

INDEX.

	PAGE
Notice of Appeal	1
Grounds of Appeal.....	2
Summons	3
Complaint	4
Answer	6
Judgment	8
Clerk's Certificate	8
Motion for Non-Suit	44
Charge	92

TESTIMONY.

John Borcias:

Direct	10
Recalled—Direct	11
Cross	11, 12

Betty Siegeler:

Direct	12
Cross	14

Alfred Iltner:

Direct	15
Cross	21
Redirect	31
Recross	32

Katie Heimbach:

Direct	32
Cross	35

	PAGE
Minnie Heide:	
Direct	40
Cross	42
Fred J. Herold:	
Direct	45
Cross	47
Redirect	51, 53
Recross	52, 53
Ernest Neuweiler:	
Direct	54
Cross	59
Redirect	69
Minnie Neuweiler:	
Direct	69
Cross	73
Hugo Landau:	
Direct	76
Cross	77
John Bouton:	
Direct	77
Cross	80
Ernest Bola:	
Direct	84
Cross	87
Redirect	90, 91
Recross	90, 91

Notice of Appeal.

New Jersey Supreme Court.

HUDSON COUNTY CIRCUIT. .

10

BETTY SIEGELER, as Administra-
trix of the Estate of Rudolph
Siegeler, deceased,
Plaintiff-Appellee,

v.

ERNEST NEUWEILER,
Defendant-Appellant.

Action at Law.

20

To J. Emil Walscheid, Esquire, Attorney of
Plaintiff-Appellee:

Sir:

Take notice that the defendant appeals to the
Court of Errors and Appeals of the State of
New Jersey from the whole of the judgment en-
tered in this case.

30

GEORGE P. LAIBLE,
Attorney of Defendant-Appellant.

40

Grounds of Appeal.NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	BETTY SIEGELER, as Administra- trix of the Estate of Rudolph Siegeler, deceased, Plaintiff-Appellee.	}	Action at Law.
	<i>v.</i>		
	ERNEST NEUWEILER, Defendant-Appellant.		

20 The appellant states the following grounds for
 appeal in this case:

1. Because the Court denied the defendant's
 motion for a non-suit upon the evidence given at
 the trial.

2. Because the Court erroneously admitted
 testimony in regard to the brakes of the defend-
 ant's automobile, over objection of defendant.

30 3. Because the verdict is contrary to the
 weight of the evidence.

Dated June 5th, 1917.

GEORGE P. LAIBLE,
 Attorney of Appellant.

Summons.

New Jersey, ss.:

The State of New Jersey to Ernest Neuweiler,
Greeting:

You are hereby summoned to answer
the annexed complaint of Betty
[SEAL.] Siegeler as Administratrix of the 10
Estate of Rudolph Siegeler, de-
ceased, in an action at law in the
Supreme Court. And take notice that unless you
file your answer to said complaint with the
Clerk of the Supreme Court, at Trenton, within
twenty days after service upon you of this writ
and the annexed complaint, the plaintiff may
proceed with the suit and judgment may be en-
tered against you. 20

Witness, William S. Gummere, Esquire, Chief
Justice of our Supreme Court at Trenton, this
sixth day of November, A. D. One Thousand
Nine Hundred and Sixteen.

WM. S. GEBHARDT,
Clerk.

J. Emil Walscheid, Esq.,
Attorney.

30

40

Complaint.

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

10	BETTY SIEGELER, as Administra- trix, etc., of Rudolph Siegeler, deceased	}	Judgment Record. Action at Law. On Postea.
	<i>v.</i>		J. Emil Walscheid, Attorney.
	ERNEST NEUWEILER.		

Ernest Neuweiler, the defendant in this cause, was summoned to answer unto Betty Siegeler, as Administratrix, etc., of Rudolph Siegeler, deceased, the plaintiff therein, in an action at law upon the following complaint:

(Summons issued November 6, 1916.)

Plaintiff, who resides at No. 663 Summit Avenue, in the Town of West Hoboken, County of Hudson, says that:

1. Hudson County Boulevard is a public highway lying between the Township of North Bergen and the Town of Union in the County of Hudson, running north and south.
2. Humboldt Street is a public highway of the Town of Union in the County of Hudson running into said Boulevard from the east.
3. On the 10th day of November, 1916, defendant was driving an automobile in a southerly direction along the Hudson County Boulevard near Humboldt Street while Rudolph Siegeler was riding on a motorcycle along the easterly side of said highway in a northerly direction.

4. The defendant, operating said automobile, attempted to turn from the Hudson County Boulevard into Humboldt Street, and at an excessive rate of speed and in a negligent manner and in doing so, lost control of said automobile and collided with the motorcycle and the person of the said Rudolph Siegeler, destroying said motorcycle and injuring the said Siegeler so severely that he died as the result of said injuries, on October 13th, 1916.

10

5. After the injuries and before the death of Rudolph Siegeler certain moneys were expended by said Siegeler for medical aid and medicines in trying to effect a cure of the injuries inflicted on the said Rudolph Siegeler.

6. Said Rudolph Siegeler left him surviving a wife, Betty Siegeler, the plaintiff, and no other next of kin.

20

7. Plaintiff was appointed Administratrix of the goods and chattels, rights and credits which were of the said Rudolph Siegeler, deceased, by the Surrogate of the County of Hudson.

8. This action is brought by the plaintiff as the personal representative of Rudolph Siegeler, deceased, and under the provisions of an act of the Legislature of the State of New Jersey, entitled "An act to provide for the recovery of damages in cases where the death of a person is caused by wrongful act, neglect or default," approved March 3rd, 1848, and the supplements and amendments thereto, and has been commenced within twenty-four calendar months of the death of said Rudolph Siegeler.

30

Plaintiff demands \$10,000 damages.

40

J. EMIL WALSCHEID,

Attorney for Plaintiff.

Filed November 15, 1916.

Answer.

