brush.

Mr. Avis: I thought I could use that at this time. I will call other witnesses to the effect that the conditions are the same.

20

Mr. Sorenson: I object to it.

The Court: I will sustain the objection to it, if there is objection to it because it is out of order.

Mr. Avis: All right. Mr. Carter, you will come back when I want you. That is all.

FRANK PARAVE, sworn.

30

Mr. Avis: I would like to offer at this time certified copies of the letters appointing Mr. Parave as administrator ad prosequendum of the estate of Joseph Parave, deceased, and Peter Parave, deceased.

(Said papers marked Exhibits P-1 and P-2.)

Direct-examination by Mr. Avis:

Q. Mr. Parave, where do you live? A. Why,
40 about three miles east of Malaga, on a farm.

Frank Parave—Direct.

Q. Upon what road? A. On the Williamstown-Marshall Road, they call it, Main and Marshall.

Q. And referring to that road, where does that road run from and to? A. Which road, Marshall Road?

Q. The road that you live on. A. Why, it goes in— The main road goes to Vineland and Marshall road goes into Malaga. 10

Q. Whereabouts in Malaga? A. Goes right near where the postoffice is, right where Malaga Pike is, the Delsea Drive.

Q. Now, do you know where the road is that leads from near John Spatafore's garage? A. Yes, sir.

Q. On Delsea Drive? A. Yes, sir.

Q. That runs eastwardly. How close does that go to your house? A. That is about three miles from the State Road to my house. 20

Q. I know, but how far is your house located from that road? A. Three miles.

Q. Three miles; your house is three miles from what? A. From Delsea Drive.

Q. Yes, but you don't just understand me. There is a road that goes from Spatafore's garage— what is the name of that road? A. That is Marshall Road. 30

Q. Marshall Road? A. Yes, sir.

Q. Then you live about the junction of those two roads, where those two roads come together? A. Yes, sir.

Q. Oh, I see; how long have you lived there, Mr. Parave? A. About twenty-eight years.

Q. How old are you? A. Fifty-two, coming fifty-three. Fifty-two years old.

Q. You were the father of Peter Parave and Joseph Parave? A. Yes, sir. 40

Frank Parave—Direct.

Q. And on October 29th, 1930, how old was Peter Parave? A. Pete Parave would be thirty years old the seventh of November.

Q. He would have been thirty the seventh of November? A. Yes, sir.

10 Q. How about the other boy? A. The other boy would have been nineteen the fifteenth of November.

Q. And what other children have you, Mr. Parave, beside these two boys? A. I got four more boys and four more girls.

Q. Will you just start at the oldest and give us the names and ages, please? A. The oldest one died— that is Peter.

Q. He was the oldest? A. He was the oldest.

20 Q. What was the next one? A. I got a girl twenty-seven years old. Her name is Mildred.

Q. Mildred? A. Yes, sir.

Q. Who is next?

The Court: Mildred is how old?

The Witness: Twenty-seven.

A. The next is Frank, Junior.

Q. He is how old? A. Twenty-five.

Q. Yes? A. The next one is Lucy.

30 Q. Lucy? A. Yes, sir.

Q. How old is she? A. Twenty-three. The next was James, twenty-one. Next was Lena, about eighteen. Next was Julia.

Q. Julia? A. Yes, sir. About sixteen. Next one was William, thirteen. Next was Louis, nine. That makes eight, doesn't it?

40 Q. Is that all of them? Let's see— of course, there was Joseph, the boy that was killed. A. That is right. I didn't put him in. He was nineteen.

Frank Parave—Direct.

Q. Mr. Parave, on October 29th, 1930, of last year, were you home? A. Not until eight o'clock.

Q. You came home at eight o'clock? A. Yes, sir.

The Court: Mr. Avis, just a moment. Did I understand there was a Louis, nine?

Mr. Avis: Yes, sir.

The Court: Then there are eight beside the two who were killed— is that right? 10

Mr. Aivs: That is right.

The Court: All right.

Q. You say you came home at eight o'clock? A. Yes, sir.

Q. And at that time, do you know whether or not the two boys, Peter and Joseph, were at home?

A. No, they weren't home when I got home. 20

Q. They weren't home when you got there? A. No, sir.

Q. Did you see either one of them later on that evening? A. After, in the hospital, yes.

Q. What hospital was that? A. Newcomb Hospital, in Vineland.

Q. Who did you go to the hospital with?

Mr. Sorenson: Objected to as irrelevant.

Mr. Avis: All right, never mind. 30

Q. What time did you get to the hospital? A. I must have got there about ten minutes of nine, or around nine o'clock.

Q. Did you see either or both of the boys at that time? A. I asked for the boys and they told me—

Mr. Sorenson: I object to any statement made about the boys.

The Court: Sustained.

Frank Parave—Direct.

Q. All right; did you see either one of the boys?

A. Yes, sir.

Q. Which one did you see? A. I seen Peter.

Q. He was the older? A. He was the older.

Q. Where was he when you saw him? A. He was in the bed.

10 Q. Do you know whether or not at that time he was conscious? A. No, he knew me and the mother.

Q. You say he did know you? A. Yes, sir.

Q. How long did you stay there? A. About an hour.

Q. And who else beside you and Peter? A. My wife.

Q. Your wife? A. Yes, sir.

Q. What is her name? A. Mary.

20 Q. I forgot to ask you, Mr. Parave, but I suppose she lives with you, does she? A. Certainly, sure.

Q. And was living with you at that time in your home? A. Yes, sir.

Q. Is she the mother of all these children? A. Yes, sir.

Q. Now, you say you stayed there about an hour? A. Yes, sir.

30 Q. Then did you leave? A. Yes, sir. Well, when Peter died, then I left.

Q. Did the boy die while you were there? A. Yes, sir.

Q. How about the other boy? A. The other boy was dead when I got there.

Q. Mr. Parave, what is your business? A. Produce buyer.

Q. Produce buyer? A. Yes, sir.

40 Q. And where is your business? A. Malaga.

Frank Parave—Direct.

Q. How long have you been in that business? A. Twenty-three years.

Q. Now, who owns the property where you live? A. I do.

Mr. Sorenson: Objected to as irrelevant.

Mr. Avis: I think it is going to be relevant.

10

Mr. Sorenson: Withdraw it.

The Court: All right.

(Question and answer repeated).

Q. You do; how big a place is it? A. Sixty-five acres.

Q. What kind of land is it? By that I mean is it all farm land or some scrub, or what? A. No, we got about ten acres of woods.

Q. How is this land used? A. All in truck. 20

Q. Used for the farm, in truck? A. In truck, yes, sir.

Q. Directing your attention to the year 1930, who operated this farm? A. Peter and Joe Parave.

Q. Now, as I recall it, you have two other boys, one James, and Frank, Junior? A. Yes, sir.

Q. During the year 1930, did they or did they not make their home with you? A. No, sir. 30

Q. Where did they live during that time? A. Frank lived in Vineland. He is married.

Q. He is married? A. Yes, sir.

Q. Where did the other boy live? A. The other boy, he worked for commission houses in New York, and he was all over the country, Pennsylvania and New York. At the time, he was in Long Island, River Head, Long Island.

Mr. Sorenson: Is that James? 40

The Witness: James, yes, sir.

Frank Parave—Direct.

Q. Now, at the time of October 29th, 1930, Frank and James were not living at your house? A. No, sir.

Q. Now, were the other children you have mentioned, Mildred, Lucy, Lena, Julia, William and Louis, living there? A. All home.

10 Q. Who else, if anyone, lived there besides you and the six children you have just mentioned? A. I got my mother and my wife's mother.

Q. Your mother and your wife's mother? A. Yes, sir.

Q. Mr. Parave, how long had these two boys been operating your farm? A. Always, they always stayed home, they never left home.

20 Q. Yes, but had they always operated the farm for you? A. The big boys always helped on the farm, yes; they done most of it, too.

Q. Was that from the time they were able to do that kind of work? A. Yes, he started when he was six or seven years old and he ran the team for me when he was seven years old.

Q. As he got older, was there any change in what he did on the farm? A. He has always worked on the farm, always.

30 Q. Was there anyone in addition to the boys who worked on this farm for you? A. We used to hire help when we need it.

Q. Did you yourself work on the farm? A. No, I didn't work on the farm, only once in a while to help them out, them two, and then I go away.

Q. Where did you say your business was? A. Business? Produce buyer.

Q. Where did you say your place of business was, if you did say it? A. Malaga.

40 Q. Where in Malaga, Mr. Parave? A. Right at the station.

Frank Parave—Direct.

Q. At the station? A. Right at the station, yes, sir.

Q. Mr. Parave, did you or did you not pay these boys for the work they did for you on the farm?

A. No, I never give them regular wages.

Q. No regular wages? A. No, sir.

Q. What, if any, arrangement did you have with them with relation to compensation for what they did? A. No arrangements at all. They just worked on the place and when they want a few pennies, I give it to them. 10

Q. Do you know how much money you gave to them on a weekly basis? A. Oh, it averaged \$5.00 a week.

Mr. Sorenson: I certainly object to that. I think that is irrelevant, what he gave these boys on a weekly basis. The question isn't what he gave the boys; the question is what the boys gave him. 20

The Court: It is a question of what the boys gave him less what he gave them, isn't it? It would be the natural pecuniary value of these boys.

Mr. Avis: It is our contention that these boys received less than they would otherwise be entitled to, and therefore the father received the benefit of the difference between what their services were worth and what they were actually paid. 30

The Court: I will overrule the objection. (Exception noted for the defendant).

Mr. Avis: Will you repeat the question, please?

(Question and answer repeated).

Q. Were either of these boys married? A. No, sir. 40

Frank Parave—Direct.

Q. Mr. Parave, what kind of boys were they? A. Well, I thought they were awfully good boys.

Q. Won't you just tell the Court and jury how they spent their time? A. Why, they was always home. If we had any cars or trucks wrong with them, the boys done all the repairs. It always seemed things would go straight; they had everything up to date.

Q. Did they ever go away from home? A. Never went away from home.

Q. What would they do, if anything, in the winter time when the work on the farm was over? A. Well, they never done much, but this year they was going to do something.

Q. Of course, you can't tell us about that now. What did they do, if anything, for amusement? A. Amusement?

Q. Yes. A. They used to go out once in a while, go to a moving picture or go down to Malaga to Frank's garage and spend a few hours there, that is, in night time, at night time. There is always something to do, chop wood for the stove or always something to do on a big farm.

Q. What did they do in the fall of the year? A. Just stayed home. We had stuff there until way late in November and December. Then when the gunning season come in, they go hunt a little.

Q. Mr. Parave, who operates your farm now? A. I got the other two boys working on the place.

Q. The other two boys; and their names are what? A. They are working on the place now.

Q. What are their names? A. James and Frank.

Q. And how much do you pay them, Mr. Parave?

Mr. Sorenson: I object to that as irrelevant.

Mr. Avis: It is my contention, if your

Frank Parave—Direct.

Honor please, that I can show in this way what damages he sustained by reason of the death of the two boys.

Mr. Sorenson: The measure of damage is what took place before this took place, before the boys met their deaths. It is not what followed. The measure of damages must be established by facts which are proven to be in existence before these boys unfortunately met their deaths. 10

Mr. Avis: That may be so, so far as the time when the damages began to run. Naturally, the damages begin to run following the death, but we can show what those damages are by what happened subsequently. That is necessarily so, as I see it. In other words, if this man is put to a greater expense now to operate the farm than he was then, I say we are entitled to show what the expense is as an element of damage. 20

Mr. Sorenson: That is not the measure of damages in a case of this kind.

The Court: I will overrule the objection.

(Exception noted for the defendant).

(Question repeated).

Mr. Sorenson: Of course, you will allow me the same exception to that question now? 30

The Court: Yes.

(Exception noted for the defendant).

A. \$10.00 a week board, and one of them has got his wife and I am giving her board, too, keeping her. They get all gas and oil free.

The Court: \$10.00 each, or \$10.00 to the both of them? 40

Frank Parave—Direct.

The Witness: \$10.00 each.

Q. You spoke of these boys repairing trucks, or something of that kind. A. Yes, sir.

Q. Were these boys able and did they know how to repair trucks? A. I guess they did, they was regular mechanics. They was raised and born on the place. They knew how to do everything on the place.

Q. What other machinery did you have on the place besides the truck or trucks? A. Why, we got cars and got a little tractor, a big tractor, a truck.

Q. Who made repairs, if there were any necessary to be made to this truck or tractor? A. They made them all the time; we just bought the parts.

Q. Mr. Parave, do you have any other men working now? A. At present?

Q. Yes. A. Yes, we got a man paying him by the day, yes, so much an hour.

Q. Did you have any men working for you in addition to the two boys who were killed last year?

Mr. Sorenson: I object to that on the ground it has already been answered by Mr. Parave in a former question, where he said he hired men.

Mr. Avis: I am talking about last year now. If your Honor please, I still think I have a right to show what wages were paid to men who did the same kind of work, who were brought in from outside, who had no interest in the farm, my thought being any outside people who worked there, did the same kind of work, fix the scale that these boys should have been paid.

Mr. Sorenson: I object to that method of

Frank Parave—Direct.

proving damages, on the ground that this is not to be proved along the lines of a quantum meruit. It is to be guided by the facts in existence before that time.

The Court: That would be, wouldn't it? Wouldn't that be evidence of the value of the services of these boys? 10

Mr. Sorenson: But the test is what the man has lost.

The Court: Exactly, he has lost the value of the services, at least, that is one of the elements.

Mr. Sorenson: And the proof is that now two other boys are home doing the work.

The Court: That is a matter of argument, of course, to the jury. That wouldn't affect the question of the admissibility. I will permit the question. 20

(Exception noted for the defendant).

(Question repeated).

A. Yes, sir.

Q. Did you have any other help last year, 1930?

A. Just when we needed.

Q. And going back to previous years, have you ever hired men to help on the farm? A. Just what we needed, just the same. 30

Q. What I am getting at— is it a fact or not a fact that each year you hired men? A. Well, yes, when we need them that day.

Q. Did you need them each year sometime during the year? A. Oh, yes, we had, yes.

Q. About when would you hire these men? A. Well, it is according to what kind of crop we got.

Q. They would help pick the crop? A. Pick the crop, yes. 40

Q. And how much—referring to the present,

Frank Parave—Direct.

right now, this year—how much do you pay these men that you have to hire, in addition to the boys who are there now?

Mr. Sorenson: I object to that on the ground that is irrelevant.

10 Mr. Avis: I won't press that question.
The Court: All right.

Q. How much did you pay your help last year that you had to hire outside of the two boys?

Mr. Sorenson: I object to that on the ground that is also irrelevant.

The Court: I overrule the objection.
(Exception noted for the defendant.)
(Question repeated).

20 A. Why, we paid quite a little, but I can't remember now.

Q. I don't mean the amount. How much of a rate, how much an hour, so much a day, so much a week? A. Yes, we paid thirty-five cents an hour first.

Q. Do you know how many hours a day they would work?

30 Mr. Sorenson: I object to this line of testimony, your Honor. I stress my objection on the ground it is not the proper way by which to prove a loss which is of a pecuniary character in a case of this kind. Now, there is no testimony that this man, as a result of this unfortunate thing, has been deprived of hiring men. There is no testimony there is any difference now than
40 there was before the accident as to the hiring of the men. He hired men before the

Frank Parave—Direct.

accident and he hires them now. That certainly cannot be held to be a loss.

The Court: It cannot be an element of loss, but I take it that Mr. Avis' reason for making this offer is to show what is the reasonable value of a farm hand—

Mr. Avis: That is entirely my purpose. 10

The Court: —at the time this father was deprived of the services of these two boys. I will overrule the objection.

(Exception noted for the defendant).

(Question repeated).

A. Eight to nine hours a day.

Q. How many days a week? A. Five days and a half a week.

Q. And what kind of work would they do on your farm? A. Most of them pick. We have pickles, maybe raise pickles. We got ten acres pickles. When they come in, we got to hire a little help. 20

Q. Would anybody else work there besides the men that you hired? A. My wife, she helps some.

Q. I am referring now to these two boys who were killed. Would they or would they not also help in that kind of work? A. Sure, sure, they done most of the work. 30

Q. They did most of it? A. Sure.

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. As I understand it, Mr. Parave, when the picking season was on, so to speak, your wife and the two boys and the hired men would go out and do the picking? A. Yes, sir. 40

Frank Parave—Cross.

Q. Would you do any yourself? A. No, sir, I have no time.

Q. Would any of your other nine children do any? A. Sometimes.

Q. Which ones of the nine children would help you out? A. Why, the two big ones, they wasn't home, and sometimes the little children do maybe an hour or two hours.

Q. They practically all helped you, didn't they? A. Just the ones that was able, sure.

Q. Do you remember that you needed any help to pitch in, and if you needed any more help you would hire men— is that the way you worked it? A. Yes, sir.

Q. After you lost Peter and Joseph, Frank Junior and James came home? A. Yes, sir.

Q. And they worked the farm for you, didn't they? A. Yes, sir.

Q. Is Frank married? A. Yes, sir.

Q. Did Frank bring his wife home with him? A. Yes, sir.

Q. So that after you lost Joseph and Peter, Frank come home with his wife and James came home? A. Yes, sir.

Q. Now, has Frank, Junior, any children? A. No, sir.

Q. After that, Frank Junior and James worked your farm? A. Yes, sir.

Q. In return for which you gave them \$10.00 a week? A. And board.

Q. And board? A. Yes, sir.

Q. Now, the way it worked out before they came home to you and while Joseph and Peter were living was that you gave those boys their board and a room and about \$5.00 a week in spending money? A. Yes, sir.

Frank Parave—Cross.

Q. So that so far as the operation of the farm is concerned at the present time, it is approximately \$5.00 more a week to you? A. I know I am always broke; I got no money to keep these two boys.

Mr. Sorensen: I move to strike that out; it is not responsive.

The Court: I didn't hear it. 10

Mr. Avis: I will consent that be stricken out.

The Court: All right; I didn't understand him.

Q. So that now it costs you \$5.00 more? A. All right; yes.

Q. You work it out, according to figures. A. That is \$10.00 more.

Q. It was board and room to the boys? A. Yes. 20

Q. And \$5.00, about, each in spending money— isn't that so? A. No, not each. About \$5.00 between the two of them, the other two boys.

Q. Before, when your counsel asked you, didn't you say \$5.00 a week each? A. \$5.00 a week. I mean the two of them.

Q. Each would get \$2.50? A. They make some little money extra.

Q. How old is Mrs. Parave? A. Fifty. 30

Q. Fifty? A. Yes, sir.

Q. Does Lucy go to school? A. No, sir, she is a hair dresser.

Q. And is Mildred married? A. No, sir.

Q. Where does she live? A. She is home.

Q. She lives home now? A. She ain't very strong.

Q. Lena lives home? A. Yes, sir.

Q. What does she do? A. She keeps house, I guess. 40

Frank Parave—Cross.

Q. Does Julia go to school? A. She just graduated now.

Q. And William? A. He just graduated.

Q. He graduated, too? And I suppose Louis is still in school? A. Yes, sir.

10 Q. Does Lucy live at home? A. She comes home just on Saturday night and goes away about Monday night.

Q. Where does she live the rest of the week? A. Camden.

Q. In Camden; and does she pay you board? A. No, sir.

The Court: Will you talk a little louder.

Mr. Parave; I can't hear you.

The Witness: All right.

20 Q. Now, have James and Frank been helping you along ever since the time they came home? A. Yes, sir.

Q. And have they been operating your farm implements and your car and all that? A. Yes, sir.

Q. Of course, they keep them in repair, don't they? A. Yes, I guess they do, yes.

Mr. Sorenson: I think that is all.

By Mr. Avis:

30 Q. Mr. Parave, one question I wanted to ask you. Did these boys own any property of any kind?

Mr. Sorenson: I object to that as irrelevant.

Mr. Avis: I was served with interrogatories, and that is one of the questions they asked me. I think I have a right to show it.

40 Mr. Sorenson: I object to that on the

Frank Parave—Cross.

ground it is immaterial, irrelevant and incompetent, and has no bearing at all as to the solution of the problem presented here in this trial.

Mr. Avis: All right, I won't insist on it. I am surprised at the objection, but it doesn't make any difference.

10

The Court: All right.

Q. How long had James and Frank been away from the farm, Mr. Parave, at the time these boys were killed?

Mr. Sorenson: I object to that as irrelevant.

Mr. Avis: I might say that this is an action for the benefit of the next of kin, and I think I have a right to show who was the family and the condition of the family at the time of the accident.

20

The Court: Overrule the objection.

(Exception noted for the defendant).

A. Frank has been married for two years, two years and a half, I guess.

Q. How about the other boy? A. And he kept house. The other boy has always worked outside; he didn't work the farm very much. First he worked a tailor shop in Vineland and lived home, but he didn't pay no board, and then he got a job with the commission house and he worked on the road.

30

Mr. Sorenson: Is that James?

The Witness: James, yes, sir.

Q. Mr. Parave, you said something about the boys made extra money? A. Yes, sir.

40

Frank Parave—Cross.

Q. What extra money did they make, so far as you know?

Mr. Sorenson: I object to that, on the ground that that certainly is not a benefit accruing to the father before this took place.

10

Mr. Avis: My intent, if your Honor please, is to show that these boys, although they made very little money from their father, they did make money in other ways or supported themselves.

The Court: I will overrule the objection. (Exception noted for the defendant).

20

A. We got the tractor and our neighbor ain't got no tractor, and they done all plowing for our neighbors. And I buy peppers down in Bridgeton and places and I used to send after them with my truck and give the boys five cents a package to get them, and I used to let them keep the money, because if I had to hire to do it, I pay that much.

Q. Any money they made with the use of the tractor, did they pay that to you? A. No, sir.

30

Q. Did they ever do any other work that you know of, in addition to that kind of work? A. I always give them something with the truck and the tractor there, and they always kept the money, and the big boy had a bank account when he was killed.

Q. Mr. Parave, did or did not the boys get any share in the proceeds of the sale of the produce raised on the farm? A. No, they didn't get it.

Q. Who got that? A. I got it all.

By Mr. Sorenson:

40

Q. Mr. Parave, when would the boys do this

Frank Parave—Cross.

extra work for the neighbors? A. In the spring of the year, plowing.

Q. Wouldn't they plow your own farm, too? A. Yes, they would plow my own farm, yes.

Q. Wouldn't that take up the greater part of their time? A. They could plow. A tractor can plow quite a few acres.

10

Q. How many times a week do you believe they would go out and use your tractor? A. Oh, I don't know.

Q. Have you any idea? A. I know one neighbor two years ago gave them \$75.00, and the same year they died he gave them \$52.00.

Q. How many neighbors would they work for, do you know? A. About two or three.

Q. Now, did those boys— How about their clothing? Would you buy their clothing for them? A. Sometimes they wanted a \$20.00 bill, sure, I give it to them. If they wanted to buy a good suit, I give it to them. Sometimes they had the money and didn't ask for it.

20

Q. So sometimes you bought clothing and sometimes you didn't? A. Yes, sir.

Q. Did they have an automobile? A. Yes, sir, I bought them the automobile.

Q. Did you buy that for them? A. Yes, sir.

30

Q. That was for both boys, wasn't it? A. Yes, sir.

Mr. Sorenson: I think that is all.

By Mr. Avis:

Q. In whose name was the automobile, do you know? A. Peter.

Mr. Sorenson: I object to that on the ground it is an improper way to prove the ownership of an automobile.

40

Frank Parave—Cross.

Mr. Avis: If your Honor please, it seems to me the question was raised about buying the car for them, and I have a right to show whose car it was. It is a question brought out by him.

10 The Court: If the witness knows, he may so testify.

(Question repeated.)

A. Peter.

Mr. Avis: That is all.

JOHN SPATAFORE, sworn.

Direct-examination by Mr. Avis:

20 Q. Mr. Spatafore, where do you live? A. Malaga.

Q. And what is your business? A. Automobile mechanic. I operate a garage there.

Q. You operate a garage there. Mr. Spatafore, did you go to the intersection of the Delsea Drive and Williamstown Road on the night of October 29th, 1930? A. To get the car?

30 Q. Well, for any purpose? Let me put it this way: Did you know that an accident occurred that night?

Mr. Sorenson: I object to that on the ground that is based on hearsay.

A. Yes.

Mr. Sorenson: And calling for a conclusion. I move to strike out the answer.

The Court: All right, it may be.

40 Q. Did you go to the Delsea Drive and Williams-

John Spatafore—Direct.

town Road that night? A. I was told to go to an accident down there.

Q. You went there, did you? What time was that, do you know, when you got there? A. I got there around quarter of nine, by the time I got started.

Q. Was it quarter of nine you left or quarter of nine when you got there? A. Well, about the time I left. 10

Q. How far is that from where your garage is located? A. A little bit better than a mile.

Q. Did you go right there or did you stop somewhere first? A. Right there.

Q. Now, when you got there, what did you see? A. Seen the car up against the tree. The back end of it was up against the tree and the front end of it facing south. 20

Q. What kind of car was that? A. Ford roadster.

Q. Now, can you describe or tell what tree that was? A. Oak tree, it was a big oak tree.

Q. Have you any recollection of whether trees were there or not? A. Sure, the trees were there.

Q. Referring to the map—

Mr. Avis: I guess I didn't offer that in evidence, did I? I would like to offer it in evidence. 30

Mr. Sorenson: I object to the map, due to that one particular point that I mentioned. If it wasn't for that, I would have no objection to the map.

The Court: I will overrule the objection. The map may be marked.

(Exception noted for defendant).

(Said map marked Exhibit P-3.) 40

John Spatafore—Direct.

10 Q. Mr. Spatafore, will you stand down here a moment, please? Do you recognize this plan or map as showing the intersection of those two roads or streets? For your benefit, I might say that this is the Delsea Drive and this is the cross-road, Williamstown lying in that direction, Malaga being down here to the foot of the map. A. I found the car facing Malaga with the back part of it up against the maple tree.

Q. Looking at the map, can you tell us which tree it was? A. This tree here (indicating).

Q. The tree marked "twenty-four inch maple?" A. Yes.

Q. You say the back of the Ford was against that tree? A. Yes, facing the second maple tree.

20 Q. You said facing south? A. Yes, facing south.

Q. Did you see any other car or automobiles there beside the Ford? A. Seen a bus over on the left when I got there.

Q. Could you indicate on the map or plan where the bus was located when you first saw it?

30 Mr. Sorenson: I object to that on the ground it is too remote. There is no given time as to when anything occurred. All we have in the case is that this man left Malaga at 8:45. Whether or not it is remote as to anything which occurred, we have nothing at all in the case. I certainly believe there ought to be a basis predicated so as to show that this man did arrive there in a reasonable time, to show what he is going to testify now is in fact a condition which existed immediately after whatever occurred.

40

John Spatafore—Direct.

Mr. Avis: I think it will be connected up without question, if your Honor please. I cannot call all the witnesses at one time, that is sure. I submit to your Honor, we will show that it was within twenty minutes of the time the accident occurred and that the position of the cars was the same as they were right after the collision. 10

The Court: Your objection only goes to the order of proof, Mr. Sorenson?

Mr. Sorenson: No, it doesn't; it goes to the fact that he is asking this man to portray a condition some time after 8:45 in the evening, without stating whether or not anything had occurred before and if it did, how long before this man arrived there. I think before this man should be permitted to testify to any conditions which he say, there should be at least some information so as to help the Court and jury determine at the present time whether or not he arrived within a reasonable time. It may very well be that counsel makes the statement now, but whether or not the proof at that particular time when it is offered will corroborate the statement, we don't know. 20 30

Mr. Avis: I will prove it, all right.

The Court: I will overrule the objection. (Exception noted for the defendant).

Q. Now, can you show us? A. Where the bus was?

Q. Yes. A. The bus was on the left hand side of the road facing north, on the other side of the maple tree. 40

John Spatafore—Direct.

Mr. Sorenson: Will you mark it, if you don't mind?

Q. Do you know how far it was from the maple tree? A. I didn't measure that off.

Q. Which way was the bus headed? A. The bus was headed north, but it was more toward the west, between north and west.

Q. Did you notice anything about the bus?

Mr. Sorenson: Well, I object to that for the same reason, your Honor, because it is too remote. There is nothing at all to show how soon this was after the accident or anything.

The Court: Same ruling. Was the question answered?

20 Mr. Avis: No. I will withdraw that question.

The Court: All right.

Q. What did you do, Mr. Spatafore, in relation to this Ford? A. Well, when I got there, I was ordered to take it away. So I looked around for one of the tires and the rest of the things, trying to find all the things I could in order to take them along with me when I went. So I found one of the tires up from the maple tree, before getting to the maple tree, and the battery was broken, too, and that was on the right hand side facing south, and the glasses we got on that side. That is how I found it.

Q. You say all the right side— which side is that? A. On the right hand side facing south.

Q. Will you indicate on the map where, for instance, you found the tire and the battery?

John Spatafore—Direct.

Mr. Sorenson: I object to that for the same reason. We are getting evidence into this case which is not at the present time related to anything which occurred. We are having this man place objects along the highway, place vehicles along the highway without any proof—

10

The Court: It may be admitted, subject to being connected.

(Exception noted for the defendant.)

Q. Now, with relation to the telegraph pole, do you know where that was? A. Yes, that was on the opposite side.

Q. See, it is marked "telegraph pole?" A. Yes. Well, I found most of the stuff on the right hand side facing south, on this side, going back to the maple tree, just like a straight line from here over.

20

Q. Where did you take this Ford, if you did take it? A. Took it to my place.

Q. How long was it there? A. You mean how long is it there now?

Q. Is it still there? A. Still there.

Q. Do you yourself know whether any photographs were taken of this Ford? A. Yes, there was some photographs taken of it.

30

Q. Do you know when? A. The following day.

Q. The following day; and were you there at that time? A. Yes, sir.

Q. Do you know whether or not this Ford car was in the same condition the following day when the photographs were taken? A. Same condition.

Q. As it was when you got it from this place? A. Same condition.

Q. How often, Mr. Spatafore, do you go by this corner? A. Oh, several times a week.

40

John Spatafore—Direct.

Q. Do you know whether or not there has been any change in the conditions there from October 29th, 1930, to the present time? A. No changes.

Q. No changes of any kind; and you live, we will say, a mile away? A. Well, a little bit better than a mile; about a mile and a quarter.

10 Q. Did you ever see the photographs taken of this car? A. Yes, I have seen them.

Q. Do you know whether or not this photograph shows the Ford car as it was when you took it away from the scene of this collision? A. Yes, sir.

Q. Look at it and see. A. That is just the way it is; it is that way today.

Mr. Avis: I offer it.

20 Mr. Sorenson: May I cross-examine on this?

The Court: Yes.

Mr. Avis: Pardon me, Mr. Sorenson: before you do that, I am going to offer another one, and you might as well save time.

30 Q. I show you two other photographs, showing different views of the car, and ask you whether or not they depict the car as it was when you took it away from the corner of Williamstown Road and Delsea Drive on October 29th? A. That is the car.

Mr. Avis: I offer those two photographs.

Mr. Sorenson: I would like to cross-examine before they are admitted.

Cross-examination by Mr. Sorenson:

40 Q. Now, when you towed this machine away from the intersection back to your garage, how did you tow it, from the front end or from the rear

John Spatafore—Cross.

end? A. I picked it up in the center, facing my tow car west.

Q. As you did that, did you strap an iron cable around the car and then lift it? A. No, strapped it on the inside, on the drive shaft.

Q. You lifted it on the drive shaft? A. Yes, sir.

Q. So when you lifted it up— A. It wouldn't hurt anything. 10

Q. The broken portions of the automobile settled back? A. No, they didn't settle back.

Q. You mean to say that when you lifted this machine up— A. Hooked it in the center of the drive shaft.

Q. Yes, and you lifted it up? A. Lifted it right up.

Q. By that you mean all four wheels came off? A. Off of the ground. 20

Q. Then you towed it for a mile that way? A. Yes, sir.

Q. And you are trying to say that the conditions of that automobile didn't change any while you were doing that? A. I towed it very carefully.

Q. How about when you were preparing to engage the cable around the drive shaft? A. The whole works is broke out in the center. You could put the chain around and lift it up. 30

Q. What did you have to move to get to the drive shaft? A. Floor boards. They were already off.

Q. What else did you have to move? A. Nothing else, just hook it and lift it up.

Q. Did you left the battery out? A. No, the battery was already broken out.

Q. Now, which side of the automobile was up 40

John Spatafore—Cross.

against the second maple tree? A. The left hand side of it.

Q. That is, the driver's side? A. The rear end, sitting in the car.

Q. That is, the driver's side? A. The driver's side.

10 Q. Which way was the automobile facing then?
A. South.

Q. Are you sure then that the left hand side of the automobile was against the tree at the time you lifted it up? A. I am sure.

Q. Now, these photographs which counsel has asked you to look at— you say you have seen these before? A. No, I haven't seen them before. I know they took pictures of it, but I haven't seen it before, but that is the picture of the car I got
20 down there now.

Q. A picture as you see it there now? A. Damaged, that is, with the automobile damaged.

Q. Does that portray the condition of the automobile at the time you arrived there to tow it away? A. That is the condition it was.

Q. You say there have been no changes? A. No changes.

30 Mr. Sorenson: I suppose you are going to ask these be marked for identification?

Mr. Avis: I am going to offer them in evidence.

(Said photographs marked Exhibits P-4 for Identification, P-5 for Identification, and P-6 for Identification.)

Mr. Sorenson: At this time I have no further questions.

By Mr. Avis:

10 Q. Mr. Spatafore, I am not just clear as to the

John Spatafore—Cross.

position of this Ford with relation to this tree. Will you tell me again where that was? A. The left back end of it up against the tree facing south.

Q. You said the back of the Ford was against it and then you said the left side. You mean the left side of the rear, is that it? A. Left side of the rear.

Q. That is, on the driver's side? A. Driver's side.

Q. And it was facing south? A. Facing south.

Mr. Avis: That is all.

By Mr. Sorenson:

Q. By that you mean the automobile was headed in a southerly direction? A. Southerly direction.

Q. And with the left rear corner, the left rear corner against the tree? A. With the left rear corner against the tree.

Q. I asked you before what part of the automobile was against the tree and you said the left side. Now, which is it, the left side or— A. The left rear, on the driver's side.

Q. The driver's side, you said, didn't you? Was it the driver's side or— A. The driver's side, left rear.

Q. Would you say it was on the rear part of the automobile or was it on the side toward the rear? A. No, it was right on the back end of it on the left side, on the corner part of the back side, on the driver's side facing south.

Q. When you arrived there, were there any other people there? A. Yes, there was a lot of people, but I was so sorry I wasn't looking for the people.

10

20

30

40

George Karibjanian—Direct.

Q. Do you know whether or not these vehicles had been moved from the time— A. No.

Q. You don't know anything about that? A. No.

Mr. Sorenson: That is all.

Mr. Avis: That is all. I offer these in evidence.

10

(Said photographs marked respectively Exhibits P-4, P-5, and P-6.)

GEORGE KARIBJANIAN, sworn.

Direct-examination by Mr. Avis:

Q. What is your business? A. Photographer.

20 Q. Where do you live? A. Vineland.

Q. How long have you been a photographer? A. Twelve years.

Q. And at somebody's request, did you go to Malaga to take some photographs of a Ford automobile? A. On the 30th of October, 1930?

Q. Yes. A. Yes, sir.

Q. That was the date, the 30th of October? A. The 30th of October.

30 Q. Where did you find the car? A. The car I found in a garage in Malaga.

Q. Do you know whose garage it was? A. Yes, Spatafore, I think his name was.

Q. Was that the man who just testified? A. That is right.

Q. Did you take photographs of it? A. Yes, sir.

Q. Did you develop your own photographs? A. Yes, sir.

40 Q. Are these the pictures that you took? A. Yes, sir, they are.

George Karibjanian—Direct.

Q. What are they, the negatives that you have with you? A. Yes, I have the negatives.

Q. I don't care about them. They truly depict that car of which you took the photographs at that time? A. That is right.

Q. Did you take any other photographs on that day? A. Yes, I took a photograph of the oak tree where the automobile was supposed to be laying against after the accident. 10

Q. Wait a minute; you don't know that. I didn't want you to testify to that. You did take some photographs, did you? A. That is right.

Q. Is this one of the photographs that you took? A. Yes, sir.

Q. And does that show the Delsea Drive at the intersection of the Williamstown Road? A. Yes, sir. 20

Q. That was taken October 30th? A. October 30th.

Q. From what point was that photograph taken, can you tell us? A. That was taken from south looking north.

Q. South looking toward the north? A. Yes.

Mr. Avis: I offer that.

(Said photograph marked Exhibit P-7.) 30

Q. I show you another photograph and ask you if you took that picture? A. Yes, sir.

Q. What does that show? A. That shows the intersection of Delsea Drive and Williamstown Road.

Q. And you are looking in what direction on that picture? A. Looking north.

Mr. Avis: I offer that.

(Said photograph marked Exhibit P-8.) 40

George Karibjanian—Direct.

Q. Did you take this photograph? A. Yes, sir.

Q. What does that show? A. That is supposed to show the oak tree where the car is supposed to be laying against.

Q. Is that near the intersection? A. That is right at the corner.

10 Mr. Avis: I offer that.

(Said photograph marked Exhibit P-9.)

Q. Did you take that photograph? A. Yes, sir.

Q. You are looking in what direction in that picture? A. North.

Q. Where was the camera placed— from what point was the picture taken? A. The camera was placed right about two feet from the road.

20 Q. How close to the intersection? How close to the corner? A. It was about— I judge about four yards.

Q. How far from the corner? A. About four yards.

Q. Was that to the north or to the south? A. Looking north.

Mr. Avis: I offer that.

(Said photograph marked Exhibit P-10.)

30 Q. You took that photograph, did you? A. Yes, sir.

Q. Without telling me what anybody else told you, where did you take that photograph— what is it taken of? A. That is taken of the trees, broken down trees.

Q. How far are those broken down trees— or where are they with relation to this intersection? A. I would say about seventy-five to one hundred feet from the intersection, looking north.

40 Q. Looking toward Franklinville, would they

George Karibjanian—Cross.

be on your left or to your right? A. They would be on your left.

Mr. Avis. I offer it.

(Said photograph marked Exhibit P-11.)

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

10

Q. So as I gather it, then, Mr. Karibjanian, this photograph which is P-11 in evidence shows a condition of broken brush? A. That is right.

Q. Which in your judgment is about seventy-five to one hundred feet away from the corner? A. That is right.

Q. Now, when you say seventy-five to one hundred feet away from the corner, you of course mean the northwest corner, don't you? A. That is right. 20

Mr. Sorenson: That is all.

By Mr. Avis:

Q. Did you take any measurements there? A. No.

Mr. Avis: That is all.

By Mr. Sorenson:

30

Q. Are you a pretty good judge of distance? A. Not very good, no.

Q. Not very good? A. Well, I am not an architect or anything.

Mr. Sorenson: No. All right.

40

Mrs. Anthony Cresci—Direct.

MRS. ANTHONY CRESCI, sworn.

Direct-examination by Mr. Avis:

Q. Mrs. Cresci, you live where? A. Vineland, 40 Shibe Terrace, Vineland, New Jersey.

Q. How long have you lived in Vineland? A. Let me see— about twenty years.

10 Q. Do you remember the night of October 29th, 1930? A. Yes.

Q. Where were you early that evening? A. Well, I was coming from Wenonah.

Q. Who, if anyone, was with you? A. Johnny DiPalito and my mother.

Q. John DiPalito and your mother? A. My mother, yes.

20 Q. Were you in a car? A. Yes.

Q. Who was driving the car? A. I was.

Q. Do you know where Franklinville is? A. Yes.

Q. Do you remember going through Franklinville? A. Yes.

Q. Now, after you came through Franklinville, Mrs. Cresci, did you have any reason to stop your car? A. No, they made me stop there.

30 Q. Where was it when you stopped your car? A. Well, I couldn't tell you that, but I was a little way from where the accident was.

Q. You don't know who stopped you? A. A short, dark-complexioned fellow: I couldn't tell you the name.

Q. Have you seen him since that time? A. No.

Q. Now, when you stopped your car, did you see anything of any other automobile? A. Not that I know of.

40 Q. What did you do after you stopped your car? A. Well, I stood there looking at the boys. They

Mrs. Anthony Cresci—Direct.

were picking up the boys, when I got there, with a searchlight.

Q. They were picking up some boys? A. Yes, the two boys, the two last boys.

Q. Where were those boys when you saw them?

A. Well, I couldn't tell you that. They were a little distance from the little car. 10

Q. Can you say on which side of the road it was, looking south, going the way you were going?

A. I couldn't tell you that. You mean the boys?

Q. Yes. A. I couldn't tell you that.

Q. Do you know whether it was on your right or on your left? A. Oh, it was on the right side going to Vineland.

Q. The way you were going, it was on your right? A. Yes. 20

Q. Where were these boys when you saw them picking them up— were they in the road or off the road? A. Oh, they were off the road, I think.

Q. Do you know how far from the road? A. I couldn't tell you that.

Mr. Sorenson: I object; she hasn't said they were off the road. She thinks they were off the road.

The Witness: Well, they were off the road. I know they didn't pick them from the road. I couldn't tell you exactly, but I think that is what it was. 30

Q. After these boys were picked up, do you know what happened to them? A. Well, they wanted me to take them in to Vineland, and I told them I had my mother, and they said, "Well, we will wait for the next car, but you stay here." I said, "All right." So when the next car came, they asked this fellow to take them in. 40

Mrs. Anthony Cresci—Direct.

Q. And did he? A. They took them in and I took the young girl in, the girl that was in the other car.

Q. I see. Now, did you see a Ford car there?

10 Mr. Sorenson: I object to that. She has already answered by saying she didn't notice any other cars.

Mr. Avis: I don't know that she understood the question, because afterward she spoke about seeing a Ford.

The Court: She spoke about a little car, as I understand the testimony.

Mr. Avis: A small car, yes.

20 Q. Did you see a small car there? A. Well, in back of us, there was a car, but I couldn't tell you what make of car it was. That was the car that took the two boys in.

Q. That is the car you mean? A. Yes.

Q. Did you or did you not see either of the cars involved in the accident?

Mr. Sorenson: I object to that, on the ground there is no proof of any accident here.

30 Mr. Avis: The pleadings admit there was an accident and admit your bus was in it.

Mr. Sorenson: I object to that. There is no proof of anything of that character in this particular case.

The Court: The answer denies everything, doesn't it?

10 Mr. Avis: Well, maybe that is so. In Paragraph 3, in answer to paragraph 3, "It admits defendant owned and operated the

Frank Newcomb—Direct.

bus." Well, that is all right; cross-examine.

Mr. Sorenson: No questions.

No cross-examination.

10

FRANK NEWCOMB, sworn.

Direct-examination by Mr. Avis:

Q. Where do you live, Mr. Newcomb? A. Iona.

Q. And on what road? A. Delsea Drive.

Q. On which side of Delsea Drive? I am going to use west or east. A. West.

Q. Would that be the right going south? A. Yes.

Q. Do you know where the Williamstown Road crosses the Delsea Drive? A. Yes, sir. 20

Q. And how close do you live to that intersection? A. Half a mile.

Q. And in which direction? I mean by that, do you live further toward Malaga or further toward Franklinville? A. Toward Malaga.

Q. Do you remember the night of October 29th, 1930? A. Yes.

Q. Where were you that evening? A. Up at Franklinville. 30

Q. Who was with you? A. Frank DeCastro.

Q. Did you stay in Franklinville? A. We went up there on business and came right back.

Q. Came on back; now, how did you go there? I mean by that, what means did you use? Were you walking? A. No, in a car.

Q. In a car; whose car? A. Porch's car.

Q. Was there a man by the name of Porch with you? A. Yes. 40

Frank Newcomb—Direct.

Q. What is his first name? A. Lynwood.

Q. Who was driving the car? A. Lynwood.

Q. After you started from Franklinville and were proceeding down Delsea Drive— that is the way you were going, isn't it? A. Yes.

10 Q. Did you stop your car at any place? A. Not until we got to the accident.

Q. Where was the accident? A. Delsea Drive and Williamstown Road.

Q. And what did you first see? A. Seen cars stopping.

Q. What did you people do? A. We pulled on up there and got out.

Q. Now, after you got out of your car, what did you do? A. Somebody was hollering for help.

20 Q. You heard somebody calling for help; and where was that person who was calling for help? A. I don't know who it was.

Q. Where was he? A. Out in the field there.

Q. In what field? What field do you mean? A. Right across from where the accident was.

Q. Was the field on the west side or the east side of the Delsea Drive? A. West side.

30 Q. How far was that person from the road itself? A. Quite a ways; I don't know just how far it was.

Q. Could you tell us by some object in the room, or some distance of that kind? A. From here to maybe the other end of the wall there.

Q. From here to the end of the wall? A. About that, I guess.

Mr. Sorenson: He said "maybe."

Q. Is that your best judgment as to the distance? A. Yes.

40 Q. Could you tell where he was with relation to

Frank Newcomb—Direct.

any other objects or any other— A. Only by some bushes that was there.

Q. Bushes; was he close to where the bushes were? A. Right on the top of them, amongst them.

Q. Was there any other object near him? A. There was a stump or log or something laying there; I don't know what it was now. 10

Q. You heard him calling for help? A. Yes, somebody was hollering to come get the fellows.

Q. You went there, did you? A. Yes.

Q. Do you know who this party was who was calling for help? A. No, I don't.

Q. Did you see him? A. It was dark there; I couldn't see.

Q. You couldn't see who it was; then what did you do? A. I gathered on to the fellow that was hurt and took him to the car. 20

Q. How many people did you see there that were hurt? A. Two.

Q. Now, won't you tell me just where they were? A. Right in them bushes, is all I can tell you.

Q. Now, Referring to this plan that is in evidence, supposing you step down here, please. Do you recognize this to be Delsea Drive, toward Franklinville this way and Malaga this way, and this to be the Williamstown-Porchtown Road? A. Yes. 30

Q. Williamstown to be over that way, Porchtown this way. Do you remember there was a house here? A. Yes.

Q. And that there is a warehouse or another building here? A. Yes.

Q. It speaks of a telephone pole and two trees there. Do you remember them? A. Yes.

Q. Now, can't you tell me, by referring to that 40

Frank Newcomb—Direct.

map, where these boys were that you saw? A. Right off that way.

Q. Won't you take my pencil and mark where you saw them? Just put a cross where you think they were. A. (Witness marks map.)

10 Q. That indicates the place where you think they were? A. Yes.

Q. Was there more than one? A. Two.

Q. What did you do? A. I went and put the fellow in the car.

Q. Now, at that time did you see any other automobiles there? A. Yes, there was other cars there.

Q. Did you know who these boys were? A. I didn't just exactly know them, no.

20 Q. You didn't recognize them at that time? A. No.

Q. Do you know whether or not they were living at that time? Do you know whether they were alive or dead at that time? A. The one I picked up was dead.

Q. He was; and did you see the other one? A. Sitting in the car; he was in the car and I took one of them in.

30 Q. Did you recognize anybody else there that night that you knew? A. Only the fellow was with me.

Q. Did Mr. Porch go over there with you? A. Yes.

Q. Did Mr. DeCastro go over there? A. Yes.

Q. Now, you say there had been an accident there, is that right? A. That is right.

Mr. Sorenson: I object to that; that is calling for a conclusion.

10 The Court: Yes, I will sustain it.

Frank Newcomb—Direct.

Mr. Sorenson: I move to strike out the answer.

The Court: It may be.

Q. Did you or did you not see any cars there in the location where this boy or these boys were laying? A. The car that they were in.

10

Q. Where was that car? A. Between the trees.

Q. And do you know what tree that was? Could you show that on the map? A. Yes.

Q. Do it for me, please? A. There is a telephone pole, there is a tree and there is a tree. This tree here.

Q. The tree marked "twenty-four inch maple?" A. Yes.

Q. What was the position of the car against that tree? A. The back was against the tree.

20

Q. The back of the car was against the tree? A. Yes.

Q. Which way was the car pointing? A. North.

Q. Well, now, you said the back was against the tree? A. Yes.

Q. Where was the front? A. To the other tree, facing the other tree.

Q. In other words, the back was against what is called the "twenty-four inch maple" and the front was pointed toward this "eighteen inch maple," is that right? A. Eighteen inch maple.

30

Q. Did you see any other cars in the same neighborhood? A. The bus.

Q. What is that? A. The bus.

Q. Where was the bus? A. That was out there in the field.

Q. Won't you come to the map again and show me where the bus was? A. Right about there.

Q. The bus was there; will you make a mark

40

Frank Newcomb—Direct.

there, as near as you can? A. (Witness marks map).

Mr. Sorenson: May we put a circle there and put the letter N in there?

Mr. Avis: I will put it there; I put it on both places.

10

Q. Was there anything on the bus to indicate to you whose bus it was? A. No.

Q. What color bus was it? A. Red and yellow, I think it was.

Q. Now, after you helped put these boys in the car, what did you do? A. Went down to the service station to tell some fellows about it so they could go tell the parents.

Q. Did you stay there? A. No, we came back.

20

Q. How long were you gone from the place where this accident occurred? A. Fifteen or twenty minutes.

Q. What kind of a night was it? A. Foggy and rainy.

Q. Fog and rain? A. Yes.

Q. Do you know what time it was when you arrived at this place? A. Somewheres around eight.

30 Q. And after you came back, what, if anything, did you do? A. Just stood around there afterward.

Q. You stayed there? A. No, we went back a little while and then we went home.

Q. Was there anything on the ground itself which would indicate to you where this bus that you saw out in there—

Mr. Sorenson: I object to that as calling for a conclusion, and it is a leading question.

40

Mr. Avis: All right.

Frank Newcomb—Cross.

Q. Did you examine the ground leading up to the point where the bus was?

Mr. Sorenson: I object to that as calling for a conclusion; it is also a leading question.

The Court: It is not a conclusion, but it may be leading.

10

Mr. Avis: All right; I won't insist on it.

Q. While you were there, Frank, did you or did you not look around the scene of the accident?

A. No, not so much; I was standing there a little while and then I went home.

Q. Did you or did you not notice the condition of the Ford? A. Yes, I noticed that.

Q. What did you notice about it? A. It was about wrecked, is all I can say.

20

Q. Talk louder. A. About wrecked, is all I can say.

Q. Did you notice whether or not— Strike that. Did you ever see the Ford afterward? A. No.

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. You were pretty well excited when you arrived there, weren't you? A. No.

30

Q. Not at all? Didn't you get excited when you saw these men lying in the field? A. Oh, I did a little then, sure.

Q. So that at the time you were pretty well excited, and you were more interested in seeing what you could do for these men, weren't you? A. Sure.

40

Frank Newcomb—Cross.

Q. When you say that this mark which you have put up on the map here is the place where you say you found these men, did you take your time and measure off the distance just about where they were, or anything like that? A. I didn't take my time and measure off anything.

10 Q. That is about, a guess, isn't it? A. No, it isn't a guess.

Q. How far would you say that the men were away from the concrete shoulder of the road? A. From here to the wall over there.

Q. From here to the wall? A. Yes.

Q. And which side of the road would you say they were on, going south? A. The right side.

Q. Now, when you arrived there, you say that one of the boys was still in the automobile? A.
20 No, somebody had put one in.

Q. I see. Excuse me; I thought you said that. In other words, what actually did take place was when you arrived there, one of the boys had already been put in an automobile and was on his way to the hospital— Is that what you mean? A. No, I said the fellow was with me got one and I helped get the other.

Q. I see; the fellow who was with you— did he
30 take his boy into the automobile first, or did you take your boy in? A. He took his, first.

Mr. Sorenson: He took his first; that is all.

FRANK DE CASTRO, sworn.

Direct-examination by Mr. Avis:

Q. Mr. DeCastro, where do you live? A. On
40 Delsea Drive and Pennsylvania Avenue.

Frank De Castro—Direct.

Q. That is near what? A. Near Iona. That is at Iona.

Q. And how far is that from the intersection of Delsea Drive with the Williamstown Road? A. About a mile and a half, I imagine.

Q. Do you remember the night of October 29th, 1930? A. Yes, sir.

Q. Where were you that evening? A. I was at Franklinville.

Q. Who, if anyone, was with you? A. Frank Newcomb and Lynwood Porch.

Q. Do you remember leaving Franklinville? A. Yes, sir, going home.

Q. Do you know what time that was? A. Around eight o'clock, eight P. M.

Q. As you came down Delsea Drive, did you stop any place? A. At the scene of the accident.

Mr. Sorenson: I object to that; it calls for a yes or no answer.

Mr. Avis: All right.

Q. Did your car stop? A. Yes, sir.

Q. And at that time did you get out? A. After the car stopped. I was just a passenger in the car. After it stopped, I got out, yes.

Q. What at that time did you see? A. I first noticed the bus off the road, and I heard the bus driver calling for help.

Mr. Sorenson: I object to that, any statements made by the bus driver.

Mr. Avis: He didn't say any statements.

Mr. Sorenson: I object to anything the bus driver said or did after the accident in the way of oral statements, as not being binding upon the defendant.

The Court: Are you withdrawing the

Frank De Castro—Direct.

question or consenting to the striking of the answer?

Mr. Avis: No, I think it should stand. He just said he heard the bus driver calling for help.

The Court: What is your motion?

10 Mr. Sorenson: So far as that goes, I haven't any objection.

Mr. Avis: I am not going any further.

The Court: Are you moving to have it stricken?

Mr. Sorenson: No, if that is the end of the statement made by the operator, no, but if it goes beyond that point, yes.

Mr. Avis: I won't undertake to prove what he said.

20

Q. Don't tell me what the bus driver said. Remember that, won't you? You say you heard this man call for help. Now, how do you know he was a bus driver? Not by what he said. A. By his uniform.

Q. And what sort of uniform did he have on?

A. Well, I noticed the cap and his tunic or coat.

30 Q. What else did you see? A. I had a flashlight and I looked on the ground and I saw two bodies, two persons lying there. They were apart from each other.

Q. How far were these boys apart? A. Fifteen feet.

Q. And where were they? A. Off the road, in the grass.

Q. On which side of the road, going toward Iona from Franklinville? A. On the right side going south.

40

Q. Do you know how far they were from the

Frank De Castro—Direct.

road? A. One of the fellows were about, I imagine, about forty feet, and one about thirty-five.

Q. Mr. DeCastro, referring to the map which is in evidence, will you look at that, please? I want you to look that over and see whether or not you understand it. A. Yes, I think it is fair enough.

Q. This would be toward Franklinville, out this way, Malaga this way, Williamstown that way, Porchtown that way, and this would be north and this would be south. A. Yes. 10

Q. You say you came from Franklinville? A. Yes.

Q. First of all, where did you stop your car? A. About here.

Q. You stopped your car about there?

Mr. Sorenson: Indicating, would you say, on a gravel shoulder just about between the two trees? 20

Mr. Avis: Wait a minute.

Q. Do you know whether or not there are two trees there? A. I knew the one tree that the car was up against.

Q. When you stopped your car, where were you with relation to that Ford against the tree—had you reached it or passed it? A. Well, as soon as the fellow was driving slowed down, I jumped out, as a matter of fact, and I believe he pulled over on the other side of the road. 30

Q. Where did you jump out? Were you up to that Ford yet? A. No, not quite up to the Ford, just a little way before I got to the boys, which was in the woods some place.

Q. Now, won't you indicate or tell me where the boys was? I will withdraw that. Do you know 40

Frank De Castro—Direct.

this property, the house with the porch there? A. I know there is some kind—

Q. Nobody lives there, do they? A. No.

Q. Can you tell me on the plan, after looking at it, this being the telephone pole, this being a tree and this another tree, this being the house, where the boys were that you saw? A. The boys were away from the tree, going in this direction.

Q. Will you take this pencil and put a mark where you think they were placed? A. We were going in this direction, and one was there and one about there.

Q. Where was the bus? A. The bus was a little ways from these fellows here, in the woods, going this way.

Q. Make a mark there where you think that was, please. A. (Witness marks map).

Mr. Avis: I will mark that with a D.

Q. What did you do, Mr. DeCastro? A. I had a searchlight and I looked at both fellows and one looked dead to me, and I heard one fellow groaning. So the one that was groaning, I picked him up along with some other fellow—I wouldn't recognize the fellow that helped me, but I think it was the bus driver—but nevertheless it was someone helped me to pick him up and I placed him in a car; I think it was a Chevrolet.

Q. You don't know what happened to the other boy? A. As I went out to the car, after placing him there, Frank Newcomb was taking the other fellow to the same car.

Q. Did you see any other boys there besides these two? A. There were other fellows there, but not that were hurt.

Frank De Castro—Direct.

