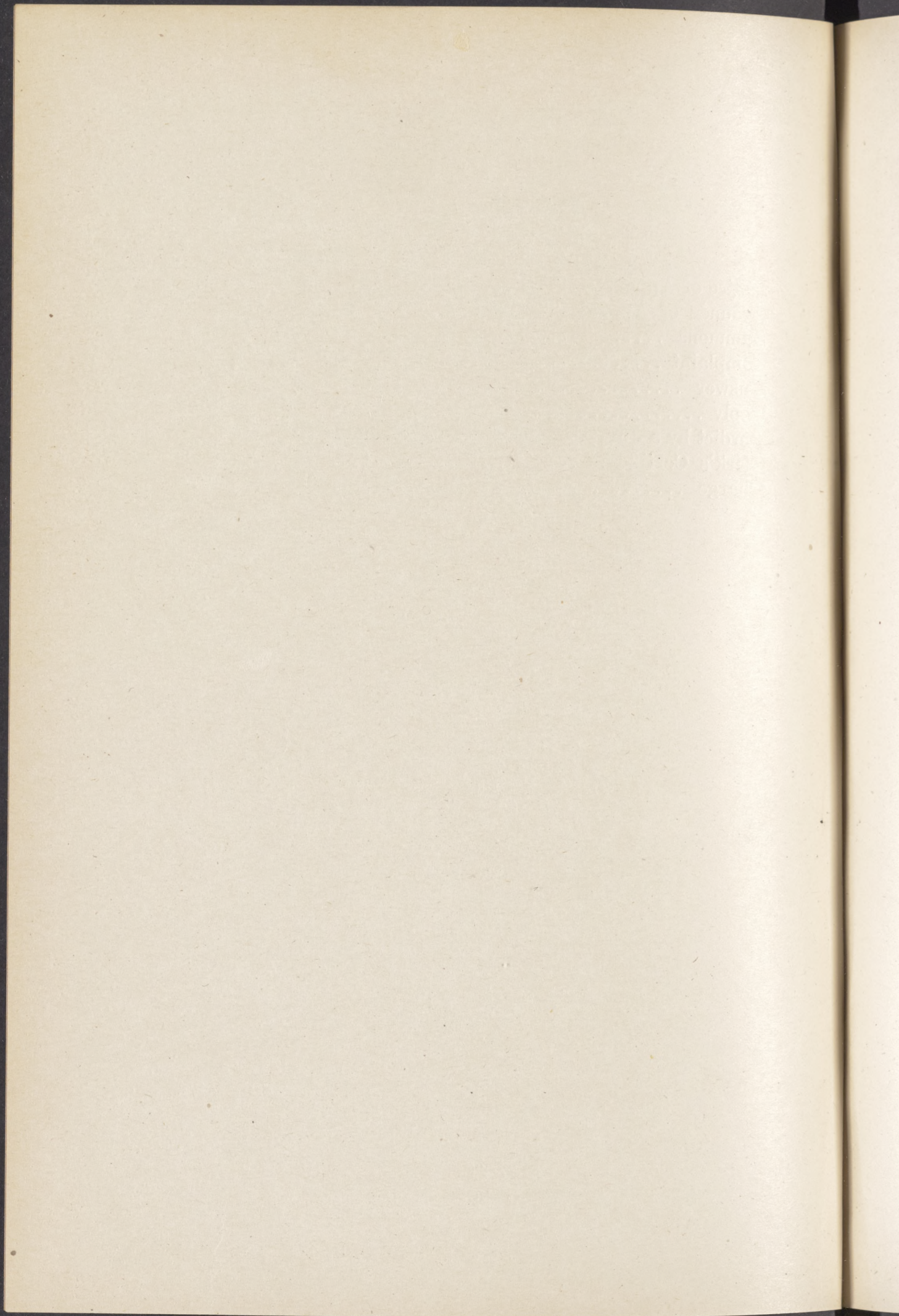


INDEX

	Page
Notice of Appeal	1
Grounds of Appeal	2
Summons	4
Complaint	5
Answer	8
Reply	9
Verdict by a Jury, Judgment for Defendants	10
Clerk's Certificate	11
Charge	11



New Jersey Court of Errors and Appeals

Notice of Appeal

ESSEX COUNTY CIRCUIT COURT

HYMAN KARNITSKY,

Plaintiff,

vs.