The defendant, residing in the Town of East Rutherford, County of Bergen and State of New Jersey, answering the complaint of the plaintiff, says:

- 10 1. He admits upon information and belief the allegations of Paragraph One of the complaint.
2. He admits upon information and belief the allegations of Paragraph Two of the complaint.
3. He admits that he was driving an automobile on the 10th day of November, 1916.
4. He denies the allegations of Paragraph Four of the complaint.
- 20 5. He has no knowledge or information sufficient to form a belief as to the allegations of Paragraph Five of the complaint.
6. He has no knowledge or information sufficient to form a belief as to the allegations of Paragraph Six of the complaint, and leaves the plaintiff to such proof as she may be advised.
- 30 7. He has no knowledge or information sufficient to form a belief as to the allegations of Paragraph Seven of the complaint, and leaves the plaintiff to such proof as she may be advised.

DEFENSES TO THE PLAINTIFF'S COMPLAINT.

By way of defense to the allegations of the plaintiff's complaint this defendant alleges:

- 40 1. That the injuries and consequent death of the plaintiff's deceased were in no wise due to the negligence of this defendant, but on the contrary, were brought about through the negligence of the said Rudolph Siegeler, deceased, in that

the said Rudolph Ziegeler was driving the motor-cycle on which he was riding at an excessive rate of speed and in a negligent and careless manner, and in doing so lost control of the said motor-cycle and collided with the automobile of this defendant, thereby causing the injuries and consequent death of the said Rudolph Ziegeler.

2. This defendant further alleges that he was in no wise negligent as alleged in the complaint. 10

3. He denies each and every allegation of the complaint except as heretofore admitted or denied.

GEORGE P. LAIBLE,
Attorney for Defendant.

(Filed Nov. 28, 1916.)

The plaintiff denies every allegation in the answer.

J. EMIL WALSCHEID,
Attorney for Plaintiff. 20

(Filed Dec. 1, 1916.)

30

40

Judgment.

This case was tried before Judge William H. Speer, Esq., with a jury, at the Hudson Circuit, on April 19th and 23rd, 1917.

The jury returned a general verdict against the defendant and in favor of the plaintiff for the sum of twenty-seven hundred (\$2700.00) dol-
lars.

Whereupon it is adjudged that the plaintiff re-
cover of the defendant the sum of twenty-seven
hundred dollars and her costs, which are taxed
at the sum of sixty-six dollars and forty-four
cents, making in the whole the sum of twenty-
seven hundred and sixty-six dollars and forty-
four cents.

Damages	\$2700.00
Costs	66.44
	<hr/>
	\$2766.44

Judgment entered April 27, 1917.

WM. S. GUMMERE,
C. J.

Clerk's Certificate.

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal and also a copy of the judgment entered in the above stated cause as the same remains on file and of record in my office.

In Testimony Whereof, I have set my hand and the seal of said Court at Trenton, this twenty-fifth day of May, A. D. nineteen hundred and seventeen.

WM. C. GEBHARDT,
Clerk.

NEW JERSEY SUPREME COURT.

BETTY SIEGELER, as Administra-
trix,

v.

ERNEST NEUWEILER.

10

Tried April 19, 1917, before Speer, J., and a jury.

J. EMIL WALSCHEID, for the Plaintiff.

GEORGE P. LAIBLE, for the Defendant.

RUNYON & AUTENREITH, of Counsel.

Mr. Walscheid: I desire to amend the complaint in the third paragraph so that the occurrence of the accident shall read as of the 10th day of October, 1916, instead of the 10th day of November, as in the pleadings alleged.

20

Mr. Autenreith: That was done the last time.

The Court: All right.

Mr. Walscheid: Plaintiff and defendant have agreed that the death of the decedent in this case occurred as the result of the accident which forms the basis of this suit.

30

Mr. Autenreith: That is admitted.

Mr. Walscheid: We have also agreed to read in evidence the testimony of John Borcias, taken at the former trial, which I will now do.

Reads testimony of John Borcias.

40

JOHN BORCIAS, sworn.

Direct examination by Mr. Walscheid:

Q. Are you connected with the Eagle Beef Company? A. Yes.

Q. In what capacity? A. Treasurer.

Q. Did you know Rudolph Siegeler? A. Yes, sir.

Q. Was he employed by you? A. Yes, sir.

10 Q. When did he enter your employ? (Witness refers to book.)

Mr. Autenreith: What is that book he has there?

A. January the 31st, 1916.

Q. How long did he remain in your employ from that time forward? A. Until October the 7th, 1916.

20 Mr. Autenreith: I object to the witness referring to the paper.

The Court: I will sustain the objection.

Q. What did you take that— A. I just didn't remember the date.

Q. Where did you get the date from? A. Out of a book.

Q. Out of that book? A. Yes.

30 Mr. Autenreith: Well then, it is all right.

Q. What was the last day he was employed by you? A. October the 7th.

Q. October the 7th? A. Yes.

Q. Hadn't he worked with you on October the 10th? A. No, sir.

Q. He was not working with you then? A. No, sir.

40 Q. Had he left your employ? A. Yes sir.

Q. What had he earned with you? A. Eighteen dollars per week.

Q. What did this Mr. Siegeler do for you? A. Managed a store.

Q. What kind of a store? A. Butcher store.

Q. Was he a butcher by trade? A. Yes.

Q. And the wages which you were paying him, were those the wages paid to a butcher? A. Yes; that and a little more; just what an ordinary butcher would get.

Q. What? A. The usual wages paid to a butcher, sixteen.

Q. He was getting eighteen? A. Yes.

Q. Was he in good health while he was working for you? A. Yes, sir.

Mr. Autenreith: I object—withdraw the objection.

Q. So far as you could observe? A. So far as I observed, yes.

Q. Was he steady in attendance on his work? A. He was, yes.

Q. During all the time that he worked for you? A. Yes.

Cross examination by Mr. Autenreith:

Q. He did not work a full year for you, did he? A. No; from January to October.

The Court: Do you want to press that objection about the good health?