Q. Did you see anybody else that was hurt? A. No.

Q. Do you know who the two boys were that you helped get in the cars? A. I never saw them before and I wouldn't know them if I saw them.

Q. Did you notice how these boys were dressed? A. The fellow I picked up was—I think he had some kind of working shirt on and—he wasn't so neatly dressed or anything. 10

Q. After you put these boys in the cars, did you stay there? A. No, I went to Malaga police headquarters, the State Police Headquarters.

Q. You notified them, did you? A. I told them about it.

Q. Then did you go back? A. Yes, after that, I went a little ways down the road and I went back to the scene of the accident. 20

Q. Mr. DeCastro, when you went back to the scene of the accident, or when you were there at any time, where was this Ford? A. The Ford was

Mr. Sorenson: I object to that.

Mr. Avis: I will strike that.

Q. When you first got there, where was the Ford? A. Up against the tree, with the back, left rear pushed up against the tree. 30

Q. Which tree was that? Was there more than one tree there? A. Well, that big tree was right there. That is the one, the only one right there, but there is a tree a little way away from that one.

Q. Which one was it the Ford was up against? A. The big tree next to the road.

Q. Referring to Exhibit P-7, will you tell us which tree it was? A. This tree (indicating).

Q. Is that the tree further north or further 40

Frank De Castro—Direct.

south? A. Further north, isn't it? Yes, this is north, going this way.

Q. So it is further north, you say? A. Yes.

Q. Referring to Exhibit P-10, can you say where the bus was when you saw it, on that photograph?

A. Yes, over here where these small trees are pushed down.

10 Q. Will you mark that with an X, where the bus was? A. (Witness marks photograph)

Q. Did you look at the bus at that time?

Mr. Sorenson: Which time is that, Mr. Avis?

Mr. Avis: At the time he first was there.

A. I didn't look at it when I first got there, but I looked at it after I came back, while the State Troopers were there.

20 Q. When you came back, was the bus in the same position as it was when you first saw it? A. Exactly.

Q. Did you look at it at that time? A. Well, I went around looking at it, along with some other folks that were there looking at it, yes.

Q. And at that time the bus wasn't on the road, as I understand you? A. No.

30 Q. What was the character of the place, of the land where the bus was located? A. The trees were pushed down and the ground was torn up.

Q. Referring to Exhibit P-11, can you say whether or not the condition around the bus was the same as shown in that photograph? A. Yes.

Q. I am referring now— You say there were some trees broken off and bent over? A. Yes.

Q. How big were those trees broken off and bent over? A. They weren't very big.

40 Q. How big? Show with your hands, if you

Frank De Castro—Direct.

will. A. I imagine about that big around (illustrating)

Q. And how far was that where the bus was from the road, in your best judgment? A. Judging at which angle, from the road right across or from the point where they got hit?

Q. Let's take it from the intersection; let's take it from a point which would be the middle of these two roads, that is, the intersection of the center lines, right from that point. A. The center of the highway? 10

Q. Yes, how far would you say it was from there to where the bus was, have you any idea? A. Seventy-five feet.

Q. Seventy-five feet from the intersection of these two roads? A. Yes, sir.

Q. Now, Mr. DeCastro, do you know whose bus this was? 20

Mr. Sorenson: I object to that as calling for a conclusion.

Mr. Avis: All right.

Q. Was there any name on this bus? A. I saw "Public Service" on it.

Q. And where was that? A. I think it was at the back. 30

Q. Do you know how many rear tires there were on this bus? A. Yes, there were dual tires.

Q. What do you mean by that? A. Two on each side.

Q. How do you know that? A. By looking at the bus.

Q. Did you look around the scene of the accident? A. I certainly did.

Q. What did you notice? A. Well, there was parts of battery around and clothing from the fel- 40

Frank De Castro—Direct.

lows, there was a pair of slippers there belonged to one boy, the spokes from the wheels.

Q. Where were these things you saw, the battery and spokes and things of that kind? A. They were on the right side of the car going into the woods.

10 Q. What? A. Like going off the road, on the other side of the car coming from the road.

Q. Let's get it straight. Going from Franklinville to Iona—that is the way you were going—were these things you found on the right or left side of the road? A. They were on the right side of the road.

Q. The right side of the road? A. Yes.

20 Q. Were there any spokes, any glass, any parts of battery or any parts from this car at all on the other side of the road?

Mr. Sorenson: I object to that on the ground it is calling for a conclusion, and further, it is a leading question.

Mr. Avis: He says he found certain things on the right side. I am asking if he found anything on the other side.

The Court: I think the question is proper.

30 (Exception noted for the defendant)
(Question repeated)

A. Only a wheel.

Q. Only what? A. One rear wheel, I think, left rear wheel.

Q. The left rear wheel? A. Yes.

Q. And that was— A. Broken off, on the ground.

40 Q. And everything else, as I understand you,

Frank De Castro—Direct.

was on the other side of the road? A. On the other side.

Q. Now, this wheel that you saw—what was the condition of that wheel? A. It was broken.

Q. The wheel, the tire, the spokes, or what? A. The spokes were broken off.

Q. The rim was still there? A. The rim was still there. 10

Q. That is the only thing you saw on the other side of the road? A. Yes.

Q. Did you notice anything else there? A. No.

Q. Well, you say you saw these things on the road? A. Yes.

Q. Where were they with relation to the intersection? Won't you just show me on the map where you found the parts of the battery? 20

Mr. Sorenson: I object to that on the ground the witness has already testified he found them alongside of the road.

The Court: What was the question?

(Question repeated)

The Court: It may be indicated on the map.

A. I don't know exactly which tree there, but I know it was the one further north, most likely this one here, the one the car was pushed up with the back against that tree, and the parts on the right of the car going south, on the right hand side. 30

Q. And where was the part of the wheel you say that you saw? A. On this side of the car, the left of the car.

Q. On which side of the highway was it looking south? A. What, the rim?

Q. Yes. A. It was laying just under the car. 40

Frank De Castro—Direct.

Q. So the wheel was lying on one side of the car and the other things on the other side? A. Yes.

Q. Do you mean then that all those things you found were all on the right side of the road? A. Sure enough, the right side of the road.

10 Q. But the wheel was on one side of the car and the other stuff on the other side of the car? A. Yes.

Q. What kind of a night was it, Mr. Parave? A. It was raining slightly and kind of—

Q. Do you know whether the roadway was wet or dry? A. It wasn't dry.

Q. What do you mean by that, "it wasn't dry"? A. It was wet; it was just drizzling.

20 Q. Was there any way that you knew that this bus had dual wheels, beside the fact that you saw them? A. By the mark it made in the highway, in the road.

Q. Won't you tell us about that mark? A. Why, you could see from a point where the Ford was against the tree, looking south, the exact course that the bus took in line to where it was in the woods.

30 Q. What was that course? A. Well, it started off the center of the highway. The bus was going north—

Mr. Sorenson: I object; he can tell us what marks he saw.

The Court: Yes.

Q. Just tell us what marks you saw. A. The marks led from off the center of the highway and on a line then to where it hit the Ford.

Mr. Sorenson: I move to strike that out, if the Court please.

40 The Court: Yes.

Frank De Castro—Direct.

Mr. Avis: All right.

Q. You saw marks in the road, did you? A. Yes.

Q. These marks, when they first started up the road—did you notice where they were, on which side of the road, looking north? A. They were on the left side of the road looking north. 10

Q. Did you follow them back? A. To where? What point, going south?

Q. Yes. A. Going south?

Q. Yes. A. It went right on to where the bus was supposed to be, on the right hand side of the road going north.

Q. You saw some tracks on the right, is it, going north? A. Yes.

Q. Now, proceeding north, where did those tracks go? A. They came over across the highway on to the left, going north. 20

Q. Did you follow those tracks on to where the bus was? A. They were quite distinct right on to where the bus stopped.

Mr. Avis: Cross examine.

Cross-examination by Mr. Sorenson:

Q. Of course, you saw the pavement was wet, wasn't it? Yes or no. A. Yes. 30

Q. And there were many other cars there, too, weren't there, at the intersection? A. What do you mean?

Mr. Sorenson: I will withdraw that question.

Q. When you first stopped there, you didn't, of course, notice anything in reference to the high- 40

Frank De Castro—Cross.

way, did you? A. I knew it was wet, because I was riding in a car.

Q. Yes, but I mean when you came up to the intersection, you sort of jumped out of your car? A. Yes.

10 Q. And you hurried over to where these two boys were, as you say? A. Yes, sir.

Q. And you helped them, is that so? A. Helped one.

Q. And you put him in the automobile? A. Yes.

Q. And then after putting him in the automobile, you took them to the hospital? A. Did what?

Q. Did you take them to the hospital? A. No, I did not.

20 Q. Did you stay at the scene of the accident? A. No, I went to the State Troopers' barracks and informed them.

Q. You went to the State Troopers' barracks; and where was that? A. Going towards Malaga.

Q. And how soon after did you come back? A. Well, I will say about twenty minutes, maybe fifteen minutes.

Q. When you got back there, were there any automobiles around there? A. Yes, there were a few cars around.

30 Q. How many, would you say? A. I couldn't tell you how many there was there, because they weren't parked in that space around there. They were parked in places—

Q. Parked on different parts of the highway? A. Yes.

Q. How many, would you say, about? A. I imagine about half a dozen or so.

40 Q. And as your automobile rolled along this wet pavement, did the automobile in which you were leave a mark on the highway? Yes or no. A. It

Frank De Castro—Cross.

Q. Yes or no. A. It depends if you put on your brakes or leave them off.

Q. As your automobile rolled along this wet highway— A. No.

Q. You say it left no marks? A. No, if it was going ordinary, it wouldn't.

Q. Ordinary marks; and the tracks which you saw leading past the Ford automobile, you say, started on the right side of the street going north? A. Yes.

Q. And then you say you came to marks toward the center of the road going north? A. Going north, it came on across the highway on to where the point where it struck the Ford.

Mr. Sorenson: I move to strike that out as not responsive, if the Court please. I think I am entitled to have that stricken.

The Court: The answer "when it struck the Ford" may be stricken.

Q. The tracks which you saw started on the right hand side of the road, you say? A. Yes.

Q. And they gradually came to the center of the road, did they, and then over to the left, or how did they come? A. They started right over on to where the bus stopped.

Q. Now, of course, you couldn't see any marks

Mr. Sorenson: Withdraw that.

Q. The tracks, when they crossed the dirt shoulder on the left hand side going north, did they go in on an angle or did they go in sharp? A. I don't understand you. What do you mean?

Q. I mean, the marks which you saw and which

Frank De Castro—Cross.

you say went across the dirt shoulder— You know what the dirt shoulder is? A. Yes.

Q. Were they a gradual twist in there or were they a sharp one? A. No, gradually; gradual, yes.

10 Q. Did you go down to the scene of the accident the next day? A. I am always around there; I am living around there.

Q. And did you see any marks there the next day? A. Where, on the highway?

Q. Yes. A. Yes, sir.

Q. I show you a picture of the highway, and I ask you to show me where they are on this photograph, which was taken a day after. A. Is this going north?

20 Q. That is going north; there is the tree. A. There is one part of the highway that has a mark. I believe it is this, here.

Q. Do you see any track marks there of any kind of a vehicle? A. Not in this picture.

Q. Will you say that you are mistaken as to your testimony that you saw tracks the day after? A. I did not see tracks the day after. As a matter of fact, I don't remember going there the day after.

30 Q. I thought I just asked you whether you went there a day after whatever had occurred, and you said you did. A. I said I am always around there, I am living around there, but I am working.

Q. Then I was mistaken. I thought you said you were there a day after. Did I ask you the question whether you were there the day after, and you said you are always there? A. I said I am always around that neighborhood, because I am

40 living around there.

Frank De Castro—Cross.

Mr. Sorenson: Perhaps we misunderstood one another. I think that is all.

By Mr. Avis:

Q. Mr. DeCastro, you say there was a mark on the road, and you pointed it out to us, is that right? A. I think this is the mark there.

Q. Did you see the mark on the road? A. The mark is still in the road.

Q. What kind of a mark is it? Just describe it. A. It is like a crack in the concrete, where the cars came together.

Mr. Sorenson: I move to strike that out, if the Court please. I certainly don't think

Mr. Avis: I didn't ask him for it.

The Court: That may be stricken, of course; this witness didn't see the cars come together.

Q. You say there was a mark. Will you with your pencil mark where there was a mark on the road?

Mr. Sorenson: I object to that; the picture speaks for itself, if there is a mark.

Mr. Avis: I still want him to mark it; I want him to show on the picture the mark he means.

Mr. Sorenson: If there is a mark on that picture, it is perfectly apparent when the jury examines it.

The Court: He may mark on the picture the mark in the road he is referring to in his testimony, if you can identify it.

10

20

30

40

Frank De Castro—Cross.

Q. Mark the mark that you mean; make an X there. A. (Witness marks photograph)

Mr. Avis: That is all, thank you.

By Mr. Sorenson:

10 Q. By the way, are there any lights located at that intersection? A. I don't know; I have never looked for any. I don't know if there is or not.

Q. If you are there all the time, don't you know whether or not it is a lighted intersection or whether it isn't? A. I don't think there are lights around there.

Q. Did you have a searchlight that night? A. Yes.

20 Q. Did you have it in your hand all the time? A. Yes.

Mr. Sorenson: That is all.

By Mr. Avis:

Q. You spoke with reference to these marks at the intersection of these two roads. Do you understand what I mean? A. Yes.

30 Q. At that point where the tracks you say were made by the bus, the tracks you noticed, were they on the left side of the road looking toward Frank-
linville or on the right side of the road?

Mr. Sorenson: I object to that on the ground that the question incorporates in it a fact that is not in evidence. The question is at the intersection where were the tracks which this man saw. There is no testimony the tracks reached the intersection.

40 Mr. Avis: All right.

Frank De Castro—Cross.

Q. Did the tracks reach the intersection we spoke about? In other words, refer to the picture in evidence marked Exhibit P-7. Do you recognize that to be the intersection in question? A. Yes, sir.

Q. Looking north? A. Yes, sir.

Q. Do you know what this is on the right side of the photograph? A. No, I don't. 10

Q. Well, let's assume that this is the Williamstown Road and it crosses over at this point. A. Yes.

Q. Can you tell me at that intersection where these marks were on the highway?

Mr. Sorenson: I object to showing it on the photograph. I think the witness can tell us without referring to the photograph. 20

Mr. Avis: He will tell me, if you don't object to it.

Q. At this intersection, on which side of the road were these marks that you have testified to? A. On the left side going north.

Mr. Avis: That is all.

By Mr. Sorenson:

Q. So that up to that point, the tracks were on the right side of the road, is that so? A. No. 30

Q. I thought you said at the intersection— A. I said it crossed the intersection going north on the left side of the road.

Q. But prior to that, they had been on the right side of the road, these marks that you saw? A. Some distance away from there.

Q. Yes; did you see the stop sign which was located on the northeast corner of the Williamstown Road? A. I know there is one there. 40

Mr. Sorenson: Yes; that is all.

John B. Di Ppolito, 3rd—Direct.

JOHN B. DI PPOLITO, 3RD, SWORN.

Direct-examination by Mr. Avis:

Q. You live in Vineland? A. Yes, sir.

Q. Were you with Mrs. Cresci on October 29th, 1930? A. I was.

10 Q. Do you remember going down the Delsea Drive? A. I do.

Q. Do you remember going through Franklinville? A. Yes, sir.

Q. After that time, do you know whether or not Mrs. Cresci stopped the car? A. She did.

Q. When the car was stopped, did you stay in the car or did you get out? A. I got out.

20 Q. When you got out of the car, what did you do? A. I seen two gentlemen bringing a boy with a white sweat shirt on to a car that was parked in back of us.

Q. Did you see any other boys that had been injured around there at that time? A. No, sir, they were brought on ahead, before we came; we just arrived there as they left.

Q. Did you see where this boy was picked up from the ground? A. No, sir.

30 Q. Was that on the right or left side of the road, so far as you were concerned, going south? A. That was on the right.

Q. You say you saw them carrying this boy. What distance had they come, or what distance did they walk that you saw before they got to the road? A. Well, when we seen them— You mean from us?

Q. No, to the road. A. They were about twenty-five feet from the road.

40 Q. You saw them carrying him over to the car? A. To the car, yes, sir.

John B. Di Ppolito, 3rd—Direct.

Q. Did you notice any other cars there? A. Well, there was only the Chevrolet in back of us, that is all.

Q. Did you know that particular place in the road—had you been over that before? A. Yes, sir.

Q. And was the road all clear in front of you? 10
A. At that time?

Q. Yes. A. It was.

Q. After you had stopped, were any cars in front of you? A. No, sir.

Q. Did you know that there had been an accident there?

Mr. Sorenson: I object to that on the ground that that is certainly a matter of conclusion. I think he can tell us what he 20
saw, and that is about where he can stop.

Q. All right; did you see anything which indicated to you there had been an accident there?

Mr. Sorenson: I object to that, also, on the ground that that is calling for a conclusion.

The Court: Yes.

Q. Did you or did you not see a bus there? A. 30
I did.

Q. And where was it? A. It was off the road about forty or fifty feet, or maybe more, in some sort of a woods there, small trees.

Q. And which side of the highway was that? A. Going down?

Q. Yes. A. It was on the right.

Q. On the right hand side; did you see the other 40
car? A. No, sir, just as we passed by, going home.

John B. Di Ppolito—Cross.

Q. You say this car was in the woods, this bus?
A. Well, it was in a place where there was trees about that size (indicating), and they were pushed over.

10 Q. Did you notice that? A. Yes, I seen they were pushed over, because you could see the other trees around them and naturally come to the conclusion that there were trees in front of it.

Q. Did you see any name on the bus? A. No, I didn't.

Mr. Avis: Cross examine.

Cross-examination by Mr. Sorenson:

Q. Did you get out of your automobile at all?
A. Yes, sir.

20 Q. Where was your automobile stopped when you got out of it? A. It was on the shoulder of the road, on the right hand side.

Q. Is that on the same side of the road that the automobile was? A. Yes, sir.

Q. How near was it when you stopped? A. Well, I didn't take notice of that, how near we were to the car, because there was a man with a lantern in the road there and he stopped us and we moved over to one side of the road.
30

Mr. Sorenson: I think that is all.

(At this point, the further hearing of the cause was adjourned until June 5th, 1931, at ten o'clock A. M.)

J. Owen Carter—Recalled—Direct.

Woodbury, N. J., June 5th, 1931.

Trial of the cause resumed on the above date at ten o'clock A. M., pursuant to adjournment, in the presence of counsel for the respective parties.

10

J. OWEN CARTER, recalled.

Direct-examination by Mr. Avis:

Q. Mr. Carter, won't you tell me the distance on the plan from the intersection of the center lines of the Delsea Drive and the Williamstown Road to the portion of the map marked "area broken off and bent over"?

20

Mr. Sorenson: That is what my objection was yesterday; that is what counsel is attempting to do now, to attempt to get a distance from a given point to some portion which has been completely outlined to be the contours of a bus.

Mr. Avis: Oh, no.

Mr. Sorenson: It is perfectly obvious that it is the contour of a bus.

Mr. Avis: Of course, that is your interpretation of it; my interpretation is it is the condition there.

30

Mr. Sorenson: It is apparent. All this man could have seen was broken twigs. He could not have seen the contour portrayed there.

(After further argument):

The Court: You object to the question?

Mr. Sorenson: Yes, I do.

40

J. Owen Carter—Recalled—Direct.

The Court: I will overrule the objection.
(Exception noted for the defendant).

A. Your question is the distance from the intersection of the center lines to the nearest edge of the area?

10 Q. To the nearest point where the brush is broken off or bent over. A. Approximately 100 feet.

Q. Now, Mr. Carter, will you also give me the distance from the intersection of those center lines to the furthest point away where it is broken off or bent over?

20 Mr. Sorenson: I interpose the same objection, your Honor, on the ground that is calling for an expression of distance without giving any approximate point where the trees are located which are broken, or anything like that. All it says is there is an area. This map purports to show an area, and I submit that without testimony showing how this area is composed, what trees constitute this area or where those trees are located, that this man should not be permitted to give any testimony as to that particular distance.

30 Mr. Avis: I think my friend may cross-examine, if he wants to, on that line. There is a photograph in evidence upon which the witness has marked the location of the bus and which shows the broken off and bent over situation.

The Court: I overrule the objection.
(Exception noted for the defendant)

A. 126 feet.

40 Q. Mr. Carter, will you tell me the distance of

J. Owen Carter—Recalled—Direct.

the nearest point, nearest portion of the area which is broken off or bent over from the edge of the gravel shoulder of the Delsea Drive? A. 36 feet.

Q. And will you also tell me the distance from the furthest point from the edge of the road, please? A. The distance from the near edge of the gravel shoulder to the far distance of the broken area? 10

Q. Right. A. 57 feet.

Q. I call your attention to photograph marked Exhibit P-10, and ask you whether or not you recognize what is shown on that photograph.

Mr. Sorenson: That calls for a yes or no answer.

The Witness: He asked me what I recognize. Repeat that question. I can't answer that yes or no. 20

Mr. Avis: I will withdraw that question.

Q. Do you recognize the vicinity or the territory shown on that photograph marked Exhibit P-10?

A. I do.

Q. Do you see the point where the X has been marked in lead pencil on the photograph? A. I do. 30

Q. Can you show on your plan which is in evidence and marked Exhibit P-3 the point shown on the photograph where it is marked X?

Mr. Sorenson: I object to that on the ground that the photograph is at most a photograph of the conditions which existed at that particular time when the photograph was taken, namely, the day after. Now, that particular photograph shows an area which 40

J. Owen Carter—Recalled—Direct.

is extensive, and on that photograph there is a mark. Now, whether that mark which has been put on there has been put on with the thought of a mark according to a scale or not is not in evidence. What counsel is attempting to do is to take the mark from the photograph and scale it on the map.

10

Mr. Avis: I won't insist on that.

The Court: All right.

Q. On your plan, does that show the area covered by this photograph?

Mr. Sorenson: I object to that, on the ground it is a comparison of testimony of witnesses.

20

The Court: Yes, I will sustain the objection to that.

(Exception noted for the plaintiffs).

Q. Do you know whether or not that photograph shows the conditions as they were on February 7th, 1931, when you made this plan or made your measurements for this plan?

Mr. Sorenson: I object to that as irrelevant; it is four months after the accident.

30

Mr. Avis: I am asking whether he knows or not.

The Court: You can answer that question yes or no.

Q. Say yes or no, please; you can say yes or no or I don't know, one of the three. A. Well, I am not prepared to say there has not been any brush removed or dirt moved to some extent, one hundred per cent I can't say yes, but it is undoubted-

40

J. Owen Carter—Recalled—Cross.

ly the same. When it comes down to yes or no, I refuse to answer.

Mr. Avis: Cross examine.

Cross-examination by Mr. Sorenson:

Q. The day that you went out to take your field notes was on what day? A. February 3rd, 1931. 10

Q. And the date that you went out to take your field notes and to prepare this map, is it not a fact that there were two tracks, automobile tracks, which led up to alongside of the twenty-four inch maple tree? A. Not that I could distinguish. There were a number of tracks there, all kind of tracks around there.

Q. What kind of tracks did you see leading up to the maple tree? A. I didn't distinguish or measure any tracks. 20

Q. When you went out to get these field notes, before you went out did you have a talk with the attorney for the plaintiff in this matter? A. Yes, sir.

Q. And when you went out there, did he tell you to get the approximate distance as to these broken twigs and everything? A. Told me to locate all physical conditions around the intersection of the Williamstown-Porchtown Road crossing the Delsea Highway, not any particular point, and I showed everything that was there. 30

Q. You say there were tracks alongside of the twenty-four inch maple tree? A. No, sir, I did not. I said there were tracks all over. He didn't request and I didn't try to notice or measure any tracks anywhere.

Q. Well, now, when you say "tracks all over," 40

J. Owen Carter—Recalled—Cross.

I am not talking about the street or on the dirt shoulder, but I am talking about that portion of the land which is beyond the dirt shoulder and near the twenty-four inch tree. Were there or were there not any track marks alongside of the twenty-four inch tree? A. The ground was not very rough and not sufficiently evident at that time for me to certify that there were tracks.

10 Q. If you were to go down there today and see them, would you change your opinion? A. If I saw tracks today and my own mind decided whether or not they were tracks, yes, sir.

Q. In reference to the dirt shoulder which is on each side of the Delsea Drive going north, are they of equal size? A. Supposed to be a five foot shoulder all the way up and down the road on each side.

20 Q. Not what they are supposed to be. Are they in fact at that intersection? A. They are irregular, not like a concrete paving.

Q. Is that map drawn to scale there? A. Yes, sir.

Q. Would you mind checking that over again to see whether or not the dirt shoulders are equal on each side? A. They are— There is one explanatory thing; if I remember right, somewhere in the testimony we have been speaking of five foot gravel shoulders. They are ten foot gravel shoulders on each side.

30 Q. I understood you yesterday to say five; I was probably wrong about it. A. Ten foot gravel shoulders on each side.

The Court: The testimony so far, I think, is five feet.

The Witness: I think we have been talking about five feet, but it is ten. Ten feet on each side is correct.

40

J. Owen Carter—Recalled—Cross.

Q. So in order to correct the thing, as we can take your measurements as an engineer, we start out with the proposition that there is a ten foot shoulder on each side of the road? A. Yes, sir.

Q. Now, when you say ten foot, you don't mean that with a degree of accuracy it is ten feet—it may vary from nine feet to eleven feet, but the average is ten? A. Irregularities, due to the traffic and the pushing over of dirt. 10

Q. Would you put some point which in your opinion as an engineer would indicate the corner here, and measure off seventy-five feet north along the westerly side of Delsea Drive? A. You want me to mark that point?

Q. Yes. A. Just off the gravel shoulder?

Q. Yes. A. (Witness marks map). 20

Q. Mr. Carter, would you indicate on the northeast corner the exact place where the stop sign was located? A. This heavy black ink directly to the left of the word "stop sign".

Q. Would you mark that with your pencil? A. Put a ring around that?

Q. Yes. That is fine; thank you.

JOHN SPATAFORE, recalled. 30

Direct-examination by Mr. Avis:

Q. John, there is one question I forgot to ask you yesterday. When you came to the intersection of Williamstown Road and Delsea Drive, you testified you saw a bus there? A. Yes.

John Spatafore—Recalled—Direct.

Q. Do you know whose bus that was? A. Public Service.

Q. How do you know? A. By approaching the car, they asked—

Mr. Sorenson: No. I object to that.

10 Q. What you might have seen; not what anybody told you. A. It was a Public Service bus; I seen the sign on the side of it.

Q. Where was the sign? A. In the circle, Public Service.

Q. Front, back, side or where? A. Side.

Q. Where? A. Side.

Q. Said "Public Service"? A. Public Service.

Mr. Avis: Cross examine.

Mr. Sorenson: No questions.

20 Q. One other question. Not telling us what was said, is there any other reason why you know this was a Public Service bus?

Mr. Sorenson: I object to that on the ground that is a question that takes in a lot of things without asking a direct point.

Mr. Avis: All right.

30 Q. Did you or did you not see the operator of the bus? A. No.

Q. Didn't see the operator of the bus? A. No.

Mr. Avis: That is all.

FRANK PARAVE, JR., sworn.

Direct-examination by Mr. Avis:

40 Q. Frank, you are one of the sons of Frank Parave? A. Yes, sir.

Frank Parave, Jr.—Direct.

Q. Just talk loud. And Peter and Joseph Parave were your brothers? A. Yes.

Q. Now, on October 29th, 1930, when this accident occurred, where were you living? A. In Vineland.

Q. With whom? A. Me and my wife.

Q. Where are you living now? A. Home, with my dad. 10

Q. When did you go home to live with him? A. Why, right after the accident.

Q. And what are you doing now? A. Why, running the farm, trying to take the place of the two brothers.

Q. Who is helping you, if anyone? A. My other brother.

Q. What is his name? A. James.

Q. How much are you paid for your services? 20
A. Ten dollars a week and mine and my wife's board.

Q. Before going home, where did you work? A. Bullock Chevrolet Company, in Vineland.

Q. What kind of work did you do there? A. Automobile mechanic.

Q. How much money did you make at that job?

Mr. Sorenson: I object, on the ground it is irrelevant, immaterial, and it is not a proper element to be considered in the trial of this case at all, what this man made. 30

Mr. Avis: It is our contention this action is brought for the benefit of the next of kin, and of course, this young man is one. If by reason of these boys' deaths he was compelled to come back to help his father in supporting this family and running the farm and lost wages, I think we are entitled to show it. 40

Frank Parave, Jr.—Direct.

10 Mr. Sorenson: I object to that, because we are getting back to the proposition that we are measuring the pecuniary loss which these people have sustained, and on the further ground that certainly whatever this man may have been getting at some other time and which moneys he may have been consuming himself certainly is no criterion as to how much money these boys who died contributed to the support of the family.

Mr. Avis: I won't press it, if the Court please; I will withdraw it.

The Court: Yes, I think the question is objectionable.

20 Q. Before the time that you came back after the accident, how long had it been since you worked or lived with your father?

Mr. Sorenson: I object to that as irrelevant, too.

A. About one year.

The Court: Just a moment. Well, the answer may stand; it is harmless, as I see it, one way or the other.

30 Q. Do you hire any men to help you on the farm? A. Well, when we can't keep up, but as a rule we run the farm.

Q. Take this year for instance. Have you hired any help on the farm this year?

40 Mr. Sorenson: I object to that as irrelevant. That is an entire course of conduct subsequent to the death which has no relation at all to the apportionment of the loss

Frank Parave, Jr.—Cross.

which these people sustained as the result of the death.

Mr. Avis: Of course, if your Honor please, I appreciate that to be so, but I don't feel we are bound to testify just what the scale of wages were on October 29th, 1930. It is my purpose to show that these boys who were killed were actually receiving a great deal less than their services were reasonably worth, and that as a result of the death, the father and the rest of the family have sustained a loss. It is my contention that we have a right to show the reasonable value of the services rendered by the two boys killed, and from that would be deducted what they were actually paid, and the difference would be the loss per week or day or whatever it might be to the next of kin of the decedent. 10 20

Mr. Sorenson: That is perfectly contrary to the rule as to the damages in this case. It is the pecuniary loss that the parents or next of kin have sustained, admeasured by the contributions given before the time of death.

(After further argument):

The Court: I will sustain the objection.

(Exception noted for the plaintiffs). 30

Mr. Avis: Cross examine.

Cross-examination by Mr. Sorenson:

Q. Frank, when you say that you worked for the Chevrolet Motor Car, by that do you mean that you worked in the garage part or worked in the sales room, or what? A. No, just as a mechanic in the shop.

Q. An automobile mechanic? A. Yes, sir. 40

James Parave—Direct.

Q. So that you are a machinist, then? A. In other words.

Q. Of course, you work around the machines at home, too, if anything goes wrong, don't you? A. Well, yes.

10 Q. Now, out of this ten dollars a week that your father gives you over and above your board and room, do you buy your clothing from that? A. Yes, sir.

Q. Do you buy your own clothes? A. Yes, sir.

Q. And part of that money also constitutes moneys which you spend for amusements? A. Well, yes.

Q. How old are you, Frank? A. Twenty-five.

20

JAMES PARAVE, sworn.

Direct-examination by Mr. Avis:

Q. Mr. Parave, your father's name is Frank Parave? A. Yes, sir.

Q. You live with him at your home?

A. Yes, sir.

Q. How long have you lived there? A. Home?

Q. Yes. A. Ever since the accident.

30 Q. Since the accident; and before that time, where did you live? A. I boarded home but I worked out.

Q. At the time of the accident, were you home? A. No, sir, I was in Long Island, New York.

Q. How often were you home prior to the accident? Before the accident, how often would you be home? A. How often I had been home?

Q. Yes. A. Before the accident?

40 Q. Yes. A. Well, I haven't been home all summer.

James Parave—Cross.

Q. What are you doing now? A. Working on the farm.

Q. And how much money are you paid? A. Ten dollars a week.

Q. You are single? A. Yes, sir.

Q. What kind of business were you in before?
A. I was working for a commission merchant, soliciting business. 10

Mr. Avis: Cross examine.

Cross-examination by Mr. Sorenson:

Q. Now, this ten dollars a week that you get, how is that paid to you, ten dollars each week? A. Each week.

Q. So that you are paid just as much as your brother Frank? A. Yes, sir. 20

Q. You are not married, you say? A. No.

Q. And how long have you been getting that ten dollars a week? A. Ever since the accident.

Q. Of course, you buy your own clothes, don't you? A. Yes, sir.

Q. How much do you figure you spend on clothing, about, a year, we will say? A. Oh, around forty or fifty dollars.

Q. How much? A. Forty or fifty dollars. 30

Q. Forty or fifty a year? A. Sure.

Q. You say you hadn't been home all summer prior to October 29th? A. Yes, sir, I haven't been home all summer.

Q. Now, how many years has it been since you lived— A. Lived home?

Q. Yes. A. One year.

Q. Would you say it was one year from now or one year from October 29th? A. One year from now, about now. 40

James Parave—Cross.

Q. So that when you went away last summer, that was the first time you went away from home?

A. That was the first time I went away from home.

Q. Now, prior to that time did you help on the farm? A. No, sir. What do you mean, from the time of the accident until now?

10 Q. No, I mean before you went away, about a year ago. A. No, sir.

Q. You never worked on the farm? A. I worked out.

Q. You worked out. You are 21, James? A. 21.

Mr. Sorenson: That is all.

By Mr. Avis:

Q. Why did you come home, James?

20 Mr. Sorenson: That is objected to as irrelevant.

Mr. Avis: I think that is proper. The cross-examination brought out the fact he has been away from home for a year, left home, and so forth. I think I have a right to show why he came back.

The Court: I overrule the objection.

(Exception noted for the defendant).

(Question repeated).

30

A. When the boys were killed in the automobile accident, I come home to help my dad on the farm.

Mr. Avis: That is all.

40

Mary Parave—Direct.

MARY PARAVE, sworn.

Direct-examination by Mr. Avis:

Q. Mrs. Parave, you are the wife of Frank Parave? A. Yes, sir.

Q. Were you the mother of Peter and Joseph Parave? A. Yes, sir.

Q. You remember the night that they were killed, do you? A. Yes, sir. 10

Q. Do you know what time they left home that night? A. Seven o'clock.

Q. Seven o'clock; and how do you know that, Mrs. Parave? A. Amos and Andy was on the radio.

Q. When they left the house, did you or did you not see them get into the car? A. Yes.

Q. And do you know who was driving the car? 20
A. The youngest boy.

Q. And his name is what? A. Joe Parave.

Q. Do you know what direction they went? A. No.

Q. You didn't see that? A. No, I didn't see it.

Q. Did you afterward go to the hospital? Did you go to the hospital afterward? A. Yes.

Q. Did you see the boys there? A. Yes.

Q. Both of them? A. No, only one. 30

Q. Which one did you see? A. Pete.

Q. Mrs. Parave, as I understand it, at your home there are now six children, yourself and your husband? A. Yes.

Q. Or eight children? A. Eight.

Q. Yes, and your husband, and is it your mother or father also that is there? A. My mother and my mother-in-law.

Q. What? A. And the mother-in-law.

Q. And the mother-in-law? A. Yes. 40

Mary Parave—Direct.

Mr. Avis: There isn't any question but what these boys died, is there?

Mr. Sorenson: No.

Q. Was Peter alive when you saw him? A. Yes.

Q. Did you talk to him? A. Yes.

Q. What kind of boys were they, Mrs. Parave?

10 A. Good, pretty nice boys.

Q. Had they ever been away from home? A. No.

Q. What did they do around the place? A. Farmer.

Q. What did they do in the winter time? A. Well, chopping wood, you know.

Q. One other question. How old are you, Mrs. Parave? A. 50.

20 Q. What is that? A. 50.

Q. 50? A. Yes.

Mr. Avis: Cross examine.

Cross-examination by Mr. Sorenson:

Q. And when you say, Mrs. Parave, that the boys left about seven o'clock, you say you remember it because Amos and Andy were on the radio. Do you mean that Amos and Andy were just starting to broadcast, at seven o'clock? A. Yes.

Q. So that when the boys left the house, it was just when Amos and Andy came on the air, so to speak? A. Yes.

Q. Now, in your house, where is your radio located? Do you understand my question? I will ask it again. Where do you keep your radio in your house, which room? A. In the sitting room.

Q. And your sitting room—is that out to the roadway? If you looked out and called this— A. Yes.

40

Mary Parave—Cross.

Q. You look out to the roadway. And in your sitting room, how is your radio located—is it so when you look at your radio you also look out of the window? A. Yes.

Q. Now, this day before seven o'clock, where had the boys been, working in the field? A. No, working home, around the house.

10

Q. They were working around the house? A. Yes.

Q. Did they have the car out that day before seven o'clock? A. No.

Q. So that the car was in the garage? A. In the garage, yes.

Q. Now, where is your garage, Mrs. Parave—is it in the back of the house? A. Back of the house, yes.

Q. How far would you say the garage is in back of your house? A. It ain't very far.

20

Q. Can you show us in the Court room here? A. About as far as the next bench.

Q. As far as the first bench there? A. Yes.

Mr. Sorenson: Can we say that is about twenty feet?

Mr. Avis: Yes, I should think so.

Q. Now, at the time Amos and Andy were on the air, were you in your living room or in your kitchen? A. Living room.

30

Q. In the living room; so that you didn't see the boys get in the automobile then, did you? A. No.

Q. The last time you spoke with Joseph, then, was before he left the house? A. Before he left the house.

Q. Was that when you were in the living room or when you were in the kitchen? A. No, I was in the living room.

40

Mary Parave—Cross.

Q. That was in the living room, too? A. Yes.

Q. Did you leave the living room any time between seven o'clock and seven-fifteen, when Amos and Andy went off the air? A. No.

Q. You listened to Amos and Andy all the time? A. All the time.

10 Q. Did you hear the boys start the automobile up? A. Yes.

Q. Now, of course, you didn't see who got into the automobile first, did you? A. No, no.

Q. Did you see the automobile start out from the garage? A. Yes.

Q. Now, how is your living room arranged, in reference to your kitchen? Is there a wall in between? A. Yes.

20 Q. Is there a door in between the kitchen— A. Yes.

Q. If I am not correct about this, you correct me, will you? You have your living room and then next you have your kitchen, is that right? A. Yes.

Q. Then there is a wall between your living room and the kitchen? A. Yes.

Q. And there is a door between your living room and your kitchen? A. Yes.

30 Q. Now, this door—is that in the center of the wall or one side or where? A. On one side.

Q. On one side? A. Yes.

Q. Now, suppose you are standing with your back to the radio, which you say is up against the front of the house— A. Yes.

Q. And you are looking out through that door, can you look out through the kitchen out into the yard? A. Yes, sure, yes.

40 Q. And is that what you were doing? A. Yes.

Q. At that time? A. At that time.

Mary Parave—Cross.

Q. You were standing in the living room looking through that door, through the kitchen, and when you looked out of the kitchen did you look out a window or out of a door? A. What do you mean?

Q. I mean you had to look through something when you looked out to the yard, didn't you? A. Yes.

10

Q. When you looked through the kitchen, did you look through a window or through a door? A. Through the window.

Q. Through the window; now, is your garage in line with that window? A. It is this way—the garage don't face to the window.

Q. The garage doesn't face to the window? A. No.

Q. So you didn't see the automobile come out of the garage? A. No.

20

Q. You didn't see the boys get into the automobile, did you? A. No.

Q. Then of course, you didn't see the automobile come out of the garage, did you? A. No.

Q. Did the automobile at any time—

Mr. Sorenson: Strike that out.

Q. Did the boys stop before they pulled out? A. No, went right on.

Q. So that the last time you really saw Joseph, then, was when he was in the house, is that right? A. Yes.

30

Q. And prior to seeing Peter in the hospital, the last time you saw Peter was also when he was in the house? A. Yes.

Q. And of course, you don't know where they went to, do you? A. They went to sell Benny's wood.

Q. What do you mean by that, Mrs. Parave? A.

40

Mary Parave—Cross.

When they went out that night, that is where they went.

Q. That is where they went? A. Yes.

Q. Mrs. Parave, I am not familiar with that term, "Benny's woods". Will you tell me what you mean by that? Is that a place?

10 Mr. Avis: That is a man's name.

Mr. Sorenson: Oh.

Q. You mean by that, then, the boys, so far as you knew, they left for the purpose of selling something? A. Yes.

Q. And what they were going to sell was Benny's wood? A. Benny's wood.

Q. Where were they going to sell it, did they tell you? A. To Franklinville.

20 Q. Now, at that particular time, was it raining? A. Drizzle.

Q. Was it dark? A. Yes.

Q. It was cloudy, wasn't it? A. It was cloudy, yes.

Q. You really don't know who was driving the automobile then, do you? A. No.

30 Q. And as they pulled out of the driveway upon the highway, of course, you don't know which way they turned, either, do you? A. No.

Q. Was anybody else with the boys when they were in your house before they started out? A. No.

Q. They were all alone; and you are sure of this, that at the time that they left the house it was seven o'clock? A. Yes.

40 Q. So that we can feel sure of this, then, Mrs. Parave: That it was a dark, rainy and cloudy night? You didn't see the automobile come out of the garage? A. No.

Mary Parave—Cross.

Q. And you didn't see which way it went, and you didn't see who drove? A. No.

Mr. Sorenson: I think that is all.

By Mr. Avis:

Q. Mrs. Parave, do you know who the boys were going to sell this wood to? 10

Mr. Sorenson: I object to that on the ground it is based upon hearsay.

Mr. Avis: If your Honor please, he is the one asked the question. She said they were going to sell Benny's wood. He asked who they were going to sell it to.

Mr. Sorenson: I object to it.

The Court: Is it material? What is the materiality of it, Mr. Avis? 20

(After a conference held at side bar):

Mr. Avis: I withdraw the question.

The Court: All right.

Mr. Avis: That is all, Mrs. Parave.

THOMAS W. BURNS, sworn.

Mr. Sorenson: If the Court please, at this time I desire to make a motion in reference to so much of Mrs. Parave's testimony which on direct-examination was to the effect that she saw the boys leave, she saw who got into the car and she saw who drove, and all that sort of thing, on the ground that in her cross-examination she has unequivocally stated she didn't see it. 30

Mr. Avis: I don't think that is exactly what she said. I think I asked her who 40

Thomas W. Burns—Direct.

drove the car and she said that Joseph did. I will admit that was a conclusion on her part and she didn't see it, and therefore that part ought to be stricken out.

10 The Court: Her testimony reasonably was that they left the house at seven o'clock and she said they got into the car and that Joseph drove.

Mr. Avis: That may be so. That is not so; apparently she was confused. She didn't see them get in the car.

The Court: You consent that part be stricken?

Mr. Avis: Yes, I don't think we have proved that Joseph drove the car at all.

20 The Court: All right.

Direct-examination by Mr. Avis:

Q. Mr. Burns, where do you live? A. I live in Malaga.

Q. For how long have you lived there, Mr. Burns? A. Eighteen years next July.

Q. Do you know Frank Parave? A. Very well.

Q. And did you know the two boys, Peter and Joseph Parave? A. Very well.

30 Q. You say you knew them very well; what do you mean by that? Where would you come in contact with those two boys? A. Through their school days. Their children and my children's school days.

Q. You knew them then, did you? A. I knew them from that period on.

40 Q. How often would you see them? A. Well, during the school days, they would come to my house with my children and go off, probably on little trips, but later on when I was working

Thomas W. Burns—Direct.

around Parave's place, why, Joe was my assistant all the time.

Q. Did you work around the Parave place? A. Yes, sir.

Q. What kind of work did you do there? A. Contracting and electrical work and installation.

Q. When was that? A. That has been for a period of years. 10

Q. Have your family been friendly with the Parave family for some time? A. Since the childrens' school days.

Q. What can you tell the Court and jury as to the kind of boys these two boys were? A. They would be a credit to any father and mother; that is the most I can say.

Q. What do you know, if anything, about their work? A. As to their work in what way? 20

Q. Do you know what they did? A. Yes, sir.

Q. What did they do? A. They ran the place over there. I have occasion to know that Peter ran the place.

No cross-examination.

ARTHUR MORENI, sworn.

30

Direct-examination by Mr. Avis:

Q. Mr. Moreni, where do you live? A. Egg Harbor.

Q. How long have you lived in Egg Harbor? A. About two years.

Q. Before that time, where did you live? A. Hammonton.

Q. How long did you live in Hammonton? A. Two years and a half. 40

Arthur Moreni—Direct.

Q. Before that, where did you live? A. Scranton, Pennsylvania.

Q. Where? A. Scranton, Pennsylvania.

Q. Do you know this gentleman, Mr. Parave?

A. No.

Q. Have you seen him? A. No, sir.

10 Q. You see him now, don't you? A. Yes, I see him now.

Q. How many times have you seen him, altogether? A. Just the start of the case.

Q. Start of the case? A. Yes.

Q. Did you know him before that time? A. Just once.

Q. I say, before that time? A. No.

Q. Mr. Moreni, do you remember the day of October 29, 1930? A. Yes.

20 Q. Were you living in Egg Harbor at that time? A. Yes, sir.

Q. Won't you tell the Court and jury what you did that day, please? A. Yes. I was going from Egg Harbor going to Philly.

Q. What time did you leave Egg Harbor? A. I leave Egg Harbor, it was around about half past six.

Q. In the morning? A. In the morning.

30 Q. Then from there, where did you go? A. Vineland.

Q. How did you go? I don't mean the roads, but were you in a car? A. No, I go in my truck.

Q. In your truck? A. Yes.

Q. What kind of truck was it? A. Chevvy.

Q. Chevrolet? A. Yes.

Q. You say you went to Vineland? A. Yes.

40 Q. Now, in Vineland what did you do? A. I stop there to pick up my father.

Q. Got your father? A. Yes.

Arthur Moreni—Direct.

Q. What is your father's name? A. Louis Moreni.

Q. Where does he live? A. In Vineland.

Q. How old is he? A. He is 72 years.

Q. After you stopped for him, where did you go? A. Philly.

Q. Did he go with you? A. Yes.

10

Q. Did you go in your truck? A. In a car.

Q. In another car? A. Yes.

Q. Whose car was that? A. My father's car.

Q. Your father's car; what kind of car was that?
A. Essex.

Q. Now, on the way to Philadelphia from Vineland, did you stop anywhere? A. From Vineland to Philadelphia?

Q. From Vineland to Philadelphia? A. I stop at the gas station.

20

Q. Do you know where that was? A. Was pretty close to Glassboro.

Q. Did you at that time know the man who ran the gas station? A. No.

Q. And for what purpose did you stop at the gas station? A. I burned my bearing.

Q. You burned out a bearing? A. Yes.

Q. What did you do at the gas station? A. I is going there and ask for tools. He isn't got any. I go buy one set wrench.

30

Q. You asked him for some tools? A. Yes.

Q. Did he have any? A. No, I just bought one set wrench.

Q. How much did you pay for them? A. Ninety cents.

Mr. Sorenson: I don't see where this is relevant at all, unless it is brought somewhere near the time of the occurrence.

40

Arthur Moreni—Direct.

Mr. Avis: I am asking that because as the thing goes along, the witness will testify to certain facts, and I thought it was proper for me to corroborate and show by other witness that he was present in a certain place at a certain time.

10

Mr. Sorenson: I object to any such thing.

The Court: I suppose it would be admissible dependent on where that certain place and when the certain time was. It is too remote from the accident; I don't see where it is admissible.

Mr. Sorenson: Not up to the present time.

Mr. Avis: All right; I won't press it.

Q. You went to Philadelphia, did you? A. Yes.

20 Q. How long did you stay in Philadelphia? A. I stay—I leave Philadelphia, it was about half past five, five, half past five.

Q. From there where did you go? A. Come back to home.

Q. What road did you take? A. I take—it was the Glassboro Road.

Q. Did you go to Glassboro? A. Sure.

Q. After passing through Glassboro, did you
30 make any stops? A. I stop at the same place.

Q. Stopped at the same place? A. Yes.

Q. Why did you stop there?

Mr. Sorenson: Objected to as irrelevant.

Q. What time was that? A. It was around half past seven, I guess.

40

Mr. Avis: I think it is admissible, if the Court please. I am going to produce the person where he stopped and prove he was there, for the purpose of corroborating the

Arthur Moreni—Direct.

fact that this man was on that road at that time and proceeded further down and saw just what happened.

Mr. Sorenson: That is improper, to do that.

Mr. Avis: My thought, if your Honor please, is that otherwise the argument could be made that this witness might not have seen it at all, maybe he wasn't there. I can prove by some other witness that at this time on this road, this man was there. 10

Mr. Sorenson: I object to that, on the ground it is too remote.

The Court: No, I think that is admissible by way of corroboration, placing this man at or near the scene of the accident at or about the time of the occurrence. 20

Mr. Sorenson: Two miles away?

The Court: Yes.

(Exception noted for the defendant).

Q. And what did you do there?

Mr. Sorenson: Objected to as irrelevant.

A. I got two sandwiches.

Mr. Sorenson: I move to strike out the answer. 30

The Court: I don't think you ought to go into the details, Mr. Avis.

Mr. Avis: All right.

Q. Did you or did you not see the man who had the gas station? A. Yes.

Q. From there, where did you go? A. Right straight home.

Q. Well, now, at that time was your car running in good condition? A. No. 40

Arthur Moreni—Direct.

Q. What was the matter with it? A. The same trouble, the burned bearing.

Q. Were you going fast or slow? A. I run about fifteen miles.

Q. As you went on down this road, do you remember going through Franklinville? A. Sure.

10 Q. Do you understand me?

Mr. Avis: Repeat the question, please.
(Question repeated).

A. I don't remember that.

Q. Do you know where Franklinville is? A. No.

Q. I see; you don't know where Franklinville is. Do you know where Clayton is? A. I know the road, I don't tell by the place, because I want to
20 go through. I stop nowhere, see, having trouble.

Q. You were on your way to where—where were you going? A. I take the road from Philadelphia, I go right—

Q. I didn't mean that. You were on your way to Vineland, is that right? A. Yes.

Q. Now, after leaving this gas station, you went on down the road, as I understand you? A. Yes.

Q. Did you see anything happen further down
30 the road?

Mr. Sorenson: I object to that on the ground that there is no testimony yet in the case to show where this man was at the particular time that he saw anything take place. I certainly think it ought to be fixed with a degree of some accuracy as to where he was.

The Court: Repeat that question.
(Question repeated).

40 The Court: That question is perfectly proper; I will overrule the objection.

Arthur Moreni—Direct.

(Exception noted for the defendant)

(Question repeated)

Mr. Sorenson: I object to that on the further ground it is calling for a conclusion.

The Court: Same ruling.

(Exception noted for the defendant)

Mr. Avis: Strike that out.

10

The Court: Strike that out? All right.

Q. Did you or did you not see a bus? A. Yes, sir.

Q. When you saw this bus, were you on the same road? A. Yes.

Q. You know exactly where it was? A. It was on that road, before I pass a little town.

Q. Now, after leaving the gas station, do you know whether or not you went through any towns? 20

A. After I see one bus go through and one car was

Mr. Sorenson: I object to this; I think we ought to have this place where this man saw—

The Witness: Well, you get somebody talking Italian, I can explain better.

Mr. Sorenson: I think there ought to be some place fixed where he saw the bus. 30

The Court: I think Mr. Avis is trying his best to fix it, although he isn't succeeding very well.

Mr. Avis: I think his testimony will fix the place eventually.

Q. Well, now, you say you saw a bus? A. Yes.

Q. Now, was that bus— Where was that bus?

A. It was on the road, coming from Vineland.

Q. Was it coming toward you or going the other 40

Arthur Moreni—Direct.

direction? A. I say it was right in the middle of the road, I see.

Q. Was it coming toward you? A. No, he is coming from Vineland; he is going to Philly.

Q. You were going to Vineland? A. Going to Vineland.

10 Q. You say you saw this bus? A. Yes.

Q. You say it was in the middle of the road? A. Yes.

Q. Now, at that time do you know whether there was any car or cars in back of you?

Mr. Sorenson: I object.

A. Just one.

20 Mr. Sorenson: I think the man ought to testify as to what he saw; I think the witness might be asked what he saw.

Mr. Avis: I will ask him what he saw. I will withdraw it.

30 Q. After you saw this bus, won't you tell this Court and jury just what you saw and just what happened? A. I saw one car in the back, and as soon as the bus he passed me, I saw the bus go through in the field and I don't see no more, the car wasn't in back with lights.

Q. You say there were lights? A. Yes.

Q. Was that from the car in back of you? A. Yes.

Mr. Sorenson: I object to that; that is leading.

Mr. Avis: No, he said that.

Mr. Sorenson: No, let the witness say it.

40 Q. How do you know there was a car in back

Arthur Moreni—Direct.

of you? A. Because he come through in my looking glass.

Q. Was it light or dark? A. It was light, the two lights he hit me on the looking glass.

Q. Two lights were on the looking glass? A. Yes.

Q. When the bus went by, did the two lights stay in your looking glass? 10

Mr. Sorenson: I object to that as leading.

The Court: The question is leading, Mr. Avis.

Mr. Avis: All right.

Q. Did anything happen to those lights after the bus went by? A. No, the light and the bus go right through in the field; that is all I see. 20

The Court: What was the last answer?

(Answer repeated).

Q. The light you are talking about, were they the lights in the bus or the lights of the car in back of you?

Mr. Sorenson: I object to that.

The Court: His testimony was, as the reporter read it, that the lights of the bus went right out in the field. Isn't that correct? 30

(Answer repeated)

Q. You were driving down which side of the road? A. It was on the right side.

Q. How did you know there was a car in back of you? A. I saw it through the looking glass in my car. 40

Arthur Moreni—Direct.

Q. And do you know whether or not that car stayed in back of you?

10 Mr. Sorenson: I object; this man can testify to what he saw. There isn't anything in the case to show where this man first saw the car or anything like that. All we have here is a man testifying he saw lights and a bus passing, or something like that.

Mr. Avis: I am going to show just what it was; that is my privilege.

The Court: I overrule your objection, Mr. Sorenson, to the question.

Mr. Avis: What was the question?
(Question repeated).

20 Q. After the bus went by? A. The car was right in the back, he hit my looking glass, and then the bus is going, see. I see all then and the bus and the other light I didn't see no more. They go right in the field.

Q. Now, won't you just tell us what you saw in the field? A. I don't see nothing no more. I see just the little light and the bus was right in the field, that is all.

30 Mr. Sorenson: I submit the question has been answered, "I didn't see any more."

Mr. Avis: I understand, if your Honor please, that this man doesn't understand English.

The Court: Yes, he can't be stopped in the middle of an answer. He is entitled to finish his answer. What was the answer?

(Answer repeated).

40 Q. What do you mean by little lights? A. The

Arthur Moreni—Direct.

little light that was in the bus. That is all, I don't see nothing else, I don't see no more car or nothing else.

Q. What kind of lights were they? A. They was two red lights.

Q. Where were they? A. On the top of the bus.

Q. Were they close together or far apart? A. I can't tell; I know it was distance one from the other. 10

Q. Some distance from the other? A. Yes.

Mr. Avis: Cross examine.

Cross-examination by Mr. Sorenson:

Q. After you saw the bus go into the field, you didn't stop, did you? A. No. 20

Q. You kept going? A. Yes.

Q. Now, after you saw the bus go into the field, where did you stop for the first time? A. Vineland.

Q. And when you stopped in Vineland, who was the first person that you saw? A. My family, my mother.

Q. Did you have a talk with your mother about what you had seen? A. No, I didn't talk, no.

Q. Now, did you go home to Egg Harbor that night? A. Yes. 30

Q. How did you go home? A. In my truck.

Q. In your truck; and which way did you go home? A. Went through Mays Landing.

Q. Through Mays Landing? A. Yes.

Q. What time did you get into Egg Harbor? A. It was around half past eleven. I don't figure it right. It was around half past eleven, I guess.

Q. How long did you stay at your mother's 40

Arthur Moreni—Cross.

house? A. I don't look how much I got there.

Q. How long did you stay? A. I don't know, I don't figure how much I stay in the house. Just I got to eat and then I started my truck and gone.

Q. How long did take you to eat? A. I think about an hour.

10 Q. Now, what time did you arrive at your mother's house that night? A. I don't look at the watch.

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

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

Q. Who was with you from the time you left Vineland to the time you got to Egg Harbor? A. Just myself.

Q. You were all alone? A. All alone.

20 Q. You were driving this Chevvy truck? A. Chevvy truck.

Q. That morning when you left Egg Harbor, you say you drove directly to your father's place? A. Yes.

Q. Then you took your father's car? A. Yes.

Q. What kind of an Essex was it? A. I don't remember—it is 1924, yes.

Q. 1924 Essex? A. 1924. I think it is 1924. I no be sure; I think 1924.

30 Q. What kind of an automobile was it? A. Was an Essex.

Q. What body, what kind of body? A. Sedan.

Q. Sedan? A. Yes.

Q. When you left Vineland that night, it was raining, wasn't it? A. It was not raining; it was a little wet.

Q. What do you mean, it had stopped raining? A. Well, it don't rain hard, just he comes once in a while. It was wet; the road was wet, anyhow.