MORRIS MACHANIC and SYDNEY
PROSS,

Defendants.

30

To John W. McGeehan, Esq., Attorney of Defendants:

Sir:

Take notice that the plaintiff appeals to the Court of Errors and Appeals of the State of New Jersey, from the whole of the judgment entered in this cause, and that he will, within the time required by law, file and serve upon you his grounds of appeal in said cause, as required by the rules and statutes in such case made and provided. 40

BENJAMIN M. WEINBERG,
Attorney of Plaintiff.

Dated, June 19, 1919.

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Grounds of AppealNEW JERSEY COURT OF ERRORS AND
APPEALS

	HYMAN KARNITSKY, Plaintiffs-Appellants,	} Action At Law.
	vs.	
20	MORRIS MACHANIC and SYDNEY PROSS, Defendants-Appellees.	

To John W. McGeehan, Attorney of Defendants:

Sir:

Take notice that the above appellant, Hyman Karnitsky, hereby sets down his grounds of appeal in the above stated cause as follows:

30 1. Because the Court refused to charge plaintiff's first request, when duly requested so to do to wit:

"It was not negligence *per se* for the plaintiff to ride upon the step of the bus, if you believe he did so, if he was there with the express or implied consent of the defendant."

40 2. Because the Court refused to charge plaintiff's second request, when duly requested so to do to wit:

"The defendants having undertaken to carry for hire, all persons who applied for passage, are common carriers of passengers, and as such, they owe to their passengers a high degree of care for their safety."

3. Because the Court refused to charge plaintiff's third request, when duly requested so to do to wit:

“If the plaintiff was obliged to leave the bus in order to permit other passengers to alight, it was the duty of the defendants' servant to use due care in the starting up of the bus, and if the plaintiff was thrown from the same, by the negligence of the defendants' servant while he was in the act of reentering the bus, the defendants are guilty of negligence.” 20

4. Because the Court refused to charge plaintiff's fourth request, when duly requested so to do to wit:

“The burden of proving contributory negligence on the part of the plaintiff is cast upon the defendants.” 30

5. Because the Court after reading from his notes charged the jury as follows:

“From all of this testimony, it is for you to say whether this defendant was negligent.”

Respectfully yours,
BENJAMIN M. WEINBERG,
Attorney of Plaintiff-Appellant.

10

Summons

State of New Jersey.

To: MORRIS MACHANIC and SYDNEY PROSS,
 You are summoned to answer the annexed complaint of Hyman Karnitsky, in an action at Law, in the Essex County Circuit Court. AND TAKE

(L. S.)

20 NOTICE that unless you file your answer to said complaint with the Clerk of the Essex County Circuit Court, at Newark, within twenty days after service upon you of this writ and the annexed Complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, FREDERIC ADAMS, Esq., Judge of the Essex County Circuit Court, at Newark, this twenty-eighth day of January, Nineteen hundred and nineteen.

30

JOHN H. SCOTT,
 Clerk.

Benjamin M. Weinberg,
 Attorney.

Complaint

ESSEX COUNTY CIRCUIT COURT

HYMAN KARNITSKY, <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">vs.</div> MORRIS MACHANIC and SYDNEY PROSS, <div style="text-align: right;">Defendants.</div>	}	Action at Law.	20
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Hyman Karnitsky residing at No. 7 Marie Place, in the City of Newark, County of Essex, New Jersey, says:

1. For some time prior to and on October 14th, 1919 the said defendants were the owners of and had the management and control of a certain bus-motor, commonly called a "jitney."

30

2. At all times herein mentioned the said defendants were engaged in the business of carrying passengers for hire in said jitney-bus, along through Elizabeth Avenue, Broad Street and other public streets in the City of Newark aforesaid, to various points and places on said streets.

3. On October 14th, 1918, the said plaintiff boarded the said jitney-bus of the said defendants on said Elizabeth Avenue and then and there became and was a passenger to be carried by the said defendants to the Central Railroad Depot on said Broad Street, aforesaid.