Mr. Autenreith: No, sir; I withdrew it.

JOHN BORCIAS, recalled.

Direct examination by Mr. Walscheid:

Q. You say that Mr. Siegeler stopped working for you on the 7th of October? A. Yes, sir.

Q. That was a Saturday, was it? A. Yes.

Q. Why did he stop working at that time? A.

It was the reason because we intended to close up the store and Mr. Siegeler told us that he better look for another position, as he probably knows something—that is the reason.

Q. You were going to close the store he was working in? A. Yes.

Q. And you did close it? A. Yes.

Q. At that time? A. Yes.

10

Cross examination by Mr. Autenreith:

Q. Do you know whether he had a job when he left? A. What is that?

Q. Do you know whether he had a job when he left? A. No, I don't know.

The Court: He said the man told him he was going to look for one.

20

A. That is what he told me.

BETTY SIEGELER, sworn.

Direct examination by Mr. Walscheid:

Mr. Walscheid: By consent of the parties I desire at this time to offer the map on the board as Exhibit P1.

30

I now offer in evidence letters testamentary issued by the Surrogate of the County of Hudson on the 6th day of November, 1916, to Betty Siegeler, upon the goods and chattels, rights and credits of Rudolph Siegeler, deceased.

Marked P2.

Q. Where do you live? A. 558 Palisade Avenue, Weehawken.

Q. How old are you? A. Twenty-five.

40

Q. Did you know Rudolph Siegeler in his lifetime? A. Yes.

Q. He was your husband, wasn't he? A. Yes.

Q. When had you been married to him? A. November 6th, 1912.

Q. Did you have any children by him? A. No.

Q. How old was he when he died? A. Twenty-eight.

Q. On what day did he die? A. 13th day of October, 1916.

Q. And did you see him? A. Yes.

Q. Saw the body after his death? A. Yes; I seen him before, too.

Q. Did your husband live with you? A. Yes.

Q. Support you? A. Yes.

Q. And what would he give you per week or per month or however he may have received it? A. By the week.

Q. What would he give you? A. He gave me all his wages.

Q. Well, he gave you all his wages; how much money per week would he give you? A. From fifteen to seventeen.

Q. From fifteen to seventeen a week? A. Yes.

Q. On the 10th day of October, 1916, was he then working? A. No; he was not working, he was looking for a position.

Q. When was the last day that he had been working? A. The 7th day of October.

Q. And prior to that time how long had he been working steadily? A. He was always working steady.

Q. Always working steady? A. Yes.

Q. Since you were married to him? A. Yes.

Q. Always went to work daily? A. Yes.

Q. The money which you received from him weekly, what did you do with that? A. I kept house, and the rest I saved.

Q. You kept house with it and the rest you saved and put it away? A. Yes.

Q. In your own name? A. Yes.

Q. You were not present at the accident at which he received his injuries, were you? A. No.

Cross examination by Mr. Autenreith:

10 Q. Your husband's salary at the time of his death was how much per week? A. Eighteen dollars.

Q. And you say he gave you all of his wages? A. Yes.

Q. Now, out of all of his wages you would provide the table for the home? A. Yes.

Q. And pay the rent? A. Yes.

Q. And would you give your husband some of that money back again for his clothing and things that he might need? A. Yes; if he needed some.

20 Q. And he frequently needed clothing, didn't he? A. He did not need much.

Q. Shoes, wearing apparel and things of that kind? A. He did not need much.

Q. Would you give him back some of that money for his own use as spending money or things of that kind? A. No.

Q. You went out together with your husband to places of entertainment? A. Not so much.

30 Q. But when you did go who paid for it? A. I paid for it.

Q. You paid for it out of the money which he gave you? A. Yes.

Q. You remember testifying here at the last trial, don't you? A. What do you say?

Q. You remember giving testimony the last time this case was tried? A. Yes.

40 Q. Do you remember testifying at that time that you gave your husband back each week out of the money he gave you about three dollars a week? A. No.

Q. Well, did you testify that way the last time or didn't you? A. I do not remember.

Q. I cannot hear you.

Mr. Walscheid: She says she does not remember.

Q. Do you remember this question being asked of you the last time: "And you did not figure that in the three dollars average, which you say you gave your husband, did you? A. Well, I always gave it to him. Q. But when you say you gave him three dollars a week you did not mean the moneys which you spent together in entertainments? A. If you count it up in the year it would not be more than three dollars a week." Do you remember that? A. Yes.

10

Q. Is that true? A. Yes.

Q. Now, your husband owned a motorcycle, didn't he? A. Yes.

20

Q. And he owned a motorcycle for a couple of years, didn't he? A. Well, he had one before he was married.

Q. Yes; and then he bought one after he was married? A. Yes.

Q. And didn't you give him any money towards taking care of that? A. Yes.

30

ALFRED ILTNER, sworn.

Direct examination by Mr. Walscheid:

Q. Did you know Rudolph Siegeler in his lifetime? A. Yes.

Q. Were you with him on the 10th day of October, 1916? A. Yes.

Q. Were you with him at the time he met with his accident? A. Yes.

40

Q. And just prior to the accident—just before the accident where were you and he? A. I was riding a motor bicycle on the Hudson Boulevard.

Q. You and he together? A. Yes.

Q. Were riding a motor bicycle on the Hudson Boulevard? A. Yes.

Q. In Union Hill? A. From Jersey City to North Bergen.

Q. You were going from Jersey City? A. Yes.

Q. On the Hudson Boulevard? A. On the Hudson Boulevard.

10

Q. In what direction were you going on the Hudson Boulevard? A. We was driving on the right side on the Hudson Boulevard.