40

Arthur Moreni—Cross.

Q. Did you have your windshield wiper working? A. No.

Q. What time did you leave Vineland on your way up to Philadelphia? A. In the morning?

Q. No, what time did you leave Philadelphia on your way to Vineland? A. I left Philadelphia, I want to go to Vineland?

Q. Yes. A. I leave Philadelphia, it was half past five, yes. 10

Q. And did you stop at any time from five-thirty until about seven o'clock? A. The first time I stop, it was a little after seven o'clock; I stop after Glassboro in the gas station.

Q. Now, as you were riding along the highway— A. I don't know what you mean.

Q. Along the road through Glassboro, was it raining at that time or wasn't it? A. It was the same, the same way; he was raining a little bit, see. 20

Q. Did the rain get on your windshield? A. Yes, it got on.

Q. And you didn't use your windshield wiper? A. No, I never used it.

Q. Never use it? A. Yes.

Q. You mean by that you never use it, no matter how hard it is raining? A. Well, it wasn't raining hard, it wasn't raining hard. 30

Q. And you say that as you were driving south along the road, an automobile bus came toward you, is that so? A. Yes.

Q. Now, how did you know it was a bus? A. Oh, gee! It is no fly; you can see the bus.

Q. There is no mistake about it, is there? A. No, no, I got big eyes, yes.

The Court: The witness seems to be certain about that. 40

Arthur Moreni—Cross.

Mr. Sorenson: Yes, he is quite emphatic.

Q. And this bus passed you, is that so? A. Yes.

Q. And then you could look into this mirror, you say? A. Yes.

Q. How big is the mirror you had? A. That long (indicating).

10 Q. How long would that be? A. Well, I don't know; you can measure it, you can see how long it was.

Q. How long do you think it would be? A. You can figure; I can't figure.

Q. You figure; I am poor at it. A. I ain't, either; I don't measure.

Q. How long do you think it is? A. Well, you figure. About seven inches, I guess. I think so; I don't know; I didn't measure it.

20 Q. How wide would you say it is? A. How wide?

Q. Yes. A. Just that way (indicating). Three inches, three or four inches. I don't know; I didn't measure.

Q. Now, do you remember crossing— A. I don't remember.

Q. Just a moment, please. —the Williamstown Road? A. I don't know the road.

30 Q. Do you remember crossing the Williamstown Road? A. I remember just there was a little barn there.

Q. You remember passing a barn? A. Yes.

Q. How far past the barn were you when the bus passed you? A. Just passed the barn.

Q. How far away, would you say? A. I don't think it was over fifty foot.

40 Q. Now, just at the time when you looked forward and you saw the bus coming toward you— A. Yes.

Arthur Moreni—Cross.

Q. At that time you didn't know whether there was an automobile in back of you or not, did you?
A. Yes.

Q. How could you look forward and backward at the same time? A. In the looking glass. You can see it on the looking glass, where you look in back what you got.

Q. You are saying you looked forward and you looked up in your mirror at the same time? A. Just the same. 10

Q. At the same time? A. I just was driving the car. You can see a car what you got behind. What you keep that looking glass for? You have to look in the back.

Q. You keep your eyes in the looking glass all the time? A. Because I got trouble in my car and I go slow, I don't want to get in trouble myself, I have to look in the back, too. 20

Q. You were going fifteen miles an hour? A. Fifteen.

Q. You were afraid of getting in trouble? A. Sure.

Q. Is that why you didn't stop? A. That is why I didn't stop.

Q. Is that why you didn't stop—you were afraid you were getting in trouble? A. I am afraid I no reach home. 30

Q. When you say you were afraid of getting in trouble, is that why you didn't stop? A. No, I didn't mean to stop. Just you ask me what you looking in the front and back what you see.

Q. You say you were about fifty feet past the barn? A. Yes.

Q. When the bus passed you? A. Yes.

Q. Now, how far did you travel from the time when the bus passed you until the time that you 40

Arthur Moreni—Cross.

saw the rear lights of the bus in your mirror? Do you understand me now? A. You mean how far I drive after the bus passed me?

Q. How far did you travel from the time when the bus passed you? A. Yes.

10 Q. To the time that you saw the rear lights of the bus for the first time in your mirror? A. I think about sixty foot, yes.

Q. So that you were 110 feet away from the intersection away from the barn? A. Yes.

Q. When you for the first time saw these red lights? A. Not from the barn. After the bus pass me, I see after the barn.

Q. You were fifty feet away from the barn when the bus passed you, is that right? A. Yes.

20 Q. You say from that time on you travelled sixty feet before you saw the rear lights or the tail lights of the bus in your mirror, is that right? A. Yes.

Q. So fifty and sixty is 110, isn't it? A. Yes.

Q. So you were 110 feet away from the barn at the time when you saw the rear lights of the bus in your mirror? A. Yes.

Q. Now, at that time when you were 110 feet away from the barn— A. Yes.

30 Q. Were you on the left side of the street? A. On the left, I was—

Q. Yes or no. A. No, on the right side; no on the left side.

Q. So that when you were looking into your mirror, you then couldn't see whether or not any automobiles were coming out of this road (indicating on map)? A. No automobile is coming out of that road.

40 Q. So when you were 110 feet up here on your right side of the road—

Arthur Moreni—Cross.

Mr. Avis: You are going the wrong way.

Mr. Sorenson: That is right.

Q. So when you were 110 feet away from the intersection, by looking in your mirror you couldn't see whether anything was coming from either this side or that side, could you? A. I don't see it is coming from that side. Just I see— 10

Mr. Sorenson: I submit I am entitled to a yes or no answer.

The Court: What was the answer?

(Answer repeated).

Mr. Sorenson: He is trying to say what he wants to say and I want him to answer the question.

The Court: Repeat the question to the witness. 20

Mr. Sorenson: I will withdraw it.

The Court: All right.

Q. Now, from the time you were 110 feet—did you hear a noise that night? A. Yes.

Q. Now, from the time you were 110 feet away to the time you heard the noise, how far did you travel? A. I don't go far; I was right there.

Q. From the time that you were 110 feet away to the time you heard a crash, how far did you travel? A. I was right there, just the 110 feet, that thing happened. 30

Q. You were 110 feet away when you heard the noise? A. Yes.

Q. Then the next thing you knew was the automobile—or rather, the bus was over in the field? A. Yes.

Q. That is all you know? A. That is all I know. 40

Q. You don't know how the bus got over in the

Arthur Moreni—Cross.

field, then, do you? You didn't see that, did you?
Yes or no. A. I don't see—

Q. Yes or no. A. I was just—

Q. Yes or no to that question. A. What do you
mean, yes or no? Bring somebody talking Italian;
I can talk better, I will show it to you.

10

The Court: Repeat the question.

(Question repeated).

Mr. Sorenson: I will withdraw that question.

The Court: All right.

Q. You didn't see how the bus got over into the
field, then, did you? Yes or no to that. A. I see
when he go in the field.

20

Q. Yes or no. A. I see when he go in the field.

Mr. Sorenson: Will you read my question
again?

Mr. Avis: I think that answers it all
right, if the Court please. I don't think he
can make this witness answer yes or no.

The Court: No, I don't think he can,
either. What was the question and answer?
(Question and answer repeated).

30

Q. Now, at the time you saw the bus go into
the field, did you see any other lights? Yes or
no to that. A. No.

Q. So that you then didn't see the accident? Yes
or no to that. A. I see when he get together, when
he goes in the field.

Q. Answer yes or no to that. You then didn't
see the accident? Yes or no to that. A. I saw
it.

40

Mr. Sorenson: I insist I ought to have a
yes or no answer.

Arthur Moreni—Cross.

The Court: I think that is yes. I should say that was yes.

Mr. Sorenson: I will withdraw the question.

Q. Did you hear anything hit the tree? A. Sure.

Q. And was that the noise that you heard? A. That is all.

Q. Did you see the bus stop? Yes or no. A. I didn't see the bus stop. Sure, he stop; he goes in the field.

Q. Yes, that is what I wanted to find out. Did you see that? A. Sure.

Q. Where were you when you saw it, how far from the intersection? A. I told you, 110 feet.

Q. You were still at 110 feet? A. 110 feet.

Q. Of course, in view of the fact that you didn't stop, you don't know whether or not the bus was damaged, do you? A. No.

Q. Now, that night when you were going south along the Delsea Drive, do you remember whether or not there were any lights on those corners? A. No, I remember just the light before I get to the corner.

Q. I mean any lights along the road? A. Back of my car there were lights.

Q. I mean, any posts, any electric lights. Do you know what an electric light is? A. I don't look.

Q. Was there any on those corners? A. No, I don't see the lights.

Q. So there were no lights? A. No lights.

Q. At this intersection? A. No, I don't see no lights.

10

20

30

40

Arthur Moreni—Cross.

Q. And furthermore, you say you don't remember crossing the road, do you? A. I don't remember that crossing, because I no watch the crossing.

Q. All you remember is you happened to see the barn? A. I remember the barn, that is all.

Q. Which side of the road was the barn? A.
10 On the right side.

Q. Is this the one (indicating on map)? A. The barn is right on the top—on the side of the road, see.

Q. Were you alongside of the barn when the bus passed you? A. When the bus passed me, I was by the barn.

Q. You were just by the barn? A. Yes.

Q. How far away from Franklinville were you
20 when you first saw some automobiles in back of your automobile? A. I don't know what is Franklinville.

Q. What is that? A. I don't know what is Franklinville.

Q. You say you remember passing through a little town? A. Yes.

Q. How far away from that little town were you
30 when you first saw some automobiles in back of your automobile? A. I don't think it was over three or four miles. I don't know, two or three miles, I don't know. I don't figure much on that road.

Q. Three or four miles? A. I don't know.

Q. You don't know whose automobile that was, do you? A. No.

Q. This noise that you heard—

Mr. Sorenson: Strike that out.

Q. Did you look into your mirror when you
40 heard the noise? A. I was looking before.

Arthur Moreni—Cross.

Q. Before? A. Sure, I was looking on the back before.

Q. So that you were riding along looking in the mirror? A. Sure, that is what I am looking for, I look back and front when I drive my car.

Q. After that noise took place, all you know in reference to why it took place is that you saw the bus going into the field? A. Yes. 10

Q. But what caused that bus to go into the field, you don't know, do you? A. I know.

Q. Yes or no. A. Yes.

Q. Well, if you knew what took place, why didn't you stop? A. I don't stop; I am afraid to stand on the road.

Q. You were afraid to stop, eh? A. Yes.

Q. Why should you be afraid to stop? A. Who take me home? I ain't got no money in my pocket that time. 20

Q. You had gasoline in your car, didn't you? A. What?

Q. You had gasoline in your car? A. The last money I spend on the gas station.

Q. Then you had plenty of gasoline in your car? A. No, I told you before I got trouble in the car, in the burned bearing. I am afraid I can't reach home. That is the reason I don't bother stopping at all. 30

Q. If you were afraid you weren't going to reach home with this bad car and you wanted to go home that night, can you tell us why you didn't borrow your father's car? A. My truck, no father's truck.

Q. If your car was no good and you wanted to get home that night, why didn't you borrow your father's car? A. The car was good when I go away; I got trouble on the road.

Q. Why did you leave your truck at your 40

Arthur Moreni—Cross.

father's place that day and take your father's car to go to Philadelphia? A. Because it was a little better driving a car than a truck.

Q. Isn't it a fact that it was because there was something wrong with your automobile at that time? A. No, sir.

10 Q. How far did you drive from the time you left your father's place to the time you first discovered that your bearings were burned out? A. Just I think three hundred foot before I reach the gas station, I stop.

Q. You stopped? A. Yes.

Q. That was in the evening, wasn't it? A. Yes.

Q. Was this in the evening? A. Evening? What do you mean?

20 Q. Night time? A. No, it was in the morning.

The Court: The bearings burned out in the morning on the way up, I think is his testimony.

Q. When you came to your father's place, your bearings were burned out? A. Yes.

30 Q. And that is why you left your car at your father's place? A. No, I don't say that. I say after I leave Vineland, my car I leave over in my father's, because it was truck. I take my father's car because I can drive a little better a car than a truck.

Q. And your truck—what kind of a truck is it? A. It is a closed body, a baker truck.

Q. A closed body? A. Closed body.

Q. It is a baker truck? A. Yes.

Q. What do you mean by a closed body? A. Not open body, closed body, all closed.

40 Q. Tell us what you mean by an all closed truck? A. What?

Arthur Moreni—Cross.

Q. What do you mean by an all closed truck, closed on the side and the back? A. Closed on the side and the back and the front, all closed.

Q. How is it closed in the back? A. Because we keep stuff in the back.

Q. Big door? A. Yes, two doors.

Q. Two doors; and they close in? A. No, it is closed that way (indicating). 10

Q. How do they close, like doors usually close? A. Like a car, just the same as on a car.

Q. Have you got any glass in the back? A. Two.

Q. Where is the glass? A. Each door.

Q. How big? A. Like that picture there.

Q. So on each door you have a piece of glass about that size? A. Well, a little bigger than that.

Q. Now, talking about the truck? A. Yes. 20

Q. Your truck; did the truck which you have have windows this size? A. Well, a little bigger, little longer than that, see.

Q. A little longer? A. Yes, not much.

Q. Now, the Essex which you have, how big a window has that in the back? A. It has got pretty big.

Q. Pretty big? A. Yes.

Q. How big do you think it is? A. I don't measure; I think it is—let's see—twenty by sixteen, I guess. 30

Q. Twenty by sixteen? A. Maybe a little bigger than that; I don't know, I don't measure it.

Q. Where do you work? A. Atlantic City.

Q. Whereabouts in Atlantic City? A. In the baker shop.

Q. There are a lot of them down there, aren't there? Which one? A. Perkins. 40

Arthur Moreni—Cross.

Q. Now, what street is that located on? A. I don't know; I can't tell by the street.

Q. You don't know where you work? A. I know, I ain't got no chance to go around when I go there.

10 Q. How long did you work there? A. I work day and night, pretty near.

Q. How long? A. On the baker shop?

Q. Yes. A. I think it was three or four years.

Q. You don't know what street it is on? A. No.

Q. You mean to say you don't know what street you work on, what street the bakery is on? A. No, because the bakery take three or four streets. I don't remember all; it is one corner.

20 Q. Can you name any of the four squares? A. I I don't remember the street, I don't look the streets. When I go I just keep on going, I go to the baker shop.

Q. You mean to say you worked three years at this Perkin's bakery shop and it takes up a whole block and you don't know any one of the four streets? A. I don't know the name.

Q. Do you know the name of your boss? A. What?

30 Q. What is the name of your boss? A. He is Perkins.

Q. Have you got a foreman? A. Yes, got the foreman and got a manager, too.

Q. What is the name of your foreman? A. Louis.

Q. Louis who? A. I don't know, I don't ask him for it. I just call him Louis, that is all.

40 Q. You worked three years with Louis and you don't know his last name? A. I work two years for him.

Q. You don't know his name? A. No, I don't

Arthur Moreni—Cross.

ask him for it, because I don't live there.

Q. How often do you see Louis? A. How long?

Q. Yes, how many times a day? A. We work all together.

Q. You work together with him all the time?
A. Sure.

Q. And don't know what his last name is? A. No, I call him Louis; I don't bother what is his second name or first name, I don't bother. 10

Q. Where does Louis live? A. Pleasantville.

Q. Pleasantville; where do you live? A. Egg Harbor.

Q. What street? A. Saint Louis.

Q. How long have you lived there? A. I think one year and a half in that street.

Q. Now, I understand you to say that you never talked with anybody about this which you say you saw, never talked with anybody? A. No, sir. 20

Q. Well, tell us this: If you didn't talk with anybody and you didn't stop there that night to see what had happened, how did anybody know that you saw as much as you claim you saw? A. Well, it was a week after that I come in Vineland and it was right on Lenox Avenue, there was three or four friends there talking about this accident, see, and then I told this to two guys, "I saw the accident when I am going by there. I didn't stop because I got trouble in my car." Well, two or three weeks after and Mr.—what do you call him? —he come see me and asked me what it was. I told— 30

Q. Never mind what you told him. A. I told him—

Mr. Sorenson: I object to what he told him.

The Court: Never mind what you told him. 40

Arthur Moreni—Cross.

Q. So you did talk with somebody about this, didn't you? A. What?

Q. You did talk with somebody about this, didn't you? A. I talk after. You ask me before when I come home. I didn't talk when I come home, see; I talk a week after.

10 Q. Mr. Avis asked you in direct-examination whether or not you had talked with anybody.

Mr. Avis: No, I didn't.

Mr. Sorenson: I refer to the testimony, then.

Mr. Avis: You can do so at your own risk, because I know I didn't ask him that.

Mr. Sorenson: I believe you are right about that.

20 Mr. Avis: Yes.

Q. So that the first time that you realized that you had perhaps witnessed something in reference to what occurred was a week after, when somebody told you something had happened out there? A. Yes.

Q. Yes; up to that time you didn't know that you had been near an accident of that character? A. No.

30 Q. You didn't realize it; when you say you passed a barn, do you remember whether or not the barn was on the north side of the Williamstown Road or on the south side of the Williamstown Road? A. On the north, I guess; it was after the road.

40 Q. Well, now, if you say that that night you didn't notice the road, how do you know whether it was north or south of the road? A. I know it is a clean place there, but I don't see it is a road, because it is pretty wide. I didn't see what road

Arthur Moreni—Cross.

come the other side. I just see a clear place, and after he has got a barn there. I don't know whether it is a road or not.

Q. So you are pretty sure it was a barn which is south of that clear place? A. Yes, it was after the clear place going from Philadelphia and going to Vineland, after the clear place, see. I don't know whether it is a road or no, because I don't saw the road. I drive right through there was a road that night. 10

Q. Now, at the time that this took place, was your father with you? A. Yes, he was with me.

Q. Your father was with you? A. Yes.

Q. What is your father's first name? A. Louis.

Q. And he lives in Vineland? A. Yes.

Q. Whereabouts in Vineland? A. On Cherry Street. 20

Q. Did you see the rear lights of the bus while it was in the field? A. That is where I see.

Q. That was where you saw it? A. That is where I see it.

Q. Do you mean by that that you didn't see the rear lights until it stopped in the field? A. No, I don't see nothing no more; I just see the two little lights, that is all. I don't see nothing, I don't see the big light at all. 30

Q. You didn't see anything? A. No.

Q. Now, when you say you had bearing trouble, how did you know that—your car wouldn't run right or did it make a lot of noise? A. It was making noise.

Q. It was making noise? A. Sure.

Q. What kind of noise was it making? A. Like a bearing.

Q. You could hear it slap? A. No, it make like a sound and it is no good. 40

Arthur Moreni—Cross.

Q. Was it a heavy noise or a light noise? A. It was a pretty heavy one coming down.

Q. Did you have your windows up or did you have your windows down? A. My side I keep down, because my stop light don't work and I put my hand outside.

10 Q. Your stop light didn't work? A. No.

Q. Did you have any headlights? A. Sure.

Q. And when you noticed the bus for the first time, how far away from you was the bus? A. From me? It was pretty close.

Q. That doesn't mean anything. How far away in feet, about, when you first noticed the bus? A. What do you mean, when he passed me or when he was by or what?

20 Q. As you were going south on the road, you say you saw a bus coming north? A. Yes.

Q. Now, how far away from you was the bus when you first saw it? A. I think it was—I don't figure. About fifty feet when I saw it was a bus.

Q. Was that the first time you had noticed the lights at all? A. What do you mean?

Q. The lights of the bus. A. No, I seen the bus before he pass me, I see he was a bus.

30 Q. How far away were those lights when you first saw them? A. What do you mean, the light on the top light?

Q. No, the front lights. This is all before the bus gets to you, see? A. Yes.

Q. I want to find out how far away that bus was when you saw it for the first time. A. I saw it before fifty feet when I saw the bus, before he get to me.

Q. The bus didn't hit you, did it? A. No.

40 Q. All right; so that you didn't see the bus un-

Arthur Moreni—Cross.

til it was fifty feet away from you? A. Yes, see, when he is going that way.

Q. Now, you say the bus was fifty feet away when you first noticed that it was a bus? A. Yes.

Q. Now, how far away was it when you first saw it? A. That is what I say, fifty feet when I saw it.

10

Q. Didn't you see any lights coming down the road at all before? A. No.

Q. Coming up the road? A. Not before the bus, no.

Q. Where were the lights of the bus the first time you saw the lights on the bus? A. Fifty feet, I tell you.

Q. As you are going south on the Delsea Drive, how far south can you look when you are about at the intersection of the Delsea Drive and the Williamstown Road, do you know? A. I don't know what you mean. I don't know what road you are talking about.

20

Q. You don't know? A. No.

Q. Now, Mr. Moreni, you were coming this way, weren't you? A. Yes.

Q. I am asking you, when you are going that way and you are right here, how far down the road you can look (indicating on map)? A. On the front?

30

Q. Yes. A. You can look about 200 feet, yes.

Q. Did you see the bus when it was 200 feet away from you? A. Yes.

Q. And you didn't realize it was a bus until it was about fifty feet away from you? A. Yes, I didn't know whether it is a bus or car when I first see.

Q. Have you talked with Mr. Parave since this thing took place? A. No, sir.

40

Arthur Moreni—Cross.

Q. Not at all? A. Just this two or three days.

Q. I mean outside of these couple of days in Court? A. No.

Q. Did you give your name to the State Police?
A. What?

Q. Did you give your name to the State Police?
A. My name?

10 Q. Yes. A. I don't give my name to nobody.

Q. What? A. I ain't giving my name to nobody, nobody asked me my name.

Q. Did you tell the police you saw all these things you say you saw? A. What police?

Q. The State Police? A. There is nobody asked me nothing.

Q. State Trooper, I mean? A. No. I know what you mean. Nobody ask me nothing of me;
20 I don't see State Trooper, I don't see nobody.

Q. No policeman asked you for your name? A. No.

Q. And you didn't give your name to any policeman? A. No, no police.

Q. Had you been informed by anybody that there were no actual eye-witnesses to this accident? A. No.

Q. Nobody told you that there were absolutely
30 no eye-witnesses to this accident? A. I can't understand that.

Q. Do you know what an eye-witness is? A. What?

(Question repeated).

A. Yes.

Mr. Avis: I am not so sure.

Q. Did anybody tell you that there were no witnesses to this accident? A. No.

Q. No one told you that? A. No.

40 Q. Now, that time when you went with your

Arthur Moreni—Cross.

father to Philadelphia, where did you go? A. I go buy some stuff in Philadelphia.

Q. Whereabouts? A. The first stop we make in Front Street.

Q. Front Street? A. Yes.

Q. Do you remember who you saw there? A. There is so many there I don't remember who was there, so many people there in a grocery store. 10

Q. Grocery store? A. Yes, big grocery store.

Q. What was the name of the grocery store? A. I don't look at it, just I walk in.

Q. Just walked right in? A. Yes, he has got plenty of signs there.

Q. You went from Vineland to Philadelphia to buy groceries? A. I go once in a while in Vineland to buy shoes, anything he need for the family, and so he take my father to buy the stuff he need to buy for his family, too. He buy his stuff a little cheap, we go down to Philly to save a few dollars. That is what we go for. 20

Q. Did you spend all your money? A. We was clean.

Q. Now, is that the only place you stopped in Philadelphia? A. In Philadelphia?

Q. Yes. A. I stop in plenty places; I don't know all. 30

Q. You don't know them all? A. We go and if it was cheaper, we go in and buy.

Q. When you went to Philadelphia, you didn't have any particular place to go? A. No.

Q. You were going to go to a lot of different places and bargain? A. Just to look for what you buy stuff a little cheaper, that is all.

Q. Has your father still the Essex? A. What?

Q. Your father still has the Essex? A. Yes, he don't drive that car far. 40

Arthur Moreni—Cross.

Q. He doesn't drive it? A. No, it was my brother-in-law the driver of the car; he died.

Q. Now, as you were coming south, did you see three trucks stopped on this side of the road, the east side of the road? A. Trucks?

Q. Yes. A. I don't see no trucks.

10 Q. You didn't see any trucks there? A. No.

Q. Now, you don't remember that; you say you didn't see any trucks stopped on the easterly side of the road? A. I don't remember no cars stopped on the road.

Q. You don't remember seeing any trucks? A. No, after the thing happened in the road, I saw a lot of cars in the road.

20 Q. But did you see three trucks standing still on the side of the road, on the easterly side, about three or four hundred feet away from the Williamstown Road? A. No, I don't see them.

Q. You didn't see them? A. I no see trucks stop there.

Mr. Sorenson: I think that is all, but I would like to have the witness back on Monday, under the Court's order.

30 The Court: I suppose you probably have some redirect, haven't you, Mr. Avis, after this cross-examination?

(After discussion).

The Court: This present matter will be continued until ten o'clock Monday morning, and this witness will return ten o'clock Monday morning.

Mr. Avis: You have got to come back.

40 (At this point, the further hearing of the cause was adjourned until Monday, June 8, 1931, at ten o'clock A. M.)

Arthur Moreni—Cross.

Woodbury, N. J., June 8th, 1931.

Trial of the cause resumed on the above date, at 10:00 o'clock A. M. pursuant to adjournment, in the presence of counsel for the respective parties.

10

ARTHUR MORENI, resumed.

Further cross-examination by Mr. Sorenson:

Q. Now, after you passed the barn, did you see any traffic or any automobiles coming towards you? Yes or no.

Mr. Avis: Now, if the Court please, I am getting a little tired of yes or no.

20

A. After you passed what?

Q. After you passed the barn, did you see any automobiles coming towards you?

Mr. Avis: I suppose he can answer that yes or no.

Mr. Sorenson: I thought he could.

A. No.

Q. This Essex that you have, does your father still own that? Does your father still own the Essex? A. Does my father own that car, you say?

30

Q. Yes? A. No, he didn't drive a car.

Q. I thought you said last Friday that your father owned an Essex? A. Yes.

Q. And you borrowed the Essex from your father? A. Yes.

Q. All right; now, you say your father doesn't own an Essex? A. He didn't drive it. You asked me if it belonged to my father.

Q. Yes, does that belong to your father? A. It was my father's car. My brother-in-law used the

40

Arthur Moreni—Cross.

car. It is my brother-in-law, and he dead. He has to drive myself when he goes there.

Q. Your brother-in-law— A. Is dead, see.

Q. He gave the car to your father, is that what you say? A. Yes, my father use it.

Q. Your father uses it? A. Yes.

10 Q. Did you leave the Essex at Vineland that night before you started home? A. Before I started home?

Q. Yes? A. Sure, I leave the night.

Q. And you say you drove home in your truck? A. Yes.

Q. Now, what kind of a truck was that, what make? A. 1928.

Q. Chevy? A. Chevy.

Q. And do you own that? A. Yes.

20 Q. What kind of business do you carry on with that 1928 Chevy? A. I didn't carry no more business; I was in business before, the year before, see.

Q. The year before? A. Yes.

Q. That is, in 1929? A. Yes, 1929.

Q. You were in business for yourself? A. Yes.

Q. Whereabouts were you in business for yourself? A. Hammonton, baker.

30 Q. And how long do you say you have been in business for yourself? A. Oh, it was two year and a half in Hammonton and about six months in Egg Harbor.

Q. Now, after you had your place of business in Hammonton for two and a half years, did you then go to Atlantic City to work? A. No, it was winter time, see.

40 Q. What do you mean by winter? A. It was in the winter time and there wasn't work in Atlantic City.

Arthur Moreni—Cross.

Q. You only work in Atlantic City in the summer? A. In the summer.

Q. When you say summer, what do you mean by that? How long do you work? A. I start in June, in May and June, see.

Q. Until about when would you work? A. About the last time, see, the 29th of September I got done. 10

Q. So that at the time this accident happened—

Mr. Sorenson: Strike that out.

Q. At the time you were driving your father's Essex, you were out of work then? A. Yes.

Q. Is that so? A. About one month.

Q. You were out of work for one month? A. Yes.

Q. Now, how long did you remain out of work? Do you understand what I mean? 20

Mr. Sorenson: Strike the question out, please.

Q. How long did you stay without any work? A. I stay all winter, just work a few days when he finds something to do on one thing or the other, see, just when he finds it.

Q. Just small jobs? A. Yes, I don't work steady. 30

Q. And during that winter, did you live in Egg Harbor? A. Yes.

Q. So that last Friday when you said that you had been working for the Perkins Bakery for three or four years, that wasn't right, was it? A. I didn't say three or four years. I say two or three years, no four.

Q. All right, I will refer to the testimony. Three to four years. 40

Arthur Moreni—Cross.

Mr. Sorenson: I would like to have the stenographer refer to that testimony.

The Court: All right.

(Previous testimony repeated).

10 Q. So that last Friday when you said three or four years, that wasn't right, was it? A. Well, it is no exactly; it ain't over three years, to be sure.

Q. In other words, you really don't know how long you worked in the Perkins place, do you? A. No.

Q. You really don't know what streets this Perkins place is located? A. No, sir.

Q. Have you any brothers? A. No.

Q. And who lives with your father? A. My mother and sister.

20 Q. Your mother and sister? A. One of my daughter's sister. I don't know how to say it.

Q. You mean sister-in-law? A. Yes.

Q. Now, who owns the Essex? A. Nobody; he throw it in now. That is changed; take another car.

Q. I thought you said last Friday that your father still has the Essex. Now, is that right or wrong? A. Yes, he threw it in now; he take another one. He got no more the Essex.

30

Mr. Sorenson: I would like to turn to that answer, please.

The Witness: I don't understand what he says now.

(Previous testimony repeated).

Q. When did that happen, since last Friday? A. What?

40 Q. Did he turn it in since Friday? A. No, about a couple of months ago. I don't remember the day, but I know he ain't got it no more.

Arthur Moreni—Cross.

Q. Last Friday when you said your father still owns the Essex, that wasn't right? A. I don't stand by that, because I don't if you asked me that way, because I know before he had the car. Now he has got another car.

Q. When I asked you Friday whether or not your father still has the car, you said he still has it? A. Sure, he don't tell me he have that car. 10

Q. So that you made a mistake about that, then, is that so? A. If you ask me that way, I make a mistake. I didn't know, I don't understand if you ask me that way, he has got it now or got it before.

Q. So you made a mistake as to how long you worked and you made a mistake as to whether or not your father owns the Essex, is that so? A. I don't make a mistake. I don't understand what you ask me. If you get somebody to put over here from Italy, I can understand better. 20

Mr. Sorenson: I would like to turn to that and see whether I asked a question which wasn't clear.

(Previous testimony repeated).

Q. Now, whereabouts does your father live in Vineland? A. In Cherry Street. 30

Q. What number? A. 920.

Q. You go by another name, too, don't you? You don't use the name of Moreni all the time?

A. Always, my time.

Q. Merino? A. Melini.

Q. What is it? A. Melini.

Q. How do you spell it? A. I don't know.

Q. So you don't know how to spell your name, either? A. No. 40

Arthur Moreni—Cross.

Mr. Avis: Have you got something with your name on?

(Witness produces automobile driver's license bearing the name Melini).

Q. What is your first name? A. Arthur.

10 Q. How do you spell that, if you know? A. I don't know from American.

Q. Can you write in Italian? A. Yes.

Q. Do you still own the truck, Mr. Melini? A. Yes.

Q. Have you got the owner's card? A. Yes.

Q. Let's see it? A. The truck?

Q. Yes? A. I ain't got the number I take this year; I don't run.

20 Q. Have you last year's? A. Ain't got enough money for buy, no, I ain't got it, no, just got the driver's license.

Q. You haven't got it for last year, either? A. Yes, I got plenty home, but not in my pocket; just got the driver's license, see.

Q. You say you got them home? A. Yes.

Q. And was that truck in the same name as the one on the driver's license? A. Yes.

30 Q. Both names the same? A. Yes, sir, the same.

Q. How about the Essex, whose name was the Essex in? A. Before my brother-in-law died, it was my brother-in-law's name.

Q. What was his name? A. Roscoe Stiniani.

Q. Did Roscoe die? A. Yes.

Q. How long ago? A. I think about eleven months; I couldn't be sure.

40 Q. After the time you saw this? A. No, from now.

Arthur Moreni—Cross.

Q. On the 29th day of October, 1930, were you working on that day? A. What?

Q. The 29th day of October, 1930, were you working on that day? A. No, I no work.

Q. You weren't working at all? A. No.

Q. Were you working on the 28th? A. On the 28th?

10

Q. Of October? A. No.

Q. Now, Mr. Melini, as I understand it when you were about fifty feet from the barn, the bus passed you? A. Yes.

Q. Is that so? A. Yes.

Q. Then when you got to a point about a hundred and ten feet away, you looked up in your mirror and you saw the little lights on the back of the bus, is that so, and then the bus went into the field? A. Yes.

20

Q. And that is all you know? A. No, I see the other car, too.

Q. That was before; you were going along the road and you saw the lights of the car in back of you, is that so? A. No.

Q. I will ask you the questions now. As you were going south, you say you looked into a mirror? A. Yes.

Q. And as you looked into the mirror, you saw some lights of an automobile in back of you? A. Yes.

30

Q. Then when you came to the barn as you went a little bit past the barn, the bus passed you? A. Yes.

Q. Is that so? A. Yes.

Q. Then when you got a hundred and ten feet past the barn, you saw the two little lights on the back of the bus, is that so? A. Yes.

Q. And then the bus went into the field and

40

Arthur Moreni—Cross.

you didn't see the other lights any more? A. No, I didn't see any more nothing at all.

Mr. Sorenson: That is all.

By Mr. Avis:

Q. One question, Mr. Melini. On which side of
10 the road were you riding? A. Right side.

Q. Do you know on which side the car in back of you was? A. The right side.

Q. How do you know that? A. I can see because I have the looking glass there was another car on the back.

Q. Now, since the accident happened, Mr. Melini, have you seen the portion of Delsea Drive where the Williamstown Road crosses? A. I no
20 was know that road that time.

Q. Do you know it now? A. I know now because we go by this morning and Friday.

Q. Can you say whether or not it was at or near this crossing when you saw the things that you have told us about? A. Yes.

Q. Do you understand me? A. Where I was?

Q. No, no. You know now because, as I understand it, you saw it Friday and today, and you know this Delsea Drive where the Williamstown
30 Road crosses, do you? A. Yes.

Q. And you know where Franklinville is now, do you? A. Yes.

Q. Do you know whether it was the same place where you saw the bus go out in the field as the place where these two roads cross?

Mr. Sorenson: I object to that on the
40 ground it calls upon the witness to give present remembrance of the present fact, where he is supposed to give his recollection

Arthur Moreni—Cross.

of past occurrences which took place on the 29th of October, 1930.

Mr. Avis: He said he didn't know where this road was and he said he knew where the barn was. Now, if the answer is predicated upon certain facts and circumstances, it seems to me Mr. Sorenson can ask him about it, how he can tell. 10

The Court: I overrule the objection.
(Exception noted for the defendant).
(Question repeated).

A. Yes.

Q. Do you understand me? A. Yes, I—

Mr. Sorenson: Well now, I submit the witness should not be permitted to give a voluntary statement without a question being asked. 20

Q. You spoke in your testimony about seeing a barn? A. Yes.

Q. Have you seen the same barn since that time? A. I saw Friday and this morning.

Q. And where is it? A. Right— It has got just across, after the cross it has got a barn, after the road is cross it has got the barn there. That is all I can say. There is an old barn and before the barn he has got the house empty there. 30

Q. Do you know how far that is from Franklinville?

Mr. Sorenson: I object to that unless the man knows where Franklinville is.

Mr. Avis: I won't insist on that question.

Q. Do you know where Franklinville is? A. I know now, this morning. 40

Arthur Moreni—Cross.

Q. Where is this barn from Franklinville? A. About one mile.

Q. In which direction? A. Franklinville, this side, see.

Q. As you are going south towards Vineland, you will come to Franklinville? A. Yes.

10 Q. After you get in Franklinville, where is the barn? A. On the other side.

Q. Towards Vineland? A. Towards Vineland.

Mr. Avis: That is all.

By Mr. Sorenson:

Q. There is no doubt about this, that it was a dark night, is that so? A. Yes.

Q. It was a rainy night? A. It no was rain.

20 Q. Now then, you say it rained? A. It no was raining; it was wet, but it wasn't raining.

The Court: I think we have been over all that, Mr. Sorenson. I want to give you a full opportunity, but don't let's try the case more than once.

30 Mr. Sorenson: If your Honor believes I have been over it, I won't ask the question. I have been over that, but the reason I do that is to get redirect testimony. It has been brought out that this man saw these lights on the portion of the road which he termed to be the right side of the road. I have a right, in answer to his questions, to find the conditions under which he claims he saw that.

40 The Court: I say, I don't want to limit you unduly, but I think there was testimony to the effect that it had been raining and the roads were wet. I think one wit-

Samuel Hewitt—Direct.

ness said there was a drizzle, if I am not mistaken.

Mr. Sorenson: Well, that is all, then.

Mr. Avis: That is all, Mr. Melini.

SAMUEL HEWITT, sworn.

10

Direct-examination by Mr. Avis:

Q. Where do you live, Mr. Hewitt? A. Glassboro.

Q. What is your business? A. Service station operator.

Q. Just where is your service station located? A. On the Delsea Drive at the south end of Glassboro.

20

Q. You know where Franklinville is? A. Yes, sir.

Q. How far is your gas station from Franklinville? A. Well, now, that I couldn't say exactly; I never measured, but it is figured to be about six miles.

Q. Do you know Mr. Melini, the gentleman who was just on the stand? A. I know him by face, yes.

Q. When did you see him before this case came up? A. Before this case came up? The night of the 29th of October, 1930.

30

Q. Where did you see him? A. In my store.

Mr. Sorenson: I object to that on the ground it is irrelevant and immaterial. Here is a man that is at least six miles away from where something is supposed to have taken place, and I certainly submit that anything this man may have seen or any-

40

Samuel Hewitt—Direct.

thing this man may have talked about or anything at all he may have done in reference to what had taken place is irrelevant, and not only irrelevant, but it is remote.

10 Mr. Avis: Of course, I don't expect to prove any conversation this witness may have had. I do say that it corroborates the testimony of Mr. Melini and the fact that it is six miles away, I say, is not too remote and would go to the value and weight of the evidence rather than its admissibility. It is my thought it is admissible.

20 Mr. Sorenson: I submit that it is improper to supply and to produce a witness in corroboration of the testimony of any other witness in the case in main. I think the proceedure is entirely different from what my adversary is trying to do. The testimony he is offering now is in the nature of rebuttal.

Mr. Avis: I don't think it is rebuttal at all, if the Court please. I think any testimony which corroborates and shows the general state of affairs, of what occurred there, is part of my main case.

30 The Court: What value has it so far as proving anything in this case is concerned, Mr. Avis? I take it from the statement which you made that you are going to attempt to show now that this man was in the neighborhood, Melini.

Mr. Sorenson: Apparently that is what is attempted.

40 The Court: I suppose so far as the case is concerned at the present time, he was

William Waterman—Direct.

there. I will sustain the objection to the testimony.

(Exception noted for the plaintiffs).

Mr. Avis: All right; that is all.

No cross-examination.

10

WILLIAM WATERMAN, sworn.

Direct-examination by Mr. Avis:

Q. Now, Mr. Waterman, where do you live?

A. 329 Elm Street, Westville.

Q. Where? A. 329 Elm Street, Westville.

Q. What is your business? A. Pipe fitter.

Q. What was your business on October 29th, 1930? A. Delivery man, truck driver. 20

Q. Where had you been early that evening, Mr. Waterman? A. Vineland.

Q. And what time did you leave Vineland? A. At about twenty minutes or quarter of eight.

Q. And after you left Vineland, what course did you take? A. North to above Newfield, dirt road to my right to Delsea Drive, across the railroad.

Q. You were driving a car? A. Yes, sir. 30

Q. What kind of car was it? A. Whippet.

Q. Was anyone with you? A. No, sir.

Q. Do you know where Franklinville is? A. Yes, sir.

Q. Now, before arriving or coming to Franklinville, did you or did you not stop your car?

Mr. Sorenson: I object to that as irrelevant, because I don't see how that has anything at all to do with the proof of anything

40

William Waterman—Direct.

in this particular case, whether or not he stopped in Franklinville.

The Court: No, before he arrived at Franklinville.

Mr. Sorenson: Or before arriving there.

The Court: It may or may not. I will overrule the objection.

10

(Exception noted for the defendant).

(Question repeated).

A. I did.

Q. And how far was that from Franklinville?

A. About a little over a mile.

Q. Mr. Waterman, do you know where the road called the Williamstown-Porchtown Road crosses the Delsea Drive? A. Yes, sir.

20

Q. Can you say where it was you stopped your car with relation to that intersection? A. To the north of the road.

Q. North of the road? A. North of the road.

Q. North of which road? A. Of the Williamstown Road.

Q. How close to the Williamstown Road was it when you stopped your car? A. About fifty to sixty feet.

30

Q. Now, after you stopped your car, what did you do? A. Got out and ran across the street.

Q. Will you just tell the Court and jury what you saw when you got there? A. Saw a Ford car up against a tree, smashed, and a bus laying in back of the Ford and a car driving down the highway with a few people in it hurt.

40

Q. Now, Mr. Waterman, you spoke about the Ford. On which side of the road was the Ford? I would rather have you tell me whether it was east or west, if you will, please. Can you do that? A. On the west side.

William Waterman—Direct.

Q. Now, where was the bus? A. On the west side.

Q. Can you tell how close the bus was to the Ford? A. I couldn't say exact.

Q. Mr. Waterman, I want you to look at this plan which has been offered in evidence. Suppose you step down there, please. For your information, this is north this way, this is towards Franklinville and this is towards Malaga, this is towards Williamstown and this is towards Porchtown. Now, do you recognize the situation from that plan? A. Yes, sir. 10

Q. Can you show me on the plan where the Ford was? A. Right in here (indicating).

Q. And where was the bus? A. The bus was laying in back of the Ford, directly in back. 20

Mr. Sorenson: I wonder if we could have the witness mark where he found the Ford by an X.

Mr. Avis: Yes.

Q. First of all, you see what that is, marked pole?

Mr. Sorenson: I submit the witness can do it without having any marks indicated to him. 30

Mr. Avis: I am not going to mark it.

Q. Do you know whether or not there was more than one tree there?

Mr. Sorenson: Can't we have those places which this witness just indicated marked, your Honor?

The Court: You can after your opponent is through, Mr. Sorenson.

Mr. Sorenson: I submit when the witness 40

William Waterman—Direct.

indicates a point, I think it ought to be marked.

Mr. Avis: All right; I don't care about that.

Q. You mark where you think the Ford was?

10 A. Right in about here (making mark on map).

Q. Where was the bus? A. The bus was laying back in back of the Ford.

Q. Indicate to me, if you will, where the bus was, by putting a mark there? A. About in here, about twenty-five foot in back of the Ford.

Q. Did you measure any distances there? A. No, sir.

Q. Did you notice anything about the bus, first of all, as to its color? A. It was sort of a red and yellow top.

20 Q. Was there any marking or names on the bus that you saw? A. Public Service.

Q. Public Service; Mr. Waterman, do you know about what time that was when you first arrived there? A. It was quarter of eight when I left Vineland. I judge it was around about—somewheres around about eight-forty or eight-forty-five, somewheres in there.

30 Q. Did you or did you not examine the Ford?

A. Well, as far as the Ford was concerned, I just looked at it and that was all.

Q. What did you see about it? A. Seen the left side of the Ford was dented in.

Q. Was there any portion of the Ford touching the tree? A. The back.

Q. Did you examine the roadway?

40 Mr. Sorenson: I object to that on the ground it is too remote as to time. This man arrived here at eight-forty-five.

William Waterman—Direct.

Mr. Avis: I won't insist on that; I withdraw the question.

Q. Could you tell whether or not the Ford had been damaged? A. The Ford was damaged.

Q. Was it intact? A. With the pole or—

Q. No; I won't insist on that, either. Calling your attention to the photograph marked Exhibit P-4, do you know whether or not that is a photograph of the car that you saw? A. That is a photograph. 10

Q. It indicates that the left front wheel isn't on the car. Do you know whether or not that was off when you saw it? A. The spokes was on the highway.

Q. The spokes were on the highway? A. The spokes were on the highway. 20

Q. Where were the spokes you saw on the highway? A. On the left hand side of the road.

Q. Would that be west or east? A. Going north, that would west.

Q. And were there any spokes on the other side of the highway?

Mr. Sorenson: I object to that on the ground it is too remote. This man arrived there at eight-forty-five and he is testifying to conditions of movable objects practically an hour after something is alleged to have occurred. 30

Mr. Avis: It is not an hour after it is alleged to have occurred at all. As a matter of fact, I don't know whether it is in evidence now or not, but we expect to show it happened between eight-twenty-five and eight-thirty.

The Court: I will overrule the objection. 40

William Waterman—Cross.

(Exception noted for the defendant).

(Question repeated).

A. No, I didn't notice any.

Q. Did you notice anything else besides spokes on the highway? A. There was glass.

10 Q. And where was that? A. In the center of the road.

Q. Now, Mr. Waterman, you show me on the plan where you saw the spokes and glass? A. About here (indicating).

Q. Just put a mark there, if you please? A. On the dirt side of the road.

Q. Did you examine the bus? A. No, sir.

Q. Did you look at it? A. Just looked at it with a glance as it laid back there.

20 Q. And what, if anything, did you see about the bus? A. Well, I just seen the back of it and one side, that is all I seen of it.

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. You say there was glass in the center of the street? A. Yes.

30 Q. When you say the center of the street, you mean in the center of Delsea Drive? A. No, I meant the concrete road.

Q. Right in the center of the concrete? A. It wasn't in the center. It was on the concrete road, was where I seen it.

Q. Yes, the glass was on the concrete? A. On the concrete.

Q. And you say the glass was in the center of the street? A. No, it wasn't in the center.

40 Q. Isn't that what you said? A. Yes, that is

William Waterman—Cross.

what I said, but it was on the concrete road, right as I walked across the street is where I seen it.

Q. You say the glass you saw was in that portion of the road which you thought was the center of the road? A. I wouldn't say it was the center.

Q. Which is it, is it the center or not? A. It was the right hand side. There is a center and two sides, and it was the right hand side. 10

Q. It wasn't in the center? A. No, it was on the right hand side.

Q. You made a mistake about that? A. Yes.

Q. Did you make a mistake about anything else you have testified to? A. No, sir.

Q. You are sure about that. When you saw the spokes there, what did you do, kick them or pick them up or anything? A. Just let them lay there. 20

Q. Were there any other people around? A. Yes, sir. 20

Q. How many were there, about? A. I couldn't say how many were there.

Q. Well, your best judgment? A. Well, there was a crowd, I guess about twenty-five or thirty, maybe more.

Q. Were the cars parked alongside of the road? A. Yes, sir.

Q. Which side? A. Both sides. 30

Q. And do you say that you saw an automobile taking these people to the hospital? A. I seen him driving down the Pike.

Q. You saw them when they were driving down the Pike? A. Yes, sir.

Mr. Sorenson: That is all.

By Mr. Avis:

Q. One other question. You say this glass was 40

Charles Allen—Direct.

on the right hand side. Was that the right hand side proceeding south or north? A. South.

Mr. Avis: That is all.

10 CHARLES ALLEN, sworn.

Direct-examination by Mr. Avis:

Q. Where do you live, Mr. Allen? A. Salem County.

Q. Near what place? A. Union Grove Lake.

Q. What is your business? A. Farming.

Q. Do you know Mr. Parave, Frank Parave? A. Yes, sir.

20 Q. Did you know his two boys, Joseph and Peter Parave? A. Yes, sir.

Q. Where would you see them when you knew them, Mr. Allen? A. I bought peppers from him for eight years and they come and hauled them with the trucks.

Q. Were you ever at the Parave farm? A. Yes, sir.

Q. And would you see the boys there at that time? A. Yes, sir.

30 Q. Do you know what they were doing? A. Farming, the only two that did farm, stayed home and farmed.

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. Have you been at the Parave farm since that time? A. Not until this morning.

40 Q. You haven't been over to the Parave home

Charles Allen—Cross.

since last October, then? A. No, sir, not until this morning. Oh, yes, I was; I was there gunning one day. I forgot about that.

Q. That day when you were out gunning, did you see James working? You know James, don't you? A. Who?

Q. James? A. Yes, he was killed before that. 10

Q. Yes, but after that did you see James working? A. No, sir.

Q. You didn't see anybody working the farm at all? A. Not then, not in gunning season time. They was all done farming then.

Mr. Sorenson: I see; that is all.

FRANK GALLUCCI, sworn. 20

Direct-examination by Mr. Avis:

Q. Mr. Gallucci, where do you live? A. Malaga.

Q. What is your business? A. I operate a filling station.

Q. Gas station? A. Gas station.

Q. Whereabouts? A. Right at the corner of Dutch Mill Road, in Malaga. 30

Q. Where is that in relation to Malaga Station? A. It is right opposite the Malaga Station.

Q. Did you know Peter and Frank Parave? A. Yes, sir.

Q. Peter and Joseph Parave? A. Yes, sir, very well.

Q. And do you remember the day of the accident? A. Yes, sir.

Mr. Sorenson: I object to that. I think 40

Frank Gallucci—Direct.

the witness can be asked to tell this without having a suggestion as to the facts of the case.

Mr. Avis: I thought we all knew there was an accident there, but it is all right.

The Court: Well, I think so.

10 Mr. Sorenson: I will withdraw my objection.

The Court: All right.

Q. Do you know what these two boys did, Mr. Gallucci?

Mr. Sorenson: I object to that as irrelevant and immaterial, without giving the time and place.

20 Q. I mean by that, what their occupation was?
A. Farming.

Q. Do you know who they farmed for or where they farmed? A. Farmed for the father.

Q. How often would you see these two boys, Frank? A. They were down to my place every night.

Q. How is that? A. They were down at my place every night.

30 Q. What would they do in your place? A. Well, they would hang around with the boys. They all gathered there at nights, and spent the evening.

Q. What would they do there? A. Well, they would have games and we had a boxing ring last summer. They enjoyed themselves like that, see.

40 Q. What kind of games did they play? A. Well, there was a certain Italian game played by the fingers. They match fingers with one another and it is played fast, very fast, and they get the

Frank Gallucci—Direct.

points, see.

Q. What kind of boys were they, Frank? A. Very good boys, the best boys around the neighborhood.

Q. Were they in your place that night? A. No, not that night. They were there that day, around noon time.

Q. Around noon time? A. Yes, sir, see, they come over—

10

Mr. Avis: Wait a minute.

Mr. Sorenson: I object to any voluntary statements.

Mr. Avis: Cross-examine.

Mr. Sorenson: No questions.

No cross-examination.

Mr. Avis: If the Court please, I would like to offer in evidence at this time a certified copy of the letters of administration ad prosequendum granted on the 8th day of December, 1930, to Josephine Raczak, in the death of Benjamin Kurzensky.

20

(Said paper marked Exhibit P-12).

WANDA RACZAK, sworn.

30

Direct-examination by Mr. Avis:

Q. Wanda, your brother was named Benjamin Kurzensky? A. Yes, sir.

Q. You understand you will have to talk so everybody can hear you. Were you home on October 29th, 1930? A. No, sir, I wasn't.

Q. Talk louder? A. I wasn't.

Q. You were not. And with whom do you live? A. Live with my mother, now.

40

Wanda Raczak—Direct.

Q. And were you living with your mother on October 29th, 1930? A. I was living with her, but I wasn't home at the time.

Q. I understand; you made your home there, though, didn't you? A. Yes, I did.

10 Q. Who else lived there besides you and your mother? A. My brother and me.

Q. What is that? A. Benjamin, my brother, and mother, and uncle, and I, four of us.

Q. Whereabouts is it that you live; where is the place? A. I don't know what you call it myself; Main Road, I think, Malaga.

Q. How far is it from Malaga? A. About two miles and a half, I guess; not very far from Mr. Parave.

Q. You lived close to Mr. Parave? A. Yes.

20 Q. What did Benjamin Kurzensky do; what was his business? A. Farming.

Q. Do you know how old he was? A. Thirty-four.

Q. What farm did he run? A. Mother's farm.

Q. Did anybody else help him? A. Me and my mother.

Q. You and your mother worked there too, did you? A. Yes, sir.

30 Q. Who supported you? A. My brother.

Q. Benjamin? A. Benjamin, yes, sir.

Q. What would he do for you? A. Well, he got us all we needed, he supported us and got us clothes and everything we needed.

Q. Did he buy you your clothes? A. Yes, he got my clothes.

Q. How about spending money? A. He gave me spending money every week, too.

40 Q. How old are you? A. I will be twenty-one in November.

Wanda Raczak—Direct.

Q. Be twenty-one next November? A. Yes, this November coming.

Q. How much would your brother give you a week? A. About a dollar or two a week, and more if I needed it.

Q. That was spending money? A. Yes.

Q. How much did he give you to buy clothes with? A. Well, he give me how much I needed. 10

Q. Have you any idea how much that was? A. Oh, I didn't need much quite often; I don't remember that.

Q. How about groceries and things of that kind — who supplied them? A. He did; he got supplies every week.

Q. Do you know how much he paid for that? A. No, I don't.

Q. You spoke about your uncle being there. What is his name? A. Steve. 20

Q. What is his last name? A. Klinkofsky.

Q. Your mother re-married, didn't she? A. Yes.

Q. Does her husband live with you people? A. Well, we can't depend on him. He stays there a week or two and then he goes away again.

Q. Does he ever contribute anything toward your support? A. No, he didn't never give us anything. 30

Q. Was he living there on October 29th, 1930?

A. No, he wasn't.

Q. How long had it been since he did live there?

A. About two years.

Q. Did you have any income, any money coming in from any other source excepting what Benjamin and you and your mother did on the farm?

A. No, except from Benjamin, my brother.

Wanda Raczak—Direct.

Q. You knew that he died, didn't you? A. Yes, sir, I did.

Q. You say you weren't home in the evening of October 29th, 1930. Did you ever see Benjamin alive after that time? A. Not after October 29th, 1930.

10 Q. When was he buried, do you know? A. The first of November.

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. Now, Wanda, you have some other brothers, haven't you? A. Yes, I have.

Q. How many? A. Two.

20 Q. Where do they live? A. Philadelphia.

Q. And you have some other sisters, too, haven't you? A. Yes, I have.

Q. How many? A. Three more besides me.

Q. Where do they live? A. Philadelphia.

Q. Now, on October 29th, 1930, isn't it a fact that you were living at East Emerald Street, in Philadelphia? A. Well, I wasn't living there; I was just staying there helping my sister to move.

Q. Who were you staying with? A. My sister.

30 Q. How long were you staying with your sister there? A. Two weeks.

Q. Which sister was that you were staying with? A. Frances.

Q. And is she single? A. No, she is married.

Q. She is married; now, let us have the names of your other brothers? A. August Kurzensky and Sigmond.

40 Q. Now, the names of your sisters? A. Celia and Stella and Frances and myself, that is all.

Wanda Raczak—Cross.

Q. Now, how old is August, do you know? A. Twenty-two.

Q. And how old is Sigmond? A. Thirty.

Q. Is August married? A. Yes, sir, he is married.

Q. Is Sigmond married? A. Yes, sir.

Q. Now, Celia, is she married? A. Yes, they are all married. 10

Q. They are all married except you? A. Except me.

Q. Now, do you remember when your mother was married the second time? A. No, I don't.

Q. You don't remember that; and when have you seen your step-father last? A. My father?

Q. Your father? A. Well, he is out on our farm now, but he don't stay. He stays as long as he wishes. 20

Q. What? A. He stays as long as he pleases, and when he gets tired he goes away.

Q. How long has he stayed this time? A. A couple of weeks.

Q. When you say he is staying on the farm, do you mean the farm that you are living on? A. Yes.

Q. And where was he prior to the last couple of weeks, do you know? A. No, I don't. 30

Q. How long was there between this last visit and the one before that? A. The last what?

Q. The last time he was home and the time before that? A. Well, he wasn't home for two years.

Q. He just came home two weeks ago for the first time in two years? A. Yes, he never stayed with us much.

Q. Now he is staying home and working the farm for the last two weeks, you say? A. Yes, for the last couple of weeks. 40

Wanda Raczak—Cross.