40

4. That said jitney-bus was permitted, by the servant and agent of the said defendants in charge of said jitney-bus, to be and become overloaded

and crowded with passengers, so that it was necessary for one or more of them to leave said jitney-bus in order to permit other passengers, who intended to alight therefrom, to leave the same.

5. That when the said jitney-bus reached the corner of Broad and Green Streets in the said City of Newark, he, the said plaintiff, was requested by the said servant of the said jitney-bus, to leave or step down from the same, so as to permit other passengers, who were in the rear of said bus, to leave the same.

6. That pursuant to the said request of the said servant of the said defendants as aforesaid, he did alight from said bus, in order to permit other passengers to leave the same, after which he, the said plaintiff, started to re-enter the said bus before the same had again started.

7. That while he was in the act of entering said jitney-bus, the servant of the said defendants in charge of it, as aforesaid, carelessly, recklessly and negligently and without warning to the said plaintiff, suddenly started and propelled the said jitney-bus forward, thereby dragging the said plaintiff along the ground and throwing him with great force and violence upon the same.

8. That by reason of the said negligence of the servant of the said defendants, stated as aforesaid, the said plaintiff received severe and permanent injuries in and about his body, to wit; having his ribs broken, his lungs fractured, his head and face cut, his nose broken and his head and body otherwise seriously and permanently injured. And also then and there sustaining serious and permanent injury to his nervous system.

Complaint

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9. That by reason of the above mentioned injuries so received by him as aforesaid, he suffered and under-went, and in the future will suffer and undergo, great pain and anguish of both body and mind. And he has been hindered and prevented and in the future will be hindered and prevented from transacting and attending to his necessary and lawful affairs by him to be performed and transacted; and he, the said plaintiff, has been obliged to lay out and expend, and in the future will be obliged to lay out and expend large sums of money endeavoring to be cured of his injuries so received by him as aforesaid. And he, the said plaintiff, has otherwise suffered and sustained great loss, damage and injury by and from the said negligence of the said defendants. 20

Plaintiff, demands damages against the said defendants in the sum of Fifteen Thousand dollars (\$15,000.00).

BENJAMIN M. WEINBERG,
Attorney of Plaintiff. 30

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Answer

ESSEX COUNTY CIRCUIT COURT

20	HYMAN KARNITSKY, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 5px 0;">vs.</div> MORRIS MACHANIC and SYDNEY PROSS, <div style="text-align: right; padding-right: 20px;">Defendants.</div>	}	Action at Law.
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THE ANSWER OF THE DEFENDANTS, MORRIS MACHANIC and SYDNEY PROSS.

The Defendants, answering the Complaint filed by the Plaintiff in the above entitled cause, say:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
- 30 3. Paragraph 3 is admitted, except that portion thereof which states that the Plainiff "was a passenger to be carried by the said defendants to the Central Railroad Depot on said Broad Street aforesaid," which is denied.
4. Paragraph 4 is denied.
5. Paragraph 5 is denied.
6. Paragraph 6 is denied.
7. Paragraph 7 is denied.
- 8 Paragraph 8 is denied.
- 40 9. Paragraph 9 is denied.
10. Plaintiff was guilty of contributory negligence in that he so carelessly, negligently, and improperly conducted himself that he contributed by his said negligence to the happening of said accident.

JOHN M. MCGEEHAN, JR.,
Attorney of Defendants.

Reply

ESSEX COUNTY CIRCUIT COURT

HYMAN KARNITSKY, <div style="text-align: right;">Plaintiff,</div> <div style="text-align: center;">vs.</div> MORRIS MACHANIC and SYDNEY PROSS, <div style="text-align: right;">Defendants.</div>	}	Action at Law.	20
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The plaintiff replies to the answer of the defendants filed herein and says:

1. He denies that he was guilty of any contributory negligence, as alleged by the said defendants in paragraph 10 of their said answer filed herein.

NOTICE

The plaintiff hereby gives Notice that upon the trial of the within cause he will move, to strike out paragraph 10 of the answer filed by the defendants, on the ground that the defense intended to be therein and thereby set up, is insufficient and improper in that it fails to set forth any facts upon which the defense of contributory negligence can be predicated.

BENJAMIN M. WEINBERG,
Attorney of Plaintiff. 40

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**Verdict by a Jury, Judgment for
Defendants**

ESSEX COUNTY CIRCUIT COURT

29019.