Q. But in what direction were you going, north or south? A. We were going to north.

Q. Did you intend to go as far as West New York? A. We was going to—about to Union Hill; we was going to West New York.

20

Q. And did you want to go to West New York along the Hudson Boulevard? A. Yes.

Q. Now, where did the accident happen? A. The accident was on the Hudson Boulevard on the corner of Humboldt Street.

Q. In Union Hill? A. In Union Hill, yes.

Q. Who was riding on the front seat of this motor cycle? A. Mr. Siegeler was sitting in the front.

30

Q. It was a two-seated motor cycle, wasn't it? A. Yes.

Q. And you were sitting behind? A. Yes.

Q. When you reached Union Hill and approached the scene of the accident, how far were you from the corner of Humboldt Street and Hudson Boulevard when you first saw the automobile which caused the accident, or which—

Mr. Autenreith: I object to that.

Mr. Walscheid: Take out "caused it."

40

Q. Which took part in the accident? A. I was about thirty feet I guess off the corner of

Humboldt Street and I saw this automobile coming.

Q. You were thirty feet from that corner? A. From that corner of Humboldt Street.

Q. On the Hudson Boulevard? A. Yes.

Q. Riding on this motorcycle? A. Yes, sir.

Q. On the Hudson Boulevard? A. On the Hudson Boulevard; yes, sir.

Q. How far out in the Hudson Boulevard from the westerly side or curb of the Hudson Boulevard were you with your motorcycle, how many feet? A. Six or eight feet.

Q. How fast were you going at that time, if you can tell?

Mr. Autenreith: I think the witness should be qualified in some way.

Q. Can you tell? A. Yes; about ten to twelve miles an hour, I guess.

Q. Had you ridden on motorcycles before? A. No; the first time in my life I was on a motorcycle.

Q. When you arrived at this point thirty feet south of Humboldt Street on the Hudson Boulevard, what did you see? A. I seen an automobile coming from the north to the south.

Q. And where was that automobile? A. When I seen this automobile it was on the left side on the Hudson Boulevard, and it turned—

Q. When you first saw the automobile where was it? A. It was on the Hudson Boulevard.

Q. And where on the Hudson Boulevard? A. About thirty feet up from the corner of Humboldt—from the northeast corner of Humboldt Street.

Q. About thirty feet from the northeast corner of Humboldt Street? A. Yes, sir.

Q. To the north of it? A. To the north.

Q. And how far out from the curb of the Hudson Boulevard about? A. Fifteen to twenty feet, I guess.

Q. Fifteen to twenty feet? A. Yes, sir.

10 Q. And when you saw the automobile at that point, tell us again where you were with your motorcycle from the southeast corner of Humboldt Street. A. I was this time about thirty feet away on the other side on the corner of Humboldt Street.

Q. About thirty feet away on the other side of the corner to the south of Humboldt Street? A. Yes.

20 Q. From there on tell us in your own way what happened, what you did or what you saw Mr. Siegeler do, and what you saw the automobile do, and what happened. A. When I was about thirty feet away from this corner I saw this automobile coming from the north to the south and Mr. Siegeler he takes his hand and he—

Q. He did what? A. He takes his hand up.

Q. Raised his hand up? A. Yes; and he says to this automobile, "Stop;" this automobile was turning in in the corner of Humboldt Street, and he says to the automobile, "Stop," and Mr. Siegeler he wants—

30 Mr. Autenreith: I object to what he wants to do.

A. Mr. Siegeler he wants to go in the—

The Court: Objection sustained.

Q. Tell us what you saw.

Mr. Walscheid: This man's English is poor.

40 Q. Tell us what you saw him do, what you saw Mr. Siegeler do. You say you saw Mr.

Siegeler raise his hand to the automobile and say "Stop"? A. Yes.

Q. Now, while he was doing that was his motorcycle still going on or had it stopped—the motorcycle on which you were? A. Yes; this motorcycle was going up in the same time.

Q. What did you see Mr. Siegeler do as it came up? A. Mr. Siegeler he tried to stop.

Q. Tried to stop what? A. The motor bicycle.

Q. Yes; and what did you see him do trying to stop? A. He tries to stop his automobile with his foot.

Q. You said his automobile. A. His motor bicycle.

Q. With his foot? A. Yes, sir.

Q. Did he succeed in stopping it; did he stop it? A. No, sir.

Q. Well, then, what happened? A. This automobile was coming in in the same time.

Q. Coming in where in the same time? A. On the corner of Humboldt street. They went past the corner of Humboldt Street and this automobile turned in to Humboldt Street.

Q. You wanted to pass Humboldt Street? A. Yes.

Q. And the automobile turned into Humboldt Street? A. Yes.

Q. And what happened then? A. On this corner it came together with the automobile and the motor bicycle—

Q. On what corner did you bump together? A. On the northeast corner of Humboldt Street and the Hudson Boulevard.

Q. At the corner of Humboldt Street and the Hudson Boulevard you bumped together? A. Yes.

Q. When you bumped together in what direction was your motorcycle turned? A. The motor bicycle was turned in at Humboldt Street.

10

20

30

40

Q. It was turned in to Humboldt Street? A. Yes.

Q. And on which side of Humboldt Street did you come together? Did you come together on the south side of Humboldt Street or on the north side of Humboldt Street or in the centre of Humboldt Street? A. On the north side of Humboldt Street.

10 Q. Did you notice how the automobile turned in to Humboldt Street, what kind of a turn it made going in? Did you see that? A. Yes.

Q. What kind of a turn did it make going in to Humboldt Street? A. It was a very short turn in.

Q. A very short turn? A. Yes.

20 Q. And how near did it come to the northerly side of Humboldt Street with its near wheels in turning in to Humboldt Street? A. It was not more than two feet away off the corner, I guess.

Q. Not more than two feet away from the corner. Well, after the automobile and the motorcycle came together, what happened next? A. When the automobile was come together with the motor bicycle Mr. Siegeler was between his automobile and I was laying on the floor.

Q. You were on the ground? A. Yes, sir.

30 Q. And he was between the automobile; what do you mean by that? A. I mean he was on the motor bicycle.

Q. On the motor bicycle and the motor bicycle on the ground?

Mr. Autenreith: I object as leading.