Q. Is your mother still home with you? A. Yes, she is home.

Q. Would your brother take the produce which he raised to town and sell it? A. Yes, he did.

Q. When he came home, he would take care of the necessary purchases, buy groceries and things of that character? A. Yes.

Q. And then occasionally he would give you a dollar or so a week? A. Yes, a dollar or two a week.

Q. And the monies that he gave you and the monies he bought these things with were monies which he got from the produce on the farm? A. Yes, sir.

Q. Is August living home with you now? A. No, he isn't.

Q. Is Sigmond living home with you? A. No.

Q. Is Celia? A. No.

Q. Any of them? A. No, none of them.

Q. Just you and your mother and your father? A. And uncle.

Q. And your uncle? A. Yes.

Q. How old is your uncle? A. He is about sixty-four.

Q. About sixty-four; and does he help about the farm, too? A. Yes, he does.

Mr. Sorenson: That is all.

By Mr. Avis:

Q. One other question. How old is Celia? A. Twenty-eight.

Q. And Stella? A. Twenty-six.

Q. Frances? A. Twenty-four.

Q. Now, as I understand it, on the farm there is you and your mother and your father and your uncle? A. Yes.

Wanda Raczak—Cross.

Q. And your father has been there for two weeks? A. Yes, but we can't depend on either; uncle just left this morning, too.

Q. Your uncle went away this morning? A. They just stay as long as they please, and when they get tired they go away.

Q. How are you making out? 10

Mr. Sorenson: That is sort of a vague question.

The Court: Yes, I think so.

Q. How big a farm is it? A. Ten acres.

Q. Is it or is it not planted for this year? A. It is planted for this year.

Q. Who did that work? A. Not all, everything isn't planted.

Q. And who did that work on the farm? A. We 20 all did, the four of us.

Q. And how long was it before Benny was killed that he ran this farm, how many years? A. About five or six years.

Q. And during that time, did anybody live there at the house besides you, Benny, and your mother? A. No, sir.

Q. Was Benny there part of the time? A. Yes, all the time. 30

Q. All the time? A. Yes, sir.

Q. Wanda, in the winter time when the work on the farm was done, what would Benny do, if anything? A. Chop wood.

Q. Chop wood; and who would he do that for? A. For everybody that called him; anybody that gave him a job.

Q. Do you know whether he got paid for that? A. Yes.

Mr. Sorenson: I object to it; I don't see 40

Wanda Raczak—Cross.

where that is relevant. It is not proof of pecuniary loss.

Mr. Avis: Well, I am not through yet. I want to ask another question, if the Court please.

The Court: All right.

10

Q. During the winter time, Wanda, who bought the groceries and whatever was necessary so far as your clothes, and so forth, were concerned? A. My brother, Benjamin.

Q. Where did he get that money? A. From cutting wood, paid for cutting wood.

Mr. Avis: That is all.

Mr. Sorenson: No questions.

20

JOHN J. MALIFF, sworn.

Direct-examination by Mr. Avis:

Q. Trooper, you are a member of the State Police? A. I am.

Q. And were such a member on October 29th, 1930? A. I was.

30

Q. At that time, Trooper, where were you stationed? A. At Malaga.

Q. On that night or that evening, were you at the intersection of Delsea Drive and Williamstown Road? A. I was sent out there, yes, sir.

Q. What time did you get there, Trooper? A. I couldn't give you the exact time I arrived there.

Q. Well, as near as you can? A. I don't know; I couldn't say.

40

Q. Couldn't say what time it was; what kind of a night was it, Trooper? A. It was raining.

John J. Maliff—Direct.

Q. Do you know whether or not the roadway was wet? A. Yes, it had been raining for some time.

Q. Trooper, when you got to this point, won't you tell the Court and jury what you saw? A. What I saw?

Q. Yes? A. There was a Ford, model "T" roadster. This was encircled around the tree; it was completely demolished, you could hardly recognize what kind of a car it was. There was a Public Service bus in a field. I couldn't tell you just how far it was from the roadway, but we measured it from the intersection and it was just thirty-nine paces. 10

Q. That was to what portion of the bus, Trooper? A. The back of the bus.

Q. You say it was a Public Service bus? A. Yes, sir. 20

Q. How do you know that? A. The name on the side.

Q. Trooper, did you or did you not see the operator of this bus? A. I did.

Q. Now, Trooper, on which side of the highway or on which side —

Mr. Avis: Strike that.

Q. You say the bus was in the field? A. Yes, sir. 30

Q. Now, on which side of the highway was this field where the bus was? A. On the left side proceeding north.

Q. And in which direction, when you saw it, was the bus headed or pointed as it laid in the field? A. Why, northwest.

Q. Did you examine the bus? A. Yes, I did.

Q. What did you see about the bus? Was it 40

John J. Maliff—Direct.

damaged or not? A. Yes, completely damaged in the front.

Q. In the front? A. Yes.

Q. And by that what do you mean, Trooper? What did you see about the front? A. Well, the headlights were off it, the radiator was pushed in and the bumper was hanging off it, it was just hanging on one side.

Q. How long did you stay there, Trooper? A. At the scene?

Q. Yes? A. Until the wreckage was towed away— not the bus, the car, the Ford car.

Q. And as the Ford was located, which way was he headed? A. That was headed south.

Q. And where was it with relation to any tree? A. It was encircled around the tree.

Q. Trooper, did you see any of the occupants of this Ford? A. In the hospital, I did, yes.

Q. You went to the hospital? A. Yes.

Q. Which hospital was that? A. At the Newcomb Hospital, in Vineland.

Q. And who did you see there, so far as occupants of this car are concerned?

Mr. Sorenson: I object to that; I don't suppose this man saw who were the occupants of the Ford.

Q. Well, did you see some persons there that had been injured? A. Yes, I did.

Q. Do you know who they were? A. Yes, I do.

Q. Who were they? A. They were the two Parave boys, I think Benjamin and Joseph— I wouldn't say; I just forget the first names off-hand, and I don't know the other one's name, I can't recall.

John J. Maliff—Direct.

Q. Do you know whether or not you saw Benjamin Kurzensky there? A. That is it.

Q. Were these boys alive or dead when you saw them? A. Two were dead.

Q. Do you remember which two were dead? A. The Kurzensky boy and one of the Paraves. Just which one, I don't recall. 10

Q. Did you notice the license number of the Ford roadster? A. I have it in my report but I haven't my report with me.

Q. You haven't your report with you? A. No, I haven't.

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. Did you see any marks in the highway there? 20
A. In the highway?

Q. Yes? A. No, I didn't.

Q. Did you see any marks which crossed the intersection at all which were—

Mr. Sorenson: Withdraw that.

Q. When I use the word "marks" in my question, what do you understand me to mean? A. I understand you to mean tire marks. 30

Q. Yes; did you see any of those? A. No, I didn't.

Q. Did you look for them? A. Yes, I did.

Q. Is that part of your regular duty when you are assigned to the scene of an accident? A. It is.

Q. To look for marks; now, in the course of your assignment, do you endeavor to secure names of witnesses? A. We do.

Q. Tell us what you did that evening in order to secure the witnesses who may have seen this 40

John J. Maliff—Cross.

take place? A. Arriving at the scene there, the only one that was present at the time was the bus driver, and I had asked him if there was any occupants of the bus and he said yes, but he had let them go, the fellow continued on, and he left his name and address. There was quite a number of motorists around there and we inquired but no one at that time had seen it.

10

Q. How many automobiles would you say were around at that time? A. Oh, a large number of them; I couldn't say off-hand.

Q. Did you at any time during your investigation on behalf of the County get the name of Arthuro Melini as an eye-witness of this accident? A. I did not.

20

Q. Did you hear anything at all about a man of that name until you came to Court today and Friday? A. No, I didn't.

Q. In your investigation as to the occurrence of whatever did take place, did you actually conduct an investigation? A. We did.

Q. And did you see Mr. Parave? A. Which one?

Q. The elder? A. I saw him at the hospital later in the evening, yes.

30

Q. Have you seen him since that time? A. No, I haven't.

Q. You are quite sure about this, though, Trooper, that the front of the bus—

Mr. Sorenson: Strike that out.

Q. That the radiator of the bus was pushed in? A. Yes.

Q. And that both headlights were off? A. Yes.

40

Q. And in reference to the damage to the Ford, did you notice that the left side of the Ford was pushed in? A. The left side of the Ford was encircled around the tree.

John J. Maliff—Cross.

Mr. Sorenson: May I see the photograph, please?

Q. This portion which I indicate here, where you see the headlights, did you notice that condition that evening? A. Well, I didn't take particular notice of that, no, because it was around this tree, see. 10

Q. Yes; are you sure about the Ford being wrapped around the tree, as you say, or is it or is it not a fact that the left rear corner of the Ford was up against the tree? A. From about the driver's seat to the back was up against the tree.

Q. That is, on the left side? A. That is right.

Q. Was the bumper hanging on the right side or on the left side? A. I don't recall. I do remember, though, it was off on one side, but just which side I couldn't say. 20

Mr. Sorenson: I think that is all.

By Mr. Avis:

Q. Trooper, you testified that you saw no tire marks in the road. Did you see any other marks in the highway? A. You refer to debris or wreckage?

Q. No, I am not speaking about that now. Did you see any marks on the concrete whatever? A. No, none at all. 30

Mr. Avis: All right; That is all, Trooper. Thank you.

August Kurzensky—Direct.

AUGUST KURZENSKY, sworn.

Direct-examination by Mr. Avis:

Q. August, how old are you? A. Twenty-two.

Q. And are you a brother of Wanda? A. Yes, sir.

10 Q. And where were you living on October 29th, 1930? A. Philadelphia.

Q. And are you married? A. Yes, sir.

Q. Do you know at that time where your mother was living? A. Down on the farm.

Q. Where is that located? A. On Main Road between Plainville and Lake.

Q. How far is that from Mr. Parave's home? A. I don't know; I would say about a half a mile.

Q. In which direction? A. Toward Vineland.

20 Q. Toward Vineland? A. Yes, sir.

Q. That would be in what direction, north, south, east or west? A. South.

Q. Where are you living now? A. Philadelphia.

Q. Now, do you know who else lived on the farm on October 29th, 1930, besides your mother? A. My mother, my sister, and my brother.

30 Q. And what is your brother's name? A. Benjamin.

Q. How old was he? A. Supposed to be thirty-three last April.

Q. Were you ever at the farm? A. Yes, sir.

Q. How often were you at the farm prior to October 29th, 1930? A. I don't quite understand what you mean.

Q. How often would you go there? A. Oh, just once in a while, on a Sunday.

40 Q. Do you know who operated that farm? A. My brother.

August Kurzensky—Cross.

Q. That is, Benjamin? A. Yes, sir.

Q. Did you contribute anything towards the support of your mother or your sister Wanda? A. Not whatever.

Q. Do you know who did support them? A. Benjamin.

Q. What is that? A. Benjamin, my brother. 10

Q. And did you ever live on the farm? A. No, sir.

Q. How long had you been away from the farm? A. About six years.

Q. And what is your business? A. Drive truck.

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. While you were at the farm, did you work on the farm? A. Yes, when I was there, I helped. 20

Q. And while you were there, did your father work on the farm? A. No, sir.

Q. Never? A. No, sir, as long as I can remember. He has been married the past seventeen years and he has only been there a week, two weeks, three weeks, and then he would be away a month, two months, a year, two years, maybe three years.

Q. At no time during the time you have been away from home— A. That is six years. 30

Q. You haven't contributed anything at all? A. No, sir.

Q. Which is the shortest way from Frank Parave's home to your house, or rather, to the farm? A. To my mother's farm?

Q. Yes? A. Right straight down Main Road to Vineland. That is the only way to go.

Q. Of course, your brother always supported himself on the produce of the farm, didn't he? A. 40

August Kurzensky—Direct.

Well, everything together, whatever he made.

Q. In other words, it worked together; the way it was worked, it was worked together and then out of the proceeds of the selling of the produce, those monies were used for the maintenance of the home? A. Yes, sir.

10 Q. Of course, he would share in that, too, wouldn't he? A. Sure thing.

Q. Was he engaged to be married? A. Not as I know of, no.

Mr. Sorenson: I think that is all.

CORVAL RICHMOND, sworn.

20 *Direct-examination by Mr. Avis:*

Q. Mr. Richmond, where do you live? A. Malaga.

Q. Have lived there how long? A. Thirty-six years.

Q. And do you hold any position in Malaga? A. Position?

Q. Yes? A. Acting Postmaster.

30 Q. Did you know the two Parave boys, Joseph and Peter? A. I did.

Q. And did you know Benjamin Kurzensky? A. I did.

Q. Mr. Richmond, how long have you known the Parave boys? A. All my life.

Q. How about the other boy, the Kurzensky boy? A. The same thing.

Q. Referring first of all to the Parave boys, do you know what they did? A. Farmed.

40 Q. And would you see them on the farm? A. Yes, sir.

Corval Richmond—Direct.

Q. How would that come about? A. By selling them feed.

Q. By selling them feed? A. Yes, sir.

Q. How about the Kurzensky boy? A. Same thing.

Q. Did you or did you not sell them feed in 1930? A. I did.

10

Q. And where was the Kurzensky boy when you sold him feed? A. At his farm.

Q. What kind of boys were these, Mr. Richmond? A. Very good in all respects.

Q. How about the Kurzensky boy? A. He was very good.

Q. What did he do? A. Farmed.

Q. Do you know what these boys did in the winter time? A. Well, the Parave boys, they went to the machinery, repaired the machinery and spread manure and got ready for the spring farming.

20

Q. How about the other boy? A. The same way.

Q. Would you ever see them any place beside at the farm, when you sold them feed? A. Oh, no, only at their farms.

Q. Did you ever farm yourself, Mr. Richmond? A. No, I run green-houses.

30

Q. Mr. Richmond, did you go to the corner of Delsea Drive—

Mr. Avis: Strike that.

Q. Did you go to this intersection of Delsea Drive and Williamstown Road at or about October 29th, 1930? A. I did.

Q. When did you go there? A. I couldn't just exactly tell you the date.

Q. Do you know when it was with relation to

40

Corral Richmond—Direct.

the accident? A. It was in February somewhere or January.

Q. I am going to show you a memorandum, Mr. Richmond, and ask you whether or not that memorandum is in your hand writing? A. It is.

10 Q. Does that refresh your memory as to when you were there?

Mr. Sorenson: I object to that— or I will withdraw it.

A. October 31st.

Q. October 31st? A. Yes.

Q. Who made that memorandum, Mr. Richmond? A. I did.

Q. You made it yourself? A. Yes, sir.

20 Q. When you were there on October 31st, is it? A. 31st.

Q. Did you make some measurements? A. I did.

Q. Now—

Mr. Sorenson: I object to the witness reading the memorandum until his memory is proved to be deficient.

Mr. Avis: All right.

30 Q. Can you tell us what measurements you made without reference to the memorandum? A. It was from the center of the road to the nearest tree, or where the car was hit, and then the tree on the other side of the car.

Q. Do you remember what the distances were? A. No, sir, I do not.

Q. And at that time did you write or mark down the distance? A. I did.

Corral Richmond—Direct.

Q. And is this the memorandum that I show you? A. Yes, sir.

Mr. Avis: I am going to ask him to testify from it, if the Court please.

Mr. Sorenson: May I cross-examine as to that paper?

The Court: Yes.

10

By Mr. Sorenson:

Q. I notice that there are some marks on there in typewriting. Did you do that typewriting yourself? A. No, sir.

Q. Who typewrote it? A. I couldn't tell you.

Q. What was your occasion for making these measurements at that time? A. By request of Mr. Parave.

Q. Who? A. Mr. Parave.

20

Q. In other words, Mr. Parave asked you to go down and make measurements? A. That is the idea.

Q. Was that as a result of the conversation between yourself and Mr. Parave? A. Well, I didn't see Mr. Parave. I just saw the person that came and asked me for Mr. Parave. I didn't see Mr. Parave personally.

Q. Who was the person that came to see you? A. Mr. Ritchie.

30

Q. Who is Mr. Ritchie? A. That is a man in Newfield.

Q. Is he related to Mr. Parave? A. No.

Q. What is his interest in the case? A. Just a friend, I suppose.

Q. Just friends; he asked you to get the measurements from the center of the intersection? A. Well, whatever the memorandum shows there; I can't remember.

40

Corval Richmond—Direct.

Q. From the center of the road—

Mr. Sorenson: May I have that last question Mr. Avis asked the witness?

(Question repeated).

By Mr. Avis:

10 Q. Now, why did you take the measurements from the center of the road? A. I took whatever it was stated there. I don't know what they wanted, I only took what they had put down there.

Mr. Sorenson: Well, I certainly object to this witness using this memorandum, because of the fact there is more information contained on it than counsel has stated there is contained on it. Just take a look
20 and you will see what I mean.

Mr. Avis: I don't expect to offer it in evidence; I am asking him to testify from it.

The Court: What is the objection to using the memorandum?

Mr. Sorenson: It contains statements of facts to which there is no testimony either in the case or through the mouth of this particular witness. There is one, for instance;
30 read there, the second question.

Mr. Avis: Supposing I ask him whether or not there was such—

The Court: It seems to me if the questions are properly framed, the witness is entitled to refresh his memory with respect to items which are, I think, in his own hand writing. That paper wouldn't be admissible in evidence.

Mr. Avis: I didn't expect to offer that.

40 The Court: Ask your question, Mr. Avis.

Corral Richmond—Direct.

Q. Mr. Richmond, do you know whether or not there was any mark in the road at or near this intersection? A. On the cement?

Q. On the cement? A. Yes.

Q. What kind of a mark was it? A. Well, it was kind of a dig, like a track.

Q. How big a mark was it? A. Well, I just can't remember. What do you mean, the length? 10

Q. Well, in any way you could show, by measurement or by comparison with some other object? A. I should say it looked as though it had been dragged or—

Mr. Sorenson: I object to any conclusions.

Q. What was the appearance of it; how big was it? A. It was about two foot long. 20

Q. Was there any width to it? A. Why, about as round as a radius rod.

Q. How big would that be? A. Something about three-quarters of an inch.

Q. Was that just a mark on the road or was there an indentation? A. It was an indentation.

Q. Where was that mark that you saw on the road? A. That was about—

Q. Refer to your memorandum, if that will help you? A. About six foot ten. 30

Q. What? A. About six foot ten.

Q. Ten what? A. Inches.

Q. From what? A. The center of the road.

Q. On which side? A. On the right hand side.

Q. In which direction? A. West, that would be west.

Q. On the west side? A. On the west side.

Q. Do you know where that was with respect to the intersection itself? Referring to the plan or 40

Corral Richmond—Direct.

map in evidence, step down here, if you will please, and make a mark there where you say it was? A. (Witness marks map).

Mr. Avis: I am going to mark that "E."
Cross-examine.

10 *Cross-examination by Mr. Sorenson:*

Q. You say you sold feed to the Kurzensky boy in 1930? A. Yes, sir.

Q. What kind of feed did you sell him? A. Peas, beans, pickels, general.

Q. How large a quantity would you say, about? A. About three bushels of peas, about sixty pound of pickels and about a bushel and a half of beans.

20 Q. What would be the aggregate cost of that? A. I think his whole bill with me last year was \$82.00.

Q. Now, when you went down to the intersection, did you do the measuring alone or did you have someone to help you? A. There was this Mr. Ritchie.

Q. There were two of you went down? A. Yes.

Q. Who is Mr. Ritchie? A. He is the Justice of the Peace at Newfield.

30 Q. Justice of the Peace; and when you say you measured from the center of the intersection, what do you mean by the center of the intersection? A. Not quite the center of the intersection; the center of the road, which is the line.

Q. You are quite sure that when you saw the mark which was in the pavement you say after the accident, it was just about where you have it marked here? A. Just about where I remember it was, yes, sir.

40

Corval Richmond—Cross.

Q. In other words, it was further south than this corner? A. Further north, before the north corner, yes.

Q. In other words, it was really in the intersection, so to speak? A. Not exactly in the center of the intersection.

Q. It was further south than the northeast corner, is that so? A. That is it. 10

Q. And it was just about opposite the northwest corner? A. Yes.

Q. And it was even a little more south than the telephone pole? A. South of the telephone pole, yes.

Q. And when I use the words "telephone pole," is this the telephone pole we are talking about (indicating)? A. Yes, sir.

Q. So that the mark that you have placed here is almost on the right hand side of the Williamstown Road going west? A. I don't understand you. 20

Q. So that the mark which you have placed, which is identified by the letter "E," is almost on the right hand side of the Williamstown Road going west? A. It would be on the north side.

Q. That is right, the north side; that is on the right hand side— A. Right hand side going west. 30

Q. Now, did you sell seeds to the Kurzensky boy this year? A. Not this year.

Q. We are quite sure about that, now, about that mark which you saw in the pavement, that it would be practically on the north side of the Williamstown Road going west? A. Yes.

Mr. Sorenson: That is all.

By Mr. Avis:

Q. Mr. Richmond, did you sell the Kurzenskys 40

Corral Richmond—Cross.

anything besides seed in 1930? A. Hot caps—that is, plant covers, you might say.

Q. Were you paid for them? A. Yes, sir.

Q. One other question. Mr. Richmond, when you were there on October 31, 1930, what was the condition of the land to the west and north of this intersection? A. You mean on the shoulders or
10 on the ground surrounding?

Q. Well, beyond the shoulders, more westerly than the shoulders? A. Well, on the shoulders, they had scraped there, but on the outside of the shoulders the ground was tore up by the—

Q. What was the natural condition of the ground beyond that, was it cultivated ground? A. No, it was rough, with bushes, like.

Q. What kind of bushes? A. Well, there is
20 these sumacs, trees.

Q. How big were they on the average? A. They would run three to four to five inches in diameter.

Q. Were they all standing upright? A. Yes, sir.

Q. What other measurements did you take, if any, that day? A. Well, I just can't exactly tell what measurements I took.

Q. Well, referring to the memorandum again, did you take any other measurements? A. I did,
30 from the mark—

Q. Wait a minute; I don't want you to read that. Refer to the last item, see that item? A. Yes.

Q. Not using what is said in the memorandum, can you tell me what measurements you made, with reference to that last item?

Mr. Sorenson: I object to that on the
40 ground that that item is not admissible in evidence as it stands now. I think counsel ought to ask a question.

Corval Richmond—Cross.

Mr. Avis: All right.

Q. Did you make any measurements from the middle of this intersection? A. I did.

Q. To what point? A. To the point where the brush was broken down.

Q. Won't you point on the map and tell me where that place is? A. From here across to here (indicating). 10

Q. What distance was that? A. I just can't remember that either.

Q. Referring to the memorandum, can you tell me— A. It would be one hundred and forty-three feet seven inches.

By Mr. Sorenson:

Q. While, this was going on were you holding one end of the tape and Mr. Ritchie the other end? A. Yes. 20

Q. How did you do it, with your foot or— A. With a steel tape.

Q. This measurement you made, was that from the intersection which has this little line here?

A. That is from the line, center of the road, yes.

Q. Center of the road; that is where the Delsea Drive and Williamstown Road intersect? A. Yes. 30

Q. Then you measured on an angle up to the area, like that? A. Like that, yes.

Q. Did you measure it to the furthest point? A. The furthest point.

Q. That would be away up here? A. That would be to the end, yes, sir.

Mr. Sorenson: I think that is all.

Josephine Raczak—Direct.

JOSEPHINE RACZAK, sworn.

(Through Casmir Wojtkovwiak, sworn as interpreter):

Direct-examination by Mr. Avis:

10 Q. Mrs. Raczak, where do you live? A. On the same road where Mr. Parave lives.

Q. And how far do you live from Mr. Parave's house? A. About a half a mile.

Q. Were you living at the same place on October 29th, 1930? A. Yes.

Q. Who else lived with you? A. My husband and my children and son that was killed.

Q. And his name is Benjamin? A. Benny.

20 Q. And how old was Benny when he was killed? A. Thirty-three.

Q. Did you see him leave the house on October 29th? A. Yes, I saw him when he left the home.

Q. What time was it? A. Seven o'clock.

Q. Was there anybody with him? A. Parave's two boys; they came after him.

Q. Do you know who was driving the car?

Mr. Sorenson: I object to that; I object to the form of the question.

30 The Court: What is the objection?

Mr. Sorenson: The objection is, "Do you know who drove the car"— the question is, "Who did drive the car; did you see who drove the car?" She may know of it from some other source.

The Court: Well, you may change the form of the question, Mr. Avis.

40 Q. Did you see who was driving the car? A. Yes, the youngest Parave boy.

Josephine Raczak—Direct.

Mr. Sorenson: Can we agree that is Joseph?

Mr. Avis: Yes.

Q. Did you see Benny afterward? A. I saw him in the hospital, but he was dead.

Q. What hospital? A. Vineland.

Q. Could you see what road or in which direction the boys went when they left your house? A. From our home they went towards the Lake. 10

Q. And in which direction would that be? A. I don't understand the direction, because I can't read.

Q. Would it be toward Vineland or Malaga or away from Vineland and Malaga? A. Toward Vineland.

Q. Can you go to Malaga on that road? A. Yes. 20

Mr. Sorenson: I submit that is an improper question, whether or not you can go that way. The question is whether or not they did.

Mr. Avis: Of course, I think that is perfectly proper myself; I appreciate the facts you say—

The Court: I think the objection is not well taken. I overrule the objection.

(Exception noted for the defendant). 30

Q. What kind of a car was it? A. It was a small machine for three people.

Q. Who else was home that night? A. With me?

Q. Yes? A. My brother and myself.

Q. What kind of work did Benny do? A. Summer time he worked out on the farm and in the winter time, if anybody called him, he would saw wood for them. 40

Josephine Raczak—Direct.

Q. Whose farm was it? A. My farm.

Q. Who worked on the farm during that year, 1930? A. After Benny was killed or before?

Q. No, before that? A. My son, the one that is hurt.

Q. Did your son August work on the farm last year? A. No, Benny.

Q. Did Benny work on the farm? A. Do you have any money coming in excepting from the farm?

Mr. Sorenson: I object to that on the ground that it is irrelevant and immaterial.

Mr. Avis: All right. I think I have a right to show it as of October 29th, 1930. My purpose is to show this woman was supported entirely by her son from this farm.

20

Mr. Sorenson: I submit the question which is asked is not relevant, and it is not leading to any particular element which is considered an element in the nature of pecuniary loss.

Mr. Avis: I won't insist on that question now; I will withdraw that question.

The Court: All right.

30 (At this point, a recess was taken until 1:30 o'clock P. M.)

Trial of the cause resumed at 1:30 o'clock P. M., pursuant to adjournment, in the presence of counsel for the respective parties.

(At this point, Court and counsel retired to side bar).

Mr. Avis: My application, if the Court please, is that the operator of the bus, Mr. Mulholland, should be a witness in the case

40

Josephine Raczak—Direct.

so far as the plaintiffs' case is concerned and should be subject to subpoena. I would like to have an opportunity of subpoenaing this witness.

The Court: What answer do you want to make to that?

Mr. Sorenson: I object to it on the ground 10
that counsel has had ample opportunity to have served the subpoena upon the man if he endeavored to have done so. Not only that, he has had his legal remedy by which he could not only find the place where the witness lived, but also he had his remedy so he could have made the party a party defendant at the time of the institution of the suit, so he could have known at all times 20
that the man would have been in Court.

Mr. Avis: That would not have insured his presence.

The Court: What was the application there? (Mr. Avis' remarks repeated).

The Court: I will refuse that request on the theory that the case having gone as far as it has, I am unwilling to delay the trial for what length of time it might take to subpoena the witness, without any knowl- 30
edge as to how long that time might be.

(At this point, Court and counsel returned to the Court room).

Josephine Raczak—Direct.

JOSEPHINE RACZAK, resumed.

(Through Casmir Wojtkovwiak, interpreter).

Direct-examination by Mr. Avis:

Q. How many acres in your farm, Mrs. Raczak?

A. Ten acres.

10 Q. Mrs. Raczak, before Benny's death, who supported you? A. All the children worked together and they helped me out.

Q. What children were there? A. The daughters and this son that is here.

Q. And what year was that? A. Benny worked with me six years.

Q. In 1930, last year, who worked on the farm?

A. My son, the one that was killed.

20 Q. Who bought the groceries? A. My son.

Q. Did he or did he not give you any money?

A. He didn't give me any money, but he spent Ten dollars or over buying supplies for the home.

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. Mrs. Raczak, you own this farm, don't you?

A. Yes.

30 Q. How much of your farm have you seeded?

A. What, seeded what?

Q. How great a portion of the ten acres have you cultivated? A. I have corn, cucumbers and some peppers.

Q. And how big a piece of your farm does that take? A. Two acres of corn and two of cucumbers and the rest in peppers.

40 Q. That is six acres? A. No, there is some ground left for cabbage and everything for our own use.

Josephine Raczak—Direct.

Q. Have you woods on your farm? A. No.

Q. Now, after you had taken your crop in, did Benny take it to town to sell it? A. Yes.

Q. And when he sold it, did he bring the money home? A. No, he would be boss of that money himself.

Q. He kept all the money for the produce which was raised on your farm? A. Yes, only he paid everything for me what I needed. 10

Q. Now, you say that all the children worked together for your support before the accident? A. Yes, before the marriage; they were small and they were all with me.

Q. And as each one married, he or she left the farm? A. Yes, they left me.

Q. On October 29th, 1930, who lived at home with you? A. My son, myself, my uncle and my daughter. 20

Q. At that time did your daughter go to school, Wanda? A. No, I don't remember.

Q. Did Wanda go to Philadelphia to look for a job? A. Yes, she was away two weeks before his death.

Q. Was she looking for a position at that time in Philadelphia? A. Yes.

Mr. Sorenson: Would you mind asking that question again to make sure she understands it. 30

(Question repeated by the interpreter).

A. Yes, she went out looking for work.

Q. That was two weeks before this happened?

A. Two weeks before his death.

Q. And at that time she was living with your daughter in Emerald Street in Philadelphia? A. I don't know what was the name of that street, but 40

Josephine Raczak—Cross.

she was at my daughter's, married daughter's home.

Q. Before your daughter Wanda went to Philadelphia two weeks before the 29th of October, 1930, had she ever worked any other place? A. No, she was always at home.

10 Q. Now, in direct-examination when you said that your son went toward the Lake, what Lake do you mean? A. There is some stores there and that road— they call that the Lake.

Q. Is that at Iona? A. No, it is toward Vineland.

Q. It is toward Vineland? A. Vineland.

Q. Do you know the name of the Lake, Mrs. Raczak? A. No, I don't.

20 Mr. Avis: That is the name of the place, but there is no lake there.

Q. Now, when the boys left your house, did you see them get into the automobile? A. I only saw my son go in. They were standing outside near the gate and he come out and went into the machine.

30 Q. Where were you, Mrs. Raczak, when you saw him get into the machine? A. I was closing the door, I was going to go to bed and I saw through the window.

Q. Did your son ever give you any money? A. Yes, if I was in need of a dollar, he would give me it.

Q. Did you ever receive any monies from any of your married daughters or married sons? A. No.

40 Q. So that whatever money that was in your family was money which was derived from the produce on your farm? A. Yes.

Frank Morrell—Direct.

Q. Who cultivates your farm now? A. My uncle and my daughter and I.

Q. And who sells your produce now? A. I will sell it if we have any.

Mr. Sorenson: That is all.

By Mr. Avis:

10

Q. Did you pay your son wages? A. No.

Q. Did he make any money for himself over and above expenses? A. He didn't make so much, you can't make much from ten acres of ground.

Mr. Avis: That is all.

FRANK MORRELL, sworn.

20

Direct-examination by Mr. Avis:

Q. Mr. Morrell, where do you live? A. Newfield.

Q. And do you know where Frank Parave lives? A. I do.

Q. How far is that from Newfield? A. Possibly five or six miles.

Q. Mr. Morrell, can you tell me what road he lives on or near? A. Why, we call it the Main Road. It runs from the Lake through Vineland to Williamstown, and he is right a little bit off the Marshall Mills Road. He is on the east side of the Marshall Mills and Main Road.

30

Q. How long have you known Mr. Parave? A. It is hard to tell that. It is fifteen or twenty years, possibly over twenty years.

Q. Did you know the two boys, Peter and Joseph Parave? A. I have.

40

Frank Morrell—Cross.

Q. Mr. Morrell, how well did you know these two boys? A. Well, I saw them every few days either in the pool room or coming into Newfield to the Post office, or something like that. Newfield is their trading center.

10 Q. What kind of boys were they? A. They were unusually ideal boys; they were very nice boys in every way, every respect.

Q. Did you know Benjamin Kurzensky? A. I did; he was with them most of the time.

Q. What kind of boy was he? A. He was the same way, a mighty nice, clean-cut boy.

Q. Do you know what kind of work they did? A. I knew they helped their fathers and mothers, and like that; I knew all of them all the time.

20 Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. When you said that they lived on the Main Road, does the Main Road run east and west? A. No, the Main Road runs practically north and south.

Q. North and south? A. Yes; it is one of the old trading roads.

30 Q. And as it runs north and south, into what streets does it lead or what particularly important highway? A. I judge the Black Horse Pike, about ten or twelve miles beyond that. It is quite a long road; it runs into Williamstown out of Vine-land.

40 Q. Have you actually seen the boys work on the farm? A. No, I haven't, no, not that I remember: I don't believe I have. I have seen the produce wagons and trucks, things like that, but I have

Gustave A. Nageli—Direct.

never seen them on the farm. I have seen them drive a car, and all like that.

Mr. Sorenson: I think that is all.

GUSTAVE A. NAGELI, sworn.

10

Direct-examination by Mr. Avis:

Q. Mr. Nageli, where do you live? A. Why, right in front of Frank Parave, on Main Road.

Q. Of course, you know Mr. Parave? A. Yes, sir.

Q. And did you know these two boys, Peter and Joseph? A. Yes, sir, knew them both.

Q. Do you know what the boys did? A. They worked on the farm for their father. 20

Q. Do you know whether or not they did any other work besides work on his farm? A. Yes, sir, they worked for me.

Q. What kind of work did they do for you? A. Plowing, cultivating, and harrowing.

Q. How often did they do that kind of work for you? A. Well, part of it in the spring, sometimes some in the summer, and then they would do some odd hauling for me. 30

Q. Did they do any work for you like that during the year 1930? A. Yes, sir.

Q. One of them or both of them? A. One of them. It was mostly with the tractor, see, mostly tractor work.

Q. Did you pay them for this work? A. Yes, sir.

Q. Do you know how much it was?

Mr. Sorenson: I object to that on the 40

Gustave A. Nageli—Direct.

ground it is immaterial, incompetent, and irrelevant.

10 Mr. Avis: My only purpose, if the Court please, was to show as a matter of fact besides what pay they got from their father they got other pay from other people, not that that would be a pecuniary loss, but it would show they had some monies other than what they made from their father.

The Court: I will sustain the objection, because the test is what pecuniary loss the next of kin have suffered, not what they have received.

(Exception noted for the plaintiffs).

20 Mr. Avis: I would like to state my reason, if the Court please. Not that it shows pecuniary loss, but shows that in view of the fact they received so little from the father, they made money elsewhere which they used themselves.

The Court: All right.

Q. Mr. Nageli, how big a farm have you? A. It is about sixteen and a half acres.

30 Q. And during 1930, was it necessary for you to employ other people on the farm? A. Yes, sir.

Mr. Sorenson: Objected to as irrelevant, as to what this man did in the operation of his farm.

40 Mr. Avis: I was going to qualify it. My purpose, if the Court please, is to show the value of the work done by the Parave boys and the Kurzensky boy as to what labor of that kind was worth in that immediate neighborhood. It is my contention that the pecuniary loss to Mr. Parave, taking his

Gustave A. Nageli—Direct.

case first, to him and to the next of kin of these decedents would be the difference in the amount that service like that was worth and what he actually paid. It seems to me that would be his pecuniary loss, because if he had to have somebody else to come in and do that same work at a higher scale, he would lose the services of the two sons. 10

Mr. Sorenson: I object to any such way of proving pecuniary loss. The measure is the pecuniary loss of the next of kin, or what the pecuniary loss is measured by the pecuniary benefit which they had received prior to the death. Now, you cannot have a given course of conduct in which there is a benefit accruing to any of the next of kin, and after the death has occurred, bring in some other people to say, "Well, in my judgment those particular services were worth so much and so much," because that would be in fact getting around the real intent of the Act, which was to see that those people who have been deprived of a pecuniary benefit that they were made full and whole to the extent of their loss. To have it measured by evidence of this character is outside the contemplation of the Act. 20 30

(After further argument).

The Court: What year was this directed to?

Mr. Avis: 1930.

The Court: I will overrule the objection.

(Exception noted for the defendant).

Mr. Avis: Read that question, please.

(Question repeated). 40

Gustave A. Nageli—Direct.

Q. Now, people that you employed, did they or did they not do the same kind of work that the Parave boys did on their farm?

Mr. Sorenson: I object as incompetent, irrelevant and immaterial.

The Court: Same ruling.

10 (Exception noted for the defendant).

Mr. Avis: Repeat the question, please.

(Question repeated).

A. Yes, sir.

Q. What was the scale of wages in 1930 for farm help doing that kind of work?

Mr. Sorenson: I object to that for the same reason, immaterial, incompetent and irrelevant, and not the proper measure.

20

The Court: Same ruling, and an exception may be noted.

(Exception noted for the defendant).

The Court: Repeat the question.

(Question repeated).

A. For tractor work, it was \$2.00 an hour.

Q. I don't mean tractor work now? A. You see, they have to have a man on the tractor to run it.

30

Q. Leaving the tractor part of it out, for general farm work? A. You would have to use some kind of equipment.

The Court: I don't think the witness understands your question. I think he is referring it to the work which they did for him.

Q. I don't mean work they did for you. You

40

Gustave Nageli—Cross.

saw the Parave boys working on their farm, didn't you? A. Yes, sir.

Q. What kind of work did they do? A. Ploughed, cultivated, and harrowed, and picked, hauled to the station, all such work.

Q. Well now, did you hire any men to do that kind of work on your farm in 1930? A. Not outside of the Parave boys. 10

Q. The Parave boys were the only boys you had? A. Yes, sir.

Mr. Avis: That is all.

Cross-examination by Mr. Sorenson:

Q. As a matter of fact, in 1930 only one of the Parave boys worked for you? A. Yes, sir. 20

Q. Which one was that? A. Peter.

Q. That was Peter, the older boy? A. Yes, sir.

Q. Now, in 1929, did you have both of them or one, if you recollect? A. As far as I can recollect, the one boy only worked maybe a day, day and a half. The other work was done by Peter.

Q. How long did Peter work that year, 1929? A. Now, off-handed, I couldn't tell you that.

Q. Well, approximately; you don't have to be so accurate. A. Well, I should judge about a week, that is, the time would run about a week. 30

Q. Did he work for you in 1928? A. No, sir.

Q. So that we gather from your testimony that Joseph worked about a day and a half for you in 1929 and he didn't work for you at all in 1930? A. That is right.

Q. But, however, Peter worked for you one week in 1929. How long did he work for you in 1930, in reference to Peter? A. About the same 40

Earl L. Mulholland—Direct.

length of time, because he covered about the same kind of work each year.

Mr. Sorenson: One week; that is all, sir.

Mr. Avis: Mr. Mulholland!

(No answer).

10 Mr. Avis: If the Court please, he has been subpoenaed.

The Court: He has been subpoenaed?

Mr. Avis: Yes, sir.

The Court: Where was he at the time?

Mr. Milton Hannold: In the car right down here in front of the Hall.

Mr. Sorenson: You say he has been served?

Mr. Avis: Yes, he says so.

20 The Court: I will have to send an officer for him.

Mr. Sorenson: Certainly. Why not? If he has been served, he has to be here.

EARL L. MULHOLLAND, sworn.

Direct-examination by Mr. Avis:

30 Q. Mr. Mulholland, by whom were you employed on October 29th, 1930? A. Public Service.

Q. Is that the Public Service Interstate? A. Coordinated Interstate.

Q. Transportation Company? A. Yes, sir.

Q. Do you know where Franklinville is? A. Yes, sir.

Q. Won't you tell me whether or not at a point near Franklinville your bus was in a collision with a Ford car? A. Yes, sir.

40

Mr. Avis: Cross-examine.

Motions for Non-Suit.

Mr. Sorenson: No questions.

(No Cross-examination)

Plaintiffs Rest

(At this point, Court and counsel retired to side Bar).

10

Mr. Sorenson: Now, if the Court please, I respectfully move for a non-suit in the case of Frank Parave, administrator *ad prosequendum* of Joseph Parave, deceased, against the Public Service Interstate Transportation Company, on the following grounds: First, that there is no proof of any negligence nor any proof of any facts which give rise to an immediate inference of negligence which was the proximate cause of whatever has taken place. I further move for a non-suit on the ground that there is no proof in this particular case that the decedent Joseph Parave was in an automobile which was being operated in a southerly direction along the public highway known as Delsea Drive, in the Township of Franklin, County of Gloucester and State of New Jersey. I further move for a non-suit in this particular case on the ground that there is no proof that an accident took place as a result of negligence which was the proximate cause, on the part of the said defendant, in which accident the said Joseph Parave met his death. I further move for a non-suit on the ground that there is no proof that the automobile which is alleged to have been driven by Joseph Parave was being operated in a southerly direction on the highway, and that the said automobile had a collision with the defendant's bus, as alleged in paragraph four of the complaint.

20

30

40

Motions for Non-Suit.

Then in the case of Frank Parave, administrator ad prosequendum of—

The Court: Are your reasons the same in all three cases?

Mr. Sorenson: No, they are different cases.

10 The Court: Hadn't we better dispose of one at a time, and wouldn't that make the record clear?

Mr. Sorenson: Yes.

(After further argument).

The Court: I will overrule the motion on all the grounds stated.

Mr. Sorenson: That is in reference—

20 The Court: That is in reference to the Joseph case, by reason of the fact that the proofs of the plaintiffs as they stand at the present time, and the reasonable inferences to be drawn therefrom, it is for the jury to say whether or not the defendant's driver was negligent at the time and place in question.

(Exception noted for the defendant).

30 Mr. Sorenson: I make a motion in the case of Frank Parave, administrator ad prosequendum of Peter Parave, on the ground that there is no proof of any negligence or any facts from which an immediate inference of negligence can be drawn, and on the further ground that there is no proof that the automobile of Peter Parave was in a collision with a bus of the defendant company at the time and place mentioned in the complaint. I further move for a non-suit on the ground that there is no proof that the automobile owned by Peter Parave was being operated in a southerly direction on the Delsea Drive at the time and place stated in the complaint.

40 The Court: That is practically the same as the

Motions for Non-Suit.

other motion. I will overrule the motion for the grounds stated in the previous case.

(Exception noted for the defendant).

Mr. Sorenson: Now, in the case of Benjamin Kurzensky, I respectfully move for a non-suit on the ground there is no proof of any negligence on the part of the Public Service Interstate Transportation Company or any proof of any facts from which an immediate inference can be drawn, and on the further ground that there is no proof that the said plaintiff, Benjamin Kurzensky, was at or near the scene of the accident at the time it is alleged to have occurred. The only testimony in the case is that he was seen to get into the automobile by his mother, and the next testimony is that he was seen at the hospital. That is the only testimony as to whether or not that boy was in the accident, and I submit that that is not proof of the case.

(After further argument).

The Court: I will overrule the motion.

(Exception noted for the defendant).

(At this point, Court and counsel returned to the Court room).

10

20

30

40

Earl L. Mulholland—Recalled—Direct.

THE CASES FOR THE DEFENDANT.

EARL L. MULHOLLAND, recalled.

Direct-examination by Mr. Sorenson:

10 Q. Mr. Hulholland, as I understand your testimony, on the 29th of October, 1930, you were employed by the Public Service Interstate Corporation? A. Yes, sir.

Q. On that day were you operating a bus on Delsea Drive? A. Yes, sir.

Q. And the bus which you were operating was coming from what point to what point? A. From Millville to Philadelphia.

Q. Speak, the jury cannot hear you unless you speak up? A. From Millville to Philadelphia.

20 Q. Now, as you were coming from Millville to Philadelphia, can you tell us what the condition of the weather was? A. It was a slight drizzle.

Q. And was or was not the street wet? A. It was.

Q. Are you familiar with the intersection of the Williamstown Road with the Delsea Drive? A. Yes, sir.

Q. And is that a lighted intersection or is it not? A. It is not.

30 Q. Coming north along the Delsea Drive, does Williamstown Road come in at right angles or in at an angle? A. Comes in at an angle.

Q. Now, this particular evening, what time of the evening was it that you reached the Williamstown and Delsea Drive intersection? A. About eight-twenty-five.

40 Q. And at that time, as you were approaching the intersection, did you or did you not see an automobile going west on the Williamstown Road? A. Going west?

Earl L. Mulholland—Recalled—Direct.

Mr. Sorenson: I will withdraw the question.

Q. As you were going north on Delsea Drive, approaching the intersection of the Williamstown Road, did you have a collision with a Ford automobile? A. I did.

Q. This Ford automobile which you had a collision with, which direction did it come from? A. 10
Come from my right.

Q. And what road was it traveling on? A.
On the Williamstown Road.

Q. Where was it in reference to the Intersection when you saw it for the first time? A. About three hundred feet from the Delsea Drive.

Q. Could you at that time see its lights? A. 20
Yes.

Q. Where were you at the time? A. About the same distance south of the Delsea Drive.

Q. Now, you tell the Court and jury everything you did and everything you saw in reference to the operation of your automobile and what took place in reference to the automobile on the Williamstown Road up to the time of the collision? A. I was coming north on the Delsea Drive at about eight-twenty-five in the evening. When I got at a distance of about three hundred feet from the Williamstown Road, I noticed a car coming out of the Williamstown Road, so I took my foot off the gas and applied my brakes slightly, knowing it was wet and the bus might slip. 30

Q. Keep your voice up. A. When I got near the Williamstown Road, within about thirty feet, I saw the car coming out of Williamstown Road wasn't going to stop, so I applied my brakes as hard as possible, and at that time he struck my right front wheel, bouncing around and getting 40

Earl L. Mulholland—Recalled—Direct.

across in front of me. Then after that, I had no light and I didn't see what happened.

Q. Now, this automobile which you saw, you say was about three hundred feet away from the intersection? A. Yes.

Q. And approaching from your right? A.
10 From my right.

Q. Now, do you know whether or not on that evening there was a stop sign on the northeasterly corner of the intersection of the Williamstown Road with the Delsea Drive? A. Yes, sir.

Q. Did that automobile stop before it crossed the Delsea Drive? A. It did not.

Q. Now, how far were you away from the intersection when you realized that that Ford automobile was not going to stop in accordance with
20 the stop sign? A. About thirty feet, I should say.

Q. What did you do then? A. I applied my brakes as hard as I could.

Q. What did you do in reference to the operation of your bus? A. First I pulled to the right to get the wheels on the gravel so the bus—

Q. Raise your voice. A. I pulled to my right to get the rear wheels on the gravel shoulder so the brakes would take better.

Q. Then what happened? A. Then I see he
30 wasn't going to stop, so I cut it to the left so he wouldn't hit me full in the side.

Q. Then when you came together, where were you in reference to the four corners of the intersection? A. About midway.

Q. Do you mean by that the middle of the Williamstown Road and also the middle of the Delsea Drive? A. No, I was still on my side of the road.

Q. You were still on your side of the road? A.
40 Yes, sir.

Earl L. Mulholland—Recalled—Direct.

Q. Now, after you came together, what happened to your bus? A. He striking my front wheel took the wheel out of my hand and I lost control of the bus.

Q. Where did your bus go? A. It went across the road.

Q. In reference to the east and west side of Del-sea Drive, where did it go? A. Well, it was about two bus lengths off the road from the corner. 10

Q. Would that be on the left hand side as you were going north? A. Going north, yes, sir.

Q. Now, at the time the two vehicles came together, was any part of your bus damaged? A. At the time?

Q. Yes? A. Yes.

Q. What was damaged? A. The air line broke on the vacuum booster. 20

Q. What do you mean by the air line on the vacuum booster breaking? A. The impact broke the little cable that goes to the vacuum, and that left me without no foot brake.

Q. That left you without brakes? A. Without no brake.

Q. Now, I show you a picture which purports to be a bus marked, "Philadelphia, Millville and Vineland," and I ask you whether or not that is a picture of the bus which you were driving on the 29th day of October, 1930? A. It was. 30

Mr. Sorenson: I ask it be marked D-1 in evidence.

(Said photograph marked Exhibit D-1).

Q. I show you another photograph, and I ask you whether or not that portrays a picture of the bus which you were driving on that day? A. Yes, sir. 40

Earl L. Mulholland—Recalled—Direct.

Mr. Sorenson: I ask that be marked D-2 in evidence.

(Said photograph marked Exhibit D-2).

10 Q. Now, when you say that the automobile and your bus came together, will you indicate on this picture of the bus what part of the bus first came in contact with the automobile, so that the jury can see and the Court can see, if you don't mind?
A. Why, the right front wheel and the fender.

Q. Yes; then what happened to the automobile?

A. Tore across in front of the bus.

Q. In front of the bus? A. In front of the bus.

Q. Did you see where it eventually stopped? A. No, I didn't see at the time.

20 Q. Now, as you were going north, before you came to the intersection of the Williamstown Road, did you or did you not pass a Chevrolet automobile at about the barn? A. No, sir.

Q. Is there anything which you could have done, Mr. Mulholland, that could have avoided this accident? A. No, sir.

Q. Now, does this picture which purports to be the Ford automobile indicate the portion of the Ford which came in contact with your bus at the first time? A. Yes, sir.

30 Q. And will you show the jury just exactly where on this Ford your bus came in contact with this Ford? A. The left front, here (indicating).

Q. At any time from the time when you first saw the Ford automobile to the time that you came into contact with it, did you notice the Ford automobile slacken its speed? A. No, sir.

Q. Did it slacken its speed? A. No, sir.

40 Q. Did you hear that Ford automobile sound any warnings as it came out upon Delsea Drive?
A. I did not.

Earl L. Mulholland—Recalled—Direct.

Q. Did you sound yours? A. I blew my horn, yes.

Q. Now, I show you a photograph and ask you whether or not that correctly portrays the intersection of Williamstown Road and Delsea Drive, looking west? Do you understand my question? A. Yes. It seems as that would be east, the way I am looking at it now. 10

Q. The way you are looking at it seems to be east? A. Yes, going south on the Delsea Drive. Is that the barn or the house?

Q. That is the warehouse. A. That would be right, then.

Mr. Sorenson: I offer this into evidence and ask it be marked D-3 in evidence.

(Said photograph marked Exhibit D-3). 20

Q. And does this photograph show the stop sign which you referred to in your testimony? A. Yes, sir.

Q. Now, I show you a photograph and I ask you whether or not this photograph correctly depicts the physical conditions which existed on the northwesterly corner of the intersection of the Williamstown Road and Delsea Drive the night of the accident? A. Yes, sir. 30

Mr. Sorenson: I ask this be marked D-4.
(Said photograph marked Exhibit D-4).

Q. Now, how many passengers did you have on the bus? A. One.

Q. Did you get his name? A. Yes, sir.

Q. Do you know what it is now? A. Michael Genovese.

Mr. Sorenson: I think that is all. 40

*Earl L. Mulholland—Recalled—Cross.**Cross-examination by Mr. Avis:*

Q. Mr. Mulholland, you say you were about three-hundred feet away when you saw this other car? A. Yes, sir.

10 Q. And at that time do you know whether or not you were going up grade or down grade? A. Slightly down grade, I believe.

Q. Slightly down grade? A. Yes, sir.

Q. And did that continue, that down grade, clear up to the intersection? A. No, I don't believe it does.

Q. Don't think it does? A. No.

Q. Well, do you know about that? A. I am not positive.

20 Q. How fast were you going three hundred feet from this intersection? A. Between thirty-five and forty.

Q. And how fast were you going at the time the two cars came together? A. About twenty miles an hour.

Q. About twenty miles an hour? A. About, yes, sir.

30 Q. Do I understand you to say that the Ford came out of this street and struck your bus on the right hand front wheel? A. Yes, sir.

Q. On the side? A. Yes, sir.

Q. Then you say it tore across in front of you? A. Yes, sir.

Q. And did your bus afterwards hit the Ford again? A. Yes, sir.

Q. Hit it again? A. Yes, sir, the car tore across in front of me.

40 Q. Did you run into it again, then? A. No, the car ran into the bus as it tore across in front.

Q. I understand you then, that first of all this

Earl L. Mulholland—Recalled—Cross.

Ford struck your right front wheel? A. Yes.

Q. And then you say it tore across in front of you? A. Cut right on in front of me, tore across in front, yes, sir.

Q. Then did your cars come together a second time? A. Yes, possibly, yes.

Q. And at that time, were you on the right hand side of the Delsea Drive? A. Yes, sir. 10

Q. And up until the time the cars came together, you were always on the right hand side, is that so? A. Yes, sir.

Q. Did you see the three passengers that were in this Ford? A. Yes, sir.

Q. Where were they when you first saw them after the accident? A. About thirty feet from the car.

Q. On which side of the highway? A. On the same as the car. 20

Q. That is, on the left side looking towards Franklinville? A. Yes, sir.

Q. About thirty or forty feet from the side of the road? A. Yes, sir.

Q. Did you notice the position of the Ford with reference to the tree? A. Not particularly, no.

Q. Isn't it a fact that your bumper was torn off? A. Yes, sir. 30

Q. And the radiator pushed back? A. To the left, yes, sir.

Mr. Avis: Mr. Gorga, will you stand up, please.

(Gentleman stands up in the Court room).

Q. Do you remember seeing that gentleman that night? A. No, sir.

Q. Do you remember that somebody else took 40

Earl L. Mulholland—Recalled—Cross.

you from the scene of the accident to the State Police Barracks? A. Yes, sir.

Q. Is that the young man? A. I couldn't say.

Q. Someone took you there, didn't they, in a car? A. Yes, sir.

10 Q. Didn't you at that time say to this young man, Nick Gorga, you didn't know where the Ford came from, you never saw it until you hit it? A. No, sir.

Q. Didn't say that? A. I don't remember, no, sir.

Q. Were the brakes in good condition on this car before the accident? A. Yes, sir.

Mr. Sorenson: I object to that; there is no allegation—

20 Mr. Avis: Yes, there is an allegation, too.

Mr. Sorenson: Well, you haven't proved it in your case.

Mr. Avis: That may be so.

Mr. Sorenson: The only proof is speeding, going on the wrong side of the road.

The Court: Well, the question was answered.

30 Q. Did you tell Trooper Maliff that night, after the accident, that the brakes on the bus were not in good shape? A. Not before the accident, no.

Q. Did you talk with Maliff after the accident, and tell him that the brakes on your bus were not in good condition? A. After the accident.

Q. I don't just understand you. You mean the brakes were not in good condition after the accident occurred? A. After the crash, yes.

40 Q. I call your attention to photograph marked Exhibit P-11, and ask you if that is where your

Earl L. Mulholland—Recalled—Cross.

bus stopped? A. I saw no tracks there, but I see the tree, I guess it is.

Q. You did knock down some trees, didn't you?
A. Some small trees, yes, sir.

Q. Did you yourself, your bus strike the tree at all? A. Which tree?

Q. The big tree? A. No.

Q. Do you know how close you came to that tree? A. No, I don't, but it was close.

Q. It was close, wasn't it? A. Yes.

Q. Were there lights inside of your bus before the accident occurred? A. What was that?

(Question repeated) A. No, sir.

Q. No lights? A. No lights.

Q. Inside? A. No, sir.

Q. What lights did you have on the bus? A. Head lights and marker lights.

Q. Did you have a light on the rear of the bus at each side at the back? A. Yes, sir.

Q. What color were those lights? A. Red.

Q. Red lights? A. Yes, sir.

Q. Where next did you see this bus after that night? A. In the garage.

Q. Where? A. In Millville.

Q. Did you examine it at that time? A. Not very close, no.

Q. Could you examine it? A. I could, yes.

Q. Was it covered over with anything? A. I believe it was.

Q. You know it was? A. I don't remember.

Q. Didn't you say you believed it was? Don't you recollect it was all covered from top to bottom? A. The front part might have been, yes.

Q. You couldn't see the front of it at that time, could you? A. I could, yes.

Earl L. Mulholland—Recalled—Cross.

Q. How did you see it? A. By lifting the canvas.

Q. Did you do it? A. No, sir.

Q. Then you don't know whether these photographs show a picture of this bus and whether or not it was in the same condition as it was after the accident? A. I examined it that night.