20	HYMAN KARNITSKY, <div style="text-align: center;">vs.</div> MORRIS MACHANIC and SYDNEY PROSS,	Plaintiff, Defendants.	}	Action at Law. Costs \$47.79.
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John W. McGeehan, Attorney of Defendants.

This action was tried before Judge Nelson Y. Dungan with a jury at the Essex County Circuit Court on May 27th, 1919.

30 The cause having been heard and submitted to the jury they return their verdict as follows:

They find in favor of the Defendants, Morris Machanic and Sydney Pross and against the Plaintiff, Hyman Karnitsky.

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and the defendants recover of the plaintiff costs, which are taxed at the sum of forty-seven dollars and seventy-nine cents.

40 Judgment entered and signed May 27th, 1919,
Book 95, Page 209.

Clerk's Certificate

ESSEX COUNTY CLERK'S OFFICE

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

I, John H. Scott, Clerk of the Circuit Court, in and for the County of Essex in the State of New Jersey.

Do HEREBY CERTIFY that the foregoing is a true and correct copy of all the records and proceedings together with the judgment record in the case of Hyman Karnitsky vs. Morris Machanic and Sidney Pross and the same is taken from and compared with original records on file in my office and as the same now remains on the files of said office. 20

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of said Court and County at Newark, N. J., this 24th day of July, A. D., 1919. 30

(L. S.)

JOHN H. SCOTT,
Clerk.

Charge

DUNGAN, J.

Gentlemen of the jury. The defendants in this case, Morris Machanic and Sydney Pross, owned a jitney bus, which, on the day this accident occurred, October 14, 1918, was operated for them between Elizabeth and Newark by William Brown, who at the time of the accident, was driving the bus as chauffeur of the defendants. Therefore, if 40

you find that William Brown, the driver of the bus, was negligent, his employers, who are the defendants in this case, are responsible for the results of his negligence.

It appears that on the night in question the plaintiff rode in defendants' jitney bus from Hawthorne and Elizabeth Avenues to a point near the City Hall, where he received the injury, as he claims, as the result of the negligent operation of the bus.

It seems almost unnecessary to say to an intelligent jury that the mere fact that the plaintiff received the injury would not alone entitle him to your verdict. Before he is entitled to your verdict, it must appear, and by the greater weight of the evidence in the case, that the motor bus was negligently operated and that because of that negligent operation he received the injury of which he complains, and that fact must be shown by a preponderance of the evidence in the case.

You are, in weighing the evidence, to regard your minds as a scales, evenly balanced. On one side of the scales you should place that evidence indicating to your mind that there was negligence on the part of the driver of the bus; on the other you should place that evidence that he was not negligent. Before the plaintiff is entitled to your verdict the weight of the evidence in the scales must bear that side down indicating that there was negligence. If the evidence bears down the other side of the scales, then, of course, the defendant would be entitled to your verdict. But, to go a step farther, if the scales still maintain their balance when all the evidence on both sides is placed in them, then the defendant is entitled to

your verdict. That illustrates what is meant by the preponderance of the evidence, that the scale on the side where you have placed the testimony of negligence must weigh down heavier than the other side.

According to the story of the plaintiff, corroborated in part by his Witness Krabalsky, he left his home, which was near the corner of Elizabeth and Hawthorne Avenues about 1:30 o'clock in the morning. It seems he worked in Delaware, that he came home Saturday and went back, leaving with a train very early Monday morning. He says he got on this bus at that point and had with him a suitcase, which he put inside and next to the right hand of the chauffeur. He says he could not get into the inside of the bus, that is, not back in the bus, because there was no place, and that there were many people standing. He says there were fifteen people standing. The driver of the bus says that six people can stand in one row and if there were fifteen people standing in addition to those who were seated that may indicate to you the crowded condition of the bus; and he says he stood right in the doorway; that at Elizabeth and Clinton Avenues the bus stopped, and in order to permit some people to alight he got off the bus and two or three people alighted and two people got on ahead of him. According to the testimony of Krabalsky, he was one of them. He then got on again and stood in substantially the same position. He says, "I went inside and stood in the same place as before, near the door." It appears that this step, this portion of the car which has been called a step is not an outside step, but is a step that is entirely within the car and

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Charge

from which a person entering or alighting stepped up on the main platform of the car, and still it was down nearer the street level and was near the door, which was opened. He says that the bus continued to the City Hall, and that as some people desired to alight there, he, with two others, again got off, one of them being Grabalsky, and one other person, and then as he endeavored to get
20 on the bus again, he said when he had one foot on the step and his right hand on the handle, with his left foot inside of the jitney, the jitney was started suddenly, with a sudden jerk, and he fell and become entangled in something and was dragged and received the injuries of which he complains.