Q. In relation to the automobile and the motorcycle after the collision where was Mr. Siegeler?

40 A. I never see him after.

Q. You did not see him then; why? A. I was sick for a couple of minutes. I never can talk.

Q. You mean you could not—do you know what you mean to say in German? A. Yes.

Q. Can you say in English the word that you mean, that you were sick? Well, did you faint? Is that what you mean? A. Yes.

Q. So that you could not think and did not know what was going on? A. Yes, sir.

Q. That is what happened? A. Yes, sir.

Q. When you got over your faint and again were able to see things what next did you see; what was happening then? A. Mr. Siegeler was sitting in his automobile.

Q. Mr. Siegeler was sitting in the— A. In the automobile.

Q. In the automobile? A. Yes, sir; and he goes down in the hospital.

Q. And they drove him away? A. Yes.

Q. And did you drive away with them? You did not go with them? A. No.

Q. Who was the man that was driving the automobile; is he here? A. Yes, sir.

Mr. Walscheid: Stand up.

Q. Is that the gentleman? A. Yes.

Q. Was anybody else with him at the time in the automobile? A. Yes, sir; one of the policemen was there.

Q. Oh, you are talking now about the time when Mr. Neuweiler took him to the hospital? A. Yes.

Q. Before the accident occurred was anybody else in the automobile with Mr. Neuweiler? A. One lady down there.

Q. Is that the little lady sitting alongside of him? A. Yes.

Cross examination by Mr. Autenreith:

Q. This was your first ride on a motorcycle? A. Yes.

Q. Never been out with Siegeler before had you? A. This was the first ride.

Q. What time of day was it the accident happened? A. That was in the afternoon, about half-past four.

Q. When did you start out on this ride? A. We start in about three o'clock, I guess.

10 Q. Had you come down the Boulevard? A. Yes.

Q. And went way down to Jersey City? A. Yes.

Q. And you were on your way back again? A. Yes.

20 Q. Now, you testified in answer to Mr. Walscheid's question that when you first saw Neuweiler's automobile you were thirty feet away; did you mean you were thirty feet away from the automobile or thirty feet away from Humboldt Street? A. I mean thirty feet away from Humboldt Street—the corner of Humboldt Street.

Q. Where was the automobile then, how far the other side of Humboldt Street was it? A. About thirty feet the other side.

Q. So you were sixty feet away from the automobile? A. Something like that, yes, sir.

30 Q. Is that what you want us to understand, sixty feet away? A. Yes, sir.

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

Q. You remember testifying at the last trial, don't you? A. Yes.

Q. Do you remember testifying at the last trial of this case? A. Yes, sir.

Q. Do you understand what I mean when I say testify? Give evidence? A. Yes.

40 Q. You were here before? A. Yes.

Q. You understand it, do you? A. Yes, sir.

Q. Didn't you testify at the last trial that when

you first saw the automobile you were a block and a half away from Humboldt Street? Did you testify to that the last time? A. It was thirty feet on the Boulevard out of Humboldt.

Q. Didn't you testify—didn't you tell the jury the last time this case was tried, that when you first saw Neuweiler's car you were a block and a half away from Humboldt Street? Did you testify to that the last time? A. I do not remember.

10

Q. Don't you know? What is your answer? Can't you answer? A. I do not know.

Q. Let me read you: "Q. How far from the corner of Humboldt Street were you when you first saw the automobile? A. I should think about a half a block away from Humboldt Street." That was my mistake. Was it about half a block? A. Yes.

20

Q. And is that your idea of thirty feet from Humboldt Street, a half a block? A. Yes.

Q. Only sixty feet in that block south of Humboldt Street to the next street? A. Yes.

Q. What is the next street there? A. The next street?

Q. Yes.

Mr. Walscheid: Do you mean the name of it?

30

Mr. Autenreith: Yes.

Mr. Walscheid: Ask him whether he knows.

Q. Do you know the name of the next street before Humboldt Street? A. The one first is Union Street.

Mr. Walscheid: It is self evident the witness does not know.

40

The Witness: I guess it is Union Street.

Mr. Walscheid: Your map shows it as Morgan Street.

Q. Well, you say there is only sixty feet in that block; that is your idea of it? A. Yes.

Q. You were riding on the back of this motorcycle? A. Yes.

10 Q. Mr. Siegeler sat in front with his hands on the handle-bars and he did the steering and the running of the engine and all that, didn't he? A. He was driving.

Q. But you did not have anything to do with running the engine, running the motor? A. No, sir.

Q. You sat on a little seat in back of him? A. Yes.

20 Q. Now, you say you could see this automobile sixty feet away; and when you saw the automobile you say it was on the lefthand side of the street? A. On the lefthand side, yes, sir.

Q. On the lefthand side of the street? A. Yes.

Q. And it was coming toward you? A. Yes, sir.

Q. And nothing in the way; you could see clear, couldn't you? A. Yes; it was clear.

30 Q. And you were sitting behind Siegeler all the time you saw this? A. Yes.

Q. And Siegeler kept right on going, didn't he? A. Yes.

Q. That is at the point where you first saw it, he kept right on going? A. No; he starts to slow.

Q. The minute you saw the automobile? A. Yes.

Q. Now, how fast did he go? A. (No answer.)

40 Q. How slow did he go? A. About ten to twelve miles an hour.

Q. How fast was he going before that? A. The same, pretty near.

Q. Then he kept right on going, didn't he? A. No; after that he was going slower.

Q. You said he went slower; how much slower did he go?

Mr. Walscheid: I object to this witness testifying as to speed in view of the fact that this was the first ride he had ever taken on a machine.

10

Mr. Autenreith: You do not think he can testify as to speed?

Mr. Walscheid: I do not think his evidence is of much value.

Mr. Autenreith: I won't press it if he does not know.

Q. Now, do you remember this question on the former trial when you were here before: "But you had your eye on the automobile all the way"? "A. Yes." That is true, isn't it? A. Yes.