10 Q. You examined it that night? A. Yes, sir.

Q. Where was that? A. In front of the State Trooper.

Q. Had you been talking to the passenger? A. Not much.

Q. I didn't ask if you talked much. Had you been talking with him? A. Yes, sir.

Q. Was he talking with you or you talking with him when the accident occurred? A. No, sir.

20 Q. Where did he sit? A. In back of me.

Q. Was he sitting in the passenger's seat? A. Yes, sir.

Q. How close to you? A. Well, the space of two seats, on a seat, on the front seat.

Q. When you talked with him, was it necessary for you to turn your head? A. No, sir, I wasn't talking to him.

30 Q. How long before the accident occurred had you been talking with the passenger? A. I don't believe I had talked to the passenger.

Q. Do you say you weren't talking with him then? A. I wasn't talking with him then.

Q. Not then? A. No, sir.

Q. You say you didn't pass another car just before the accident? A. No, sir.

Q. Do you remember when you last passed a car? A. No, sir.

40 Q. How do you know you didn't pass a car, then, before the accident? A. I don't remember seeing one.

Earl L. Mulholland—Recalled—Cross.

Q. It is possible you might have passed one, isn't it? A. No, sir.

Q. Didn't do it? A. No, sir.

Q. Do you know where it was when you last passed a car before the accident happened? A. On the other side of Malaga.

Q. On the other side of Malaga? A. The other side. 10

Q. You hadn't passed any cars since that time until the accident? A. No, sir.

Q. What time did you leave Vineland? A. Eight o'clock.

Q. And that means where in Vineland? A. At the railroad station, across from the station.

Q. What course did you take after leaving Vineland station? A. I go out Landis Avenue to Delsea Drive. 20

Q. You go out to Delsea Drive? A. Yes.

Q. Then up Delsea Drive? A. To Malaga.

Q. I see; you come on up Delsea Drive? A. Yes.

Q. And finally to Philadelphia? A. Yes, sir.

Q. What time were you due in Franklinville? A. About eight-twenty-five.

Q. As a matter of fact, you were due there eight-twenty-three— isn't that so? A. I believe so at that time, yes. 30

Q. And due in Clayton at eight-twenty-nine? A. Yes, sir.

Q. Do you know whether or not your passenger was asleep at the time the accident occurred? A. He was.

Q. And following the accident, were both of your head lights out? A. Yes.

Q. How about your rear lights? A. No, sir. 40

Earl L. Mulholland—Recalled—Cross.

Q. Those two lights, one on each side at the top, they stayed on? A. They stayed on, yes, sir.

Q. Do you know whether or not the head lights on the Ford were still lighted after the accident? A. No, they wasn't.

Q. They were both out? A. Yes, sir.

10 Q. Now, when this Ford struck your right front wheel, where were you with relation to this intersection? A. I don't understand that.

Q. I will ask you another way. As I understand you, you saw this Ford three hundred feet away? A. Yes, sir.

Q. It was coming out this way? A. Yes.

Q. You were going this way (indicating)? A. Yes, sir.

20 Q. Won't you show me on this plan just where it was that the Ford struck you, where your bus was when the Ford hit your right front wheel? A. I was about midway.

Q. Won't you come down here and put a mark there, please? A. I was about midway.

30 Q. Well now, this is the concrete, the gray portion, the brown is the shoulder. Won't you tell me just where your bus was when this car struck your car? A. About the center of Williamstown Road and Delsea Drive.

Q. Will you just make a mark there? A. (Witness marks map).

Q. That is where you were? A. Yes, sir.

Q. Were there any other cars coming towards you on the Delsea Drive? A. No, sir.

Mr. Avis: That is all.

By Mr. Sorenson:

40 Q. I show you a photograph which purports to be a picture of the Ford automobile in its dam-

Harlan North—Direct.

aged condition, and I ask you whether or not this correctly portrays the condition as you saw it exist the night of the accident? A. Yes, sir.

(Said photograph marked Exhibit D-5).

Mr. Sorenson: That is all, Mr. Mulholland.

10

HARLAN NORTH, sworn.

Direct-examination by Mr. Sorenson:

Q. Mr. North, by whom are you employed? A. Prosser, Charles D. Prosser.

Q. On October 29th, 1930, by whom were you employed? A. Same man.

Q. About eight-thirty that evening, were you on Delsea Drive at or near the Williamstown Road? A. I was. 20

Q. Now, how far were you away from the Williamstown Road? A. About five-tenths of a mile.

Q. Keep your voice up a little louder, please. When you say five-tenths of a mile, were you north of Williamstown Road or south? A. South.

Q. South, and were you in an automobile, a truck, or what were you doing at that point? A. Truck; the truck was stopped. 30

Q. Why was it stopped? A. Well, there was two trucks, and the other truck developed trouble, and we both stopped and we were speaking together.

Q. Who had the other truck? A. Johnson, Earl Johnson.

Q. While you were stopped, were you stopped on the dirt shoulder of the road or on the concrete? A. Completely on the dirt shoulder. 40

Harlan North—Direct.

Q. While you were stopped there, did you see the bus pass? A. I did.

Q. And at the time the bus passed, can you tell us whether or not it was riding on his right or left side of the road? A. On the right side of the road.

10 Q. Which direction was it going? A. North.

Q. Now, as it was going north at that point five-tenths of a mile away, can you tell us what your judgment is as to the speed of the bus A. Well, I wouldn't say. He wasn't going over forty, and maybe less, between thirty-five and forty.

Q. Now, after the bus had passed you, did you pay any more particular attention to its course? A. No.

20 Q. What was the next thing that apprised you of the fact that anything had occurred? A. The crash.

Q. What did you do then, when you heard the crash? A. We got in the trucks and came down the road.

Q. Before you did that, did you look in the direction from which the crash was coming? A. No.

30 Q. You got into your truck, you say. Now, when you got into your truck to go towards the direction from which you heard the noise of the crash, did you or did you not see any automobile coming towards you? A. I did not.

Q. Did you see a Chevrolet automobile going south? A. No.

Q. Did you see any automobile going south from the time you saw the bus pass you to the time you heard the crash? A. No.

40 Q. Now, after you got in the truck, what did you do? A. We just went down the road. Of

Harlan North—Cross.

course, we didn't know the distance, how far it was, and we come to the intersection and I seen the lights on the back of the bus out in the field.

Q. Which side of the street did you stop your truck on? A. Why, I stopped right in the road. I was the first truck and then when the bus driver and the other fellow said there was an accident, I drove my truck over on the left hand side and shone the lights in the grass there to find the fellows. 10

Q. And did you find the fellows? A. Yes.

Q. Did you see the Ford? A. Yes.

Q. Will you tell us what the position of the Ford was in reference to the tree? A. Why, the back of the Ford was right up against the second tree.

Q. Which way was the Ford headed? A. South and parallel with the two trees. 20

Q. Parallel with the two trees? A. Yes, sir, right in line.

Q. What were the weather conditions, Mr. North? A. Why, there was a slight drizzle.

Q. Was that intersection a light one or a dark one? A. Rather dark, I think.

Q. I asked you before whether or not you saw a Chevrolet automobile going south. Now, I ask you did you or did you not see an Essex automobile going south? A. No. 30

Mr. Sorenson: That is all.

Cross-examination by Mr. Avis:

Q. Mr. North, do you know where Porch's gas station is on this road? A. No.

Q. Do you remember whether or not your trucks were right close to a gas station? A. Well, there 40

Harlan North—Cross.

was a gas station we passed; we stopped right at that gas station.

Q. Yes; and from there it was five-tenths— that is, a half a mile, isn't it, to where the accident happened? A. To where we were stopped, as near as we could judge.

10 Q. Yes; and isn't it a fact from where you were, going north, that there is a slight up grade, and then there is a down grade before you get to this intersection, and from where you were you couldn't see this intersection at all? A. Not even in the daytime.

Q. Because of this up grade and then down grade? A. Yes.

Q. You heard this crash, did you? A. Yes.

20 Q. Was there more than one crash? A. Well, it was one big one. There could have been small ones in it.

Q. One big crash; you were half a mile away and could hear it? A. Yes.

Q. And of course, the first thing you fellows did was jump in the trucks to hurry up there? A. Yes.

30 Q. Now, you don't know whether any cars went by or not, do you, after that time? A. Surely, I do.

Q. Well, did they? A. No.

Q. You mean to say that although you were intent on getting up to this accident, hearing this big crash, you could tell whether cars went by or not? A. Yes, I know when a car passes me in the road, I guess.

Q. Well, do you always know? A. I don't drive asleep.

40 Q. No, but you might drive home all night and might pass eight or ten cars, and you wouldn't

Harlan North—Cross.

know about it tomorrow or the next day—isn't that so—you were not looking for any other cars; you were hurrying to this accident—that is so, isn't it? A. There wasn't many on the road that night. I was pretty sure when you did see a car, you remembered it.

Q. You were intent on getting up to the accident, weren't you? A. Well, yes. 10

Q. Now, did you see— How many people did you see that had been hurt? A. Three.

Q. Three; and where were they, on which side of the road? A. Left hand.

Q. And how far were they from the side of the road, from the gravel shoulder? A. From the edge of the gravel shoulder?

Q. Yes? A. Oh, about twenty or twenty-five feet. 20

Q. As a matter of fact, they laid between where the Ford was and where the bus was, didn't they? A. Yes.

Q. And the bus was further down in the field? A. Yes.

Mr. Avis: That is all.

EARL JOHNSON, sworn. 30

Direct-examination by Mr. Sorenson:

Q. Mr. Johnson, on October 29th, 1930, by whom were you employed? A. Charles D. Prosser.

Q. In the course of your work, did you have occasion to drive a truck down Delsea Drive or up Delsea Drive? A. Yes, sir.

Q. Was it your truck that broke down? A. Yes, sir. 40

Earl Johnson—Direct.

Q. And at the time it broke down, was there a truck in back of you or in front of you? A. In front of me.

Q. Was that the truck that Mr. North had? A. Yes, sir.

10 Q. Now, while your truck was standing there, what part of the road did it occupy? A. Right hand shoulder.

Q. Would that be the easterly side? A. Yes, sir.

Q. And while you were at your truck there, did you notice a bus pass? A. Yes, sir.

Q. Can you tell us anything about how it was going, the speed, or anything? A. Not hardly.

Q. In your judgment, can you tell us how fast it was going? A. About thirty-five or forty.

20 Q. And at the time, what part of the roadway was it occupying? A. North.

Q. What part of the road was it in? A. Right hand side.

Q. Now, from the time it passed you, did you pay any particular attention to it? A. No.

Q. What was the next thing you know about what took place? A. Heard the crash.

30 Q. What did you do then? A. Got in the truck and came on up.

Q. As you were coming up, did you see an Essex automobile going south? A. No.

Q. Did you see any automobile going south? A. No.

Q. Now, when you got up to the scene of the accident, did you leave your truck? A. I did.

Q. When you got out of your truck, where did you go? A. Over to where the men was laying.

40 Q. When you went over there, did you see the Ford automobile? A. Yes, sir.

Earl Johnson—Cross.

Q. Where was the Ford automobile in reference to the second tree? A. The back end was this side of the tree, out this way, and the front end was pointing south.

Q. And was the automobile on an angle out towards the street, or was it parallel, or how was it? A. Just a litte bit angled.

10

Q. Headed in which direction? A. South.

Q. Now, what were the weather conditions, Mr. Johnson? A. Foggy and rainy.

Q. How was the street? A. Wet.

Mr. Sorenson: That is all.

Cross-examination by Mr. Avis:

Q. Mr. Johnson, you were about a half mile away, weren't you? A. About that.

20

Q. About five-tenths of a mile; have you measured it since that time and found out it was that distance? A. No, I haven't.

Q. Isn't it a fact at that time there was an up grade as you proceeded towards the north? A. There is.

Q. So the bus was going up a hill at that time, wasn't it? A. Yes, sir.

Q. And you heard the crash? A. Yes, sir.

30

Q. Did all three trucks go up there? A. Two.

Q. Two of you? A. One we left in Millville.

Q. There were two trucks standing here, were there? A. Yes.

Q. When you heard the crash, you all jumped in trucks and hurried up there? A. Yes, sir.

Q. These boys you say you helped pick up or looked for, were they on the westerly side or easterly side of the road? A. Westerly.

40

Michael Genovese—Direct.

Q. How far were they from the side of the road?

A. I don't know just how far it was.

Q. You mean you don't know in distance or you don't remember? A. Don't know the distance.

Q. Would it be as far as you and I are apart?

A. Off the shoulder?

Q. Yes? A. Yes.

10 Q. Where was the bus? A. In the field.

Q. Did you go down and look at the bus? A. No.

Mr. Avis: That is all.

MICHAEL GENOVESE, sworn.

Direct-examination by Mr. Sorenson:

20 Q. Mr. Genovese, on October 29th, 1930, were you a passenger in a bus which was being operated by Mr. Mulholland? A. Yes, sir.

Q. Where were you seated? A. Right in back of him.

Q. Did you see this accident take place? A. No, sir.

Q. Why didn't you? A. I was asleep.

30 Q. Now, as the accident happened, did anything happen to you? A. Just a little scar on the shoulder, that is all.

Q. How did you get that scar on your shoulder? A. From the tree.

Q. From what? A. From the tree.

Q. From the tree? A. Yes.

Q. Will you show us on this photograph just about where you were seated? A. Right over here, right in back of the driver, right in back of him.

40 Q. Right in back of the driver? A. Right in back of the driver.

Michael Genovese—Cross.

Q. Where the window is broken? A. Yes.

Q. Take a look? A. Right here, right at this one here, right in back of the driver (indicating).

Q. Do you remember the kind of weather it was that night, Mr. Genovese? A. No, I don't.

Q. Don't remember anything about it? A. No, I was so excited I don't remember nothing.

10

Cross-examination by Mr. Avis:

Q. Didn't you have a cut on your hand? A. No, just on the shoulder.

Q. Just on the shoulder? A. Yes.

Q. You say that was from a tree? A. Yes, where the bus hit, when it stopped.

Q. Was the bus in amongst some trees? A. Where it went in.

20

Q. Did one come in the window? A. The branch hit the window when it went down.

Q. A branch? A. Yes.

Q. That hurt your left shoulder or your right shoulder? A. Right shoulder.

Q. Were you sitting on the left side of the bus or the right side, looking front? A. Just the way I am sitting now, driving up.

Q. As you are looking towards the front of the bus now? A. Yes.

30

Q. Are you on the right side or left side? A. Left side.

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

Q. What I am getting at, wouldn't your left shoulder be the nearest to the outside of the bus? A. No, I got it right here (indicating).

Q. Your right shoulder was the nearest? A. Yes.

40

Norman Wigglesworth—Direct.

Q. And this cut you got, was it a cut or just a bruise? A. No, a cut from glass.

Mr. Avis: Cut from the glass; that is all.

10 NORMAN WIGGLESWORTH, sworn.

Direct-examination by Mr. Sorenson:

Q. Now, Mr. Wigglesworth, on October 29th, 1930, by whom were you employed? A. Charles Prosser.

Q. What is that? A. Prosser, of Pitman.

Q. Were you on one of the trucks which was going along the Delsea Drive? A. I was riding with Mr. North.

20 Q. That is, you were going along Delsea Drive; which way were you going? A. North.

Q. As you were going north along Delsea Drive, did you stop before you got to the intersection of the Williamstown Road? A. We did.

Q. How far in your judgment did you stop from the Williamstown Road? A. Five-tenths of a mile.

30 Q. And when you say five-tenths of a mile, half a mile, do you approximate that, or do you consider it by measurement? A. Well, we measured by our speedometer, but of course, it would be only approximate as to where we stopped, because we weren't sure of the spot where we did stop.

Q. Well, you were stopped there that night. Can you tell us anything about the weather conditions? A. Stormy.

Q. When you say that, what do you mean? A. Drizzling rain.

40 Q. What was the condition of the highway? A. Wet.

Norman Wigglesworth—Direct.

Q. Would you say it was a dark night? A. Yes, it was a mean night to drive.

Q. Are you familiar with the intersection of the Williamstown Road and the Delsea Drive? A. Yes, sir.

Q. Can you tell us whether or not it is a dark intersection? A. It is.

10

Q. Are there any lighting apparatuses around there, any light poles or anything? A. No, sir.

Q. While your truck was stopped five-tenths of a mile from the Williamstown Road, did or did not a bus pass you? A. It did.

Q. Which direction was it going? A. North.

Q. Can you tell us anything about its speed? A. Approximately thirty-five or forty.

Q. After it passed you, can you tell us what portion of the roadway it occupied? A. Why, it passed us, it didn't go out of its course any.

20

Q. When it passed you what part of the street was it on? A. On the right.

Q. After that, what was the next thing you noticed? A. The crash.

Q. What did you do then? A. Finished what we were doing to the second truck, got in our trucks and went up.

Q. From the time you heard the crash to the time you got down to the scene of the accident, did you see an Essex automobile going south from Williamstown? A. I don't remember any.

30

Q. Then after you got into your truck, did you go down to the scene of the accident? A. We did.

Q. As you were driving down, do you remember seeing an Essex automobile pass you? A. No car at all in either direction.

Q. When you got down to the intersection, will you tell us what you did in reference to your

40

Norman Wigglesworth—Cross.

trucks? A. We stopped the trucks; I got out and looked around, and we saw the boys down in the field.

Q. Did you go over to the Ford? A. Not at first.

Q. Later on, did you go over? A. We did.

Q. Where was the Ford? A. Between the two
10 trees.

Q. Will you tell the Court and jury exactly what the position of the Ford was? A. The Ford was headed south and the second tree—that is, the tree furthest north, was right by—was not against the fender, but it was right near the spare tire.

Q. Which way was it headed? A. South.

Q. Now, would you say that that Ford automobile was on an angle or would you say it was parallel with the concrete pavement, or what position
20 it was in? A. I should say it was parallel.

Q. Did you see any drag marks on the highway that night? A. Didn't notice any.

Q. Do you know whether or not there was a stop sign on the northeasterly corner of the intersection of the Williamstown Road and the Delsea Drive?
A. There is.

Q. Was there one that night? A. Yes, sir.

30 Mr. Sorenson: That is all.

Cross-examination by Mr. Avis:

Q. Mr. Wigglesworth, from where you were looking north, there was an up grade, wasn't there, on Delsea Drive? A. Yes, sir.

Q. You couldn't see that intersection at all from where you were, could you? A. No, sir.

Q. And of course, you don't know what the bus did after it passed you and got over the hill, do
40 you? A. No, sir.

Norman Wigglesworth—Cross.

Q. You don't know how fast it was going at the time it reached this intersection? A. No.

Q. Did you see these three young men? A. Yes, sir.

Q. Where were they? A. I could show you if I looked at that picture.

Q. Suppose you show us on the plan here, on this map. Here is a telegraph pole or telephone pole; here is one tree and here is the other tree; this is going towards Franklinville. Can you show us? A. Yes, sir. 10

Q. Supposing you do just show me where it is, please? A. Two of them laying about here and one fellow here. (Witness marks map).

Q. Where was the bus? A. (Witness indicates on map).

Q. The Ford was against this tree? A. That is right. 20

Q. Pointed south; did you notice a mark on the concrete about here (indicating)? A. No, sir.

Q. Didn't look for that? A. No, sir.

Q. Do you recognize this photograph, referring to Exhibit P-7, showing the telephone poles and the two trees in question? A. That is right.

Q. I understand this tree, the one furthest north, is the one against which the Ford was resting? A. Yes, sir, the rear end of it. 30

Mr. Avis: That is all.

By Mr. Sorenson:

Q. Did you see any marks in the concrete at the intersection? A. No, sir, we didn't look—or I didn't look, rather.

Mr. Sorenson: That is all.

Louis Liber—Direct.

LOUIS LIBER, sworn.

Direct-examination by Mr. Sorenson:

Q. Mr. Liber, on the 29th day of October, 1930, were you in or around the intersection of the Williamstown Road and Delsea Drive? A. Yes, sir.

10 Q. And were you driving an automobile? A. Yes, sir.

Q. Which way were you driving? A. North on Delsea Drive.

Q. Now, as you were driving north on Delsea Drive, did you hear a crash take place? A. No, sir.

Q. What kind of an automobile were you driving? A. A Studebaker car with a winter top on it.

20 Q. Was there anybody with you? A. Yes, sir.

Q. Now, I understand that you took one of the boys to the hospital? A. No, sir.

Q. What time did you arrive at the intersection? A. About eight-forty, eight-forty-five.

30 Q. When you arrived at the intersection, what did you see in reference to the Ford automobile and the second tree? A. The Ford automobile and the second tree? The spare tire was about a foot from the second tree, north.

Q. What do you mean by that? A. Why, facing south, the Ford was with the spare tire sort of backed up against the tree, like.

Q. As you were driving along, and when you came to that particular point, will you tell us what the weather conditions were? A. It was sort of sleety and rainy, a light rain.

40 Q. What was the condition of the highway? A. Wet.

Q. When you arrived at the scene of this acci-

Louis Liber—Direct.

dent, were there any other cars there? A. Yes, sir.

Q. How many, would you say? A. Well, there were two trucks there.

Q. Now, as you were driving north, did you or did you not see an Essex automobile pass you? A. No, there was none passed us.

10

Q. Then did you leave your automobile at the intersection—did you get out of it? A. We stopped before we came to the Williamstown Road, and we saw an accident and we turned up the Williamstown Road towards Williamstown.

Q. And did you walk back? A. Walked back.

Q. When you got back to the intersection, were there any marks at the intersection? A. I didn't notice any.

20

Q. You are sure that as you were going north, approaching the intersection of the Williamstown Road and Delsea Drive, you didn't see an Essex automobile coming towards you? A. Not within a half a mile down the road, I didn't see any.

Mr. Sorenson: That is all.

Cross-examination by Mr. Avis:

Q. How about half a mile down the road, did you see one there? A. No, sir, I did not.

30

Q. When did you pass the last car, do you remember? A. No, I don't; I don't believe that I passed any that night, because I was driving slow.

Q. I mean cars; you passed some cars coming towards you, didn't you? A. You mean met any of them?

Q. Yes? A. No, I don't remember.

Q. You were coming north, weren't you? A. I was coming north.

40

Louis Liber—Cross.

Q. You can't tell us when you passed the last car, that is, that you approached going in the opposite direction? A. No, I didn't.

Q. That goes for an Essex or any kind of automobile? A. Any kind of automobiles.

10 Q. Now, referring to Exhibit P-7, do you recognize that as being the pole and the two trees where the Ford was located? A. Positively.

Q. And the Ford, you say the rear tire was about a foot from that tree? A. Yes, it was approximately a foot, foot and a half, from that tree facing this way, across the road.

Q. Just facing diagonally across the road? A. No, sir, not directly across the road. I say it was facing this way, across the road, about like that, facing out towards the road.

20 Q. That would be in a southeasterly direction? A. I don't know; that road don't run direct north and south.

Q. Do I understand you to mean that the Ford would be pointed something like in that direction (indicating)? A. Down this way, just about like that, the Ford was (indicating).

Q. Did you notice the tree? A. I knew they were there is all.

30 Q. Did you notice any marks on the trees? A. No, I didn't.

Q. Whereabouts do you live? A. 432 Almond Street, Vineland.

Mr. Avis: And you never examined the tree afterwards for marks on it. That is all.

(At this point, the further trial of the cause was adjourned until June 9th, 1931, at 10:00 o'clock A. M.).

Allison Weatherby—Direct.

Woodbury, New Jersey, June 9, 1931.

(Trial of the cause resumed at 10:00 o'clock A. M. on the above date, pursuant to adjournment, in the presence of counsel for the respective parties).

10

ALLISON WEATHERBY, sworn.

Direct-examination by Mr. Sorenson:

Q. Mr. Weatherby, on October 29th, 1930, did you or did you not see a bus which was operated by Mr. Mulholland? A. I did.

Q. Did you see it in its damaged condition? A. Yes, sir.

Q. Now, did you make the repairs to that particular bus? A. I did.

20

Q. Will you tell the Court and jury what repairs you made to that particular bus? A. Well, at first the radiator and part of the motor was broken, pushed back, and the mud guard and one wheel was damaged. Then underneath, there was the booster line was broken.

Q. What do you mean by the booster line? A. That is a connection between the motor and the brakes, which in turn works the brakes.

30

Q. What happens when the line is broken? A. When the booster line is broken, it breaks the connection that operates the booster cylinder.

Q. What happens then? A. You have no brakes.

Q. Did you make the repairs? A. I did, I put a new booster line on.

Q. Where does the booster line run from and where does it run to? A. It takes off of the intake manifold.

40

Allison Weatherby—Direct.

Q. Where is the intake manifold? A. On the side of the motor, supplying the gas. Of course, that creates a vacuum.

Q. Will you tell us where it is with reference to the structure of the bus? A. On the right hand side of the motor.

10 Q. Where does it lead to? A. Leads from the right hand side of the motor down along the chassis back to a valve that is operated by the foot pedal.

Q. Where is the valve with reference to the structure of the bus? A. About midway of the bus.

Q. From there where does it lead? A. On down to the booster cylinder.

20 Q. Where is the booster cylinder? A. That is probably two feet back of the valve, see, midway of the bus.

Q. So we have the air line starting at the right of the motor and then runs back toward the rear of the bus? A. That is it.

30 Q. Whereabouts was the air line broken on this particular bus? A. Up next to the motor, where it comes from the chassis, between the chassis and the motor. It is a small place in there and of course, the motor, the impact will move the motor. The motor sets in rubber to take care of the strain and stress that might come on it. Of course, when the motor waves with such an impact, it will break this small copper tubing, about the size of your small finger.

Mr. Sorenson: I think that is all.

Allison Weatherby—Cross.

Cross-examination by Mr. Avis:

Q. Mr. Weatherby, by whom are you employed?

A. Public Service.

Q. Were you employed by the Public Service in October? A. Yes, sir.

Q. When was it that you made the repairs on this bus? A. Why, I saw it the day after it was brought in the shop. 10

Q. Had this break that you have described been made by some object which came from underneath?

A. Well, it could, but it is more likely to be from the strain of the motor.

Q. It could have happened from some object that came from underneath the car? A. Not very well, at that. 20

Q. How about if this bus, as a matter of fact, had run over and knocked down trees which had eventually flown up underneath the motor—isn't it possible that might have made that break? A. No.

Q. Why couldn't it? A. Because it runs in between the channel of the chassis.

Q. Is there anything underneath it? A. No, sir.

Q. As I understand, that line runs from the side of the motor back some distance, doesn't it? A. About half way down the bus. 30

Q. What is it, a copper tube? A. Copper tubing.

Q. Isn't it a fact if something hits the copper tube almost anywhere during its length, it might have pulled it loose from the motor? A. Couldn't hit it.

Q. Couldn't hit it? A. No, sir, the chassis has a channel and this tubing runs down in back of the channel. 40

Allison Weatherby—Cross.

Q. Was there any other damage underneath the bus? A. No, only the front axle was pushed back, and of course, the front spring.

Q. The front axle was pushed back? A. Yes.

Q. Is there an emergency brake on the bus? A. Yes.

10 Q. Of course, that wasn't affected at all, was it, that is, it wasn't broken? A. Not to the best of my knowledge.

Q. And do I understand it that a break in this line, that immediately upon that break your foot-brake is useless? A. Yes, sir.

20 Q. And does it have the effect that the brake is just working like that, with no effect (illustrating)? A. Well, no, the brake would come back on account of the spring tension, of course, up to its normal position, but it wouldn't have any effect on the brakes, that is, when you would apply it.

Q. That happens immediately? A. Yes, sir.

Q. Supposing, as a matter of fact, the brakes had been applied prior to that break, what effect would that have? A. None whatever.

30 Q. Supposing the brakes had been applied, the pedal had been pushed in? A. Well, as soon as the vacuum is gone, your brakes are gone; they wouldn't stay there, your brake wouldn't stay on.

Q. You would have the brakes up until the time that break occurred? A. Up until that time.

Q. You personally don't know when that line broke at all? A. The only thing I could see would break it is like I said before, the wave of the motor would twist the line off.

Q. That wave of the motor would be in any direction? A. Oh, yes, sure.

40 Q. It might have back, forward, or sideways? A. Well, it couldn't come back.

Oscar Von Der Tann—Direct.

Q. Why couldn't it? A. On account of the cross members that hold the motor in the frame; they weren't broken.

Q. Do you inspect these buses? A. Yes, sir.

Q. How often are they inspected?

Mr. Sorenson: I object to that on the ground that is irrelevant. 10

Mr. Avis: All right; I will withdraw it. That is all.

OSCAR VON DER TANN, sworn.

Direct-examination by Mr. Sorenson:

Q. Mr. Von Der Tan, on the 29th day of October, 1930, were you a passenger in an automobile? 20
A. Yes, sir.

Q. Whose automobile were you riding in? A. My own.

Q. Your own; and where were you riding from and where were you riding to? A. Riding from Vineland going to Pitman.

Q. As you were driving between those two points, did you have occasion to drive on Delsea Drive? A. We did.

Q. As you were driving on Delsea Drive, did you come to the intersection of the Williamstown Road and Delsea Drive? A. Yes, slr. 30

Q. What did you see when you got there? A. The first thing we seen was a truck loaded with wood sitting in the Delsea Drive with its head lights pointed toward the cars that were wrecked.

Q. So that as you were driving along Delsea Drive, you were driving in which direction, north? 40
A. North.

Oscar Von Der Tann—Direct.

Q. Now, as you approached the Williamstown Road, did you pass an Essex automobile? A. No, sir.

10 Q. Did you, as you were driving north, at any time within a range of one mile south of the intersection pass this automobile? A. I don't recall passing no cars.

Q. Now, when you arrived at the intersection, I suppose you saw the damaged Ford? A. After we had stopped and got out of the car.

Q. Yes; and will you tell us where the Ford was with reference to the two trees? A. Well, the rear end of the Ford was against the one tree.

Q. And which way was it headed? A. It was headed south.

20 Q. Did you at that time see any marks in the highway? A. No, sir.

Q. Now, as you were going north along Delsea Drive and just before you got to the intersection of the Williamstown Road, is there anything on the southeasterly corner which obstructs your view? A. There is a hill there, I think.

Q. How big do you think it is? A. I guess a pretty good sized hill there.

30 Q. As you are going along, going north towards the Williamstown Road, do you remember that just before you get to the road you go up an incline and then down the incline? A. Yes, there is a slight hill there.

Q. That is before you get to the intersection? A. Yes, sir.

Q. And is that incline at its peak—or rather, is that hill at its peak higher than the Williamstown Road? A. What was that?

40 Q. Do you understand my question? As you are going north, as I understand it, as you are go-

Oscar Von Der Tann—Cross.

ing north you are going in this direction, and just before you get to the Williamstown Road, there is a rise in the road, and then you go gradually down. The question I am asking you is when you get to the top of the rise in the road, is that top of the rise of the road higher than the Williams-town Road? A. I don't know.

10

Mr. Sorenson: I think that is all.

Cross-examination by Mr. Avis:

Q. Who was with you? A. There was four of us.

Q. As you approached the Williamstown Road, you could see down the Williamstown Road to your right. You spoke about an embankment, didn't you? A. Yes, I don't believe you could.

20

Q. You don't think you could see the Williams-town Road at all? A. No.

Q. Now, when you saw this truck with its lights pointed off the road, did you see the bus? A. Not then, we didn't.

Q. Did you see the bus afterwards, before you left the scene? A. Sure.

Q. Where was it? A. The bus was in the trees, back off the road.

30

Q. Did you know whether or not there were trees that were bent over and broken down, immediately surrounding the bus?

Mr. Sorenson: I object to that on the ground it is not proper cross-examination.

Mr. Avis: He was asked what he saw, if the Court please, on his direct-examination; he was asked what he saw when he got there.

The Court: I will overrule the objection.

40

Oscar Von Der Tann—Cross.

(Exception noted for the defendant).

(Question repeated).

A. There were trees alongside of the bus, yes.

Q. Were they all standing and upright? A. I couldn't tell you; I think some of them were standing up.

10

Q. Some of them what? A. Some of them were standing up alongside of the bus.

Q. And some were broken down? A. There were short trees alongside, sumac trees, little sumac trees.

Q. I call your attention to photograph marked Exhibit P-10, and ask you whether the photograph shows some trees were bent over and broken over?

20

A. Maybe the bus was sitting over the top of those bent trees at the time.

Q. Did you notice any trees that were bent over or broken off in the same neighborhood where the bus was that night? A. I didn't notice that.

Q. And you say you don't recall passing any cars? A. No, sir.

Q. Are you willing to say, as a matter of fact, that you didn't pass a car? A. No.

Q. What is that? A. We didn't pass no car.

30

Q. When did you last pass a car? A. I don't believe we passed any; we were driving slow, see.

Q. Maybe that is right, but I am talking about cars approaching in the opposite direction.

Mr. Avis: I will strike that.

Q. Did you understand Mr. Sorenson's question to mean whether you passed cars that were going in the same direction? A. In the same direction?

40 Q. You were asked whether or not you passed any cars? A. Yes.

Oscar Von Der Tann—Cross.

Q. Any Essex car? A. Yes.

Q. Well now, did you understand from that question as to whether or not you passed cars going in the same direction? A. We didn't pass any cars going the same direction or the opposite direction for quite a ways that night.

Q. Where was the last time you passed one going the opposite direction? A. Oh, it was at least three-quarters of a mile from the scene of the accident.

10

Q. Three-quarters of a mile? A. Yes.

Q. Do you remember that car? A. As a matter of fact, I don't remember passing any cars.

Q. I thought you just said you passed one three-quarters of a mile away? A. We may have passed one back further, but we didn't pass none that close to the accident.

20

Q. You haven't any recollection of passing a car a mile or two miles or three miles, have you? A. I don't remember; it has been so long.

Q. Do you remember passing any cars since leaving Vineland? A. I believe we did pass some cars after we left Vineland.

Q. Do you know where that was? A. I couldn't tell you where that was.

Q. Did you know there had been an accident there until you got there? A. We first seen the wood truck, we thought that was in the accident.

30

Q. Did you hear any crash? A. No.

Q. Before you got to that point where the accident had occurred, did you know there had been an accident? A. We seen the trucks sitting in the road so funny, we thought right away there had been an accident.

Q. These people with you, were they all boys or some girls? A. Two girls and two boys, counting myself.

40

Oscar Von Der Tann—Cross.

Q. You were headed for Pitman? A. That is it.

Q. Going to the movies? A. Yes, sir.

Q. I don't suppose you had any interest in watching cars on the road, did you? A. I most generally take pretty good notice of them.

10 Q. If you took pretty good notice of them, why don't you tell me what cars you did pass within a mile of the accident? A. Because I don't recall passing them; I don't believe we did.

Q. How about within two miles—as a matter of fact, you don't know, do you? A. I don't remember passing no cars.

Mr. Avis: I think that is all.

By Mr. Sorenson:

20 Q. If an automobile was driving slowly along the road, about fifteen miles an hour, which automobile had a burned-out bearing, which was making a noise, do you believe that you would have noticed an automobile of that character if it had passed you?

Mr. Avis: I object to that question in that form.

The Court: Sustained.

30 Q. Now, I show you a photograph which purports to be looking in a northerly direction on Delsea Drive, and I ask you whether or not that correctly depicts the conditions that you saw in and around the Delsea Drive and this intersection that night? A. That is it.

Mr. Sorenson: I ask it be marked D-6.
(Said photograph marked Exhibit D-6).

40 Q. I neglected to ask you about the weather.

Myrtle Von Der Tann—Direct.

What kind of an evening was it? A. It was a wet evening.

Q. And at the time that you arrived at the intersection, was it raining or was it not? A. I think it was raining.

Mr. Sorenson: That is all.

10

By Mr. Avis:

Q. There is one question I would like to ask Mr. Von Der Tann. What is your business, Mr. Von Der Tann? A. Automobile mechanic.

Q. Whereabouts do you work? A. Williamstown.

Q. Williamstown; who for? A. My father.

Q. What is his name? A. The same.

20

MYRTLE VON DER TANN, sworn.

Direct-examination by Mr. Sorenson:

Q. Now, Mrs. Von Der Tann, were you also in an automobile on the night of the 29th of October, 1930? A. I was.

Q. Was the automobile in which you were riding going in a northerly direction, along Delsea Drive? A. Yes.

30

Q. Now, do you remember coming to the intersection of Delsea Drive and the Williamstown Road? A. Yes.

Q. What is that? A. I do.

Q. Now, when you came to that intersection, did you see that an accident had occurred? A. Yes.

Q. Now, immediately before you came to the intersection, as you were going in a northerly direc-

40

Myrtle Von Der Tann—Cross.

tion, did you or did you not pass an Essex automobile? A. No.

Mr. Sorenson: That is all.

Cross-examination by Mr. Avis:

10 Q. Did you pass any other kind of automobiles?
A. No, I don't remember any.

Q. You don't remember any; you people were all headed for the moving picture show, weren't you? A. Yes.

Q. And you were riding in the front seat? A. No, in the back.

Q. Who rode in the front seat? A. My brother and his wife.

20 Q. And your brother is who? A. Mr. Liber.

Q. And you and your husband were on the back seat? A. Yes.

Q. Is your husband the gentleman who just testified? A. Yes, sir.

Q. And on which side of the car were you riding, the left or the right? A. The left.

Q. And as you proceeded up this road, I suppose you were talking together? A. Yes, sir.

30 Q. You weren't taking particular notice of what cars you were passing, were you? A. No, I don't think any passed.

Q. What is that? A. None didn't pass, I don't think.

Mr. Avis: You don't think they did. That is all.

Mr. Sorenson: That is all.

40 Mr. Sorenson: I have exhausted my witnesses at the present time. I have one more

Myrtle Von Der Tann—Cross.

witness whom I would like to call, and that is this young lady's sister-in-law, who, she tells me, is on her way up from Vineland.

The Court: Does it add anything, Mr. Sorenson?

Mr. Sorenson: It adds this, it is one more witness to testify that as they were driving to the intersection there that they didn't pass any vehicles, there were no vehicles coming in the opposite direction. 10

Mr. Avis: I could call a witness or two in rebuttal. It would mix it up a little, if you don't mind.

Mr. Sorenson: If you care to do that, I don't mind. Of course, it is according me a courtesy.

Mr. Avis: I will be glad to do it for you or anybody else, or the Court. 20

The Court: I want to get along, I don't want to lose any time. If we had any assurance they would be here within a few minutes, that would be one thing, but I don't want to stay around half the morning and wait.

PLAINTIFF'S REBUTTAL. 30

TROOPER JOHN J. MALIFF, recalled.

Direct-examination by Mr. Avis:

Q. Trooper, I understood you to testify that when you got to the scene of this accident that night you had some conversation with the bus driver? A. I did.

Q. Did he or did he not—I am referring now 40

Trooper John J. Maliff—Rebuttal—Direct.

to Mr. Mulholland, the operator of the bus—say to you that before the accident occurred the brakes of the bus were not in good condition?

10

Mr. Sorenson: I object to that on the ground the basis of that is not the foundation which was laid at the time of the examination of the operator. That question was not put to him in that way.

Mr. Avis: I think that is just what I did ask him, whether or not he didn't tell the Trooper that before the accident occurred the brakes on the bus were not in good condition.

20

The Court: I don't recall that in the testimony. I do recall the question asking as to whether he didn't say to the trooper that he didn't see the car until he struck it.

Mr. Sorenson: No, your Honor, that was another witness. The question, as I recollect it, was asked whether or not the operator had said to the Trooper that the brakes were not working, or something like that.

The Court: If there is any question about it, you had better examine the record.

30

(Previous testimony repeated).

Mr. Avis: I will withdraw the question.

Mr. Sorenson: The witness hasn't denied that. He said, "Yes, I told him the brakes were in good condition after the accident."

Mr. Avis: That is not what the question was.

40

Q. Here is the question I would like to ask now, whether or not, when you talked with the driver of the bus, Trooper Maliff, that he told you the brakes on the car were not in good condition?

Trooper John J. Maliff—Rebuttal—Direct.

Mr. Sorenson: Well now, I object to that on the ground that that question is vague and indefinite, because it certainly leaves an open inference as to time and place when this particular condition which he is attempting to bring out is referred to. For instance, now there is no doubt about it that after the accident, as the testimony now stands, the brakes— 10

The Court: That wouldn't prevent the question from being proper, would it, Mr. Sorenson? It is for the jury to say what the facts were.

Mr. Sorenson: The driver went further than that and said what he told the trooper was that his brakes were not in good condition after the accident occurred. 20

The Court: I will permit the question.

Mr. Sorenson: I pray an exception, on the ground there has not been a proper foundation laid for the purpose of asking this question.

The Court: All right.

(Exception noted for the defendant).

(Question repeated).

A. The words that was used at that time were that "My brakes were not"— Now, wait a minute. "My brakes were not so very good," is what he said to me. 30

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. Now, you investigated this, didn't you? A. I did, yes. 40

Trooper John J. Maliff—Rebuttal—Cross.

Q. And in the course of your investigation, you made a report of this accident, didn't you? A. I did.

Q. And of course, anything which is of importance as to the cause of the accident, you make a notation of? A. We do.

10 Q. I show you what purports to be a copy of your report, and I ask you to show me anything in your report which shows the driver said any such thing? A. We don't make it in that, not in this here report here.

Q. Take a look and see if that is your report. Just take a look and see if this is the report, a copy of the report which you made? A. It is.

20 Q. Now, you are looking through that to see if you find anything in that which indicates that the operator said any such thing to you? A. It wouldn't be in this report.

Q. If it was important, would you not have put it in the report? A. Not in this one, no.

Q. Now, did you have a further conversation with the operator at that time? A. In regard to what?

Q. In regard to what had occurred? A. Yes.

Q. Now, tell us what else the operator said?

30 Mr. Avis: I object to that.

Mr. Sorenson: Oh, I think that is important; when a part of a conversation has been given, I have a right to bring out the rest of the conversation. I cannot be limited just because counsel endeavors to bring his questions in the one question, your Honor, so as to pick out what part of a conversation and screen out everything else.

40 (After further argument).

Trooper John J. Maliff—Rebuttal—Cross.

The Court: I will overrule the objection.
(Exception noted for the plaintiffs).

Q. Now, referring to your notes there, what else did the operator tell you? A. These notes?

Q. Yes? A. Nothing, by these notes.

Q. Are these notes made by you? A. Yes, sir. 10

Q. And the information that you have on these notes, from whom did you get that? A. I didn't quite understand you.

Q. The information that you have on your notes there, from whom did you get that information? A. Oh, the bus driver.

Q. Was that a result of the conversation? A. Pardon me?

Q. Was that as a result of a conversation? A. Somewhat, yes. 20

Q. All right; now, tell us what your conversation was?

Mr. Avis: I object to that.

The Court: No, you will have to limit it to the conversation with respect to brakes, Mr. Sorenson.

Q. Limit your answer to that conversation which took place at the time. You say that this man said he had something wrong with the brakes? 30

A. At that time, I was sitting in the driver's seat of the bus, trying the brakes, and they worked rather hard, and I had asked him how his brakes were, and he said, "My brakes weren't so good."

Q. That is all after the accident? A. Yes, surely. Of course, then I asked him about his lights and he said he had lights, otherwise the bus operated all right. 40

Trooper John J. Maliff—Rebuttal—Cross.

Q. What else did he say, in reference to where he was when he tried the brakes—did he say anything? A. Where he was when he tried the brakes?

Q. Yes? A. No, he didn't.

10 Q. Did he say anything about there was any need for his trying the brakes before he got to the intersection? A. Stopping for passengers, I imagine.

Q. Did he tell you anything about how the accident happened? A. No, he didn't know.

Mr. Sorenson: I submit I have a right to use that now, your Honor.

The Court: Have a right to what?

Mr. Sorenson: To use this now.

20 The Court: What do you mean, use it? (After conference at side bar).

Mr. Sorenson: I offer in evidence the report made by Trooper J. J. Maliff, No. 481, which is a report that the Trooper states—

The Court: Don't read that in front of the jury.

30 Mr. Sorenson: I have to have some kind of identification. I will do that afterwards, then, as long as this is the paper we know about.

The Court: All right.

Q. Now, when you got into the bus, was that at the time it was in the field? A. Yes, sir.

Q. And at the time it was in the field, was the bus level or was it tipped, on uneven, rough ground? A. Why, it was sunken in a little bit, yes.

40 Q. And at the time that you tried the brakes,

-Trooper John J. Maliff—Rebuttal—Cross.

did you know that the air line was broken? A. No, I didn't.

Q. Do you make out two reports when an accident takes place? A. On manslaughter cases, yes, sir.

Q. What occurred to your other report, where is it? A. In the notes of the Prosecutor. That is for criminal action, that is all. 10

Q. And doesn't your department keep a copy of it? A. They do, yes, sir.

Q. And is this a copy of it? A. No, sir.

Q. Where is that copy now? A. At the Malaga sub-station.

Q. And have you seen the report that you filed at the Malaga station recently?

Mr. Avis: If the Court please, I don't like to be objecting, but it does seem to me I cannot see the significance or where this testimony is relevant at all. 20

The Court: I sustain the objection.
(Exception noted for defendant).

Q. The report which I showed you before in cross-examination, did that or did it not have any mention of the operator making any such statement to you? A. No. 30

Mr. Sorenson: That is all.

By Mr. Avis:

Q. Trooper, you say you tried the brakes? A. I did.

Q. Well, now, you said it worked hard. What did you mean by that? A. You could not push it down, all the way down to the floor—or not to the 40

Mrs. Jennie Kulp—Direct.

floor, but as you were working it down, it grew harder all the time, very hard.

Q. Didn't work free and easy, so you could put them down and it would come right back? A. No.

Mr. Avis: That is all.

10 *By Mr. Sorenson:*

Q. Have you ever been a bus driver? A. No, I haven't.

Mr. Sorenson: I think that is all.

Mr. Sorenson: May I call Mrs. Kulp now?

Mr. Avis: Yes, surely.

20

DEFENDANT'S CASE REOPENED.

MRS. JENNIE KULP, sworn.

Direct-examination by Mr. Sorenson:

Q. Mrs. Kulp, where do you live? A. Williamstown Road, Iona.

30 Q. And as a person in going in a northerly direction along Delsea Drive, which side of Delsea Drive do you live on? A. I live on the right hand side.

Q. Now, how far east of Delsea Drive would you say your house is located? A. Well, I couldn't tell you the number of feet, but I should think about two squares.

Q. About two squares; now, on October 29th, 1930, did you hear a crash? A. I did.

40 Q. Now, before you heard the crash, did you hear an automobile passing your house? A. I did.

Mrs. Jennie Kulp—Cross.

Q. And how could you tell it was an automobile?

A. Why, by the sound of it.

Mr. Sorenson: That is all.

Cross-examination by Mr. Avis:

Q. What were you doing at the time, Mrs. Kulp? 10

A. What did you say?

Q. What were you doing at the time? A. Sitting in the living room, facing the window.

Q. Does your house sit back from the road some distance? A. Just a little.

Q. Does it sit back from the road more than the other houses along there? A. Not an awful lot.

Q. It does sit back further than the other houses, doesn't it? A. No, sir, I don't think it does. 20

Q. Don't think it does; and what time was this, Mrs. Kulp, that you heard the crash? A. Why, sometime after eight o'clock.

Q. Did you hear the crash? A. Yes.

Q. You were inside? A. Yes, sir.

Q. And are there other houses between your house and the Delsea Drive? A. One.

Q. Who lives there? A. My folks.

Q. What? A. My parents. 30

Q. Were they home that night? A. They were.

Q. Did any other cars go by beside this one car?

A. I didn't notice any.

Q. You didn't see the car? A. No.

Q. Which direction was it going? A. I don't know.

Q. You don't know which direction it was going? A. I don't know, but I heard the crash after it went by. 40

Louis Liber—Recalled—Direct.

Q. You don't know which direction this car was going at all? A. No.

Mr. Avis: That is all.

By Mr. Sorenson:

10 Q. You say that you heard the crash after it went by. How long a time would you say intervened between the time you heard the noise of an automobile in front of your house and the time when you heard the crash? A. Well, I couldn't just say; it was a couple of minutes, I think.

Mr. Sorenson: That is all.

LOUIS LIBER, recalled.

20 *Direct-examination by Mr. Sorenson:*

Q. Mr. Liber, yesterday when you were on the stand I asked you in reference to which direction you were going on Delsea Drive, and you said you were going north. Now, before you came to the intersection of Williamstown Road going in a northerly direction, is there any point along the right or left side of the road which is of any interest to you? A. There is.

30 Q. What is that point? A. It is my aunt's house.

Q. On which side of the road is that going north? A. On the left hand side going north.

Q. How far from the intersection? A. Why, a half a mile or more.

40 Q. Now, from the time you passed your aunt's house that evening to the time you got to the intersection where this had taken place, did you pass an Essex automobile? A. No, sir.

Louis Liber—Recalled—Cross.

Mildred Liber—Direct.

Q. Going in a southerly direction? A. No, sir.

Mr. Sorenson: That is all.

Cross-examination by Mr. Avis:

Q. You say your aunt lives about a half a mile from where this happened. Now, calling your attention to the half mile the other side of your aunt's house, did you pass any automobile during that half mile? A. I don't remember any. 10

Q. You don't remember? A. No, sir.

Mr. Avis: That is all.

MILDRED LIBER, sworn. 20

By Mr. Sorenson:

Q. Mrs. Liber, where do you live? A. 432 Almond Street, Vineland.

Q. And on the evening of the 29th of October, 1930, were you in an automobile going in a northerly direction along Delsea Drive? A. Yes, sir.

Q. Do you remember coming to the intersection of the Williamstown Road? A. Well, we stopped when we came there. 30

Q. When you came there, did you see an accident had occurred? A. Yes.

Q. Now, immediately—

Mr. Sorenson: Strike that out.

Q. Before you got to the intersection of Delsea Drive and the Williamstown Road, do you remember whether or not you passed an automobile? A. No, I didn't see any. 40

Mildred Liber—Cross.

Q. Speak up, please. A. I didn't see any.

Mr. Sorenson: I think that is all.

Cross-examination by Mr. Avis:

10 Q. Are you the wife of the gentleman who just testified? A. Yes, sir.

Q. What is your husband's business? A. He works in the Philadelphia brush factory.

Q. You say you didn't see any car? A. I didn't see any.

Q. Were you looking for any? A. Well, I was watching the road, of course; I always do that.

Q. You didn't know any accident had happened, did you, at that time? A. Not until after we got there.

20 Mr. Avis: That is all.

Mr. Sorenson: That is all. That is my case, if your Honor please.

DEFENDANT RESTS.

PLAINTIFFS' REBUTTAL REOPENED.

30 NICK GORGO, sworn.

Direct-examination by Mr. Avis:

Q. Mr. Gorgo, did you see Mr. Mulholland, the operator of the bus, on October 29th? A. Who is that?

Q. The night of the accident, the bus operator? A. No. You mean the bus driver?

Q. Yes. A. Yes, sir.

40 The Court: What is the answer, yes or no.

Nick Gorgo—Rebuttal—Direct.

Mr. Avis: I think he didn't understand what operator means.

Q. Did you see the bus driver that night? A. Yes, sir.

Q. I am referring now to Mr. Mulholland. Did you see the bus driver, Mr. Mulholland, in Court yesterday? A. Yes, sir.

10

Q. Did you see him the night of October 29th, the night of the accident? A. Well, I have seen him when he come in the car, when I take him down to the police station.

Q. While you were in the car with him, did he or did he not say to you that he never saw the Ford car until the cars collided?

Mr. Sorenson: I object to that; I don't believe the foundation has been laid for this witness.

20

Mr. Avis: Well, we will go back to that, too.

(Previous testimony repeated).

Mr. Avis: I will withdraw that question.

Q. Did the bus driver, Mr. Mulholland, say to you that night while he was in your car, that he didn't know where the Ford car came from, that he didn't see it until the collision occurred, or words to that effect? A. Yes, sir.

30

Mr. Avis: Cross-examine.

Cross-examination by Mr. Sorenson:

Q. Were you driving the automobile? A. Yes, sir.

Q. And who else was in the automobile besides you? A. There was a friend of mine.

40

Nick Gorgo—Rebuttal—Cross.

Q. Who is that friend? A. Nick Di Matteo.

Q. Where was the bus driver seated? A. In the middle.

Q. What kind of a car did you have? A. Ford roadster.

Q. And where were you driving to? A. I was driving to home.

10 Q. Driving home; had you been to the police headquarters at that time? A. No, I was coming down the road from Camden and the State Trooper stopped me when I got there to the accident and asked me if I would drive the bus driver down to his office.

Q. And what time in the evening was that? A. It was about nine o'clock.

Q. And was the Trooper with you at the time?
20 A. No.

Q. How did this conversation come up, did you ask the bus driver— A. I asked the bus driver—

Q. What did you ask him? A. I asked him if he knew how the accident happened.

Q. Now, if you knew that he was the bus driver, will you tell us why you asked a question in that way?

Mr. Sorenson: What was that last answer?

30 (Answer repeated).

Q. Why should you ask a question in that form, if he knew how the accident happened? A. Well, before he got in my car, one of the fellows from Malaga that knew us, knew me and Nick—

Q. Well, answer my question?

Mr. Avis: I think he is answering it.

40 Mr. Sorenson: I will withdraw the question, because he is bringing in some extraneous matter.

Nick Gorgo—Rebuttal—Cross.

The Court: All right.

Q. Now, since the night of this accident, have you talked with anybody about this case? A. No, sir.

Q. Nobody at all; do you really mean that? A. Yes.

Q. You haven't talked with Mr. Parave about it? A. Well, I did talk to him about a week ago.

Q. About a week ago; in other words, up to a week ago you hadn't talked with anybody about this at all, is that so? A. Yes.

Q. Now, how did the conversation come up between you and Mr. Parave a week ago? A. I don't understand what you mean.

Q. Did Mr. Parave come down to see you or did you go to see Mr. Parave a week ago? A. We was just talking about the accident, and I told him what the bus driver told me, is all.

Q. Are you working at the present time? A. No, sir.

Mr. Sorenson: I think that is all.

NICK DI MATTEO, sworn.

Direct-examination by Mr. Avis:

Q. Mr. De Matteo, were you with Nick Gorgo on October 29th, the night of this accident? A. Yes, sir.

Q. In his car? A. Yes, riding with him.

Q. Did you stop at the scene of this accident? A. No, the State Trooper stopped us.

Q. The State Trooper stopped you? A. Yes.

Q. Then did anybody get in your car, the car

Nick Di Matteo—Rebuttal—Direct.

you were riding in? A. Yes, he stopped us and told us to—

Q. Not what he told you. Who got in the car?

A. The bus driver.

Q. Did you or did you not hear the bus driver say to Mr. Gorgo that he didn't see the Ford and didn't know where it came from until the cars came together, or words to that effect?

10

Mr. Sorenson: I object to that on the ground there has been no proper foundation laid for any questioning of this witness along that line.

The Court: Look for that question, please. (Previous testimony repeated).

20

The Court: Your objection is what, Mr. Sorenson?

(Objection repeated).

The Court: What have you to say, Mr. Avis?

Mr. Avis: I say the foundation is that the bus driver was asked whether or not he made that statement to Mr. Gorgo in his car that night. He said no. Now, this party heard it, not said to him, but said to Mr. Gorgo.

30

The Court: I overrule the objection.

(Exception noted for the defendant).

(Question repeated).

A. Yes.

Mr. Avis: Cross examine.

Cross-examination by Mr. Sorenson:

Q. Where do you live? A. Malaga.

Q. You work for Mr. Parave? A. No.

Q. What kind of business are you in? A. I was driving a truck from Philadelphia to Newark.

40

Nick Di Matteo—Rebuttal—Cross.

Q. What kind of a truck? A. Reo Speed Wag-on.

Q. What kind of business are you in? A. No business.

Q. What is that? A. No business; I am driving for somebody else.

Q. What do you drive? A. A truck. 10

Q. I mean, what kind of goods do you travel with? A. It was apples, we were selling a place in Newark, an apple man.

Q. Where were you coming from this night? A. We were coming from Camden.

Q. What time of the night was it? A. About nine o'clock.

Q. You say you were going to Malaga? A. Yes, sir, we were going home.

Q. How many automobiles were there in and around the intersection of the Williamstown Road and the Delsea Drive when you arrived there? A. I don't know. 20

Q. How many, about? A. I couldn't tell you.

Q. More than ten? A. I don't know how many there were.

Q. Were there less than ten? A. I don't know, because I just got off and got the bus driver in, and we went off. 30

Q. Who stopped you? A. The State Trooper.

Q. And when the State Trooper stopped you, what did he say to you? A. He said, "Bring this fellow up to the station house".

Q. Did you do that? A. Sure.

Q. Now, since this has taken place, with whom have you talked about it? A. Nobody.

Q. Nobody at all; so that when you took the

Colloquy.

stand, nobody knew what you were going to say, is that so? A. Yes, sir.

Mr. Sorenson: That is all.