If this be the correct version of what occurred, you will be justified in finding that the driver of the bus was negligent. If he had permitted so many people to get on that bus that in order to
30 permit a passenger to alight it was necessary for some of them to get off the bus, it was his duty to keep that bus at a stand still until those who had alighted for that purpose had an opportunity to get safely back into the bus before it started. And particularly so if they had alighted at his invitation, as indicated by the testimony of Grabalsky. Grabalsky says, you will recall, that the driver said, "Please go down and let the people pass." If he said that, there can be no question that the
40 driver knew of the presence of these persons upon the street and that their going down upon the street was not for the purpose of leaving the car permanently, but to leave people alight from the car and that they would go back on the car. Grabalsky says that he was one of those that got on at Clinton and Elizabeth Avenues. He said that three

got off. Two went away and he got back on, and the one man who got back on was Karnitsky, the plaintiff in this case. The next stop was City Hall. He says that there Karnitsky and another man and he went down and two men got off, and then a man, whose name he does not mention, stepped back, and then he stepped back, and Karnitsky started to get on and the driver started the machine and he fell down, and that where the bus stopped was near the middle of the City Hall. 20

However, the defendants' witnesses tell an entirely different story. Brown, the driver of the bus, says that there was some delay about the plaintiff getting on the bus, that he had to stop twice for him to get on, and that although he twice warned him to get inside of the bus and go further back into the bus, he insisted upon standing on the steps all the way to Green and Broad Streets. He denies that there was any stop made at Clinton and Elizabeth Avenues, and says that the first stop was at Green Street on Broad. He says that he did not stop at Franklin. He says that the first time he warned the plaintiff to get inside the car was at the railroad track and again warned him and said, "Please go to the rear of the car," which he says the plaintiff did not do. He also says that instead of this plaintiff falling after he had stopped to permit passengers to alight, that in the middle of the block he had received a signal to stop and started to slow down and that before he stopped the plaintiff had fallen down about twenty feet from the corner and five or six feet from the curb and that the step was in perfect condition. He says that the last time he saw him both his feet were on the steps; that he was pretty sure he was holding by his right hand 30 40

and facing front; that the first he knew of his having fallen was when someone called to him—a man called to him—and he felt a jar of the car and stopped immediately. He denied that the car was crowded; he says that all the seats were full; that his register showed fourteen people between Elizabeth and Newark; that thirteen people, which was the seating capacity of the bus, got on at Elizabeth; that he stopped at Hawthorne Avenue for the plaintiff to get on, which made fourteen people, and that the only man who was standing was this man. Mr. Reich, who came from Elizabeth on that bus, testifies to the same thing. He says that every seat was taken in the bus, but that no one was standing when they left Elizabeth; that the only stop they made between Elizabeth and Green and Broad Streets was the stop made at Hawthorne Avenue and Elizabeth Avenue, when the plaintiff boarded the bus, and was the only one who was standing, and that he stood up by the door all the way and on this step all the way from the time he boarded it until he fell. He says he saw him fall, that he went off all of a sudden—as he expressed it, “in the wink of an eye” and that there was no unusual motion of the bus prior to his falling. He says they did not stop at Franklin Street and the bus did not stop before he fell off and start again. Mr. Kredentz got on this bus at Elizabeth and says there was no one standing, that he remembers. He is not as positive as are Brown and Reich, but says there was no one standing that he remembers. He remembers only one stop between Elizabeth and the City Hall, and he says that the bus was not crowded. He says also that the car had not stopped and started when someone called that a passenger had fallen off,

and that the bus had been going at the regular speed.