20

Q. "From a distance of about a block away from Humboldt Street? A. Yes, sir."

Q. You had your eye on the automobile all that time? A. Yes.

Q. From a block away? A. Yes.

Q. Never took it off once, did you? A. (No answer.)

30

Q. Now, this automobile you say was coming right toward you and on the same side of the street you were on, right on the lefthand side? A. Yes, sir.

Q. You were going right at the automobile, just like that?

Mr. Walscheid: Yes; he said that.

Q. I am asking him. He looks at you. Let's look at the jury for a while. A. No; there was

40

plenty of room to go through between the automobile and the sidewalk.

Q. All right; the automobile was coming toward the motorcycle, wasn't it? A. Well, there was plenty of room that they can go through with the motor—

10 Mr. Autenreith: I ask that that be stricken out.

The Court: I will strike it out.

(Question repeated.) A. Yes.

Mr. Walscheid: Do you understand everything that is said?

A. No.

20 The Court: Tell us if you do not understand.

Mr. Walscheid: If you do not understand don't sit there and say, "Yes, sir." Just say you do not understand it. We will get you an interpreter.

Q. Now, the automobile started to turn into Humboldt Street, didn't it? A. Yes.

30 Q. And just when it started to make the turn the motorcycle struck it; is that correct? A. I do not know what you mean.

Q. Do you know what I mean to say, that the motorcycle struck the automobile?

Mr. Walscheid: I desire to ask the Court for an interpreter for this witness. I have tried conscientiously to give the testimony in English.

40 Q. Now, listen to me carefully, will you? I want to get this out. A. All right, sir.

Q. I want to be fair with you. I want you to

understand it. Just as the automobile turned in, was it then that the motorcycle struck it? A. This automobile was coming together with the motorcycle in Humboldt Street.

Q. Just as it started to turn in to Humboldt Street? A. Yes, sir.

Q. Now, you remember the last time you were here, do you remember testifying as follows: "Q. Whereabouts did they come together? A. On the corner of Hudson Boulevard and Humboldt Street." Do you remember that? A. Yes, sir.

10

Q. That is true? A. Yes, sir.

Mr. Walscheid: There is no difference between that and his testimony now.

Mr. Autenreith: He says now in Humboldt Street.

20

Q. Now, the motorcycle that you were on—you were watching everything? A. Yes.

Q. You were watching Siegeler, weren't you? A. Yes.

Q. And did you tell Siegeler to stop or anything when you first saw the automobile? A. No; I told Siegeler an automobile is coming there.

Q. You told him there was an automobile coming? A. Yes.

30

Q. But he could see it; nothing in front of him? A. Yes; he could see it himself.

Q. Now, your motorcycle when it came together with the automobile on the corner of the Boulevard and Humboldt Street, struck the automobile, didn't it? A. Them two was come together.

Q. Well, the motorcycle struck the automobile, didn't it? Don't look at him so much.

40

Mr. Walscheid: He has just answered the question. He says the two of them came together.

Mr. Autenreith: That is not an answer to the question.

Q. Did the motorcycle run into the automobile?

10 A. The automobile was run—the motor bicycle was run; they was come together at one time.

Q. All right; the front wheel of the motorcycle hit the automobile where?

Mr. Walscheid: I object to that. The witness has not said that the front wheel of the motorcycle hit it.

The Court: I will sustain the objection to it.

Mr. Autenreith: I will ask him then.

20 Q. Did you notice whether the front wheel of the motorcycle struck the automobile? A. The front wheel from the motor bicycle was going together with the front of the automobile.

Q. It hit the front of the automobile, did it? A. The front of the automobile.

Q. The automobile was turned in to Humboldt Street? A. Yes; and—

30 Q. And it—

Mr. Walscheid: Let him finish.

A. Yes, sir.

Q. Now finish.

Mr. Walscheid: What do you mean by saying: “and”—?

A. Mr. Siegeler he tries to go in Humboldt Street, too, and tried to get out of the way.

40 Q. Don't tell us what he tried to do. Tell us what he did do. A. Well—

Q. The automobile was turned in toward Humboldt Street, wasn't it? A. Yes.

Q. Now, Siegeler was coming straight down the Boulevard, wasn't he—toward the north?

Interpreter arrives.

Mr. Autenreith: I will strike out that last question and examine him through the interpreter.

10

Q. (Through Interpreter): Neuweiler's automobile had started to turn in to Humboldt Street, hadn't it? A. Yes, sir.

Q. Siegeler was going straight ahead, wasn't he? A. Yes; straight ahead.

Q. Now, did the front wheel of Siegeler's motorcycle strike the automobile? A. The automobile as well as the motorcycle came together.

Q. You were thrown off the motorcycle, weren't you? A. Yes.

20

Q. And you went right clean over the top of the automobile, didn't you—the hood? A. I do not know where I was lying.

Q. Well, was it Mr. Siegeler that went over the top? A. That I do not know neither. I did not see it.

Q. Do you remember testifying this way at the last trial: "Q. Your motorcycle ran into the front of the automobile and you went off? A. Yes, sir." A. I fell down, but where I do not know.

30

Q. Did you testify that way the last time, or didn't you? A. I said I fell down some places, but where I do not know.

Q. Did you testify in answer to this question at the last trial: "Now, didn't your motorcycle strike the automobile at the front wheel? A. Yes." A. Yes; the motorcycle and the automobile came together in the front; that is right.

40

Q. Did you testify this way at the last trial?

A. Yes, sir, I did.

Q. "Q. Now, didn't your motorcycle strike the automobile at the front wheel? A. Yes." A. Yes, sir.

Q. Now, the Boulevard, right at the point of Humboldt Street, was a nice, smooth road at that time, wasn't it? A. Yes, sir.