PLAINTIFFS REST.

10 Mr. Sorenson: Is Trooper Maliff here?
(No answer).

Mr. Avis: I think he has gone, he is stationed at Freehold and last evening I called up the Commanding Officer and he said he could come here this morning if I would release him right away, because he wanted him for something else.

The Court: He doesn't seem to be found.

20 Mr. Sorenson: I will have to rest, then. I will mark these for identification, and when I endeavored to offer them into evidence, it was objected to for the reasons the Court stated, and I secured an exception.

The Court: Yes.

(Exception noted for defendant).

(Two sheets of paper marked D-7 for identification).

30 Mr. Sorenson: D-7 is a report made by State Trooper J. J. Maliff, which is a report that the State Trooper testified contains the information concerning the accident which he secured from the operator of the bus. That is what I offered into evidence.

40 The Court: Now, the offer is refused on the ground that that goes outside of the scope of the examination in chief, the witness having been called merely for the purpose of contradicting the testimony of the driver of the bus when he denied hav-

Motions for Direction of Verdicts.

ing made a statement with respect to the condition of the brakes. That is the situation, isn't it, Mr. Avis?

Mr. Avis: Yes, sir.

The Court: Do you want an exception to that ruling, Mr. Sorenson?

Mr. Sorenson: Yes, your Honor.

10

(Exception noted for the defendant).

BOTH SIDES REST.

(At this point, Court and counsel retired to side Bar).

Mr. Sorenson: Now, on behalf of the defendant, Public Service Interstate Transportation Company, I respectfully move for a directed verdict in the case of Josephine Raczak, administratrix *ad prosequendum* of Benjamin Kurzensky, deceased, on the ground that there is no proof that the said defendant has been guilty of negligence, and on the further ground that the said Benjamin Kurzensky has been guilty of contributory negligence.

20

The Court: The motion is overruled. They are both questions for the jury.

(Exception noted for defendant).

30

Mr. Sorenson: Then in the case of Frank Parave, administrator *ad prosequendum* of Peter Parave, deceased, versus Public Service Interstate Transportation Company, I move that there be a directed verdict in favor of the defendant on the ground that there is no proof of any negligence on the part of said defendant, and on the further ground that the defendant Peter Parave, deceased, was guilty of contributory negligence.

40

Motions for Direction of Verdicts.

The Court: The motion is overruled on the ground that both are questions for the jury.

(Exception noted for the defendant).

10 Mr. Sorenson: In the case of Frank Parave, administrator *ad prosequendum* of Joseph Parave, deceased, versus Public Service Interstate Transportation Company, I move for a direction of a verdict in favor of the defendant, on the ground that there is no proof of any negligence on the part of said defendant, and on the further ground that the said Joseph Parave was guilty of contributory negligence.

The Court: Same ruling.

(Exception noted for the defendant).

20 Mr. Sorenson: Now, in all three cases, I make a motion for the sake of brevity, that your Honor strike from the record all such testimony which has been offered in this case tending to show what hired men usually received when they worked on farms. This motion is made for the reason that such testimony is not evidential for the purpose of proving pecuniary losses under the Death Act, and is therefore not immaterial but also irrelevant, and therefore inadmissible.

30 Mr. Avis: My contention is that in this particular case we are entitled to show what the services rendered by the decedents were reasonably worth, and that the jury would have a right to take from that sum such sum actually paid, and the difference could be taken into consideration in estimating what damages were due, if any, under the Death Act.

40 The Court: The motion is overruled.

(Exception noted for the defendant).

Motions for Direction of Verdicts.

Mr. Sorenson: I am making that in one breath, with the reservation that if it should turn out that the technical point is raised it is only addressed to the cases in group, I will not be confronted with the fact that I should have made it to each case individually.

Mr. Avis: Oh, no, I will agree to that proposition. 10

The Court: All right.

Mr. Sorenson: In each one of the cases, I respectfully move for a directed verdict on the ground that there is no proof of any negligence which is the proximate cause of the said accident, which negligence is chargeable to the defendant, Public Service Interstate Transportation Company.

The Court: The motion is overruled; it is a question for the jury. 20

(Exception noted for the defendant).

(At this point, the further hearing of the cause was adjourned until 1:30 o'clock P. M.).

30

40

Charge of the Court.

(Trial of the cause resumed at 1:30 o'clock P. M., pursuant to adjournment, in the presence of counsel for the respective parties).

10

CHARGE OF THE COURT.

ELDRIDGE, J:

Ladies and Gentlemen of the Jury:

20

You have been listening to testimony introduced in the trial of three separate suits growing out of an alleged collision between a Ford automobile in which three men were riding and a motor bus of the Public Service Interstate Transportation Company, which collision is alleged to have occurred on October 29th, 1930, at or near the intersection of the Delsea Drive and the Williamstown Road, just south of Franklinville. It is the charge in the three separate complaints that as a result of the collision, all of the occupants of the Ford were killed immediately or died as a result of the collision shortly thereafter. Hence, you will notice that the suits are brought by the representatives of the deceased parties.

30

Prior to what is known as our Death Act, there was no provision in our law for recovery by anyone where death resulted from an alleged negligent act of another. In 1848 however, provision was made for the bringing of suit by a person appointed especially for that purpose, and our statute provides "that wherever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would,

40

if death had not ensued, have entitled the party

Charge of the Court.

injured to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured." The statute then provides that suit shall be brought in the name of the personal representative of the deceased, and further makes provision for the distribution of the damages awarded, should any award be made. 10

It is in pursuance of the provisions of this law to which I have just called your attention that these three suits have been brought. The first is brought by Josephine Raczak as administrator *ad prosequendum* of Benjamin Kurzensky, deceased. She brings suit to recover damages for his death against the defendant, the Public Service Company. The second suit is by Frank Parave, administrator again, to recover damages for the death of his son Peter Parave, and the third suit by Frank Parave, again as administrator of his son Joseph Parave, all three suits, as I have said to you, being brought against the same defendant, the Public Service Company, as I shall describe it for the sake of brevity. 20 30

Now, you will notice that there are three separate suits started. Although those three suits have been tried together, there should be three separate verdicts returned by you, which verdicts may be in favor of one or more or all of the plaintiffs, or may be no cause for action against one or more or all of the plaintiffs and in favor of the defendant, the Public Service Company. Let me repeat that to you, that there be no misunderstanding so far as your verdicts are concerned. You are trying three 40

Charge of the Court.

separate suits, and you should therefore render three separate verdicts, which may be in favor of one or more or all of the plaintiffs, or which may be no cause for action against one or more or all of the plaintiffs and in favor of the defendant company.

- 10 You will note further that the statute provides that the action may be brought and damages recovered by the personal representative where the act, neglect or default of the defendant is such as would have entitled the deceased party to have brought an action to recover damages had he merely been injured. It follows, then, from that statement of the law that the same principles respecting the liability of the defendant apply as would have been applicable with the deceased living and
20 bringing suit in his own name. Let me, then, point out to you the principles which apply, having said to you that the same principles apply as would have applied had the deceased been injured merely and had brought suit in his own name.

- It seems hardly necessary to say to you that not every collision justifies recovery. You have heard me say that on numerous occasions during this session of Court, and that is true no matter what the
30 result of the collision may have been. Before there can be recovery, the party sought to be charged—that is, the Public Service Corporation, in this case—must be guilty through its agent of what we know in the law as negligence. Unless there was negligence on the part of the driver of the defendant's bus, there can be no recovery, and that is true even though you may find that the three deaths resulted from the collision. The basis
40 upon which recovery is sought is that the plaintiffs are charging the defendant company with the neg-

Charge of the Court.

ligent operation of its bus through its agent and driver, and unless you find by a preponderance of the evidence that the driver of the bus was negligent at the time and place in question in the operation of his car, then there can be no recovery, in spite of the fact that three deaths resulted from this collision.

Negligence in our law is defined to be either the omission to do something which a reasonable man, guided by the circumstances which ordinarily regulate the conduct of human affairs, would do or the doing of something which a prudent and reasonable man would not do. It is the failure to observe for the protection of another person that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. It involves the existence of a duty on the part of the defendant to protect the plaintiff from injury, failure of the defendant to perform that duty and injury to the plaintiff resulting from such failure.

It is the plaintiffs' contention in this case that the defendant company failed in its duty, in that its driver did not exercise that care and precaution which would have been exercised by a reasonably careful and prudent man under the same or similar circumstances, and that the deaths of the decedents resulted therefrom.

Negligence alone, however, is not sufficient. In order to charge the defendant in damages, not only must its driver have been negligent but that negligence must have been the proximate cause of the injury. By "proximate cause," we mean that cause which naturally and probably led to and which might have been expected to produce the result. It is the efficient cause, the one that nat-

10

20

30

40

Charge of the Court.

urally sets or necessarily sets the other causes in motion. It means that there must be no other culpable and efficient agency intervening between the wrongdoer's act and the loss.

10 It is for you to say whether you are convinced by the preponderance of the evidence that the driver of the bus was negligent and that such negligence was the proximate cause of the injuries complained of.

20 I shall not discuss with you the testimony. You have heard it from the witnesses upon the stand. Anything that I might say to you concerning the testimony would not be binding upon you, because you are the sole judges of the fact. I want merely to say to you with respect to the testimony that you are entitled not only to consider the proven facts, but to consider also the reasonable and immediate inferences from those proven facts.

30 Your first question, then, it seems to the Court, would be to determine whether or not the defendant's driver at the time and place in question was guilty of negligent conduct, negligent conduct such as I have defined to you, and whether or not that negligent conduct was the proximate cause of the death of these three men. If you find there was no negligence, or even if there were negligence and that negligence was not the proximate cause of the death of these three men, then there can be no recovery on the part of their administrators, and your verdict should be no cause for action. I repeat again that in order to charge the defendant company, you must find the driver guilty of negligence, and that that negligence was the proximate cause of the injury complained of.

40 So much for the principles involved with respect to the conduct of the defendant's driver. I want

Charge of the Court.

to have something to say to you also respecting the occupants of the Ford car.

In order that there may be recovery on the part of the plaintiffs or any one of them, the deceased person for whose death recovery is sought must have been free from contributory negligence. Contributory negligence in our law is defined to be 10
such an act or omission on the part of the plaintiff amounting to an ordinary want of care as concurring or cooperating with the negligent act of the defendant is the proximate cause or occasion of the injury complained of. It is present in a given case when the plaintiff, by the exercise of reasonable care, could have avoided the injury, notwithstanding the defendant's negligence. If any one of these decedents were guilty of contributory negligence such as I have defined to you, then his administrator cannot recover, even though the defendant's driver may have been guilty of negligence. Our law does not permit a jury to distinguish between different degrees of negligence, and if there was negligent conduct on the part of any one of the decedents which contributed to his injury, then there can be no recovery on the part of his administrator in this case. 20

I want to speak to you also and charge you concerning the relationship existing between the occupants of this car. I am not referring to blood relationship—that is immaterial. I am referring to their situation with respect to each other in the car in which they were riding. So far as the testimony discloses, Joseph was the driver of the car in question. He would, of course, be chargeable with his own negligence, and if you find that to have existed, then he cannot recover. Let me repeat that to you. So far as the evidence discloses, 30
40

Charge of the Court.

Joseph Parave was the driver of the car. He would, of course, be chargeable with his own negligence, and if you find that to have existed, his administrator could not recover, because as I have already said to you, where both parties are negligent or where the plaintiff himself contributes to the injury by his own negligence, there can be no recovery on his part or on the part of his personal representative.

There is in our law, however, what we know as the doctrine of imputed negligence, that is to say, one party becomes chargeable with the negligence of another. That doctrine applies so far as the defendant is concerned. The company itself was not, of course, and could not be driving this bus at the time in question; its driver was in charge of the bus and, as I have already said to you, any negligence on the part of the driver of the bus would be imputed to the company, his employer. That same doctrine has application to the matter of Peter's death, Peter Parave's death. The testimony discloses the fact that Peter was the owner of the car in question, of the Ford car. Where a car is driven by one other than the owner, the law presumes that the driver of the car is the agent of the owner and engaged in the owner's business. That is a presumption which may be overcome by testimony, the theory being that a principal is liable for the acts of his agent when the agent is engaged in his master's business and acting within the scope of his authority. I say, that presumption that the owner is liable by reason of the fact that he is the owner of the car and that therefore the driver's negligence is imputed to him may be overcome by testimony. There is, however, in this case no testimony to overcome that presumption.

Charge of the Court.

If Joseph be found guilty of contributory negligence, that negligence would be imputed to Peter and there could be no recovery by the administrator of Peter. In other words, Peter and Joseph stand in the same position; if Joseph be guilty of negligence, contributory negligence, then Peter cannot recover. That same principle to which I have referred with respect to these two brothers in the judgment of the Court would have application so far as Benjamin Kurzensky is concerned. I confess that the evidence is somewhat meagre, but the only testimony that we have is to the effect that these three boys had gone "to sell Benny's wood." I think that is the exact wording; if not, it is near enough for my purpose. That is the testimony and it would seem to the Court that under those circumstances, there being no other evidence and no contradiction of that evidence, that the jury should find that Joseph, the driver of the car, was acting as the agent of Benny at the time and place in question, and I therefore charge you that this principle of imputed negligence which would charge Peter with Joseph's negligence, if there were any, would also charge Benny, in which event if you find Joseph guilty of contributory negligence, then there can be no recovery on the part of Benny.

Those seem to the Court to be the general principles which have application to this case so far as the question of fixing the liability is concerned. There is in particular one more principle to which I will call your attention just a little later, but if, after having considered all these questions in the light of the principles I have just enunciated to you, you find that the defendant's driver was guilty of negligence, that that negligence was the

Charge of the Court.

proximate cause of the injury, and that there was no contributory negligence on the part of these plaintiffs, then you come to your next question, namely, the amount of damages you will award.

10 The suits are brought in this class of cases by the especially appointed administrator *ad prosequendum*, that is, a person appointed for the purpose of bringing suit for the benefit of the next of kin of the deceased person. Peter and Joseph left them surviving a father and mother and eight brothers and sisters. Benny left him surviving a mother and six brothers and sisters, if I am not mistaken in my recollection of the testimony. It is, however, a fact that so far as the proof of loss is concerned the testimony is to the effect that in
20 the case of the two boys, the first case to which I have referred, the loss proven, if any, has been limited to the father, and with respect to the second case, the Kurzensky case, the loss has been proven to the sister of the deceased man and his mother. I want to call your attention to the fact, however, that even though there be more than one person who may have suffered loss by reason of the death of the deceased person, that does not mean that there is to be a separate award. If an
30 award is made, it is a single award made to the administrator of the estate of the deceased person of such an amount as will compensate the next of kin for their pecuniary loss.

I want to call your attention particularly to the fact that I said "pecuniary loss." The law permits no award for grief, sorrow or injured feelings, and the mental agony which these brothers and sisters and these parents may have suffered has no
40 part whatever in your consideration. The law requires that I, as the Court, give no place to sym-

Charge of the Court.

pathy or pity, and the law places upon you exactly the same requirement. I repeat to you that the test has to do merely with pecuniary loss, the money value of these lives to those who are seeking to recover. You are to award—if you make an award, if the plaintiffs are entitled to recover at all—such an amount as will compensate them for their reasonable expectation of pecuniary benefit from the deceased, such an amount as will compensate them for their reasonable expectation of pecuniary benefit from the deceased. The amount, however, cannot be a mere guess, but must be based upon the evidence. It must be such an amount as you consider fair and just and reasonable, based upon the evidence which you have heard presented in this case. The award you are to make is not, however, to be a weekly payment, but is to be a lump sum award, capitalized at its present value, such a pecuniary benefit as the parties might reasonably expect to receive from the deceased persons. So much with respect to the question of damages and the amount which may be recovered. 10

I said to you that there was one general principle to which I wanted to call your attention, and that has to do with the question of the proof required. I have said to juries before and you have undoubtedly heard it said to you that the party alleging must sustain that allegation by a preponderance of the evidence. That is to say, in other words, the burden of proof rests upon the plaintiff. He must sustain every allegation necessary for recovery by the greater weight of the believable evidence. By the greater weight of the believable evidence, we do not mean necessarily the greater number of witnesses. We mean that 20 30 40

Charge of the Court.

you are to consider the number of witnesses along with the quality and the character of the evidence introduced. You are to take all of those things into consideration; you are to weigh the evidence, and if it is equal in the balance, there can be no recovery. In order that there be a recovery, the
 10 greater weight of the believable evidence must fall upon the side of the plaintiff.

To sum up, then, after having said so much to you with respect to the law applicable to the case, let me say to you again that you are trying three separate cases. You should return three separate verdicts, an amount awarded in one or more or all of the separate cases or a verdict of no cause for action in one or more or all of the cases.

20 I think that completes what I desire to say to you by way of general charge. I have been asked to read to you a number of charges on the part of the defendant, and with the exception of perhaps the last three which I think I have already covered in my general charge, I shall read them to you and so charge you.

30 "1. The plaintiff is only entitled to recover by establishing the truth of his case as laid in his complaint, and if he fails to do this the defendant is entitled to a verdict," and I so charge you.

"2. In an action predicated upon negligence, the right of the defendant to have the plaintiff bear the burden of proving the charge made in the complaint is a substantial one, which burden must be borne by proof of some negligent act or by proof of circumstances from which the defendant's want of care is a legitimate inference. Where neither
 40 sort of proof is presented, the verdict of the jury must be for the defendant," and I so charge you.

Charge of the Court.

"3. Negligence in its essence is always concrete, hence it must always rest upon testimony that tends to the establishment of concrete acts, either of omission or of commission; there is no such thing as negligence at large," and I so charge you.

"4. There is always a presumption against negligence." I so charge you. 101

"5. The mere proof of a collision or facts from which a collision could be inferred is no proof of negligence." So far as that charge is concerned, I repeat that the mere proof of a collision or facts from which a collision could be inferred is no proof of negligence; there must be more proof than the mere proof of the collision itself.

"6. The plaintiff is charged with the duty of proving by the greater weight of the credible evidence the allegations contained in his complaint, and if the proof is equally consistent with the absence as with the existence of negligence on the part of the defendant, the verdict must be for the defendant." I have already explained that to you in my definition of the preponderance of the evidence. The greater weight must fall on the side of the plaintiff, and if the evidence is equal, then there can be no recovery. 202

"7. Negligence is a fact which must be shown. It will not be presumed," and I so charge you. 30

"8. To recover for the death resulting from a negligent act of a party, based upon circumstantial evidence, the plaintiffs must show, not a possibility only, but a probability that the death resulted from the defendant's negligence." I so charge. 40

Charge of the Court.

"9. The plaintiffs are further charged with the duty of proving that the negligence alleged was the proximate cause of the accident." I so charge you again, as I have already charged you generally.

10 "10. Proximate cause is defined as the efficient cause, the one that necessarily sets the other causes in operation. It means not nearness of time or distance but closeness of connection. It connotes that there must be no other culpable and efficient agency intervening between the defendant's dereliction and the accident," and I so charge you.

20 "11. Where the evidence is circumstantial, the plaintiff must show existence of circumstances rendering the inference of negligence of the defendant probable and excluding an inference that the death was due to other causes for which the defendant was not responsible," and I so charge.

30 The next charge has to do with our traffic regulation. Our Traffic Act provides that "It shall be unlawful for the driver of any vehicle * * * to enter upon or cross any 'stop street', so designated and marked, unless he shall first have brought his vehicle to a complete stop at a point within five feet of the nearest crosswalk, or a 'stop' line, marked upon the pavement, at the nearest side of such stop street." That is a provision of our Traffic Act. I want to say to you, however, with respect to it that the mere violation of a Motor Vehicle provision does not of itself constitute negligence. It is one of the facts and circumstances that may be taken into consideration along with other facts and circumstances in determining whether or not the defendant was guilty of negligence at the time and place in question.

40

Charge of the Court.

"13. The driver of the Ford automobile was charged with the duty of operating his vehicle in accordance with the provisions of the Traffic Act." That is true, but again I say to you that the violation of this does not constitute negligence. It is one of the things to be taken into consideration along with the others.

10

"14. The operator of the bus had the right to assume that the driver of the Ford automobile would obey the law and bring the Ford automobile to a stop before entering upon the Delsea Drive." That is true, of course, provided you found that the car was coming out of the cross street. That is a disputed question of fact for you to determine.

"15. Under the law of this State and the facts of this case, the operator of the bus was permitted to operate his bus at a speed not exceeding forty miles per hour." That is true, and I so charge you.

20

"16. If you find that the plaintiffs' automobile failed to stop before entering upon Delsea Drive and such failure to stop was negligence and the proximate cause of the accident, your verdict must be for the defendant." That would be true, of course, if you find that that mere violation of the Motor Vehicle Act, if there was such a violation, constituted negligence.

30

Number 17 I have covered in my general charge and refuse to repeat it.

Number 18 has been sufficiently covered in my general charge.

Number 19 has been sufficiently covered.

40

Defendant's Exceptions.

I find three more requests to charge that I did not reach.

Number 20 is refused because it has already been covered amply in my general charge.

10 "21. One who sees or could have seen if he looked and has the faculties of understanding the dangers to which he is exposed, is charged with a knowledge of them, and failure to act on the knowledge as a prudent and cautious man would act under like circumstances is negligence which would defeat recovery," and I so charge you.

20 "22. Benjamin Kurzensky could not divest himself of the duty of using reasonable care by placing himself completely in the custody of Joseph Parave," and I so charge you.

You may now retire, deliberate, and return with your verdicts.

DEFENDANT'S EXCEPTIONS.

30 Mr. Sorenson: I ask an exception to your Honor's not charging Requests to Charge Numbers 17, 18, and 19, on the ground that each one of these requests sets up the rule of law which is applicable to the fixing of the principal sum which the jury is to award and which sum is to be the pecuniary loss which they find.

I direct the Court's attention to the thought that I have incorporated in them that this future sum, while it is capitalized, must be reduced to the present value of that future amount.

40 There is one more exception I desire to take. It is to that portion of your Honor's charge wherein you charge as to the duty which rests upon the

Defendant's Requests to Charge Refused.

defendant, and you use the phraseology "There is a duty to protect the plaintiffs from injury and that duty rests upon the defendant," without stating to the jury that that duty only rests upon the defendant as to those persons who are likewise in the reasonable usage of the highway.

The Court: All right.

10

(Exceptions noted for the defendant).

DEFENDANT'S REQUESTS TO CHARGE
REFUSED.

"17. Damage recoverable in each of these cases are not such as arise from injury to the feeling, but are awarded only in reference to the actual pecuniary loss, and in estimating the damages the jury cannot take into consideration mental suffering or loss of society, but must give compensation for pecuniary loss only."

20

"18. If any of the plaintiffs is entitled to recover, such plaintiff is entitled to recover a capital fund which represents the present value of all the future pecuniary losses which will fall upon the next of kin by the premature taking off of the intestate. 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 have become ill. He might have become a victim of lingering fatal disease. He may have married. The next of kin may have predeceased him. Nothing is to be added for loss of society or wounded feelings or any-

30

40

Defendant's Requests to Charge Refused.

thing else which cannot be measured by money and satisfied by pecuniary recompense."

10 "19. The jury in assessing damages should ascertain the present value of all of the future pecuniary losses and return a verdict for that sum and not for the total amount of such losses."

"20. The Ford automobile was owned by Peter Parave and driven by Joseph Parave, which situation charges Peter with the contributory negligence of Joseph. If you find Joseph guilty of contributory negligence, then your verdict must be in favor of the defendant and against Peter as well as against Joseph."

20

30

40

Grounds of Appeal.

Filed September 12, 1931.

NEW JERSEY COURT OF ERRORS AND APPEALS.

FRANK PARAVE, Administrator <i>ad Prosequendum</i> of JOSEPH PARAVE, deceased, Plaintiff-Appellee, vs. PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, a New Jersey Corporation, Defendant-Appellant.	}	Action at Law. 10 On Appeal from the New Jer- sey Supreme Court.
--	---	---

To: MESSRS. AVIS AND AVIS,
Attorneys of Plaintiff-Appellee, 20
Woodbury, N. J.

Sirs:

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

1. Because the court, although request- 30
ed so to do by the attorney for the defend-
ant at the close of the plaintiff's case, refus-
ed to non-suit the plaintiff on the following
ground:

That there was no proof of any negligence,
nor any proof of any facts which give rise
to an immediate inference of negligence
which was the proximate cause of whatever
has taken place; and on the further ground
that there was no proof in this particular 40
case that decedent, Joseph Parave, was in
an automobile which was being operated in

Grounds of Appeal.

10 a southerly direction along the public highway known as Delsea Drive in the Town of Franklin, County of Gloucester, and State of New Jersey; and on the further grounds that there was no proof that an accident took place as a result of negligence, which was the proximate cause on the part of the defendant, in which accident the said Joseph Parave met his death; and on the further ground that there was no proof that the automobile, which was alleged to have been driven by Joseph Parave, was being operated in a southerly direction on the highway, and that the said automobile had a collision with the defendant's bus as alleged in paragraph four of the complaint.

20 2. Because the court, although requested so to do by the attorney for the defendant at the close of the whole case, refused to direct a verdict in favor of the defendant on the following grounds:

30 That there was no proof of any negligence on the part of the said defendant; and on the further ground that the said Joseph Parave was guilty of contributory negligence; and on the further ground that there is no proof that there was any negligence which was the proximate cause of said accident, which negligence was chargeable to the defendant, Public Service Interstate Transportation Company.

Dated: September 8th, 1931.

Yours truly,

HENRY H. FRYLING,
Attorney of Defendant-Appellant.

(Endorsed) Service of a copy of within Grounds of Appeal acknowledged this 10th day of September, 1931.

40 AVIS & AVIS,
Attorneys of Plaintiff.

Grounds of Appeal.

Filed September 12, 1931.

NEW JERSEY COURT OF ERRORS AND APPEALS.

FRANK PARAVE, Administrator <i>ad Prosequendum</i> of PETER PARAVE, deceased, Plaintiff-Appellee, vs. PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, a New Jersey Corporation, Defendant-Appellant.	}	Action at Law. 10 On Appeal from the New Jer- sey Supreme Court.
--	---	--

To: MESSRS. AVIS AND AVIS, Attorneys of Plaintiff-Appellee, Woodbury, N. J.	20
---	----

Sirs:

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

1. Because the court, although requested so to do by the attorney for the defendant at the close of the plaintiff's case, refused to non-suit the plaintiff on the following grounds: 30

That there was no proof of any negligence, or any facts from which an immediate inference of negligence can be drawn; and on the further ground that there is no proof that the automobile of Peter Parave was in a collision with a bus of the defendant at the time and place mentioned in the complaint; 40

Grounds of Appeal.

and on the further ground that there was no proof that the automobile owned by Peter Parave was being operated in a southerly direction on the Delsea Drive at the time and place stated in the complaint.

10 2. Because the court, although requested so to do by the attorney for the defendant at the close of the whole case, refused to direct a verdict in favor of the defendant on the following grounds:

20 That there was no proof of any negligence on the part of the defendant, and on the further ground that the defendant, Peter Parave, deceased, was guilty of contributory negligence; and on the further ground that there was no proof of any negligence which was the proximate cause of the said accident, which negligence was chargeable to the defendant, Public Service Interstate Transportation Company.

Dated: September 8th, 1931.

Yours truly,

HENRY H. FRYLING,
Attorney of Defendant-Appellant.

30 (Endorsed) Service of a copy of within Grounds of Appeal acknowledged this 10th day of September, 1931.

AVIS & AVIS,
Attorneys of Plaintiff.

Grounds of Appeal.

Filed September 12, 1931.

NEW JERSEY COURT OF ERRORS AND APPEALS.

JOSEPHINE RACZAK, Administra- trix <i>ad Prosequendum</i> of BEN- JAMIN KURZENSKY, deceased, Plaintiff-Appellee, vs. PUBLIC SERVICE INTERSTATE TRANSPORTATION COMPANY, a New Jersey Corporation, Defendant-Appellant.	}	Action at Law. 10 On Appeal from the New Jer- sey Supreme Court.
---	---	---

To: MESSRS. AVIS AND AVIS, Attorneys of Plaintiff-Appellee, Woodbury, N. J.	20
---	----

Sirs:

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

1. Because the court, although requested so to do by the attorney for the defendant at the close of the plaintiff's case, refused to non-suit the plaintiff on the following grounds; that there was no proof of any negligence on the part of the Public Service Interstate Transportation Company, or any proof of any facts from which an immediate inference could be drawn; and on the further ground that there was no proof that the said plaintiff, Benjamin Kurzensky, was at

40

Grounds of Appeal.

or near the scene of the accident at the time it was alleged to have occurred.

10 2. Because the court, although requested so to do by the attorney for the defendant at the close of the whole case, refused to direct a verdict in favor of the defendant on the following ground: That there was no proof that the defendant had been guilty of negligence, and on the further ground that the said plaintiff, Benjamin Kurzensky, had been guilty of contributory negligence; and on the further ground that there was no proof of any negligence which was the proximate cause of the said accident, which negligence was chargeable to the defendant, Public Service Interstate Transportation Company.

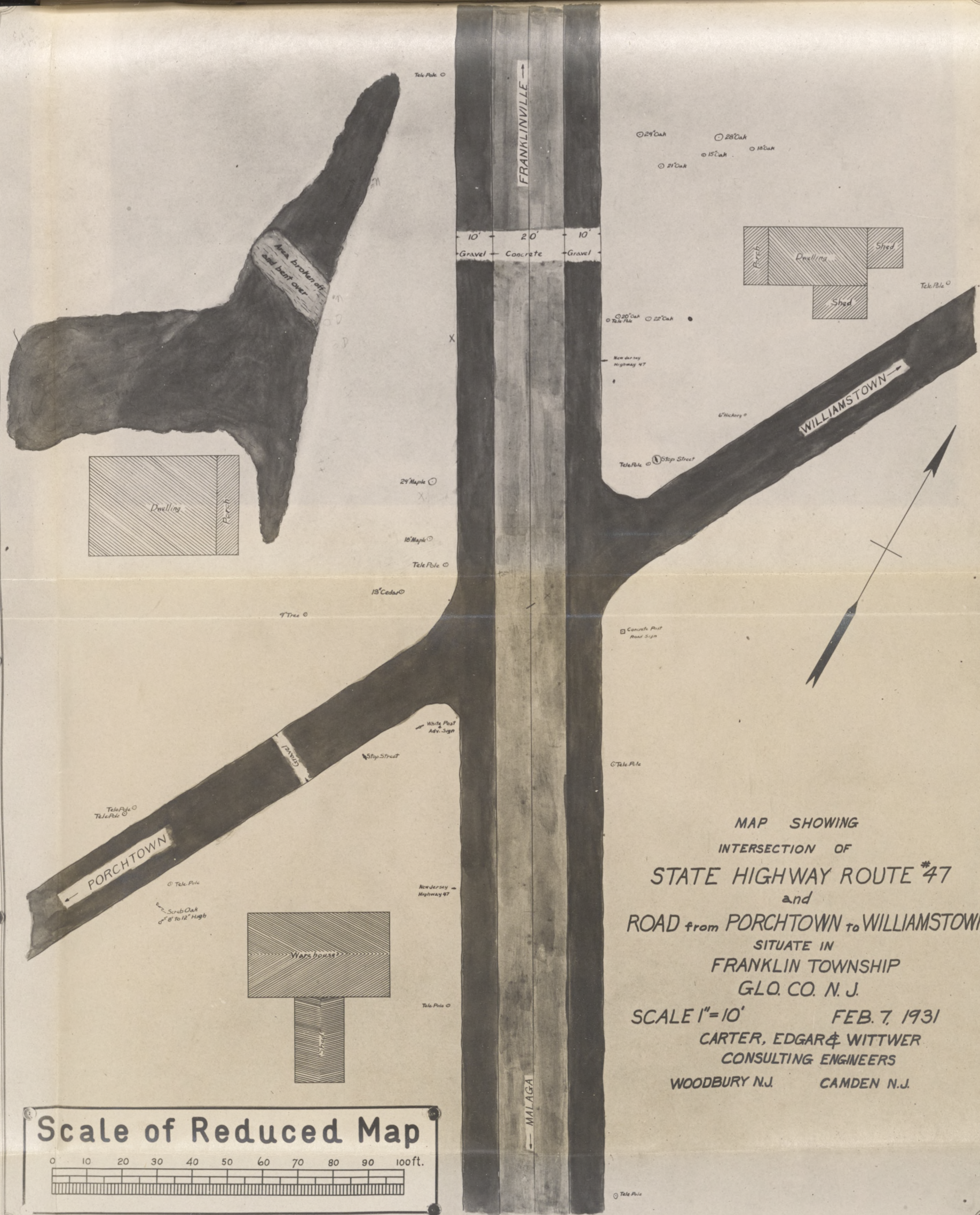
20 Dated: September 8th, 1931.

Yours truly,

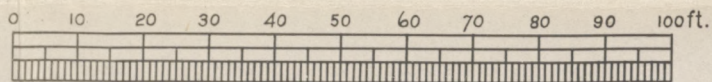
HENRY H. FRYLING,
Attorney of Defendant-Appellant.

(Endorsed) Service of a copy of within Grounds of Appeal acknowledged this 10th day of September, 1931.

30 AVIS & AVIS,
Attorneys of Plaintiff.



Scale of Reduced Map



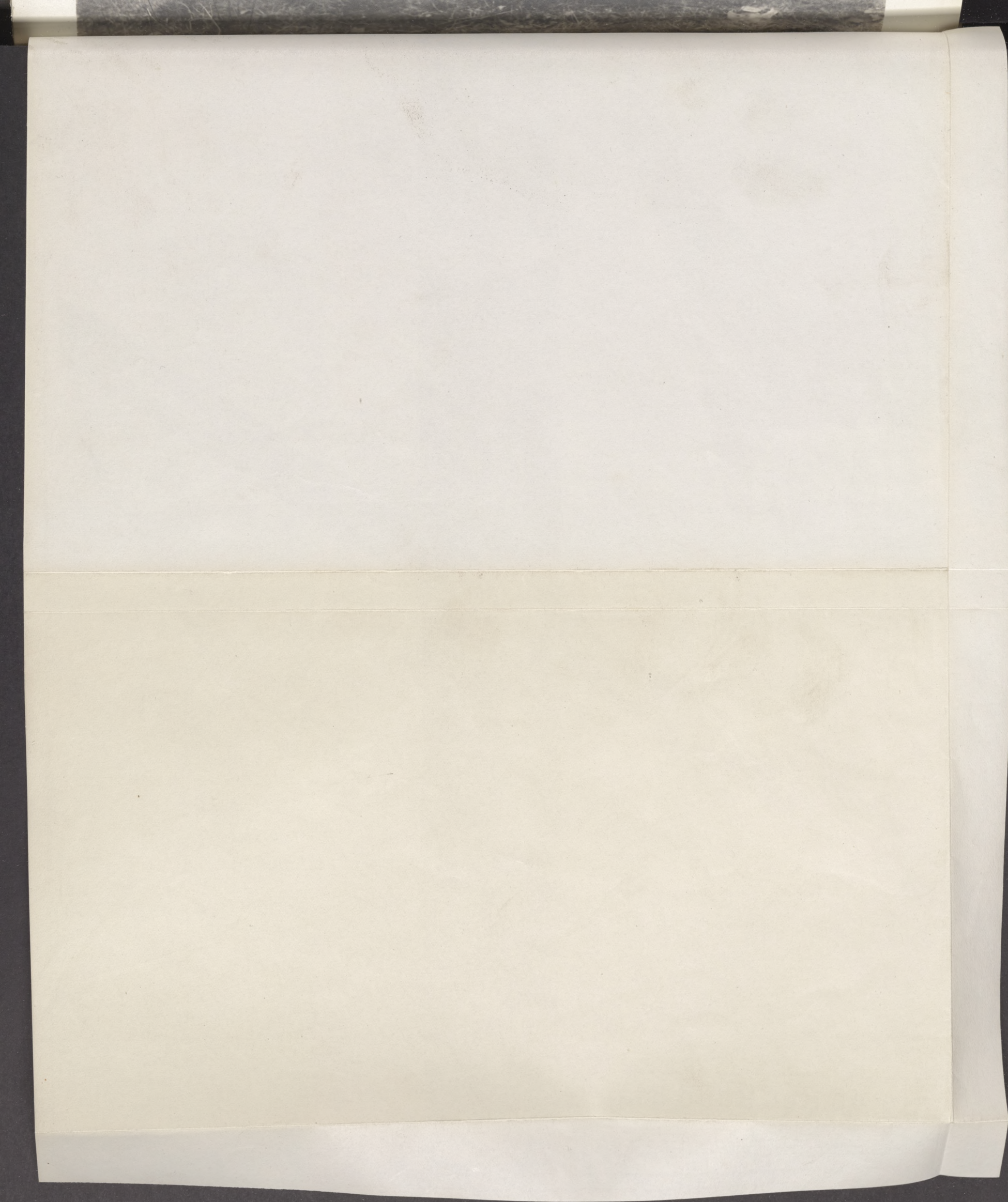


EXHIBIT P-4





Exhibit P-5



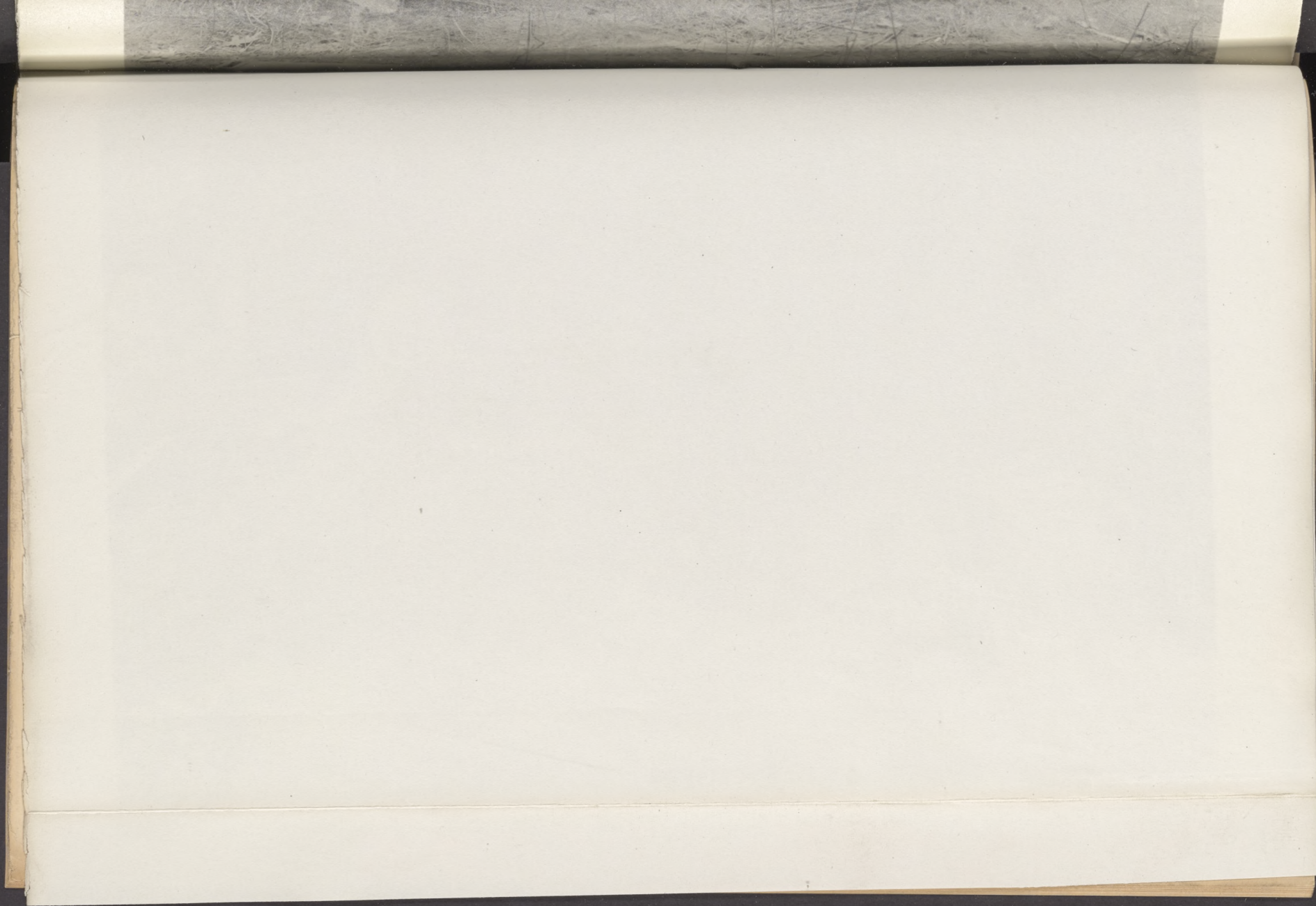


Exhibit P-6



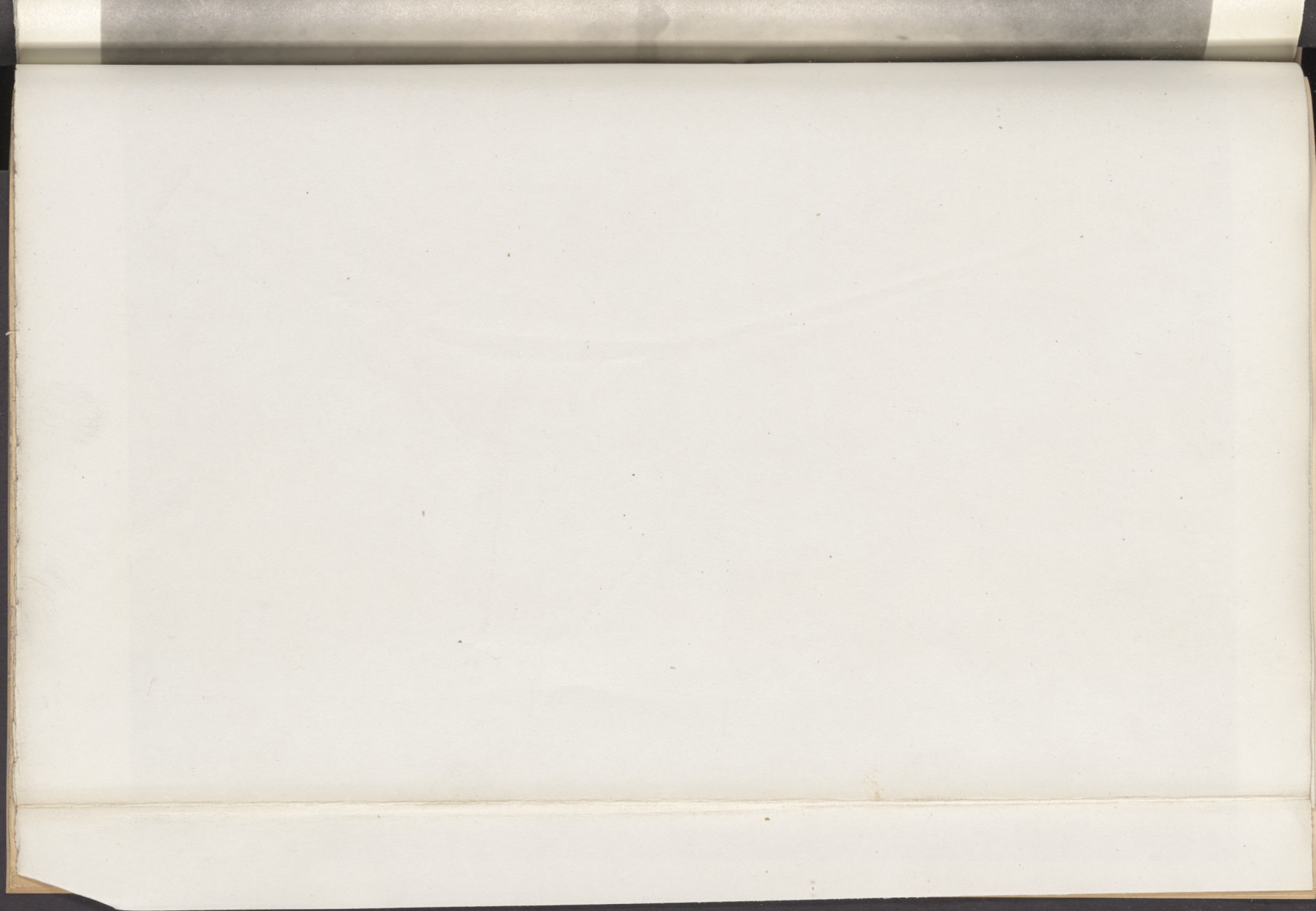


Exhibit P-7



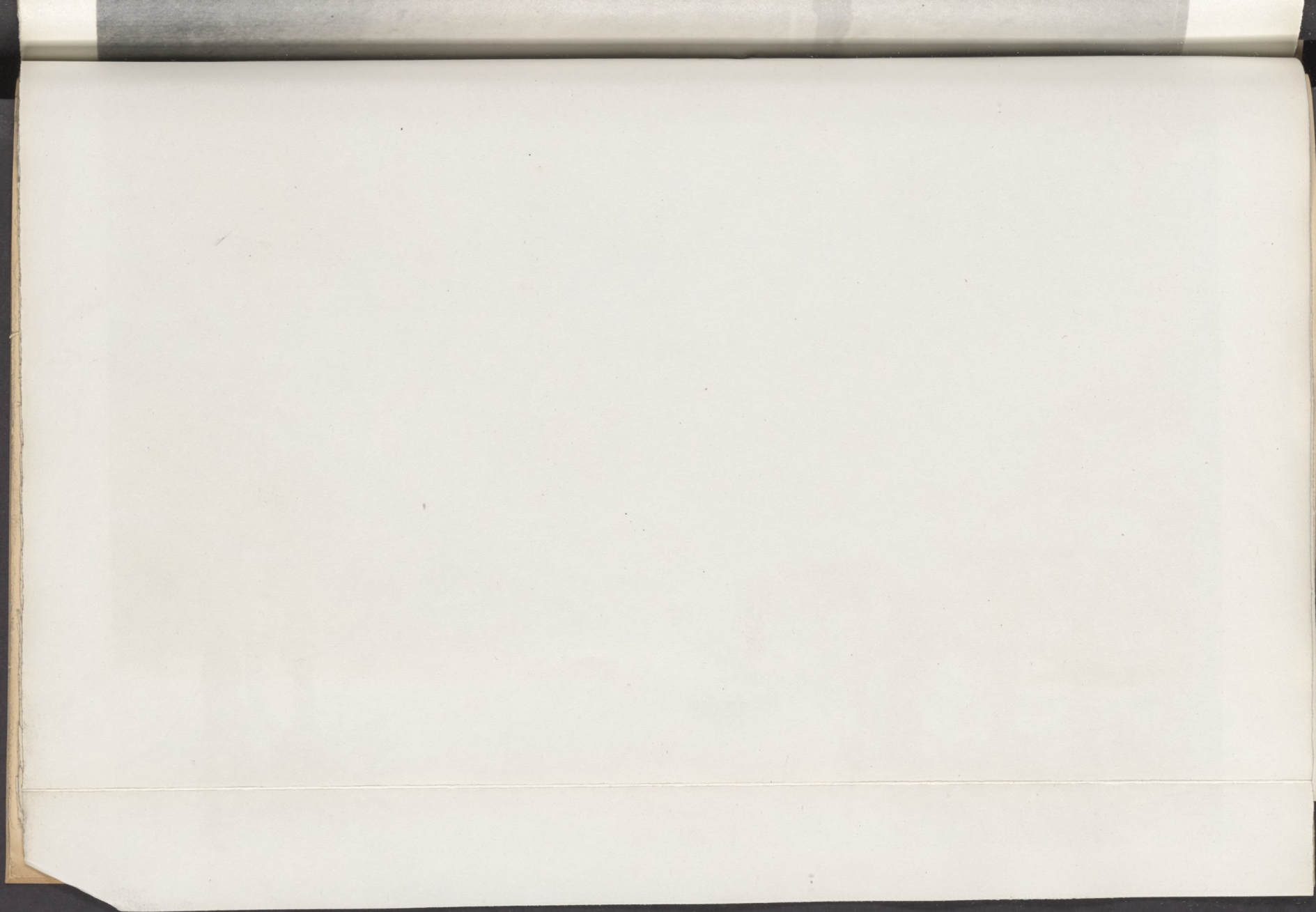






Exhibit P-9



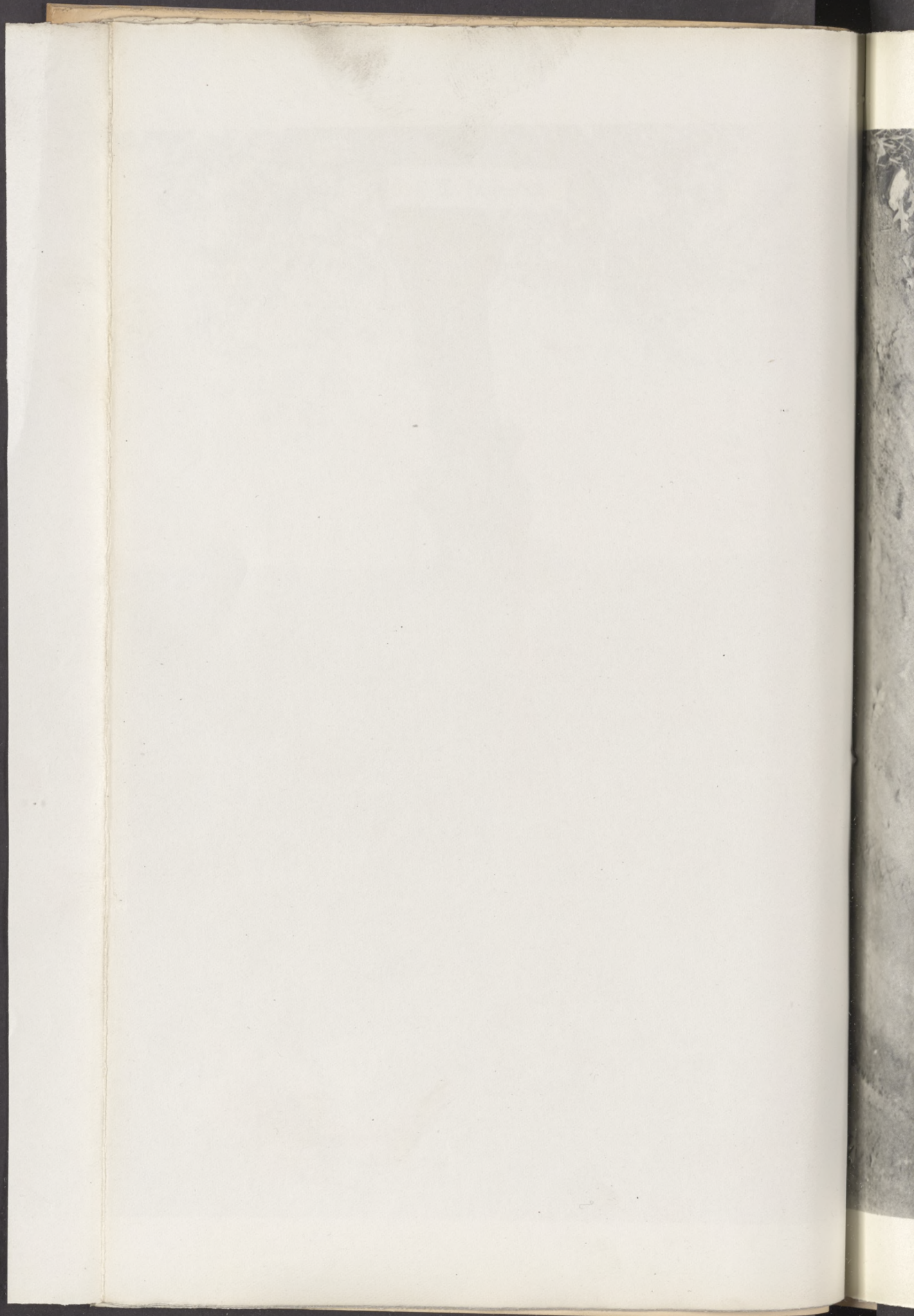




Exhibit P-10



Exhibit P-11





Exhibit D-1





Exhibit D- 2





Exhibit D- 3



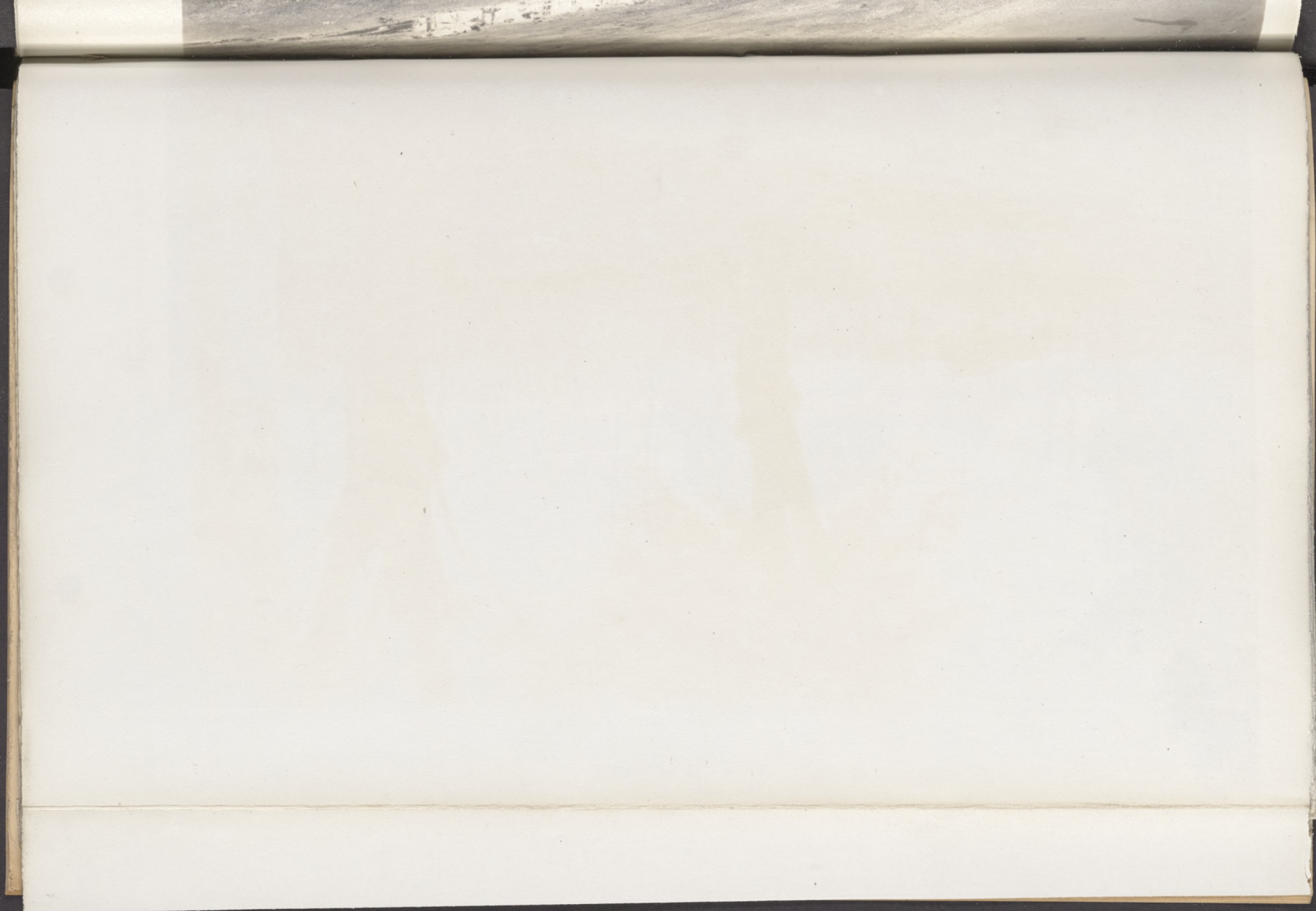


Exhibit D- 4





Exhibit D-5



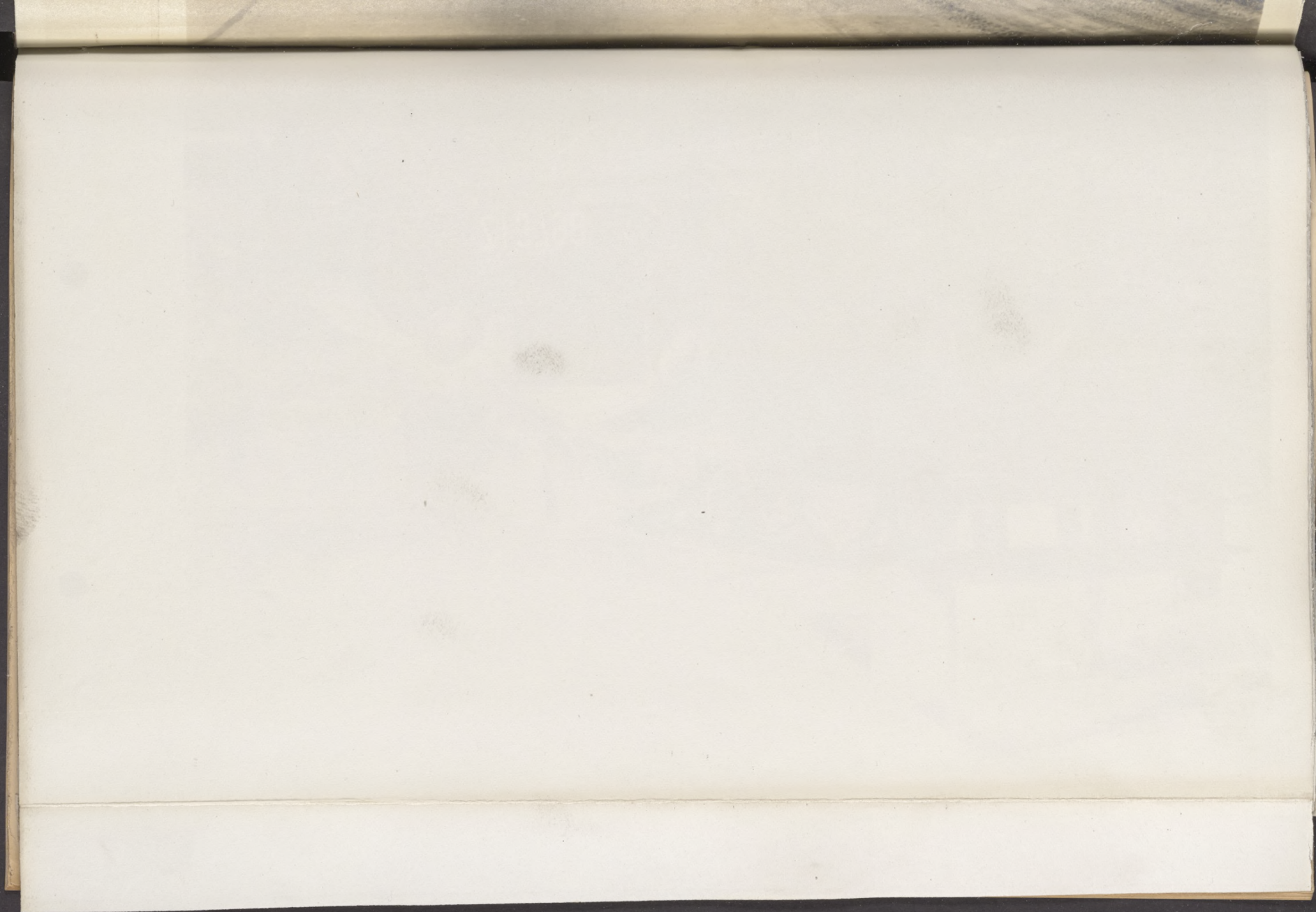
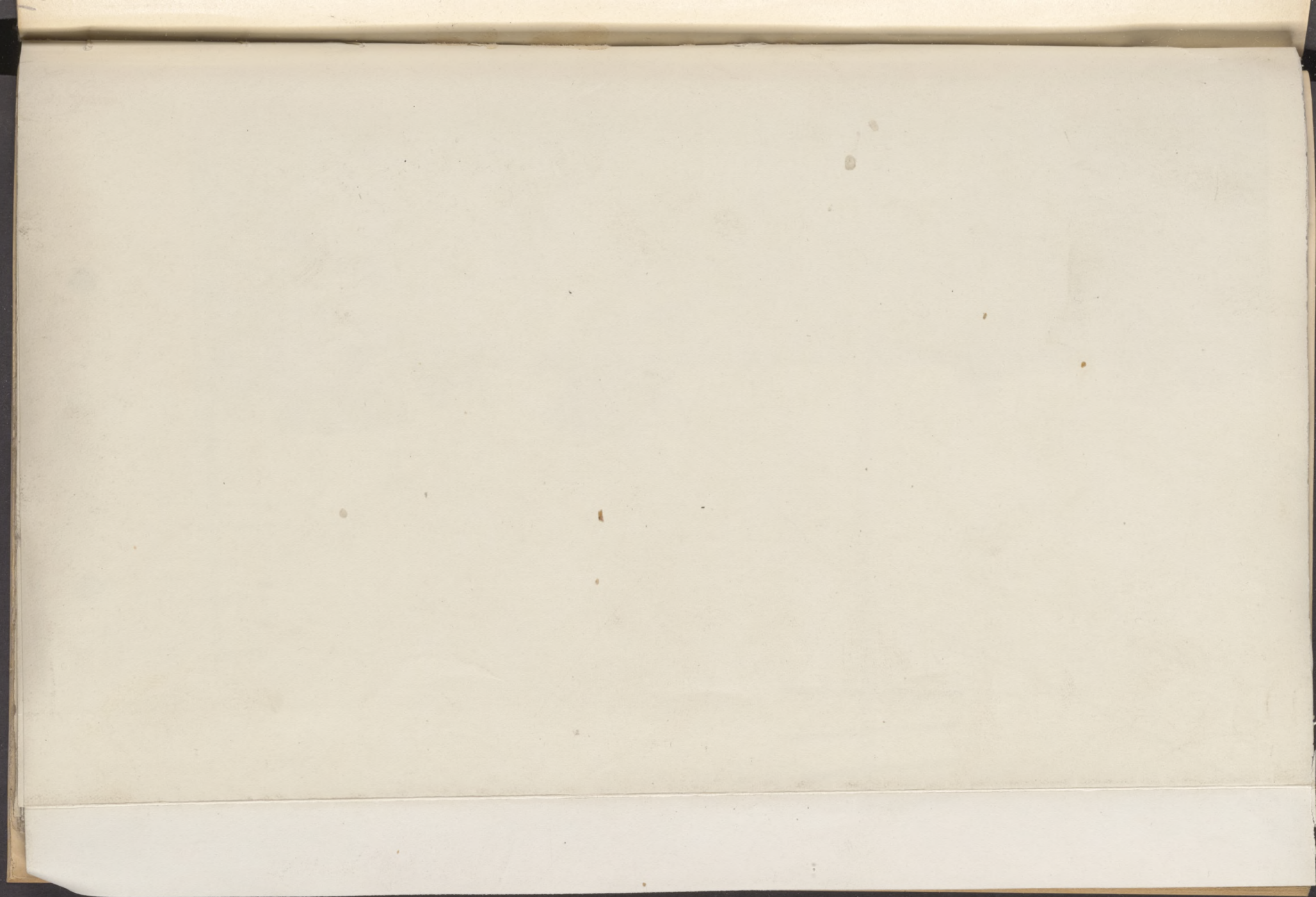


Exhibit D- 6





183
84

New Jersey Court of Errors and Appeals

FRANK PARAVE, administrator *ad prosequen-*
dum of Joseph Parave, deceased,
Plaintiff-Appellee,

vs.