Now, gentlemen, from all this testimony it will be for you to say whether or not the fall of the plaintiff was caused by the negligent operation of that car by Brown, the chauffeur, whether or not he operated his automobile as a reasonably careful and prudent person would operate it, whether or not in view of the high degree of care which is owing by a carrier of passengers to the passengers he did what an ordinarily careful and prudent man would have done. As I have already said, if he stopped his car and the car was crowded as the plaintiff and his witnesses say it was, and the plaintiff allowed other passengers to alight and then before he had succeeded in getting back upon the car the car was suddenly started and he was thrown to the ground, then that would have been negligence on the part of the driver of the car. If, however, the plaintiff was standing upon that step in a car that was not crowded, and had been warned by the driver to go back in the car and had declined or failed to do so and without any extraordinary jolt or jar or lurch of this automobile he fell to the ground because of the position in which he placed himself, then that was not negligence, there was no negligence on the part of the driver.

It seems quite impossible to reconcile some of this testimony, and when testimony cannot be reconciled it is for you to consider the truthfulness, as has been suggested in the argument. If there was no lurch or jar or unusual motion of this bus, is it likely that the plaintiff standing upon that step in this bus would have fallen from it, because all of them testify, everybody testifies who testi-

fies upon that subject in the case, that before the stop there was no unusual lurch or jar of this bus.

Now, gentlemen, you have not quite yet reached a point where the plaintiff is entitled to your verdict when you have found that the driver of the bus was negligent, if you so find, because it is a rule of law that if there was any negligence on the part of the person injured which contributed to the accident, and his injuries resulted from that contributory negligence, he cannot recover. Here the burden of proof shifts. The burden is upon the defendant to show negligence on the part of the plaintiff, contributory negligence on the part of the plaintiff. Before you can find contributory negligence it must appear from the greater weight of the evidence. It is necessary for a man to take reasonable care for his own safety and if he fail to do that and if by that failure the accident occur, then he cannot recover. In other words, if they were both negligent, the driver of the bus and the plaintiff, the plaintiff cannot recover. It was not negligence *per se*, negligence in itself, to ride on the step of a jitney bus if it were crowded. As has been said by Justice Trenchard in delivering the opinion of the Court of Errors and Appeals, the highest Court of this state, "It is true that a passenger who voluntarily rides upon the platform step when there is room for him inside of the car takes upon himself the duty of looking out for, and of protecting himself against, the usual and obvious perils attendant upon his position, such as the danger of being thrown from the step by the ordinary jolting and swinging of the car." That was the situation in this case. If there was room in the car, inside the bus, and the plaintiff was told

to go inside of the bus, and if you find as a matter of fact, that the position in which he placed himself was a position of some peril, and if he refused to take that degree of care for his own safety which would be taken by an ordinarily careful and prudent man and thus received his injuries, then he cannot recover. Of course, as I have said, it was not negligence *per se* for him, negligence in itself, to ride in that position or any position in which he was permitted to ride by those in charge of the car if the car was crowded and that was the only position in which he could reasonably place himself. If you find that the driver of the bus was negligent and do not find that there was any negligence on the part of the plaintiff which contributed to the accident and his injuries, then you come to the consideration of the question of damages. Of course, you will not consider damages at all if you find that the driver of the bus was not negligent or that the plaintiff himself was guilty of some negligence. But if you decide that your verdict must be for the plaintiff, then you come to the consideration of damages.

Upon that point it appears that the result of the plaintiff's injuries were quite serious and admittedly so. The defendants' attorney, in his argument, admits that the results were quite serious. He had quite severe injuries to his face, which were not serious; they were severe, but not serious. The scars are still left on his face. But the serious injuries seem to have been the injury to his chest. It appears, according to the testimony of one of the doctors, that two ribs were broken, and this developed into an infected condition so that pus developed there and it was necessary that