10

Q. And a nice level road? A. Yes, sir.

Q. And a nice straightaway—no turns in front of you? A. Yes, sir.

Q. And yet you say this motorcycle was only going ten or fifteen miles an hour? A. I said, first, I do not know how fast the automobile went. That was, as I said, my first ride on the motorcycle, and I never knew how rapidly it went.

20

Q. Did you ever ride in automobiles before? A. In the auto, yes, sir; I did.

Q. And you had ridden about twenty times before this accident, hadn't you? A. That is correct, yes, sir.

Q. And you cannot tell us about how fast this motorcycle was going? A. I said about ten to fifteen miles—or ten to twelve.

30

The Interpreter: He corrects it. Ten to twelve miles.

Q. Now, you say as the motorcycle went on toward the automobile you told Siegeler to stop? A. No; I did not say that.

Q. Didn't you just testify to that a few minutes ago? A. I told him to look out, there was an automobile approaching.

40

Q. Oh, yes; and you were about sixty feet away then? A. Yes, sir; and—

Q. What? A. Yes, sir.

Q. How near was Mr. Siegeler to the automobile

when he yelled out "Stop"? A. That was about from fifty to sixty feet.

Q. Well, did he yell stop at the same time that you told him there was an automobile? A. Not at the same time; he did not say that at the same time.

Q. How soon afterwards? A. About ten or fifteen feet after that—after he said so.

Q. Now, in response to Mr. Walscheid's question you said that Mr. Siegeler put on a brake. A. (No answer.)

Q. Did you see him do that? A. I noticed it when he did it with his foot.

Q. The brake that he puts on is down at his foot? A. Yes.

Q. And you were sitting right behind him? A. Yes; behind him.

Q. On a little seat? A. Yes, sir.

Q. So that your body almost touched his? A. No; it is not so exactly near together.

Q. Well, how far apart? A. There is a room about as the witness indicates.

Q. How much is it? Show us how much. A. That is the distance between us.

Q. Six inches? A. Yes.

Q. And you had your eye on the automobile all the time? A. Yes, sir.

Q. Now, you started a suit against Mr. Neuweiler, too, didn't you? A. Yes, sir.

Redirect examination by Mr. Walscheid:

Q. The last time you testified without the aid of an interpreter, didn't you? A. Yes.

Q. Now, tell us so that we can get this clear, in what direction was your motorcycle turned and in what direction was the automobile turned when the two came together? A. The automobile turned into Humboldt Street and we want to ride from

the south toward the north. On the northeast corner of Humboldt Street came—Humboldt Street and the Boulevard—the automobile came. We were trying to get out of the way of the automobile at that time and we turned in somewhat into Humboldt Street.

Q. Into Humboldt Street, too? A. Yes, sir.

10 Q. Now, when the two struck together were they both headed or turned into Humboldt Street?

Mr. Autenreith: I object to that as leading.

The Court: That is rather leading. I will sustain the objection.

Mr. Walscheid: Withdraw the question.

20 Q. Now, when the two struck together in what direction were the two headed? A. Both facing into Humboldt Street.

Recross examination by Mr. Autenreith:

Q. Was the automobile on the Boulevard or was the automobile in Humboldt Street when the accident happened? A. It was on Humboldt Street—it was on the corner of the Boulevard—then—
(the Interpreter): Then he said more—"Into Humboldt Street."

30 Q. And the automobile was damaged at the front right wheel, wasn't it? A. I did not see that, no.

KATIE HEIMBACH, sworn.

Direct examination by Mr. Walscheid:

Q. Where do you live? A. 4538 Hudson Boulevard, Union Hill.

40 Q. Between what streets do you live on the Hudson Boulevard? A. Between Liberty and Humboldt Streets.

Q. Did you see an accident on the afternoon of October 10, 1916? A. Yes.

Q. At Humboldt Street and Hudson Boulevard? A. Yes, sir, I did.

Q. Where were you at the time? A. I was on our front porch.

Q. And in relation to the Humboldt Street corner of the Hudson Boulevard—the northeast corner, are there any houses between your house and that corner? A. No, sir. 10

Q. So that you live in the first house to the north of Humboldt Street and on the east side of the Boulevard? A. Yes, sir.

Q. And this is Humboldt Street; can you see from there? A. Yes, sir.

Q. That would be your house? A. Yes.

Mr. Walscheid: Hadn't we better mark that "Empty Lot"? By consent the plot outlined in yellow on the easterly side of the Boulevard and 25 feet to the north of Humboldt Street and which had no designation of any kind, is marked "Empty Lot" because it is an empty lot. 20

Q. Your house—the house you live in—do you know how many feet that is to the Humboldt Street corner? A. No, sir. 30

Q. But it is the first house from Humboldt Street? A. Yes, sir.

Q. And you say you were on the porch? A. On the porch.

Q. What did you first see while you were on the porch there in relation to this occurrence? A. Well, I heard a man on a motorcycle call "Stop," and that made me look into the street, and then I looked to see what he was calling "Stop" to, and as I turned I saw an automobile turning in over to our side. 40

Q. Turning into your side? A. Yes.

Q. By that you mean turning in to Humboldt Street corner? A. Yes, sir.

10 Q. Go ahead. A. And then of course, that was—he started to turn in, and with that of course, the accident come, and I started to run to the corner to see if I could help anybody or anything, but I saw the man on the motorcycle was hurt and I could not do anything, so I just waited to see someone take him away, whatever they would do.

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

Q. And did you notice whether the automobile had turned into Humboldt Street or how it turned into Humboldt Street? A. Yes.

20 Q. Will you describe to us how it turned into Humboldt Street? A. Well, it started to turn this way and fell over this way.

Q. That is not very plain. Can you describe upon the map with a pencil? Do you think you could do that? A. Yes, sir.

Q. Come here and do it, please. Now this house here, marked "Dwelling," being the first house north of Humboldt Street, is your house? A. Yes.