PUBLIC SERVICE INTERSTATE TRANSPORTATION
COMPANY, a New Jersey Corporation,
Defendant-Appellant.

FRANK PARAVE, administrator *ad prosequen-*
dum of Peter Parave, deceased,
Plaintiff-Appellee,

vs.

PUBLIC SERVICE INTERSTATE TRANSPORTATION
COMPANY, a New Jersey Corporation,
Defendant-Appellant.

JOSEPHINE RACZAK, Administratrix *ad prose-*
quendum of Benjamin Kurzensky, deceased,
Plaintiff-Appellee,

vs.

PUBLIC SERVICE INTERSTATE TRANSPORTATION
COMPANY, a New Jersey Corporation,
Defendant-Appellant.

Action at Law

On Appeal
from
Supreme
Court.

BRIEF OF DEFENDANT-APPELLANT.

It is claimed by the plaintiffs that their decedents, Joseph Parave, Peter Parave and Benjamin Kurzensky, met their deaths because of an alleged collision between an automobile in which they were riding and an automobile bus of the defendant-appellant, and that the said alleged collision was caused by the negligence of the defendant company.

These actions are for damages for negligently causing such deaths. These cases, despite the objection of the defendant-appellant, were submitted to a jury at the Gloucester Circuit, which rendered verdicts for the plaintiffs-appellees in the amount of \$10,000.00 in each case. Subsequent thereto, pursuant to P. L. 1931, Chapter 356, the trial court granted the defendant rules to show cause why the said verdicts should not be set aside. These rules were limited as to damages only, with express reservations of all the points raised by each and all of the exceptions taken at the trial for the purpose of appeal.

On the argument of the said rules the Court discharged the rule as to the plaintiff Josephine Raczak, administratrix ad prosequendum of Benjamin Kurzensky. In the cases of Frank Parave, administrator ad prosequendum of Peter Parave, deceased and Frank Parave, administrator ad prosequendum of Joseph Parave, deceased, the Court made the rules absolute unless the plaintiffs should, within ten days from the date of the service of a copy of the said rules, consent to a reduction of the verdicts to \$7,500.00 in each case. Subsequent thereto the plaintiff Frank Parave, as administrator ad prosequendum of Peter Parave, deceased and Joseph Parave, deceased, filed with the New Jersey Supreme Court a consent to accept the reduced verdicts.

Subsequent thereto judgments were entered in favor of Josephine Raczak, administratrix at prosequendum of Benjamin Kurzensky, in the amount of \$10,000.00 and in favor of Frank Parave, administrator ad prosequendum of Joseph Parave in the amount of \$7,500.00 and Frank Parave, administrator ad prosequendum of Peter Parave, in the amount of \$7,500.00. From the judgments entered on the said verdicts this appeal is taken.

The grounds of appeal (Printed State of Case), (p. 321 to p. 325) are:

1. The refusal of the Court to nonsuit the plaintiff below;
2. The refusal of the Court to direct a verdict in favor of the defendant below.

Facts.

J. OWEN CARTER, a witness called by the plaintiffs, testified that he is a civil engineer. At the request of the plaintiffs' attorney he prepared a map of a portion of Delsea Drive at a point where the said highway is intersected by the Williamstown Road. Delsea Drive has a concrete surface 20 feet in width, on each side of which there is a dirt shoulder 10 feet in width. The Williamstown Road intersects Delsea Drive at an acute angle of approximately 60 degrees, so that the northeast (p. 54, l. 40) corner of the intersection is 30 feet farther north than the northwest corner. The Williamstown Road is not well defined, being only a dirt road which is crowned in the center to some extent. On the westerly side of Delsea Drive, north of Williamstown Road there is located a telegraph pole, an 18 inch maple tree and a 24 inch maple tree. The telegraph pole is located on the edge of the rounded portion of the northwest corner. This pole is situate (p. 46, l. 21) $26\frac{1}{2}$ feet from the intersection of the middle of both highways. North of this telegraph pole is situate the 18 inch maple tree, which is 34 feet (p. 46, l. 25) from the intersection of the midline of both highways. Fifteen feet (p. 51, l. 15) northerly from this 18 inch maple tree there is situate a 24 inch maple tree (p. 46, l. 25) which is 44 feet from the intersection of the midline of the highways. The northeast corner is (p. 55, ll. 1-10) directly oppo-

site the mid point between these two trees. There is a storehouse located on the southwest corner. The northerly corner of this storehouse is situate (p. 47, l. 18) 76 feet south of the southerly edge of the Williamstown Road. Both Delsea Drive and the Williamstown Road are (p. 49, ll. 1-10) $1\frac{1}{2}$ feet below the level of the land. On the northeast corner 15 feet east of the dirt shoulder of Delsea Drive there is (p. 53, l. 22) erected a "Stop" sign. This "Stop" sign is located on the northerly side of the Williamstown Road at a point 22 feet (p. 53, l. 30) east of the intersection of the northerly edge of the dirt shoulder of the Williamstown Road and the easterly side of Delsea Drive. The gravel of the northwest corner is rounded off to the extent of five feet back from the intersection of the two edges of the highway. The Williamstown Road is practically level.

J. OWEN CARTER, recalled as a witness by the plaintiffs, testified that there is approximately (p. 124, l. 10) 100 feet from the intersection of the center line of Delsea Drive and Williamstown Road to the nearest edge of the area which is marked on the map "area broken off and bent over." From the same point at the intersection to the farthest point of this area there is approximately (p. 124, l. 39) 126 feet. This witness corrects his testimony to the effect that where he has said there was a 5 foot gravel shoulder he should have said that it was a ten foot dirt gravel shoulder. On the northeast corner there is a "Stop" sign which he indicates (p. 129, l. 21) on the map in heavy ink and is further indicated by the words "Stop sign."

FRANK PARAVE, a witness called by the plaintiffs, testified that he was the father of Peter and Joseph

Parave. He lives on the Williamstown-Marshall Road and his house is located three miles from Delsea Drive. When he arrived at the hospital at ten minutes to nine he saw his older son, Peter, who, at that time, was still living. Joseph was dead at the time that Mr. Parave arrived. Peter died about an hour after Mr. Parave arrived. While the automobile was in Peter's name, it was bought by Mr. Parave (p. 88, ll. 28-38) for both of the boys.

JOHN SPATAFORE, a witness called by the plaintiffs, testified that he is an automobile mechanic. In response to a call he went to the intersection of Delsea Drive and Williamstown Road on the evening of October 29th, 1930. He arrived there at 8:45 (p. 79, ll. 4-10). On his arrival he saw a Ford Roadster; the left back end of which was against the 24 inch maple tree. The car was headed in a southerly direction. He saw a bus on the left hand side of Delsea Drive facing north, which bus was west of the 24 inch maple tree. The bus was west of the 24 inch maple tree. The bus was headed north, but more to the west (p. 82, l. 8). Glass and a broken battery (p. 82, l. 30) were found on the right hand side of the Ford automobile. A tire and the battery were found on the side of the road which is opposite (p. 83, l. 17) to the telegraph pole.

GEORGE KARIBJANIAN, a witness called by the plaintiffs, testified that on the 30th day of October, 1930 he made some photographs of a Ford automobile and also of the intersection of the Delsea Drive and the Williamstown Road. Exhibits P-10 and 11 are photographs which portray a condition of broken brush which was located on that day 75 to 100 feet from the northwesterly corner.

MRS. ANTHONY CRESCI, a witness called by the plaintiffs, testified that on the night of October 29th, 1930, she was driving in a southerly direction on Delsea Drive. With her in her automobile were her mother and Johnnie Di Ppolito. After having passed through Franklinville she was hailed to stop her car. When she stopped she saw (p. 92, l. 35) no other automobiles. She saw (p. 93, l. 5) two boys picked up from the westerly side of the highway, but both of the boys were lying off the road. These two boys were taken away in a small car that stopped in back of Mrs. Cresci's automobile. This small automobile (p. 94, ll. 20-25) which took the boys away was the only other automobile which she saw at that time and place.

FRANK NEWCOMB, a witness called by the plaintiffs, testified that on the evening of October 29th, 1930 he was in an automobile driven by Mr. Lynwood Porch in a southerly direction down Delsea Drive. At the intersection of Delsea Drive and the Williamstown Road they saw automobiles stopping and therefore they also pulled to the side of the road and got out. At that time, he heard someone (p. 96, l. 18) calling for help. This call for help was coming from the westerly side of the road. It was dark and he could not recognize the person who was calling. He saw (p. 97, l. 22) that two persons were hurt. At that time there were other automobiles at the scene of this occurrence. A Ford automobile was between the two trees which are located on the northwesterly corner. The back of the Ford was against a 24 inch maple and the front was pointed toward the 18 inch maple. A bus was out in the field. It was a foggy and rainy night. They arrived around eight o'clock. The Ford automobile was wrecked.

FRANK DE CASTRO, (p. 102) a witness called by the plaintiffs, testified that on October 29th, 1930, that about eight o'clock in the evening while he was riding in Lynwood Porch's automobile on the Delsea Drive, the automobile in which he was riding came to a stop. At that time he noticed (p. 103, l. 30) a bus off the road and the bus driver was calling for help. With the aid of a flashlight he saw (p. 104, l. 30, also p. 106, l. 25) two boys lying on the ground; one 15 feet away from the other. They were completely off the road and lying in the grass on the westerly side of the highway. One was 40 feet from the road and the other was 35. He saw no other boys besides the two that were hurt. He saw (p. 106, l. 38, p. 107, l. 7) nobody else was hurt. After the boys were taken to the hospital he went to the Malaga Police Headquarters and then returned to the scene. The left rear of the Ford was up against the big tree. The bus was off the road and small trees were pushed down and the ground torn up. The bus was (p. 109, l. 18) 75 feet from the intersection of the midline of Delsea Drive with the midline of the Williamstown Road. Parts of the battery and clothing from the boys, a pair of slippers and spokes of the wheels were on the right side of the Ford automobile. A wheel of the Ford automobile was on the east side of the road. It was (p. 112, l. 18) drizzling and the highway was wet. There was a few cars parked at various places along the highway. There were tracks (p. 113, ll. 5-25) which started on the right side of Delsea Drive going in a northerly direction. These tracks started on the east side, gradually came to the center of the road, crossed the intersection on the left side of the road and led on to the place where the bus was stopped. There is a "Stop" sign located

(p. 119, l. 38) on the northeast corner of the Williamstown Road.

JOHN B. DI PPOLITO 3rd, a witness called by the plaintiffs, testified that on October 29th, 1930, he was in an automobile driven by Mrs. Cresci. After having passed through Franklinville, the automobile stopped. He did not see where the boys were picked up from the ground. He saw a bus (p. 121, l. 35) which was about 40 or 50 feet off the road on the westerly side. He noticed that at the place where the bus was standing that some trees were pushed over.

JOHN SPATAFORE, recalled, testified that the bus which he saw bore an insignia with the words, "Public Service" marked on the side. He did not see the operator of the bus.

FRANK PARAVE, JR. (p. 130) a witness called by the plaintiffs, limited his testimony solely to the question of pecuniary losses.

JAMES PARAVE, (p. 134) also testified as to pecuniary losses.

MARY PARAVE, the wife of Frank Parave and mother of Peter and Joseph Parave testified that the boys left home at (p. 137, l. 12) seven o'clock in the evening. She did not see (p. 137, l. 25) in which direction they went. She didn't see (p. 139, l. 34) the boys get into the automobile and therefore doesn't know (p. 140, l. 12) who entered the automobile first. She didn't see (p. 141, l. 25) the automobile leave the garage; she didn't see (p. 142, l. 25) who was driving the automobile and she doesn't know (p. 142, l. 27) which way they drove after they had pulled out of the driveway.

The boys left home that evening for the purpose (p. 141, l. 38; p. 142, l. 18) of selling Benny's (Benjamin Kurzensky) wood at Franklinville. At the time they left it (p. 142, l. 22) was dark and cloudy and it was drizzling.

THOMAS BURNS, (p. 143) a witness called by the plaintiffs, limited his testimony to the subject of pecuniary losses.

WILLIAM WATERMAN, a witness called by the plaintiffs, testified that on October 29th, 1930 he was employed as a delivery man and early that evening had been to Vineland. He left Vineland at 20 or 15 minutes of eight, driving north to above Newfield, taking a dirt road to his right to Delsea Drive, crossing the railroad tracks before getting to the Drive. He brought his car to a stop at a point 50 to 60 feet north of the Williamstown Road. He immediately left his automobile and ran across the street. He saw a Ford automobile up against a tree and a bus lying 25 feet in back of the Ford and a car driving down the highway with a few injured people. The Ford automobile was west of Delsea Drive; the bus was west of Delsea Drive. The left side of the Ford was dented in and the back portion of the Ford was touching the tree. The spokes (p. 193, l. 22) of the left front wheel of the Ford were on the west side of the highway. Broken glass was in the center of the road. On cross-examination this witness reiterates that the glass was in the center of the street, meaning the center of the concrete road. He states that he was in error as to this and meant to say that it was on the right hand side proceeding south. At the time of his arrival there was a crowd gathered which he estimated to be about 25 or 30 persons.

CHARLES ALLEN, a witness called by the plaintiffs, (p. 196) testified to the fact that he saw the Parave boys working on the farm.

FRANK GALLUCCI (p. 197) a witness called by the plaintiffs, also testified to subjects which are pertinent to the proof of pecuniary losses.

WANDA RACZAK, (p. 199) a witness called by the plaintiffs, also testified as to matters which were pertinent to pecuniary losses, which she sustained as a result of the death of her brother Benny. She testified that Benny, her brother in winter time earned money by chopping wood.

JOHN J. MALIFF, a witness called by the plaintiffs, testified, (p. 206) that he arrived on the scene of the occurrence that evening but is unable to give the exact time. It was a rainy evening and it had been raining for some time (p. 206, l. 40; p. 207, l. 2). He observed at the intersection a Ford Roadster encircled around a tree. He saw (p. 207, l. 10) a Public Service bus in a field 39 paces from the intersection. The bus was in a field west of Delsea Drive and was headed in a northwest direction. The damage to the bus was (p. 208, l. 7) that the two headlights were off, the radiator was pushed in and the bumper was hanging off on one side. He saw the two Parave boys and the Kurzensky boy at the hospital. At that time one of the Parave boys and the Kurzensky boy was dead. On cross-examination State Trooper Maliff testified that (p. 209, ll. 20-40) while he looked for tire marks on the highway he was unable to find any. There were a large number of motorists at the scene of the accident, but no one had seen the accident. He handled the investigation of this case for the County of Gloucester and at no time

did he ever hear of one Arthur Melini or Marenì as a witness. While he conducted a thorough investigation as to the occurrence he did not hear (p. 210, ll. 15-20) anything at all about this alleged witness until he was produced in court at the time of trial. On redirect-examination the State Trooper testified (p. 211, l. 30) that he saw no marks of any character on the concrete.

AUGUST KURZENSKY, a brother of Benjamin, and a witness called by the plaintiffs (p. 212) testified that the Kurzensky farm is located on Main Road between Plainville and Lake about a half a mile south from the Parave farm, towards Vineland. The only way by which they can travel from their home to the Parave's home is straight down Main Road to Vineland.

CORVAL RICHMOND, a witness called by the plaintiffs, testified (p. 214) that on October 31st, 1930 he went to the intersection of Delsea Drive and the Williamstown Road for the purpose of making some measurements at the request of Mr. Parave. At that time there was a mark on the cement at or near this intersection which was about two feet long and as round as a radius rod. This mark was 6 feet 10 inches (p. 219, ll. 26-39) from the center of the road on the westerly side and is marked on the map P-1, which is attached to the State of the Case, by the letter "E". On cross-examination this witness testified that this indentation in the pavement which is marked by the letter "E" is (p. 221, l. 30) on the right hand side of Williamstown Road going west. This indentation is south (p. 221, l. 15) of the telephone pole which is located on the northwesterly corner of the intersection. On redirect this witness testifies that measurements disclose that there was 143 feet seven inches

from the center of the intersection to the farthest point where the brush was broken down.

JOSEPHINE RACZAK, through an interpreter, testified (p. 224) that she lives about a half a mile from the Parave home. On the evening of October 29th, 1930 the two Parave boys called for her son Benny. Joseph, the younger Parave boy was (p. 224, l. 39) driving. As they left her home (p. 225, l. 10) they were headed towards Lake which would be (p. 225, l. 18) towards Vineland. She saw (p. 230, l. 22) her son enter the automobile. She did not again see her son until he was in the hospital and at that time he was dead.

FRANK MORRELL, a witness called by the plaintiffs, testified (p. 231) that Frank Parave lives on Main Road which runs from Lake through Vineland to Williamstown.

GUSTAVE A. NAGELI, a witness called by the plaintiffs, (p. 233) testified on subjects which were pertinent to the proof of pecuniary losses.

EARL L. MULHOLLAND, a witness called by the plaintiffs, (p. 238, ll. 30-40), testified:

“Q. Mr. Mulholland, by whom were you employed on October 29th, 1930? A. Public Service.

Q. Is that the Public Service Interstate? A. Coordinated Interstate.

Q. Transportation Company? A. Yes, sir.

Q. Do you know where Franklinville is? A. Yes, sir.

Q. Won't you tell me whether or not at a point near Franklinville your bus was in a collision with a Ford car? A. Yes, sir.

Mr. Avis: Cross-examine.

Mr. Sorenson: No questions.

(No Cross-examination)”

ARTHUR MORENI, a witness called by the plaintiffs, testified that on October 29th, 1930, he was living in Egg Harbor, N. J. On that particular morning he left Egg Harbor at about half past six with the purpose of going to Vineland where his father lives. He made this trip in his Chevrolet truck. When he arrived at Vineland he borrowed his father's Essex automobile for the purpose of riding from Vineland to Philadelphia. His father accompanied him on this trip from Vineland to Philadelphia. On the way to Philadelphia he stopped at a gasoline station which is quite near Glassboro; this stop being necessitated by motor trouble. After having made this stop he continued on to Philadelphia where he spent the greater portion of the day. At about half past five (p. 148, l. 20) he left Philadelphia for the purpose of returning to Vineland. On his return he traveled upon (p. 148, l. 25) the Glassboro Road. After having passed through Glassboro he stopped again at the gasoline station at which place he bought two sandwiches. He was still having the same motor trouble that had evidenced itself in the morning, *i. e.*, burnt bearing. He doesn't remember passing through Franklinville because he doesn't know (p. 150, ll. 10-15) where Franklinville is located. Before he passed a little town he saw a bus travelling on the same road that he was travelling on. This bus was coming from the direction of Vineland, occupying the middle of the road. Then the following questions (p. 152, l. 25 to p. 153, l. 38) were asked:

"Q. After you saw this bus, won't you tell this Court and jury just what you saw and just what happened? A. I saw one car in the back, and as soon as the bus he passed me, I saw the bus go through in the field

and I don't see no more, the car wasn't in back with lights.

Q. You say there were lights? A. Yes.

Q. Is that from the car in back of you? A. Yes.

Mr. Sorenson: I object to that; that is leading.

Mr. Avis: No, he said that.

Mr. Sorenson: No, let the witness say it.

Q. How did you know there was a car in back of you? A. Because he come through in my looking glass.

Q. Was it light or dark? A. It was light. The two lights he hit me on the looking glass.

Q. Two lights were on the looking glass? A. Yes.

Q. When the bus went by, did the two lights stay in your looking glass?

Mr. Sorenson: I object to that as leading.

The Court: The question is leading, Mr. Avis.

Mr. Avis: All right.

Q. Did anything happen to those lights after the bus went by? A. No, the light and the bus go right through in field; that's all I see.

The Court: What was the last answer?
(Answer repeated)

Q. The light you were talking about, were they the lights in the bus or the lights of the car in back of you?

Mr. Sorenson: I object to that.

The Court: His testimony was, as the reporter read it, that the lights of the bus went right out in the field. Isn't that correct? (Answer repeated).

Q. You were driving down which side of the road?

A. It was on the right side."

(p. 154, l. 20 to p. 155, l. 12) :

“Q. After the bus went by? A. The car was right in the back, he hit my looking glass, and then the bus is going, see. I see all then and the bus and the other light I didn't see no more. They go right in the field.

Q. Now, won't you just tell us what you saw in the field? A. I don't see nothing no more. I see just a little light and the bus was right in the field, that is all.

Q. What do you mean by little lights? A. The little light that was in the bus. That is all, I don't see nothing else, I don't see no more car or nothing else.

Q. What kind of lights were they? A. They was two red lights.

Q. Where were they? A. On the top of the bus.

Q. Were they close together or far apart? A. I can't tell; I know it was distance one from the other.

Q. Some distance from the other? A. Yes.”

On cross-examination the witness testified that he left Philadelphia at half past five. The first stop he made at a gasoline station was after he passed through Glassboro. This was a little (p. 157, l. 12) after seven. At that time it was raining lightly (p. 157, ll. 20-30) with rain accumulating upon his windshield. While he had a windshield wiper, he did not use it. The road (p. 156, l. 40) was wet. As he was operating his automobile on this road an automobile bus came towards him. After the bus had passed his automobile he looked into his mirror which is about seven inches (p. 158, ll. 18-24) in length and three or four inches in width. He doesn't remember (p. 158, ll. 27-29) crossing the Williamstown Road because he doesn't know where that road is. He does remem-

ber that he was 50 feet past (p. 158, ll. 36-40) a barn when he looked forward and saw a bus coming towards him. At that time (p. 159, l. 15) he saw a car in back of his automobile. From the time when the bus passed his automobile to the time when he saw the rear lights of the bus in his mirror, he, Moreni, had travelled 60 feet, so that (p. 160, l. 25) he was 110 feet away from the barn at the time when he saw the rear lights of the bus in his mirror. At that time he was on his right side of the road. He was 110 feet away from the barn when he heard the noise. The next thing he knew (p. 161, ll. 36-39) was that the bus was over in the field and that's all he knows. At the time when he saw the bus (p. 162, l. 30) go into the field he did not see any other lights. The noise that he heard was (p. 163, ll. 9-12) when something hit the tree. At the time when this witness alleges he saw the above related events he was travelling (p. 159, ll. 24-28) at about 15 miles an hour. He did not stop because he was afraid of getting in trouble (p. 163, l. 2). He does not know whether or not the bus that he saw was damaged. He did not look to see (p. 163, ll. 32-40) whether or not there were any electric lights along the road. He did not see any lights on the corners and he does not remember that crossing, because he was not watching for the crossing (p. 164, ll. 18-35). He does not know where Franklinville is. He thinks he was 2, 3 or 4 miles past a small town when he first saw some automobile in back of his automobile (p. 164, l. 36). He cannot identify (p. 164, l. 35) the automobile that was in back of him. All he knows (p. 165, ll. 9-11) is that after the noise he saw a bus going into the field (p. 169, ll. 18-35). He has never talked (p. 169, ll. 19-35) with anybody about this observation of his except about a week after the accident when three or four friends

were talking about this alleged accident at which time he told two fellows that he had seen the accident when he was going by (p. 170, l. 20). The first time he realized (p. 170, l. 20) that he had witnessed anything in reference to what had occurred was about a week after the date of the occurrence when somebody told him that something had happened out on that road. Up to that time he didn't know (p. 170, l. 25) that he had been near an accident of that character. The barn (p. 170, l. 30 to p. 171, l. 15) which he saw he guesses was on the north side of the road. At any rate it was after the road. He does not know (p. 170, l. 37) whether or not it is a road because all he saw was a clean space which was pretty wide. He did not recognize it to be a road. He did not see the road. He saw the rear lights of the bus while the bus was in the field (p. 171, ll. 21-31). At that time he saw nothing else. He saw the bus when it was 200 ft. away from him approaching him but at that time he could not recognize that it was a bus (p. 173, ll. 32-38; p. 174, l. 10). He did not give his name to the State Police. As he was driving south (p. 176, ll. 2-24) he did not see any trucks which were stopped on the easterly side of the road.

Further on in the cross-examination Arthur Moreni rendered the following testimony (p. 183, l. 25; p. 184, l. 5):

"Q. I will ask you the questions now. As you were going south, you say you looked into a mirror? A. Yes.

Q. And as you looked into the mirror, you saw some lights of an automobile in back of you? A. Yes.

Q. Then when you came to the barn as you went a little past the barn, the bus passed you? A. Yes.

Q. Is that so? A. Yes.

Q. Then when you got 110 feet past the barn, you saw the two little lights on the back of the bus, is that so? A. Yes.

Q. And then the bus went into the field and you didn't see the other lights any more?

A. No, I don't see any more nothing at all."

On redirect-examination this witness testified that he was driving on the right side of the road and that because he had a looking glass he could see that there was another car in back (p. 184, l. 11). Through this looking glass he could see that the automobile which was in back was on the right side of the road. He had no knowledge (p. 184, l. 15) of the intersection of Delsea Drive and Williamstown Road at the time that this accident is alleged to have happened. Now he knows the location because during the course of the trial, as the witness puts it, (p. 184, l. 20) "We go by this morning and Friday." He now knows that where these two roads cross is the same place where he saw the bus go into the field. He now says (p. 185, l. 25) that directly after the intersection there is a barn which is the same barn that he claims he saw the night of this occurrence. This barn is one mile south of Franklinville.

SAMUEL HEWITT, a witness called by the plaintiffs, testified (p. 187) that he is the operator of a service station which is located on Delsea Drive at the south end of Glassboro. His gasoline station is about six miles from Franklinville.

The foregoing is all the proof offered by the plaintiffs. This was followed (p. 239) by motions for nonsuit, which motions were denied and exceptions taken (p. 240-241).

EARL L. MULHOLLAND, a witness called by the defendant, testified (p. 242, l. 10) that on October

29th, 1930 he was employed by the Public Service Interstate Corporation. On that date he was operating a bus on Delsea Drive coming from Millville and going to Philadelphia. On that evening there was a slight drizzle and the roads were wet. The intersection of the Williamstown Road with Delsea Drive is not a lighted intersection. Williamstown Road does not cross Delsea Drive at right angles but comes in at an angle. He arrived at the intersection of the Williamstown Road and Delsea Drive at about (p. 242, l. 32) 8:25. On approaching the intersection he saw an automobile which was travelling west on the Williamstown Road. This automobile was coming from his right (p. 243, l. 10). At the time when he first saw this automobile which was travelling on the Williamstown Road it was 300 ft. (p. ~~243~~²⁴⁴, l. 15) east from Delsea Drive. At that time the bus was also 300 ft. away from the intersection. On seeing this automobile on Williamstown Road he took his foot off the gas (p. 243, l. 30) and applied his brakes lightly, knowing that the pavement was wet and that the bus might slip. When the bus was within 30 feet (p. 243, l. 35) of the Williamstown Road, he saw that this automobile which was travelling on the Williamstown Road was not going to stop. He therefore applied his brakes as hard as possible and at that time the automobile struck the right front wheel bouncing around, getting in front of the bus. After that the lights of the bus were out and the operator is unable to say what happened after that time. There is (p. 244, l. 11) a "Stop" sign located on the northeasterly corner of the intersection of Williamstown Road with Delsea Drive. This automobile which was travelling on the Williamstown Road did not stop at the "Stop" sign or at any time before it crossed Delsea Drive. The bus (p. 244, l. 18) was about 30 feet from the intersec-

tion when the operator realized that this automobile was not going to stop in accordance with the "Stop" sign. At that time, (p. 244, l. 28) the operator pulled to his right to get the rear wheels on a gravel shoulder so that the brakes would grip more firmly. After that he cut to his left so that the automobile would not hit the bus full in the side. The point of collision is fixed in the midway of the intersection in reference to the four corners. The bus at the time of the collision was still on its right side of the road. The impact (p. 245, l. 1) caused the steering wheel to leave his hands and he therefore lost control of the bus. The bus went across the road and travelled about two bus lengths off the road from the corner. The impact broke a little cable (p. 245, l. 20) that goes to the vacuum, thereby breaking the air line on the vacuum booster. This (p. 245, l. 25) left him without any brakes. The point of impact on the bus (p. 246, l. 8) was the right front wheel and a fender. Immediately after the impact, the automobile tore across the front of the bus. The left front (p. 246, l. 30) of the Ford came in contact with the bus. This automobile (p. 246, l. 32) which was travelling on the Williamstown Road did not slacken its speed from the time when he first saw it to the time of the collision. No warnings (p. 246, l. 40) were sounded by this automobile. He (the operator) (p. 247) sounded his horn. Exhibit D-3 in evidence (p. 247, l. 21) is identified by this witness to correctly portray the physical conditions which existed at the intersection on the night in question and portrays the "Stop" sign which is located on Williamstown Road, east of Delsea Drive. Immediately before the collision he did not pass an Essex (Moreni's) automobile (p. 246, l. 18). At the time of the collision there was one passenger on

the bus by the name of Michael Genovese (p. 247, l. 35).

On cross-examination (p. 248, ll. 18-39) this witness testified that the bus was going between 35 and 40 miles per hour when it was 300 feet from the intersection. At the time of the collision it was proceeding at 20 miles per hour. A Ford automobile came out of the side road and struck the bus on the front wheel on the right side. The automobile tore across the front of the bus. Up to the time of the collision (p. 249, l. 12) the bus was on the right hand side of the highway. The front bumper of the bus (p. 249, l. 29) was torn off. The radiator of the bus was pushed back to the left. The credibility of the operator was attacked (p. 255) as to an alleged statement which he made to Nick Gorgo in which statement he is alleged to have said that he didn't see the Ford automobile (p. 250, l. 10) until he hit it. The making of such a statement was denied by this witness. The brakes of this bus were in good condition (p. 250, l. 15) before the accident. He states that he told (p. 250, ll. 29-38) Trooper Maliff that the brakes were in good condition before the accident, but not in good condition after the accident. He saw no tracks (p. 251, l. 1) on the highway. The bus, after it left the highway, knocked down (p. 251, l. 3) some small trees. The bus was lighted with headlights and marker lights (p. 251, l. 20). On the rear of the bus there were two red lights, one on each side. Immediately before the accident occurred (p. 252, l. 38) he did not pass another car. The only passenger (p. 253, l. 35) on the bus was asleep at the time the accident occurred. After the accident (p. 253, l. 38) both of the headlights of the bus were out. At the time of the collision the bus was about in the center of the Williamstown Road and Delsea Drive.

HARLAN NORTH, a witness called by the defendant (p. 255, l. 20) testified that about 8:30 in the evening of October 29th, 1930 he was on Delsea Drive at or near the Williamstown Road. The place where he was stopped with his automobile truck was approximately five-tenths of a mile from the intersection. His truck was one of a group of two trucks; the other truck had developed motor trouble (p. 255, l. 30). At the time when he was stopped, his truck was completely off Delsea Drive and standing on a dirt shoulder. While his truck was stopped there (p. 256, l. 5) he saw a bus pass. This bus was on the right side of the road going north. At the time when this bus passed him (p. 256, l. 15) it was travelling between 35 and 40 miles an hour. After the bus had passed him he paid no particular attention to its course. He heard a crash and then came down (p. 256, l. 25) to the intersection (p. 256, l. 29). He did not see any automobile coming towards him. He did not see an Essex automobile going south (p. 257, l. 28). He drove his truck (p. 257, l. 10) to the side of the road so as to throw the lights into the field. The Ford automobile was up against the second tree. The intersection (p. 257, l. 25) was rather dark and there was a slight drizzle falling. On cross examination the witness testified (p. 258, l. 28) that he knows that no automobiles went past his truck from the time he heard the crash to the time he got to the scene of the accident. At the scene of the accident (p. 259, ll. 15-20) he saw that three people had been hurt and they were lying on the ground 20 or 25 feet from the edge of the gravel shoulder.

EARL JOHNSON, a witness called by the defendant (p. 259, l. 35) testified that while he was travelling on Delsea Drive he developed motor trouble

and broke down. He drew his truck off the road and upon the right hand dirt shoulder which would be on the easterly side of Delsea Drive. While his truck was standing there the bus passed him travelling about (p. 260, l. 18) 35 to 40 miles per hour. This bus was travelling on (p. 260, l. 22) its right hand side. After having heard the crash he got into his truck and went to the scene of the occurrence. From the time he heard the crash to the time he got to the scene of the occurrence (p. 260, l. 3) he did not see an Essex automobile travelling south. The highway (p. 261, ll. 11-13) was wet and the weather was foggy and rainy. On cross examination this witness testified that he had stopped about a half a mile from the intersection. On hearing the crash, he jumped into his truck and hurried to the scene of the occurrence.

MICHAEL GENOVESE, a witness called by the defendant, testified (p. 262, l. 20 to p. 263, l. 10) that he was a passenger in the bus, but that he did not see this accident take place because he was asleep. He received an injury to the shoulder which was caused by a branch of a tree going through a window.

NORMAN WIGGLESWORTH, a witness called by the defendant, testified (p. 264, l. 8 to p. 266, l. 28) that on the evening in question he was riding with Mr. North on Delsea Drive. At a point five-tenths of a mile south of the Williamstown Road the truck on which he was drivnig was brought to a stop. At that time the highways were wet and the weather stormy with a drizzling rain falling. While his truck was stopped at that point, five-tenths of a mile from Williamstown Road a bus passed which was travelling approximately 35 or 40 miles per hour. This bus was travelling on its

right hand side of the road. After the bus had passed, he heard the crash. From the time he heard the crash to the time that he arrived at the scene of the accident, he did not see any cars travelling in either direction. There is a "Stop" sign located on the Williamstown Road on the north-westerly corner of the intersection.

LOUIS LIBER, a witness called by the defendant, testified that on October 29th, 1930, he was driving his Studebaker automobile in a northerly direction on Delsea Drive. He arrived at the intersection of Delsea Drive and Williamstown Road (p. 268, l. 25) at about 8:40. The Ford automobile was lying between the two trees.* The highway (p. 268, l. 35 to p. 269, l. 2) was wet and the weather was sleety and rainy. As he was operating his Studebaker automobile north towards the intersection there were no automobile which passed him. There were no track marks (p. 269, l. 18) at the intersection.

ALLISON WEATHERBY, a witness called by the defendant (p. 271, l. 8; p. 272, l. 35) testified that after the accident he saw the bus in its damaged condition. The radiator and part of the motor was broken and pushed back. The mudguard and one wheel was damaged and the booster line, which is a connection between the motor and the brakes, was broken. With the breaking of this booster line the bus is without any brakes. He made the necessary repairs on this bus. This booster line leads from the right hand side of the motor down along the chassis to a valve that is operated by the foot pedal. This valve is about in the middle of the bus. The break in the air line was next to the motor. On cross examination Mr. Weatherby testified that he is employed by the public Service.

He testified (p. 273, l. 20) that this booster line runs between the channel of the chassis so that it could not have been broken by any object from underneath the bus. The strain on a motor caused by the waving of the motor (p. 274, l. 35) twisted the line off.

OSCAR VON DER TANN, a witness called by the defendant, testified that on October 29th, 1930, he was riding from Vineland to Pitman. As he was driving on the Delsea Drive to Pitman he would be travelling in a northerly direction. As he approached the Williamstown Road intersection he says that there was no Essex automobile that passed him. On cross examination he testified (p. 277, l. 30) that he saw the bus off the road. There were trees alongside of the bus (p. 278, l. 7). He definitely states (p. 279, ll. 1-20) that he did not pass any automobiles travelling in the same direction or the opposite direction for quite a ways before arriving at the scene of the accident. It was raining and the highways were wet.

MYRTLE VON DER TANN, a witness called by the defendant, testified (p. 281) that she was in an automobile which was being operated in a northerly direction along Delsea Drive. There was no Essex automobile which passed her automobile immediately before they arrived at the scene of the accident.

MRS. JENNIE KULP, a witness called by the defendant, testified (p. 290, l. 25 to p. 292, l. 15) that she lives on the Williamstown Road, Iona, at a point approximately two squares east of Delsea Drive. On the evening of October 29th, 1930 she heard a crash. Before hearing the crash she heard an automobile passing her house. She could iden-

tify it being an automobile by the sound which was created by it in passing. On cross examination she testified that she was seated in her living room facing the window. There is only one other house between her house and Delsea Drive. No other automobiles passed her house except this one car. She doesn't know in which direction this automobile was going, but she does know that after it went by she heard the crash.

LOUIS LIBER, a witness called by the defendant, was recalled. He testified (p. 292) that his aunt's home is on the westerly side of Delsea Drive about a half a mile or more from the intersection of Delsea Drive and the Williamstown Road. From the time he passed his aunt's house that evening to the time that he got to the intersection, he did not pass an Essex automobile.

MILDRED LIBER, a witness called by the defendant, testified (p. 293, l. 25 to p. 294, l. 20) that on the evening of the 29th day of October, 1930 she was in an automobile which was proceeding in a northerly direction on Delsea Drive. Before it got to the intersection of Delsea Drive and the Williamstown Road she did not see any passing automobiles.

This concluded the testimony for the defendant.

The plaintiff on rebuttal recalled Trooper John J. Maliff, and asked this question (p. 284, l. 37 to p. 285, l. 35) :

"Q. Here is the question I would like to ask now, whether or not, when you talked with the driver of the bus, Trooper Maliff, that he told you the brakes on the car were not in good condition? A. The words that was used at the time were that 'My brakes were not'—Now, wait a minute. 'My brakes

were not so very good,' is what he said to me."

On cross examination this witness testified that he tried the brake and he could not push it down all the way to the floor and as the brake was being worked it grew harder. This witness testified that he had never been a bus driver.

NICK GORGIO, a witness called by the plaintiffs on rebuttal, testified (p. 295, ll. 28-33) that the bus operator said to him that he didn't know where the Ford came from and that he didn't see it until the collision occurred or words to that effect. On cross examination this witness was asked (p. 296, l. 24) :

"Q. What did you ask him? A. I asked him if he knew how the accident happened."

He has not spoken (p. 297, ll. 3-26) to anybody about this case nor this accident and the first time that he talked with Mr. Parave about the accident was a week prior to the date of trial. This witness at the time of trial was unemployed.

NICK DI MATTEO, a witness called by the plaintiffs, on rebuttal, testified that he heard (p. 298, ll. 10-35) the bus driver say to Mr. Gorgio that he didn't see the Ford and don't know where it came from until the cars came together or words to that effect. This witness testified on cross examination (p. 299, l. 37) that since the date of the accident up to the time of trial he has not talked with anyone in reference to this accident and that at the time when he was put on the stand to testify no one knew what he was going to testify to. At this juncture the plaintiff rested in the way of proof on rebuttal. The defendant then offered into evidence (p. 300, l. 29 to p. 301, l. 10) a written report made

by Trooper Maliff which was marked D-7 for identification which contained information which he had secured from the operator of the bus concerning the accident. The Court refused to permit this report into evidence on the ground that it went beyond the scope of the examination in chief in view of the fact that the witness had been called merely for the purpose of contradicting the testimony of the bus driver when he denied having made a statement with respect to the condition of the brakes. An exception was noted to that ruling.

After both sides had rested the defendant then moved for a directed verdict in each case on the ground that there was no proof that the said defendant had been guilty of any negligence and on the further ground that each of the decedents had been guilty of contributory negligence. These motions were overruled and exceptions (p. 301, 302, 303) noted by the defendant.

POINT I.

It was error to refuse a motion for a non-suit in favor of the defendant.

The first ground of appeal in the case involving Joseph Parave, deceased, is as follows (p. 321) :

“1. Because the court, although requested so to do by the attorney for the defendant at the close of the plaintiff's case, refused to non-suit the plaintiff on the following ground:

“That there was no proof of any negligence, nor any proof of any facts which give rise to an immediate inference of negligence which was the proximate cause of whatever

has taken place; and on the further ground that there was no proof in this particular case that decedent, Joseph Parave, was in an automobile which was being operated in a southerly direction along the public highway known as Delsea Drive in the Town of Franklin, County of Gloucester, and State of New Jersey; and on the further grounds that there was no proof that an accident took place as a result of negligence, which was the proximate cause on the part of the defendant, in which accident the said Joseph Parave met his death; and on the further ground that there was no proof that the automobile, which was alleged to have been driven by Joseph Parave, was being operated in a southerly direction on the highway, and that the said automobile had a collision with the defendant's bus as alleged in paragraph four of the complaint."

In the case involving Peter Parave, deceased, as follows (p. 323) :

"1. Because the court, although requested so to do by the attorney for the defendant at the close of the plaintiff's case, refused to non-suit the plaintiff on the following grounds:

"That there was no proof of any negligence, or any facts from which an immediate inference of negligence can be drawn; and on the further ground that there is no proof that the automobile of Peter Parave was in a collision with a bus of the defendant at the time and place mentioned in the complaint; and on the further ground that there was no proof that the automobile owned by Peter Parave was being operated in a southerly direction on the Delsea Drive at the time and place stated in the complaint."

In the case involving Benjamin Kurzensky, deceased, (p. 325) :

"1. Because the court, although requested so to do by the attorney for the defendant at the close of the plaintiff's case, refused to non-suit the plaintiff on the following grounds; that there was no proof of any negligence on the part of the Public Service Interstate Transportation Company, or any proof of any facts from which an immediate inference could be drawn; and on the further ground that there was no proof that the said plaintiff, Benjamin Kurzensky, was at or near the scene of the accident at the time it was alleged to have occurred."

The complaint (p. 3) in the case involving Joseph Parave, deceased, alleges the negligence of the defendant as follows:

"2. On October 29, 1930, Joseph Parave, who was then nineteen years of age, was an occupant in and the operator of a certain Ford automobile which was being operated by himself in a southerly direction along the public highway known as Delsea Drive in the Township of Franklin, County of Gloucester and State of New Jersey."

"4. As the said automobile of which the said Joseph Parave, deceased, was the operator, and the automobile passenger bus of the defendant approached the intersection of said Delsea Drive with the public highway leading from the Delsea Drive to Iona, the defendant, by its agent and employee, carelessly and negligently operated said automobile passenger bus at a high and unlawful rate of speed, and without due regard for the rights and safety of other persons using said highway, and carelessly and negligently failed to have such automobile passenger bus in proper mechanical order, and failed to have the brakes of same in good, proper, working

order, and carelessly and negligently operated said automobile passenger bus from the right or easterly side of said highway to the left or westerly side thereof, and into and against the automobile of which the said Joseph Parave was the operator. The collision aforesaid between said automobiles was caused solely by the negligent operation of defendant's automobile passenger bus."

In the complaint (p. 16) in the case involving Peter Parave, deceased, the negligence is averred in the same form as above set forth in the Joseph Parave case, except that Peter Parave is alleged to be a passenger.

In the case involving Benjamin Kurzensky, deceased, the complaint (p. 29) as to averments of negligence is identical with that of Peter Parave.

The complaint therefore in each case contains the allegation that a Ford automobile in which these three decedents were occupants was proceeding in a southerly direction on Delsea Drive in the Township of Franklin, County of Gloucester. And further, that the defendant was also operating a vehicle on Delsea Drive but in a northerly direction, which vehicle was travelling at a high and unlawful rate of speed with defective brakes. And further, that the said automobile of the defendant was negligently operated from the right or the easterly side of the highway to the left or westerly side of the highway into and against the automobile in which the three decedents were occupants.

It is a cardinal rule of law that the plaintiff is charged with the duty of affirmatively proving the allegations made in his complaint. *Bien v. Unger*, 64 N. J. L. 596, 46 Atl. 593; *McGilvery v. Power Co.*, (N. J. Err. & App.) 63 N. J. L. 591, 44 Atl. 637. The proof offered must prove the truth of the allegations. In the cases at bar, the plaintiffs were

charged with the duty of affirmatively proving that the Ford automobile was in fact travelling on Delsea Drive and in a southerly direction on the said drive. This allegation must of necessity be established before the duty which rested upon the defendant could be determined. It must of necessity therefore follow that whether or not the defendant was guilty of any negligence cannot be determined until the plaintiffs had proved the allegations as set forth in the complaints. The testimony places the Ford automobile, in its damaged condition, up against the 24" tree. The Ford automobile was between the 24" and the 18" tree, so that it was headed south with its rear end resting against the 24" tree. This 24" tree is 17 feet from the westerly side of the west portion of the concrete surface of Delsea Drive and is 44 feet from the intersection of the midlines of the Williamstown Road and Delsea Drive. Williamstown Road crosses Delsea Drive at an acute angle in such a fashion that the northeast corner is 30 feet farther north than the northwest corner. The northeast corner is directly opposite to a point midway between the two trees. The Ford was lying between the two trees. There was debris on the right side of the Ford. There was a mark on the right hand side of the Williamstown Road, going west, which mark was not quite in the center of the intersection, but was south of the telephone pole which is located on the northwesterly corner of the intersection. Two boys were found lying on the ground; one 35 feet from the road and the other 40 feet from the road. A public Service bus was in the field on the westerly side of Delsea Drive at a point 75 feet from the intersection of the midline of Delsea Drive and the midline of the Williamstown Road. The weather conditions were wet with a slight drizzle falling. The highways were wet. State Trooper

Maliff places the position of the bus as in the field 39 paces from the intersection. The physical conditions which existed at the intersection as outlined above certainly do not give rise to any inference that the automobile which was damaged had been travelling upon Delsea Drive, nor do these physical conditions give rise to any inference as to which direction the Ford had been travelling. The damaged condition of the Ford, of course, raises the inference that it was in contact with some object. In view of the fact that it was resting against the tree the only immediate inference which can be drawn is that whatever damage existed was caused by coming in contact with the tree. If an inference can be drawn that this Ford automobile was travelling on Delsea Drive, the evidence would still be in a position where there would be no testimony as to which way it was travelling on Delsea Drive. Hence, it would then be necessary to form another inference which would be that this Ford automobile was travelling south on Delsea Drive. But, even if this inference was permitted, then it would be necessary to draw the inference that because these boys were found in the field near the place where the damaged Ford was found that they must have been occupants in this automobile while it was on Delsea Drive and travelling in a southerly direction. This posture of the proof then presents a question that in view of the fact that there were only two boys found at the scene and three in the hospital, which of the three were the ones in the automobile? The front end of the bus was also damaged. It is to be noted that the bus was completely off the road and resting in the underbrush and amongst trees of various sizes. It may be that the damaged condition of the bus and the damaged condition of the Ford may give rise to an inference that these vehicles collided one with

the other. But, if this inference is permitted, then we are confronted with the question as to whether the Ford collided with the bus first, or collided with the tree first. If we permit the inference that the Ford collided with the bus, we are still in the dark as to where the respective vehicles were when the collision took place. Was it at the intersection, or was it on that portion of Delsea Drive which does not constitute the intersection? Without being able to fix the location where these vehicles came together, we are unable to say what distance the bus travelled after the collision. And further, we are unable to say on what portion of the highway the collision, in fact, took place. The fact that the automobile was 17 feet away from the westerly edge of Delsea Drive cannot of itself create the immediate inference that it, the Ford automobile, was on Delsea Drive, because its position is directly opposite to the northeasterly corner of the intersection of the Williamstown Road and Delsea Drive, so that an inference that the Ford automobile was on the Williamstown Road is equally consistent with the inference that it was on Delsea Drive. With a deduction of inferences, one as consistent as the other, it must unqualifiedly follow that neither inference can be said to be the immediate inference. The plaintiffs produced a witness, Moreni, who testified that while he was travelling south on the Delsea Drive he looked into his mirror and saw two lights in back of him. At that time the bus passed him. Then the bus went into the field and he did not see the lights any more. It is to be particularly noted that this witness makes no mention of the character of the vehicle which was in back of him. He says nothing as to the distance at which these lights were in back of him. He definitely states that he does not know whose automobile was, in fact, in back of

him. He did not stop. He knew nothing about the accident until a week later when he heard some men talking about it. The plaintiff endeavors to contend that these lights which Moreni saw were the lights of the damaged automobile which was found up against a tree. There is no testimony of any character rendered by Moreni which identifies the lights that he saw to be the lights of the automobile that was found in its damaged condition. To identify the lights that Moreni saw to be the lights of the automobile, it is necessary to infer that the Ford automobile was (an inference) on Delsea Drive; was, (an inference) travelling south on Delsea Drive and was (an inference) while so travelling, carrying headlights which were (an inference) lighted. There is no proof in this case that the Ford automobile at any time prior to the collision did, in fact, carry lights which were lighted, so that before Moreni's testimony can be helpful, it is necessary to infer that the Ford automobile was, in fact, carrying lights which were lighted. Having created the inference that the Ford automobile was, in fact, carrying lights which were lighted, it becomes necessary to inquire into the question as to whether or not there is any testimony supplied by Moreni which indicates whether or not this vehicle which he saw was, in fact, travelling or moving on Delsea Drive. The furthest his testimony goes is that he saw two lights in back of him and that because they shone directly into his mirror he drew an inference that they were on the right side of the road. He at no time says that they were the lights of a moving vehicle. He says that he heard something hit the tree and he did not hear any other noise. After the noise he saw the bus going into the field. He does not state which field he has reference to and

it is further to be particularly noted that at no time in any portion of his testimony does he describe seeing the bus coming into contact with the vehicle which carried the lights that were in back of him. The fact that Moreni testified that he didn't see the lights any more, does not justify the inference that the lights were extinguished by contact with the bus. There is no direct testimony which indicates that the bus did, in fact, come in contact with the Ford. It may have been that this automobile which Moreni saw in back of him may have turned to its right to proceed westerly on Williamstown Road and in so doing cast a beam of its light out on the field. There may have been, as far as Moreni is concerned, another automobile passing the one carrying lights which second automobile may not have been lighted, and may have been a culpable factor in whatever occurred.

Moreni's testimony goes no further on the question of identity than to say that he saw lights in back of his automobile.

The only witnesses in the case who testified to any facts which relate to circumstances before the occurrence of this collision are Mrs. Parave and Mrs. Raczak. Mrs. Parave did not see the automobile as it left the garage. She did not see her boys enter the automobile. Mrs. Raczak states that the Parave boys called for her son and then the three of them started toward Lake which is in the direction of Vineland. Neither of these witnesses state that the Ford automobile carried headlights which were lighted.