there should be an operation and that about two inches of the rib was removed, which, according to one of the doctors, is a very serious operation, being a question, and was a question in this case whether or not the plaintiff would survive the operation. However, he did survive. He has suffered considerable pain and he says that he is not yet cured of that pain. He tells you that he is unable to use his arm, but there is nothing the matter with the arm itself and the physicians say there is nothing the matter with the arm, but he says it gives him pain in the chest whenever he attempts to raise the arm. Whatever you believe will compensate the plaintiff for his injuries and pain and suffering, that you should put in terms of dollars and cents and award that amount to him, if you decide he is entitled to your verdict. The expenses of his treatment and attempts at a cure are to be considered by you and awarded to him if he is entitled to your verdict. These items, as I understood them and have taken them down, are as follows: Dr. Rogers, four visits, \$20; for the operation, \$50; Dr. Danzis, one visit, \$3; Dr. Ill, \$10, Dr. Parsonnet, four visits, \$8; Dr. Rothseid, eleven visits, \$25; there has been no testimony of the value of the services of Dr. Furstman, as has been suggested in the argument; medicine, \$38.35 and \$2.50, and the expenses at the Beth Israel Hospital, \$168.50. These all together aggregate \$325.35. In addition to that he says that he has been unable to work and is still unable to work, and if he is entitled to your verdict he is entitled to be compensated for his loss of earnings for such length of time as you believe from the evidence he has been incapacitated from his usual or some other occupation. He says at that time he was earning \$8.20

a day as a carpenter, working for MacArthur Brothers, who built the Shipping Board's buildings, and that the wages now are eighty cents per hour and that the wages at that time were seventy cents per hour. He says he is still unable to resume his occupation. However, two physicians called in his own behalf, Dr. Rogers and Dr. Furstman both of them think that he is in condition to resume some kind of work. Dr. Rogers says that the probabilities were that six months after the operation he would have had about as good use of that side as before and should think he would be absolutely free from pain at the end of six months. More than six months have elapsed since the operation. Dr. Furstman says that six months ought to have sufficed for him to do his regular work. He does not think he has any adhesions and thinks it would do him good to go to work. Dr. Lowenstein says he found his lungs normal. He didn't find anything the matter with the arm and shoulder, except he says he cannot lift it, and the suggestion is that that is a psychopathic condition, that is, all in his mind, and if he would go to work that would pass away. He says that he thinks he is able to do carpenter work, and that the pain and headaches may be the result of some other thing. However, that is a matter about which plaintiff has not expressly complained, although it is an element which you may take into consideration.

Now, gentlemen, whatever damage you find from the evidence the plaintiff has suffered, the elements of which I have given you, that is, injury, pain and suffering, past, present, and if it is not yet cured, such pain as you think he will suffer in

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Charge

the future as the result of these injuries, such loss of earnings as you believe from the evidence he will suffer in the future may be included in your verdict. However, as I have already said, these elements of damages should not be considered at all unless you decide that the evidence preponderates that the plaintiff received his injury through the negligence of the driver of the car, and not even
 20 then if you find that there was any negligence on his part which contributed to the accident and injury.

I have some requests to charge.

The first one I have covered, and I decline to charge it except as I have charged. I think I have covered it in almost the exact words.

I decline to charge the second, because I have covered it.

I have covered the third.

30 I have covered the fourth. Covered almost in the words of the request.

Jury retired.

Mr. Weinberg: I first desire to except to the refusal of the Court to specifically charge the requests I have handed to the Court.

40 I desire to except to that portion of your Honor's charge wherein you said to the jury substantially after you had read from your notes, from all of this testimony it is for you to say whether this defendant was negligent, my point being that the jury had the right to consider all the other evidence in the case.

Also where your Honor said that everyone testifies that there was no lurch before the car stop-

ped, as everyone else testified on that point. Of course, your Honor did not mean that was testimony of the plaintiff.

The Court: Yes, I did mean the plaintiff.

Mr. Weinberg: Then I request an exception as charged.

And that portion of the Court's charge where it referred to the plaintiff's position as being on the step of the car, where it appeared that there really 20 was no step.

The Court: These exceptions will be cited.

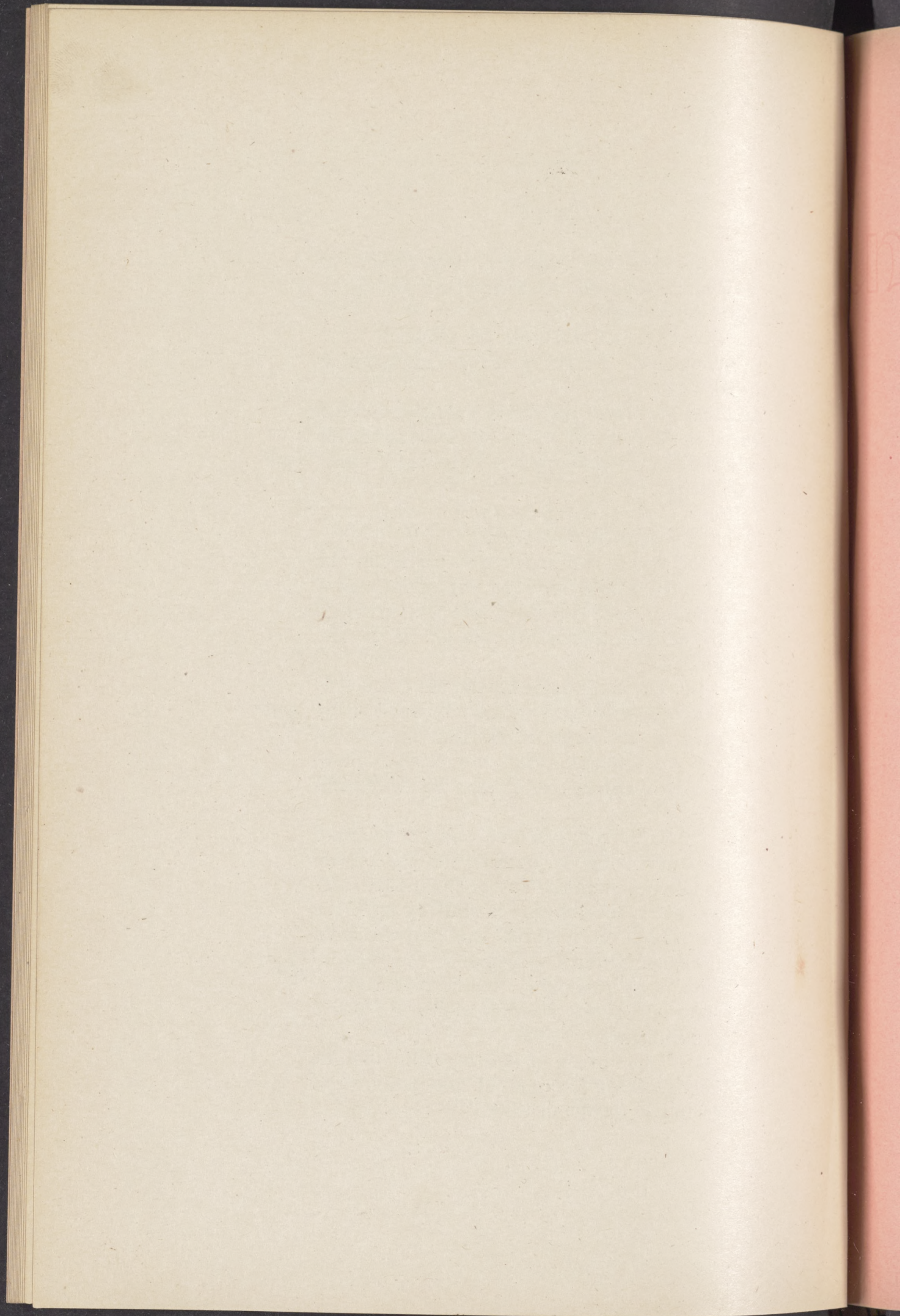
Plaintiff's requests to charge:

"1. It was not negligence *per se* for the plaintiff to ride upon the step of the bus, if you believe he did so, if he was there with the express or implied consent of the defendant.

"2. The defendants having undertaken to carry for hire, all persons who applied for passage, are common carriers of passengers, and as such, they owe to their passengers a high degree of care for their safety. 30

"3. If the plaintiff was obliged to leave the bus in order to permit other passengers to alight, it was the duty of the defendants' servant to use due care in starting up of the bus, and if the plaintiff was thrown from the same, by the negligence of the defendants' servant while he was in the act of re- 40 entering the bus, the defendants are guilty of negligence.

"4. The burden of proving contributory negligence on the part of the plaintiff is cast upon the defendants."



INDEX.

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