Even if it should have been definitely proved that the Ford automobile was travelling in a southerly direction on Delsea Drive there is no evidence to prove that the occupants, whoever they were, in that automobile were injured as a result of any neg-

ligence on the part of the defendant. It therefore follows that the cases again plunge into the realms of inferences. The negligence charged is excessive speed, improper equipment and going from the right side to the left side of the road. As to the allegation of improper equipment, there is not a single iota of testimony. Hence, there is no evidence from which any inference may be drawn. As to the allegation of excessive speed, the only possible evidence in the case is that the bus came to a stop approximately 75 feet from the intersection of the midline of Delsea Drive and the Williamstown Road. To draw the inference that the bus traveled 75 feet after the collision, it is necessary to infer that the collision took place directly in the center of the intersection. But, there is no such testimony. Hence, such an inference cannot be drawn. There is no testimony in the plaintiffs' case which fixes any point where the alleged collision took place. In the absence of such testimony, there is no evidence from which any inferences of any character as to speed can be drawn. As to the allegation that the bus was negligent in going from the easterly side of the road to the westerly side of the road this allegation is predicated entirely upon the testimony of a witness who said that he saw track marks which started before the intersection, crossed to the left side of the road at the intersection and led up to the place where the bus was standing. The fact that the bus crossed the intersection on the so-called left side of the road is just as consistent with no negligence as with negligence. If the bus took that (an inference) course to avoid being struck by an automobile which was coming west, out of Williamstown Road, then it cannot be said that the fact that it was on the left side of the road was an act of negligence. Even if it had been conclusively proved that the bus had crossed to the

left side of the road, such a course could not have any bearing in the disposition of these cases except if it had been also proved that the Ford was travelling in a southerly direction on Delsea Drive. At the most, the existence of a track mark leading up to the bus raises an inference that that was the course which the bus took. To infer such an inference would be an immediate inference. To infer that such a course was negligence would be predicated one inference upon another inference. This second inference would therefore not be an immediate inference. Hence, it would not be a legal or permissive inference. If we are to infer that the Ford automobile was in fact on Delsea Drive proceeding in a southerly direction and then to draw an inference from the track marks that that was the course that the bus took, there would still be no evidence to indicate any negligence. There is no testimony in the case fixing the position where the alleged Ford automobile was at the time when the bus went from its right to its left (an inference) side of the road. Even if we were to infer that the Ford automobile was travelling in a southerly direction, on Delsea Drive, and that the bus crossed from the right to the left side of the road, there still remains the question of proximate cause. The proximate cause of this accident to make the defendant responsible must be established by proof which is either direct in character or such that legitimate inferences can be drawn therefrom. There is no such testimony. It therefore follows that with the absence of such testimony no inferences can be drawn.

The attorney for the plaintiffs, realizing the insufficiency of his proof called Earl L. Mulholland, as a witness, and directed five questions to him which are as follows:

Q. Mr. Mulholland, by whom were you employed on October 29th, 1930? A. Public Service.

Q. Is that the Public Service Interstate?
A. Coordinated Interstate.

Q. Transportation Company? A. Yes, sir.

The import of these three questions can be no other than that Mr. Mulholland was employed by the Public Service Coordinated Interstate Transportation Company. Such a named corporation is not in court under the pleadings as filed. The last two questions are as follows:

Q. Do you know where Franklinville is?
A. Yes, sir.

Q. *Won't you tell* me whether or not at a point near Franklinville your bus was in collision with a Ford car? A. Yes, sir.

These answers do nothing more than indicate a willingness on the part of the witness to tell whether or not he was in a collision. If an inference is to be drawn from these responses that he affirmatively states that he was in a collision, there is nothing in his testimony to show that it was a collision which took place in Franklinville which is the Township wherein the intersection of Delsea Drive and the Williamstown Road exists. There is nothing in his testimony which indicates that any information offered by him relates to an occurrence which may have taken place on October 29th, 1930 at 8:25 in the evening at the intersection of the Delsea Drive and the Williamstown Road.

The proof of a case by circumstantial evidence is not to be tested by the strongest circumstance in it, but the courts have held over and over again that it must be tested by the weakest link in the chain. It is also a rule of law not to make the evidence submitted any stronger against the defendant than the witnesses make it.

The cases at bar are entirely predicated upon circumstantial evidence. It is this evidence which has been submitted that is to be tested by the rules of law and not the theories however ingeniously they have been propounded.

The case at bar presents the question which concerns the position that the Ford automobile occupied at the time of the alleged accident. If the Ford automobile has not by legitimate proof been shown to have been proceeding on Delsea Drive in a southerly direction, then the plaintiffs must fail.

A like question was presented in *Olsen v. Erie R. R. Co.*, decided by our Court of Errors and Appeals, 124 Atl. 367, 99 N. J. L. 485, where the decedent was found four or five feet north of the planks of a certain crossing. This crossing traversed a set of railroad tracks owned by the defendant. No one saw the accident and no one knows under what conditions Olsen met his death. One witness produced by the plaintiff testified that shortly before he heard the moaning he heard a train pass. He did not hear the train give any warning. He did not hear any bell prior to the passing of the train. The Court held (*Italics ours*):

"The nature of decedent's injuries make it probable that they were caused by contact with the steel wheels of one of the defendant's cars or engines. The only testimony adduced by the plaintiff in support of her averment that this was the proximate result of the negligent operation of defendant railroad was the proof of a failure to give the signals required by Section 35 of the Railroad Act (P. L. 1903, P. 663) upon the approach of an engine to a public highway. In our opinion, a jury could not properly have found that any duty to give such signals rested upon the defendant company. In order to do so, they must have found, both that the

Edison Crossing was a public crossing, and, further, *that decedent was upon it at the time he was injured.* * * *

"Further more, it is our opinion that the trial judge was justified in not leaving to the jury the question of Olsen's position at the precise moment when he was injured. When he was found, he was not lying on the crossing, but four or five feet north of it. We have seen that there were no eye witnesses and therefore no direct evidence as to how the accident occurred. Plaintiff insists, however, that the jury should have been permitted to infer, from the single circumstance of his nearness to a railroad crossing after the accident, that he was struck while on the crossing and carried beyond it by the impact. There was no testimony that Olsen more frequently went to his barge by way of Edison Crossing than by the other two possible paths to the docks. There was also no testimony that he was struck by any particular train. That being so, we think that an inference equally consistent with the circumstance of the position of his body, when found, is, that he was struck after he had passed the crossing and was walking north along the tracks towards one of the other paths to the docks, by an engine or car coming in a southerly direction towards him. Moreover, the fact that Olsen had reached the crossing five minutes after leaving a place within twenty minutes' walking distance therefrom, seems more consistent with his having ridden there on an engine, and therefore with his having been injured in some other way than as the result of his use of the crossing. To permit an inference of negligence by the jury, the circumstances must be more consistent with the existence thereof, than with its absence. *Alvino v. Public Service Rwy. Co.*, 97 N. J. L. 526. *An essential element of negligence in the case at bar, is the use by the plaintiff's intestate of the Edison Crossing of the*

defendant railway company, at the time of his injury. Since the inferences from the proof are equally consistent with Olsen's not having been on the crossing at the time of the injury, we think, for this reason also, the plaintiff must fail."

The principle that the right of a jury to draw an inference from certain proved facts does not extend to drawing an inference from an inference or permit a presumption to arise from a presumption is well established not only in this but many other States.

"The only presumptions of fact which the law recognizes are immediate inferences from the facts proved." *McCombe v. Public Service Railway Co.*, 112 Atl. Rep. 255, 95 N. J. L. 187.

The principle enunciated in the case of *McCombe v. Public Service Railway Company*, above cited, was again announced by our Court of Errors and Appeals in *Adriance v. Schenck Bros., et al*, 112 Atl. Rep. 408, 95 N. J. L. 185, to wit:

"The only presumptions of fact which the law recognizes are immediate inferences from the facts proved."

In the case of *Price v. N. Y. C. R. R. Co.*, 92 N. J. Law, p. 429, 105 Atl. 187, decided by this Court in 1918, it was distinctly held that a presumption cannot be based upon a presumption. In that case a fireman on a locomotive was found injured. On behalf of the plaintiff it was claimed that a poker on an engine going in the opposite direction had extended out far enough to hit the fireman, and that in fact it did hit him. There was a judgment for the plaintiff, from which the defendant appealed. A new trial was granted the defendant, the Court remarking: "With these circumstances we

are asked to presume without proof thereof that the rod may have changed its position from one of safety to one of danger to the plaintiff, and upon this presumption to further presume that it did in fact strike him which is not allowable." The Court quoted from *Manning v. John Hancock Mutual Life Ins. Co.*, 100 U. S. 694, "The only presumptions of fact which the law recognizes are immediate inferences from the facts proved."

In *Cunard S. S. Co. Ltd. v. Kelly*, 126 Fed. Rep. 610, First Circuit, the first paragraph of the syllabus reads:

"It is not permissible for a jury to base an inference of fact upon another fact which is only established by presumption. Whenever circumstantial evidence is relied upon to prove a fact the circumstances must be proved and not themselves presumed."

Swenson v. Erlandson, 90 N. W. Rep. 534,

"Circumstantial evidence is, of course, competent and proper and often the only obtainable evidence in such cases; but, as such evidence consists in reasoning from facts which are known or proved, to establish such as are conjectured to exist, the process is fatally vicious and defective if the circumstances from which we seek to deduce the conclusion depend also upon conjecture and speculation. *Rice, Ev.*"

Cauble v. Hudson, 59 N. E. Rep. 866 (Indiana).

In this case the decedent who was non compos mentis and was a smoker and was known to carry a pipe and matches, was found burned and dead in a burned barn. The Court held that this did not prove that the decedent had caused the barn to burn down. The Court held:

"His going to the barn in the first place

can be established only by an inference, and, if he did go, it is only through an inference that it can be said he burned the property. A fact may be proved by circumstantial evidence, but the circumstances themselves must be proved and not presumed. It is not found that he burned the barn, nor is it found as a fact that he went to the barn. The fact that his headless body was found in the ruins is a basis for conjecture merely. The Trial Court was right in denying a judgment resting on inferences based on inferences."

Atchison, &c. R. Co. v. McFarland, 43 Pacific (Kan.) 788.

"The inferences drawn from the testimony are, for the most part, based upon other inferences and presumptions which just as reasonably warrant different conclusions. Mere theories and inferences do not authorize a verdict in a case of this nature unless they are the only conclusions which can reasonably be drawn from facts proven."

United States v. Ross, 92 U. S. 281,

"They are inferences from inferences; presumptions resting on the basis of another presumption. Such a mode of arriving at a conclusion of fact is generally, if not universally, inadmissible. No inference of fact or law is reliable drawn from premises which are uncertain. *Whenever circumstantial evidence is relied upon to prove a fact*, the circumstances must be proved and not themselves presumed."

Globe Accident Ins. Co. v. Gerisch (Ill.) 45 N. E. Rep. 563. In this case it appears that a janitor whose duty it was to remove ashes suffered a fatal strain about the time when ashes which he was supposed to remove were in fact removed. The Court said:

"If from the fact that he lifted a box of

ashes, and from the further fact that he not long afterwards suffered from the effects of a strain, it can be inferred that such strain was caused by so lifting said box of ashes, the missing link in the chain will be supplied."

But the Court refused to allow such double presumption.

The case of *McCombe v. Public Service Railway Co.*, 112 Atl. Rep. 255, 95 N. J. L. 187, above referred to was one in which, quoting from the syllabus, the following appeared:

"The plaintiff's intestate was discovered about midnight, by the motorman of an approaching electric car, on the tracks of the defendant company, near the bridge over the Hackensack River on the Newark Plank Road in Jersey City with one arm and leg cut off sharply. There was no eye witness to the accident, no one saw how it happened. Held, a nonsuit was not error."

The Court there held that negligence is a fact which must be proved. It will not be presumed. The Court there further held that:

"The plaintiff, to succeed, must show by evidence, not only such circumstances as would justify the inference of the defendant's negligence, but would exclude the idea that the accident was due to a cause with which the defendant was unconnected."

The case of *Erbe v. Philadelphia Rapid Transit Co.*, 100 Atl. Rep. 966 (Pa.) says:

"Assuming this testimony to be sufficient to show deceased was struck by the car, there still remains the total absence of proof to show death occurred by reason of negligence on the part of the defendant. Proving that

an accident happened or the existence of an opportunity for it to happen, in the manner alleged, is entirely insufficient to establish negligence. * * * For all that appears in the evidence deceased may have been seized with a sudden illness and fallen on the track immediately in front of the car. * * * There being nothing in the evidence tending to show what deceased was doing, or whether or not she was about to cross the track at the time of the accident, the doctrine of presumption of negligence is not applicable."

A case somewhat similar to our present one is that of *Helen Patton, administratrix v. Public Service Railway Company*, 227 Fed. Rep. 810, decided by the Circuit Court of Appeals on writ to the United States District Court of New Jersey in 1915. In that case plaintiff's decedent was killed by the backing of one of the defendant's cars on its private right of way near a station. The Court said:

"No one saw the accident and no one knows, as a matter of fact, how it happened. The plaintiff contends that from the circumstances of the accident, negligence of the defendant must be inferred, that is, had the defendant not been negligent, the accident would not have occurred. When or how the plaintiff's husband got upon the track between the two rails is not disclosed. Whether he heard the bell ordering the car to back or whether he saw the lighted car in time to avoid his peril, is not shown. Whether the car knocked him down, or whether he fell down and while in the forward position in which his body was found was run over by the car, is a mystery. Whether the conductor upon the rear platform of the car could have seen the decedent or by the exercise of care should have seen him, is not proved nor is it proven that in backing the car under the circumstances, the conductor, was engag-

ed otherwise than in directing the car's movements and in the proper exercise of care for the safety of those upon the track. In fact, it is not shown how the accident occurred. While it is certain that the plaintiff's husband was killed by the car, there is no evidence that his death was caused by negligence, or that the proximate cause of his death was the negligence of the defendant. * * * The circumstances connected with the death of the plaintiff's husband in so far as they are disclosed, do not show that it was necessarily occasioned by the negligence of the defendant. It may have been occasioned by negligence of his own, or may have been the result of pure accident, in which case no negligence was present. In this state of the evidence it is clear that there was nothing from which the jury could properly have found that the death of the plaintiff's husband was due proximately to the negligence of the defendant."

In *Alvino, admx. v. Public Service Railway Co.*, 97 N. J. Law 526, 117 Atl. 709, the plaintiff brought suit to recover damages under the Death Act, growing out of an alleged collision between a motorcycle and a trolley car. It was held that the testimony fairly created an inference of fact that there was a collision between the motorcycle and a trolley car, but how it happened or who was responsible for the collision was left entirely to conjecture. The Trial Court had submitted the case to the jury. The Court of Errors and Appeals in holding that such action by the Trial Court was error, said:

"Negligence is a fact which must be shown. It will not be presumed. There is always a presumption against negligence. *McCombe v. Public Service Railway Co.*, 95 N. J. L. 187.

"The only presumptions of fact which the law recognizes are immediate inferences

from the facts proved. *Price v. New York Central Railroad Co.*, 92 N. J. L. 429; *McCombe v. Public Service Railway Co.*, *supra*; *Adriance v. Schenck Bros.*, 95 N. J. L. 185.

"Proof of a collision or facts from which a collision could be inferred by a jury does not make out a *prima facie* case of negligence. The doctrine or main *res ipsa loquitur* is not applicable. *Conover v. Delaware, &c., Railroad Co.*, 92 N. J. L. 602.

"To establish a case of negligence and fix the liability of the defendant, it is incumbent upon the plaintiff to prove some fact which is more consistent with negligence of the defendant than with the absence of it. *Toomey v. London, &c., Railway Co.*, 3 C. B. (N. S.) 150.

"When the plaintiff's evidence is equally consistent with the absence as with the existence of negligence on the part of the defendant, the plaintiff must fail (*Cotton v. Wood*, 8 C. B. [N. S.] 568), because there is always a presumption against negligence and in favor of innocence. *Philadelphia, &c., Railroad Co. v. Hummell*, 44 Pa. St. 375. A probability is not sufficient. *Searles v. Manhattan Railway Co.*, 101 N. Y. 661."

In *Ryan v. Public Service Railway Co.*, 128 Atl. 158, the syllabus (by the Court) states:

"The fact that the deceased was struck by an electric car, in the absence of any proof from which the negligence of the motorman may be inferred, is not sufficient to send the case to the jury, in an action to recover damages under the Death Act."

In *Maphet v. Hudson and Manhattan Ry. Co.*, 119 Atl. 777, 98 N. J. L. 369, the Court submitted to the jury the question whether "Plaintiff's injuries were caused by the negligence of the defend-

ant in driving or placing the fuse on the said platform."

"Negligence is never presumed, but must always be proven. The only presumption of fact which the law recognizes is an immediate inference from the facts proved, and mere theories and inferences do not authorize a verdict, unless they are the only conclusions which can reasonably be drawn from the facts proven, and if a plaintiff is to succeed it is incumbent upon him, in the absence of direct evidence, to show, not only existence of such possible responsibility, but the existence of such circumstances as would justify the inference that the plaintiff's injury was caused by the negligent act of the defendant, and which would exclude the idea that it was a cause with which the defendant was not connected, *McCombe v. Public Service Railway Co.*, 95 N. J. Law, 188, 112 Atl. 255 * * *

There are a number of cases in this State which illustrate the doctrine that the mere possibility that the defendant may have been negligent is not enough."

In *Stumpf v. D. L. & W.*, 76 N. J. L. 153, 69 A. 207:

"We think the true rule is that where it appears that the injuries were occasioned by one of two causes, for one of which the defendant is responsible, but not for the other, the plaintiff must fail if the evidence does not show that the injury was the result of the former cause. If under the testimony it is just as probable that it was caused by one as the other, he cannot recover."

Hummer v. Lehigh Valley R R. Co., 75 N. J. L. 703, 706, 67 Atl. 1061:

"Where the evidence is equally consistent with either view, with the existence or non-existence of negligence, it is not competent

to the judge to leave the matter to the jury. The party who affirms negligence had altogether failed to establish it. That is a rule which ought never to be lost sight of." *Cotton v. Wood*, 8 B. C. (N. S.) 568 (at P. 572).

The rule relating to proving negligence appears to be laid down very clearly in the case of *Suburban Electric Co., v. Nugent*, 58 N. J. L. 658, 34 Atl. 1069:

"It must be conceded that the plaintiff below was bound to show something more than that the defendant was possibly responsible for the decedent's death in order to entitle him to a verdict. It was incumbent upon him, in the absence of direct evidence of that fact, to show not only the existence of such possible responsibility, but the existence of such circumstances as would justify the inference that the death was caused by the wrongful act of the defendant, and would exclude the idea that it was due to a cause with which the defendant was unconnected."

In *Bien v. Unger*, 46 Atl. 593, 64 N. J. L. 596, Mr. Justice Garrison speaking for our Court of Errors and Appeals, held:

" * * * Now, the issue tendered by the narrative placed upon the plaintiff the burden of proving something by preponderance of proof,—something that was to say the least, more consistent with the negligence of the defendants than it was with their innocence.

"This right of the defendant to have his plaintiff bear the burden of the affirmative is a substantial one, and not a mere matter of form. *McGilvery v. Power Co.* (N. J. Err. & App.) 44 Atl. 637, * * *."

" * * * There is no such thing as 'negligence at large'."

McGilvery v. Newark Electric Light & Power Co., 44 Atl. 637, 64 L. 591, decided by our Court of Errors and Appeals, it was held:

"This doctrine of the plaintiff's preponderance of evidence is one of substantive law and not a mere matter of procedure. Whether, in a given case, the testimony is capable of sustaining the burden of proof is a court question, both before verdict and after. A verdict does no more than the court would do without it, viz: solves all fairly-debatable inferences in the plaintiff's favor. If, notwithstanding this, the essential facts are still in equipoise, there is no preponderance of proof, and a jury is impotent to supply by its verdict a probative weight that is lacking in the testimony. It is not a question of the weight of conflicting testimony such as trial courts settle as incident to their verdicts, but of the sufficient compliance with a legal rule that appellate courts notice and enforce.

"This rule was, at the trial, invoked by the motion to direct a verdict upon the ground that there was no evidence of negligence on the part of the defendant."

POINT II.

It was error to refuse the motion for a direction of a verdict in favor of the defendant.

At the conclusion of the presentation of all the evidence which was rendered in the trial of these causes the attorney for the defendant moved for a direction of a verdict for the defendant in each of the causes on the following grounds (p. 301, p. 303):

1. That there was no proof that the defendant had been guilty of negligence.

2. Further that there is no proof of any negligence which was the proximate cause of the said accident which negligence was chargeable to the defendant, Public Service Interstate Transportation Company.

3. Further that the said decedents have been guilty of contributory negligence.

Each of these motions was overruled by the Trial Court and an exception noted for the defendant.

The defendant produced EARL L. MULHOLLAND as a witness, who testified that he was operating a bus which was travelling in a northerly direction on Delsea Drive, on October 29th, 1931. At that time the roads were wet and there was a slight drizzle falling. He arrived at the intersection of the Williamstown Road and Delsea Drive at 8:25 in the evening. At a point 300 feet north of Williamstown Road he saw an automobile which was travelling west on the Williamstown Road which automobile was at that time 300 feet east from Delsea Drive. After having seen this automobile on the Williamstown Road he took his foot off the gas and applied his brakes lightly. When his bus was within 30 feet of the intersection the operator saw that this automobile which was travelling on the Williamstown Road was not going to stop. He saw that this automobile was not going to heed the traffic "Stop" sign which is located on the Williamstown Road, 22 feet east of the easterly side of Delsea Drive. He thereupon applied his brakes as hard as possible, turned his bus slightly to the right so as to get the wheels on the right side of his bus on the dirt gravel which would cause his brakes to grip firmly and prevent skidding. He then turned to his left so that the automobile which was travelling on Williamstown Road would not hit the bus full in the side. The point of collision

was midway of the intersection with reference to the four corners. The impact threw the steering wheel out of his hands. The impact also broke the vacuum line which controls the braking apparatus, so that he was left without brakes after the impact. The automobile which was travelling westerly on the Williamstown Road did not sound any warnings, nor did it at any time slacken its speed before entering upon Delsea Drive. At the time when he first saw the Ford automobile on Williamstown Road the bus was travelling in the open country 35 to 40 miles per hour. At the time of the collision it was proceeding at 20 miles per hour.

HARLAN NORTH, NORMAN WIGGLESWORTH and EARL JOHNSON, testified that at a point one-half of a mile south of the intersection they noticed this bus pass them. At that time their respective trucks were on the dirt shoulder of Delsea Drive. The bus was on its right side of the street and travelling 35 to 40 miles per hour. Shortly thereafter they heard the crash. From the time the bus passed them to the time that they arrived at the scene of the accident no Essex automobile passed them.

OSCAR VON DER TANN, MYRTLE VON DER TANN, LOUIS LIBER and MILDRED LIBER all testified that as they were travelling north on Delsea Drive towards the scene of the accident, there was no Essex automobile which passed them going in a southerly direction.

JENNIE CULP, testified that she lived on the Williamstown Road at a point two squares east of Delsea Drive. On the evening of October 29th, 1930 she heard a crash. Immediately before the crash she heard an automobile pass her home.

ALLISON WEATHERBY, testified that he saw the bus in its damaged condition. The radiator and part of the motor was broken. The mudguard and one wheel was damaged. The booster line, which is a connection between the motor and the brakes, was broken. The breaking of this booster line left the bus without any brakes.

This brief resume of the defendant's testimony clearly indicates that the plaintiffs' case has not secured any added strength from the defendant's evidence and further, that the defense indicates a set of facts which are not in any respect parallel with the allegations of the complaints. It is manifest that the evidence of the defendant proves that the accident was due to a cause entirely different from that alleged.

In such a situation the rule of law as enunciated by Chief Justice Gummere in *Patrick Murphy v. North Jersey Street Railway Co.*, 71 N. J. Law p. 5, 58 Atl. p. 1018, is applicable. The allegations of the declaration and plaintiff's proofs were that plaintiff attempted to board defendant's car while it was standing, and while he was in the act of doing so said car started, throwing the plaintiff to the ground. The case of the defendant was that its car had already started, and was in motion, when plaintiff attempted to board it, missed his hold upon the grip and fell to the ground.

The Court charged the jury that even if they believed that the accident occurred in the way testified to by the defendant's witnesses, they would, nevertheless, have a right to find a verdict for the plaintiff if they concluded that the defendant was guilty of negligence.

The Court in its opinion said (*italics ours*):

"In the second place, it is a cardinal rule, for the control of a trial court, that only

those questions which are within the issues raised by the pleadings should be submitted to the jury, and a failure to observe this rule is legal error. *Excelsior Electric Co. v. Sweet*, 30 Vroom, 441. The issue presented by the pleadings for the determination of the jury in the present case was whether the defendant had caused the plaintiff's injury by negligently starting the car while he was in the act of getting upon it. *This was the claim which was set up by the plaintiff in his declaration, and denied by the defendant in its plea, and which the plaintiff was bound to establish by proof in order to entitle him to a verdict. If, at the trial, he had abandoned this position, and attempted to show that his injury was due to an entirely different cause—for instance, the defective condition of the step upon the car—he, of course, would not have been permitted to do so, for it is elementary law that a plaintiff cannot recover for a cause of action other than that set out in his declaration. And this principle is equally applicable when dealing with the case made by the defendant in contradicting the plaintiff's claim. The defendant is only required to prove that he was not guilty of the negligent act charged against him in the declaration. When he does this by showing that the accident which produced the plaintiffs' injury was due to a cause entirely different from that alleged by the latter, he has relieved himself from responsibility, so far as the action then being tried is concerned. To compel him to go further and disprove responsibility for the existence of that cause, is to require him to meet an issue which the case does not present.*

"The judgment under review should be reversed."

In *Merklinger v. Lambert*, 76 N. J. Law 806, the allegations of the complaint and the plaintiff's proof describe the accident as having happened in

a particular manner. The testimony of defendant's witnesses indicated that it had happened in a different manner. The Trial Judge in his charge said:

"Now, this is the allegation of the plaintiff, that his son, the deceased, was injured by having this automobile collide with the bicycle, throwing the deceased on the ground and injuring him so seriously that he soon thereafter died. *If the accident happened in any other way, the plaintiff cannot recover.* If this bicycle slipped, and this young man fell onto the pavement without coming into collision with the automobile, he cannot recover in this action, because he has alleged in his pleadings that the accident occurred by reason of the collision with the automobile, and if it happened in any other way, it is a subject for your consideration in this suit. The burden is on the plaintiff to satisfy you that in all probability the accident happened as he contends it did."

Our Court of Errors and Appeals in approving this portion of the Trial Court's charge, said:

"Having alleged a particular act of negligence, in order to maintain his action, he must prove it as laid. This rule seems well established in this State, as well as in foreign jurisdictions, as was pointed out in the well considered brief of the defendant in error."

In *Excelsior Electric Co. v. Sweet*, 59 N. J. Law 441, 31 Atl. 721, the plaintiff was injured when a street light, suspended above a highway, fell upon his horse as he was passing along said highway. Allegations in the complaint, and the plaintiff's proof dealt entirely with insufficiency of the ropes and pulleys, by which said light was suspended, as the cause of the accident. The defendant's proof tended to show that the cleat upon the pole to

which the rope was attached, was broken by some extraneous force exerted immediately before the lamp fell, and so the rope had become loose from its fastening.

Our Court of Errors and Appeals, in the course of its opinion said (*italics ours*) :

"In this condition of the pleadings and proofs, the trial judge charged the jury that 'if the cleat on the pole was not a proper one to be placed there, if the defendant did not use reasonable care in placing a safe and secure cleat there, and use reasonable care in keeping it in repair, and the rope slipped from it and so the lamp fell, that would be negligence on the part of the defendant.' To this the defendant excepted, on the ground that the matter was not within the pleadings and was not raised by the plaintiff. * * *

It is a cardinal rule for the control of a trial court that the questions submitted to the jury should be within the issues raised by the pleadings.

From what is above stated, it plainly appears that the pleadings in this case presented no issue as to the state or position of the cleat, the sole complaint being as to the rotten, weak, insufficient and defective condition of the rope and pulleys. It was, therefore, erroneous for the judge to submit such an issue to the jury under the pleadings as they stood (*Martinez v. Runkle*, 28 Vroom 111)."

Applying these rules of law to the evidence produced by the defendant, it is manifest that it was not within the province of the jury to test the defense in accordance with the rules of law for the establishment of negligence. So, too, at the time when the Court was urged to direct a verdict for the defendant, it was not within the province of the Court to pass upon the question as to whether

or not the defendant's case presented an actionable cause of action. At the time when the motion for a direction of the verdict was made the status of the proof was such that the Court was required to consider whether the plaintiffs had offered any evidence to sustain the allegations of the complaints. We therefore urge that verdicts for the defendant should have been directed for the same reasons that we have already urged that non-suits should have been granted.

On rebuttal the plaintiff produced two witnesses, Nick Gorgo and Nick Di Matteo, who testified as to statements which the operator of the bus was alleged to have made. These statements were denied by the operator. This rebuttal testimony was directed solely to the credibility of the operator. Such testimony, when it is admitted into evidence, does not constitute proof of any fact, but is only proof that the words were spoken and is not proof of the truth of anything which has been said.

"The proof is only of the fact that the words were spoken and not of the truth of anything as stated therein."

Trenton Passenger Railway Co. v. Cooper,
60 N. J. Law, 219; Castner v. Sliker, 33
N. J. Law, 507.

Contributory Negligence.

There is no evidence in the plaintiffs' own case bearing on the conduct of the decedents. Hence, no argument can be presented in such a manner as to be predicated upon the plaintiffs' evidence. The rules of law as presented in the argument under Point II, indicate that the facts of the defense in this particular case cannot supply a cause of action for the plaintiffs. It therefore follows that while

there may be plenary evidence of contributory negligence on the part of the plaintiffs as revealed in the defendant's case, such a defense has no legal position for determination, because it is not related to the cause of action as pleaded by the plaintiffs.

It is respectfully submitted that the Court should have nonsuited the plaintiffs upon motions of the defendant and that after the whole case was in, the Court should have directed verdicts for the defendant.

Respectfully submitted,

HENRY H. FRYLING,
Attorney for and of Counsel
with Defendant-Appellants.

HENRY J. SORENSON,
Of Counsel.

18
83
84

THE END OF THE WORLD

18
83
84

New Jersey Court of Errors and Appeals

Frank Parave, administrator ad prosequendum of Joseph Parave, Deceased.

Plaintiff-Appellee,

vs.

Public Service Interstate Transportation Company, a New Jersey Corporation,
Defendant-Appellant.

Frank Parave, administrator ad prosequendum of Peter Parave, Deceased,

Plaintiff-Appellee,

vs.

Public Service Interstate Transportation Company, a New Jersey Corporation,
Defendant-Appellant.

Action at Law

On Appeal
from
Supreme Court

Josephine Raczak, Administratrix ad prosequendum of Benjamin Kurzensky, Deceased,

Plaintiff-Appellee,

vs.

Public Service Interstate Transportation Company, a New Jersey Corporation,
Defendant-Appellant.

BRIEF OF PLAINTIFFS-APPELLEES

STATEMENT.

Suits were brought by the plaintiffs-appellees against the defendant-appellant, alleging that their decedents,

Joseph Parave, Peter Parave and Benjamin Kurzensky, came to their deaths in a collision between a Ford automobile in which they were occupants and an automobile bus of the defendant-appellant, which said accident was caused by the negligence of the defendant-appellant in the operation of said automobile bus.

Plaintiffs-appellees alleged in their complaint that their decedents were occupants of said Ford automobile, which was proceeding in a southerly direction along the public highway known as Delsea Drive in the Township of Franklin, County of Gloucester and State of New Jersey, and that the said automobile in which they were riding was struck and run into by the automobile bus of defendant-appellant, which was proceeding along said highway in a northerly direction, and that said collision was caused by the negligent operation of the automobile bus of the defendant-appellant, and that said automobile bus was being negligently operated at a high and unlawful rate of speed, without due regard for the rights and safety of other persons using said highway, without having the said automobile bus in proper mechanical order, and without having the brakes on same in good, proper working order, and that said automobile bus was operated on its left or the westerly side of said highway, and that the negligence of the defendant-appellant was the sole cause of said collision.

The Court refused to non-suit the plaintiffs or to direct a verdict in favor of the defendant below, and the jury found in favor of each plaintiff below in the sum of Ten Thousand Dollars. Subsequently, rules were obtained by the defendant below with respect to the amount of damages, and the Court discharged the rule so far as the plaintiff, Josephine Raczak, administratrix ad prosequendum of Benjamin Kurzensky was concerned, and made the rules absolute as to the other plaintiffs unless said plaintiffs would consent to a reduction of the verdict to Seventy-five Hundred Dollars in each case. Subsequently, the plaintiff, Frank Parave, as administrator ad prosequendum of Peter Parave, deceased and Joseph Parave, deceased, filed with the New

Jersey Supreme Court a consent to accept the reduced verdicts.

From the judgment entered on said verdicts the defendant below has appealed.

The defendant-appellant, in its grounds of appeal alleges that the judgment heretofore rendered in these causes should be reversed for the reasons that the Court refused to non-suit the plaintiff and also refused to direct a verdict in favor of the defendant at the close of the case. Defendant further alleges in its grounds of appeal that the Court should have non-suited the plaintiff because of the fact that there was no proof of any negligence nor of any facts which give rise to immediate inferences of negligence which was the proximate cause of the injuries, and further that there was no proof that the decedents were in the automobile being operated in a southerly direction along the public highway known as Delsea Drive, in the Township of Franklin, Gloucester County, New Jersey, and on the further ground that there was no proof that an accident took place as a result of negligence which was the proximate cause or the fault of the defendant, in which accident the said decedents met their deaths, and also that there was no proof that the automobile was being operated in a southerly direction along said highway and had a collision with defendant's bus.

The grounds of appeal further set forth that the Court erred in refusing to direct a verdict in favor of the defendant at the close of the case for the reason that there was no proof of any negligence on the part of the defendant; that the decedents were guilty of contributory negligence and further that there is no proof of any negligence which was the proximate cause of said accident, chargeable to the defendant below.

The plaintiffs-appellees contend that the grounds of appeal are entirely without merit.

It is our intention to deal with the questions involved as we understand them, in the following order:

Do the proofs show:

A. That the automobile in which the plaintiffs' decedents were occupants was being driven in a southerly direction along the Delsea Drive?

B. That all of the decedents were occupants in said automobile?

C. That a collision occurred between the automobile in which plaintiffs' decedents were passengers and the automobile bus of defendant?

D. That the collision was caused by the negligence of the defendant?

E. That plaintiffs' decedents were guilty of contributory negligence?

A. Do the Proofs Show That the Automobile In which the Plaintiffs' Decedents were occupants was being driven in a southerly direction along the Delsea Drive?

B. Do the Proofs Show that all of the Decedents were occupants in said automobile?

Arthur Merini, a witness produced by the plaintiffs in the court below, testified that he was proceeding in a southerly direction on the night of the collision along the road leading from Philadelphia to Vineland, known as the Delsea Drive, and saw approaching him, in the opposite direction, a bus, Page 151 of the State of Case:

Q. Well, now, you say you saw a bus? A. Yes.

Q. Now, was that bus—Where was that bus? A. It was on the road coming from Vineland.

Q. Was it coming toward you or going the other direction? A. I say it was right in the middle of the road, I see.

Q. Was it coming toward you? A. No, he is coming from Vineland; he is going to Philly.

Q. You were going to Vineland? A. Going to Vineland.

Q. You say you saw this bus? A. Yes.

Q. Now at that time do you know whether there was any car or cars in back of you?

Mr. Sorenson: I object.

A. Just one.

Mr. Sorenson: I think the man ought to testify as to what he saw; I think the witness might be asked what he saw.

Mr. Avis: I will ask him what he saw. I will withdraw it.

Q. After you saw this bus, won't you tell this Court and jury just what you saw and just what happened? A. I saw one car in the back, and as soon as the bus he passed me, I saw the bus go through in the field and I don't see no more, the car wasn't in back with lights.

Q. You say there were lights? A. Yes.

Q. Was that from the car in back of you? A. Yes.

Mr. Sorenson: I object to that; that is leading.

Mr. Avis: No, he said that.

Mr. Sorenson: No, let the witness say it.

Q. How do you know there was a car in back of you? A. Because he came through in my looking glass.

Q. Was it light or dark? A. It was light, the two lights he hit me on the looking glass.

Q. Two lights were on the looking glass? A. Yes."

This witness further testified on page 153, as follows:

"Q. You were driving down which side of the road?

A. It was on the right side.

Q. How did you know there was a car in back of you? A. I saw it through the looking glass in my car.

Q. And do you know whether or not that car stayed in back of you? After the bus went by? A. The car was right in the back, he hit my looking glass, and then the bus is going, see. I see all then and the bus and the other light I didn't see no more. They go right in the field.

Q. Now, won't you tell us what you saw in the field? A. I don't see nothing no more. I see just the little light and the bus was right in the field, that is all."

This witness further testified, on page 161, that he heard a noise or a crash after the automobile bus had passed him.

This witness further testified that he recognized a barn at about the same time that the bus passed him on the evening of the collision, and that since that time

he has seen the building again and definitely locates it at the southerly side of Delsea Drive from the intersection with the Williamstown Road, which all of the witness agree is the place where the collision between the automobile and the bus of the defendant-appellant occurred, pages 184 and 185.

It is our contention that this witness has definitely testified to the fact that there was immediately back of his car an automobile which was proceeding in the same direction, in view of the fact that the two lights showed in his windshield or mirror.

It is to be remembered from the testimony of this witness, the facts appear that there was an automobile immediately in back of him on the right side of Delsea Drive, and that the witness was proceeding in a southerly direction, that the bus went by, he heard a crash and the lights of the car in back of him disappeared and he saw the two rear lights of the bus going into the field.

The next question involved as we understand it is whether the automobile which Mr. Merini testified was in back of him on the Delsea Drive is the automobile in the collision and whether the decedents were occupants therein.

The testimony of Mary Parave, page 137, shows that the two decedents, Peter Parave and Joseph Parave, left home in company of each other. The testimony of the witness, Josephine Raczak, pages 224 and 225, shows that the two Parave boys and Benjamin Kurzensky went away together the night of the collision in a small machine for three people.

The witness, Earl Mulholland, on page 246, testified that his machine was in collision with a Ford automobile and also, page 249, that he saw the three passengers that were in the Ford, and that they were about thirty feet from the car which was in the collision with his bus. The place of the collision was fixed by this witness, the driver of the bus of defendant-appellant, and is the same place fixed by the witness, Merini.

Mrs. Cresci, a witness produced for the plaintiff, testified, on page 93, that she was requested to take two of the persons found to Vineland, and that, subse-

quently, another automobile came along and took two of the persons in that car.

Trooper Maliff testified, page 208, that in the Newcomb Hospital, in Vineland, New Jersey, he saw the three decedents and that at that time two of the decedents had already died.

The testimony of Frank Parave, page 61 and 62, is to the effect that he went to the Newcomb Hospital, in Vineland, and there saw his two sons, the decedents, Peter and Joseph Parave, that one was already dead, and that the other boy subsequently died. He testified that he went to the hospital around nine o'clock, and the testimony of the other witnesses place the time of the occurrence of the accident at about eighty twenty-five p.m.

It is to be noted that counsel for the defendant-appellant, on page 138, agreed that the boys had died.

The witness, Harlan North, page 259, testified that he saw three boys who had been hurt, at the scene of the accident, and that they laid between the Ford and the bus.

Norman Wigglesworth, page 267, testified that he saw three young men at the scene of the accident.

Counsel for the defendant-appellant, in his brief, page 7, states that the boys were taken to the hospital.

We contend that where the testimony discloses that the three decedents started from home in a small car; there was a collision between a small automobile and the bus of the defendant-appellant; and that three persons are found within twenty-five or thirty feet of said small automobile; are taken to a hospital and died, and the testimony discloses that these three persons, so dying, are the same persons who started out in said small car, that the only inference to be drawn therefrom is that the decedents were occupants of said car.

It is to be noted that in the answer filed by the defendant below and incorporated in the first, second and third defenses, that the defendant did not directly deny that any of the decedents were occupants in said automobile, but alleged that each decedent contributed to the accident by his own negligence.

C. Do the Proofs Show that a Collision Occurred Between the Automobile in which plaintiffs' decedents were passengers and the automobile bus of defendant?

It is alleged by the defendant-appellant, that there is no proof that the automobile in which decedents were occupants was in a collision with the automobile bus of the defendant-appellant.

The testimony in the case of the plaintiffs below showed that a collision had taken place between a Ford automobile and the automobile bus. There was direct testimony to this fact from the witness Earl Mulholland, page 238.

There was also the testimony of the witness, Merini, page 151, which is to the effect that after the bus went by he heard a crash and, page 152, after the bus had passed him the lights of the car in back of him disappeared. Plaintiffs' proofs also showed that the Ford automobile was near a tree or against a tree on the Westerly side of the highway and was damaged. Surely, from these facts, the only legitimate inference which could be reached, is that there had been a collision between the Ford automobile and the automobile bus. As a matter of fact, after the motion for a non-suit was made and denied, the defendant below produced Earl Mulholland, the operator of the said automobile bus, who testified that upon the night in question, the automobile bus and the Ford car were in collision, pages 243 and 244. If, however, the plaintiffs' proofs did not prove that a collision had occurred between the automobile bus and the Ford automobile and such proof appeared in the defendant's case in the trial below, the refusal of the Court to non-suit would not justify a reversal. In other words, if there was a defect in plaintiffs' proof and such defect was supplied by evidence thereafter taken during the progress of the cause, the failure to non-suit would not justify a reversal. *Maudsley vs. Richardson & Boynton Co.* (N. J. Err. & App.) 101 N. J. L. 561.

D. Do the proofs show That the Collision was Caused by the negligence of the defendant?

It is alleged by the defendant-appellant, that there is no proof of negligence on the part of the defendant, and that to infer negligence, it was necessary for the jury to base an inference upon an inference, or to take inferences from inferences.

We allege that this is not so.

In the first place, the witness, Arthur Merini, testified that upon the night of the collision, he was driving in a southerly direction along Delsea Drive, at a point which he afterwards designated as the intersection of the Williamstown Road and the Delsea Drive, and that in back of him was an automobile, page 152, that after the bus passed him, he saw the bus go into the field, and the car in back of him "the lights was there no more." He also testified that the car was right in the back and after the bus passed him he did not see the other lights any more, page 154. He again testified that he knew there was an automobile in back of him, page 159. He also testified, page 160, that there was no car coming out of the Williamstown Road, and that when he was one hundred ten feet from the intersection he heard a noise or crash, page 161. He also testified, page 184, that the car in back of him was on the right or westerly side of the highway. The testimony of this witness is direct to the fact that there was in back of him on the right side of the Delsea Drive an automobile; that a bus went by him, proceeding in a Northerly direction and that shortly afterwards he heard a crash; that the lights of the car in back of him disappeared, and that the bus proceeded into the field.

The position of the bus has been fixed upon the map offered in evidence and by other witnesses as being on the westerly side of the highway and some distance from the highway itself. The witness, J. Owen Carter, testified, page 124, that it was approximately one hundred feet from the intersection of the centre lines of the Williamstown Road and the Delsea Drive to the nearest point where the brush was broken off or bent

over, and one hundred twenty-six feet to the furthest point where the brush was bent off or broken over.

Trooper Maliff testified, page 207, that the bus of the defendant-appellant was in the field and was thirty-nine paces from the intersection of these two roadways, and that this distance was to the rear of the bus, which was the closest portion to the highway, and that the bus was in the field on the left side of the highway, proceeding north.

The witness, John B. Di Ppolito, 3rd., page 121, testified that the bus was on the Westerly side of the highway about forty or fifty feet, maybe more, in some sort of woods.

Frank Newcomb, pages 99 and 100, testified as to the position of the bus after the accident and located it on the map at a point adjacent to the portion marked on the map "Area broken off and bent over."

A witness, Frank De Castro, testified, page 108, that immediately after the accident the bus of the defendant-appellant was in the position where the small trees were pushed down, and further, that adjacent to the bus the trees were pushed down and the ground torn up.

The witness, Corval Richmond, page 223, testified that it was one hundred forty-three feet seven inches to the furthest point to the intersection where the brush was broken off and bent over.

The witness, J. Owen Carter, testified, pages 124 and 125, that the nearest portion of the area which was broken off or bent over from the edge of the gravel shoulder of the Delsea Drive was thirty-six feet, and that the furthest of the broken off or bent over area from the edge of the Delsea Drive, the nearest point, was fifty-seven feet.

The testimony of Corval Richmond, page 219, is to the effect that upon the Delsea Drive, on the Westerly side, which would be the right side, proceeding in a southerly direction, was a mark in the concrete, an indentation about two feet in length and three-quarters of an inch in width, which said mark was six feet and ten inches to the right or westerly of the centre line of the Delsea Drive, and he marked on the map the

place where this mark appeared in the concrete. This mark is further shown in photograph, Exhibit P-8.

The appearance of the Ford car itself as appears from plaintiffs' exhibits, p. 4, p. 5 and p. 6 and defendant's exhibit D-5 indicates that there was a terrific impact or collision. The fact that the bus of the defendant in the court below was located at least one hundred feet and possibly one hundred forty-six feet from the intersection, and at least forty to fifty-seven feet from the Westerly side of Delsea Drive, also indicates that the bus of the defendant was travelling at an excessive rate of speed.

We contend that from these facts alone the jury could have found that the bus was travelling at an excessive rate of speed and such inference could legitimately be drawn from said facts. It is to be remembered that the testimony of Harlan North, a witness produced by the defendant in the Court below, shows, page 255, that he was five-tenths or one-half a mile from the Williamstown Road on the Delsea Drive, and that, page 256, from that distance, he heard the crash, and that it was a big crash, page 258.

The testimony of Earl Johnson, page 260, also shows that from one-quarter to one-half a mile away, he heard the crash.

Norman Wigglesworth testified that he too was one-half mile away and heard the crash. The jury had a right to infer from these facts, that is from the distance the bus was off the road, from the distance same was from the intersection of the two highways, from the mark in the road, from the position of the Ford car, and from the noise and force of the impact, that the bus of the defendant in the court below was travelling at an excessive rate of speed.

Healey, et al, vs. Braested (N. J. Err. & App.) 120 Atl. 12. In this case cited the Court said "the testimony tended to show that at the time of the collision, the motorcycle had reached a point a little beyond the centre line of Webster Avenue, and also on the right hand side of Griffith Street, going at a speed of eight or nine miles an hour, and had been just changed from second speed to first speed when it was run into at the rear

wheel by the defendant's automobile with such force that the motorcycle was thrown over to a fence alongside of a grocery store on Griffith Street, West of Webster Avenue, and that the automobile proceeded along Webster Avenue beyond Griffith Street, a distance past seven houses before it was stopped. Although there was no direct testimony of the speed of the automobile, nevertheless the jury would have been warranted in finding from the force of the impact with the motorcycle and the distance the automobile proceeded thereafter before it was stopped that the latter was being driven at an excessive rate of speed."

Purcell vs. Pollock (N. J. Err. & App.) 105 N. J. L. 221. In the case herein cited, an appeal was taken to this court, alleging that the Court erred in denying a motion for a non-suit and also in failing to direct a verdict in favor of the defendant.

The facts in the case were that the plaintiffs, at an intersection failed to see the approach of the defendant's car and testified that something like a cloud came rushing up and crashed into the Ford and turned it around, and that the crash was terrific and testified to the damage to the automobile. The Court, page 224, said "Defendant urges that plaintiffs did not prove any negligent acts or conduct of the defendant because they could tell nothing as to what occurred just preceding the collision. This, however, ignores the legitimate inferences to be drawn from plaintiffs' proof, if believed by the jury, of the sudden rush of the Buick car, and the almost immediate crash, and the results of the collision to the respective cars as well as the position in which they were found, when they came to a stop. It is plain that the speed and momentum of one or both of these cars caused the accident and it was clearly within the province of the jury to decide upon the truth of the facts under this conflict of testimony and to draw proper inferences therefrom."

The bodies of the three decedents were found on the left side of the highway proceeding northwardly, the direction in which the bus of the defendant in the court below was being operated and some distance from the westerly edge of the highway. This is testified to

by Frank DeCastro, pages 104 and 105. Harlan North, page 259, testified that the decedents were on the left side of the highway and about twenty to twenty-five feet from the gravel shoulder. Earl Johnson, pages 261 and 262, testified that the decedents were on the westerly side of the highway, the distance therefrom, he couldn't say.

The witness, Frank DeCastro, testified, pages 109, 110 and 111 that the parts of battery and clothing and other debris were on the right hand side of the car going into the wood, which would be on the westerly side of the highway, and that the only part of the car on the other side of the highway was the rim of a wheel.

The witness, William Waterman, pages 193 and 194, testified that the spokes and glass from the Ford car were on the west side of the highway, and that there was no debris on the other or easterly side of the highway.

The witness, John Spatafore, testified, page 82, that the tires, parts of battery and glass from the Ford were on the Westerly side of the highway, and that the debris was found on the right side, facing south going back to the maple tree in a straight line. The testimony as to the position of the debris or broken parts of said automobile is a fact which the jury may take into consideration and from which, we contend, the inference could be drawn that the bus collided with the Ford on the right side of the highway, and that is on the right side of Delsea Drive, going South.

The witness, Frank De Castro, page 113, testified that after the accident occurred, he traced the marks of the bus in the highway and they led from the right or easterly side of the highway, proceeding north over to the centre of the highway and across to the left or westerly side thereof, and that it continued on to where the bus stopped, and that it was a gradual turn to the left and not a sudden twist, page 116. This witness further testified, page 119, that at the intersection of said highways the marks showed the bus to have been on the left side going north, that is on the Westerly side of Delsea Drive.

We contend that the plaintiffs in the Court below have proved that the Ford automobile was proceeding southerly along the Delsea Drive; that all of the decedents were occupants therein; that a collision occurred with the automobile bus of the defendant in the court below and that said collision was caused solely by the negligent operation of defendant's bus. The proofs further show that the collision occurred because of the fact that the defendant in the court below negligently operated said automobile bus at a high and unlawful rate of speed and into the automobile of which decedents were occupants, on the westerly side of said highway, that is that the automobile bus was operated on the wrong side of the highway and into and against the automobile in which decedents were occupants. For the jury to find from the testimony that there was negligence on the part of the defendant in the court below which was the proximate cause of the collision it is not necessary for the jury to draw inferences from inferences, but they could find negligence from the facts proved in plaintiffs' case in the court below. These facts, among others, consisted of the testimony that the automobile was directly in back of the witness Merini and was on the right side of the highway; the testimony that all of the debris and parts of the Ford were on the westerly side of the highway; that the Ford itself was on the westerly side of the highway; that the automobile bus was on the westerly side of the highway in a field and some distance from the highway; that the course taken by the bus was from the right or easterly side of the highway to the left or westerly side thereof and from thence into the field; that the mark on the concrete was on the left or westerly side of the highway; that the bodies of the decedents were all found on the left or westerly side of the highway some distance therefrom. All these facts taken with all other facts in the testimony show that the collision occurred through the negligence of the defendant company.

The cases cited in the Brief of the defendant-appellant do not apply to the case at bar. There is no question but that the principle laid down in the cases cited

have no application here, for in the cases cited in the defendant-appellant's proof, the facts shown create purely an inference that there had been a collision, or accident, while in the case at bar there were facts proved which show that defendant-appellant was negligent or certainly facts proved from which an immediate inference of negligence could be drawn by the jury.

In the case of *Podolsky vs. Sautter*, (N. J. Err. & App.) 102 N. J. L. 598, the Court said, page 600, "Before the judge can take away from a jury the question whether or not the negligence of the defendant is the proximate cause of the injury and determine that question himself the facts must, not only be undisputed, but the inferences to be drawn from those facts must be such that fair-minded men ought not to differ about them."

See also *Aeur vs. Sinclair Refining Company*, (N. J. Err. & App.) 103 N. J. L. 372. In this latter case the Court said "But the evidence tended to show negligence upon his part in respect to the speed and control of the car. And when, as here, negligence may reasonably and legitimately be inferred from the evidence, it is for the jury to say whether from such evidence, negligence ought to be inferred."

Newark Passenger Railway Company vs. Black 55 N. J. L. 606.

In the case of *Burruano vs. Public Service Interstate Transportation Company*, 144 Atl. 585, the Court held that the fact that a wheel or tire of a bus picked up a stone and hurled same with such force so as to go through a plate glass window, that same led to the inference that the bus must have been propelled at a high rate of speed.

Work vs. Philadelphia Supply Company, (N. J. Err. & App.) 95 N. J. L. 193, in this case a question arose as to whether the plaintiff had proved negligence. The Court said, page 195, "So, on the point of the defendant's negligence all the trial Court had to decide was whether negligence of the defendant may be reasonably inferred. It was open to the jury then to say, whether from the facts in proof, negligence ought to be inferred."

Ceslak vs. Krause. (N. J. Err. & App.) 156 Atl. 161.

In this last cited case, an appeal was taken from the ruling of the Court below in failing to grant a non-suit and in also failing to direct a verdict on the ground that there was not sufficient proof to justify the jury in finding that defendant's automobile came in contact with plaintiff. In this case the testimony was that the plaintiff was walking southerly along the sidewalk and was crossing a street, and that he looked in both directions, saw no automobile or lights, heard no horn, and had passed about half-way across the street when he was run into and knocked down by an automobile. Several persons testified the tire marks led from the place where the plaintiff was lying in the roadway to the Krause garage. The defendant admitted that he had driven along this place at about the time the collision occurred. The Court held under the proved facts and circumstances that the jury was warranted in finding the plaintiff had been struck by an automobile of the defendant, negligently operated, and that the question was for the jury.

E. Do the Proofs Show that plaintiffs' decedents were guilty of contributory negligence?

There is no testimony in plaintiff's case in the court below which would show that decedents, or any of them, were guilty of contributory negligence. If the testimony of the defendant witness, Mulholland, were to be believed there would still be a disputed question as to whether decedents, or any of them, were guilty of contributory negligence, which would be for the jury.

We respectfully submit that there was no error in the refusal of the Court in the trial below to non-suit the plaintiffs or in the Court's failure to direct a verdict following the close of the case, and that the judgments entered in the court below should be affirmed.

Respectfully submitted:

AVIS & AVIS,
Attorneys for Plaintiffs-Appellees.

James B. Avis,
of Counsel.

INDEX

	Page
Complaint	1
Answer	3
Reply	7
Sequestration	8
Process	10
Judgment	11
Notice of Appeal	12
Grounds of Appeal	14
Testimony	17
Motions for New Trial	18, 118
Motions	21

Witnesses for Plaintiff

Matthias L. Hoffman	
Direct	21
Cross	22
Re-direct	29
Edward A. Moran	
Direct	30
Cross	32
Re-direct	38
Re-cross	39
Recalled—Cross	39
Edward J. Farrell	
Direct	39
Recalled—Direct	119
John Massey	
Direct	41
Cross	45
Robert Rohlfes	
Direct	50

In this last cited case, an appeal was taken from the ruling of the Court below in failing to grant a non-suit and in also failing to direct a verdict on the ground that there was not sufficient proof to justify the jury in finding that defendant's automobile came in contact with plaintiff. In taking the testimony was that the plaintiff was walking southerly along the sidewalk and was crossing a street, and that he looked in both directions, saw no automobile or lights, heard no horn, and had passed almost half-way across the street when he was run into and knocked down by an automobile. Several persons testified the tire marks led from the place where the plaintiff was lying in the roadway to the Kroger garage. The defendant admitted that he had driven away this place at about the time the collision occurred. The Court held under the proved facts and circumstances that the jury was warranted in finding the plaintiff had been struck by an automobile of the defendant negligently operated, and that the question was for the jury.

E. Do the Facts Show that plaintiffs' decedents were guilty of contributory negligence?

There is no testimony in plaintiff's case in the court below which would show that decedents, or any of them, were guilty of contributory negligence. If the testimony of the defendant witness, Mulholland, were to be believed there would still be a disputed question as to whether decedents, or any of them, were guilty of contributory negligence, which would be for the jury.

We respectfully submit that there was no error in the refusal of the Court in the trial below to non-suit the plaintiffs or in the Court's failure to direct a verdict following the close of the case, and that the judgments entered in the court below should be affirmed.

Respectfully submitted:

AVIS & AVIS

Attorneys for Plaintiffs-Appellants

James B. Avis
of Counsel