30 Q. Where were you in the beginning? A. I was here on the porch.

Q. I will mark it "A." And whereabouts was the automobile when you first saw it? A. Right about here.

Q. On which side of the Boulevard was it? A. On the other side.

Q. There (indicating)? A. Yes, sir.

Mr. Walschied: I will mark that "B."

40 Q. Now, from B you say the automobile went to this Humboldt Street corner? A. Yes.

Q. Now, take this pencil and start from B and draw a line around that corner. This being the corner, show us how it went. Just how close to or how far from this corner it went around. (Witness marks it.) A. There is where the accident happened (indicating).

Q. I am going to mark that point "C." Is that right? A. Yes.

Q. Now, when the accident happened did you see anything that the man on the motorcycle was doing? A. No, sir; I only heard him call "Stop."

Q. Did you see his hand out? A. No, sir.

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

Q. Did you see the collision? A. Yes.

Q. After the collision what next did you notice? A. Why, I noticed that the man's left leg was hurt.

Q. Yes; in relation to the automobile—did the automobile stop at the collision point or did it go on? A. No; the automobile still kept moving.

Q. And where did it move to? Take your pencil from the point C and indicate. A. About there.

Q. About to there, marking this point "D"? A. Yes, sir.

Q. And there is where it stopped? A. Yes, sir.

Q. And where was the motorcycle when the automobile stopped at the point D; where was that lying? A. It was thrown down this way.

Q. Mark that point "E." A. There.

Q. Is that right? A. That is right.

Cross examination by Mr. Autenreith:

Q. Where was Mr. Siegeler before they picked him up? A. He was still sitting on his motorcycle.

Q. Did you see Mr. Iltman there? The man

that was on the stand before? A. No; not after the man was thrown.

Q. And did you notice the automobile before it got to the point B on the Boulevard that you have marked there? A. No, sir; I did not.

Q. Now, you were on your porch this afternoon, were you? A. Yes, sir.

10 Q. And your sister was there with you? A. Yes.

Q. That is Mrs. Hein, the lady that was in Court the last time? A. Yes.

Q. And you had your children out there, didn't you? A. Yes.

Q. What were you doing just before you heard this voice "Stop"? A. We were talking together.

Q. You were not paying any particular attention to the Boulevard, just that minute, were you? A. No, sir.

20 Q. Your attention was not directed to this motorcycle or to the automobile, either one, until you heard somebody call "Stop"? A. Yes.

Q. And it was just at that minute that you then looked to see what was going on? A. Yes.

Q. But before that you were entirely oblivious to everything on the Boulevard? A. Yes.

30 Q. Now, when you heard this call of "Stop" that attracted your attention to something and you looked; now, did you see the motorcycle first? A. Yes.

Q. You looked toward the motorcycle before you looked toward the automobile? A. Yes, sir.

Q. How far south of the corner of Humboldt Street was the motorcycle when you first saw it? A. There is a little grocery store right next—

40 Q. Was it this building right next to the corner, next to the cafe? A. Right next to the cafe.

Q. Where was it— A. Right between the saloon and the grocery store.

Q. About on the dividing line between the two buildings? A. Yes.

Q. We will mark that "F." Then you heard the cry "Stop" and you looked up in that direction toward the motorcycle; then you turned around and saw the automobile at the point marked B, didn't you? A. Yes, sir.

Q. And this automobile at the point marked B, was that going fast or slow? A. I could not say. 10

Q. How did it impress you? A. I could not judge.

Q. Ever ridden in an automobile? A. Yes.

Q. How often; many times? A. Well, not so often.

Q. Ridden in jitneys, have you? A. Yes. Not so often either.

Q. You have ridden in trolley cars? A. Yes. 20

Q. Was this automobile going faster than a trolley car? A. I could not say that.

Q. Well, you turned around and looked at it? A. But I could not judge how fast it was going.

Q. When you heard somebody shout "Stop" you thought that there must be a reason for it, didn't you? A. Certainly.

Q. And didn't that sort of impress you, whether the automobile was going fast? A. No; I do not think so. 30

Q. Didn't it occur to you why he shouted "Stop" if the automobile was not going fast? A. No, sir.

Q. At any rate you are unimpressed with any speed of the automobile, are you? A. No, sir.

Q. You won't say whether it was going fast or slow? A. I could not say.

Q. Is that because you are afraid to make a guess or because you do not know? A. I do not know; I could not say. 40

Q. But the automobile was starting to make a turn at any rate? A. Yes.

Q. When you first saw it, it was on the point marked B and then started to make a turn? A. Yes.

10 Q. I suppose you cannot tell us how fast the motorcycle was going either, if you cannot tell us about the automobile? A. No.

Q. You saw the two men on it? A. Yes, sir.

Q. Now, how soon after you heard this call of "Stop" did the accident happen? A. Well, it seemed to me it happened in just a few seconds, or I should say about two minutes—about three minutes.

Q. Two minutes? A. Well, I could not really judge time.

20 Q. Do you mean a few seconds or a few minutes?

Mr. Walscheid: She said she could not judge time.

A. I could not judge time.

Q. Was it a couple of minutes? A. A couple of minutes it must have been.

30 Q. Do you mean a couple of regular full minutes? A. I could not say; I really could not say.

Q. Or do you mean seconds? You do not want to tell this jury it took that motorcycle two full minutes, do you, to go the distance of that cafe building? A. I could not say; I could not tell truthfully.

40 Q. We only want to get your best impression of it, you know. You know it took long enough for the motorcycle to go the distance from that cafe and grocery store to the other side of Humboldt Street? A. I do not understand you.

(Question repeated): A. What do you mean by it took long enough?

Q. Well, the automobile went that distance, that was the length of time—the motorcycle I mean—when you first saw it it was right at the cafe and grocery store? A. Yes.

Q. And the accident happened while it was going from there to the other side of the street? A. Yes.

Q. You do not want to tell us that was two minutes? A. I told you I did not know. 10

Q. Is your judgment of that as accurate as it is on the way this automobile turned? A. Yes, I saw that.

Q. You also saw the other, didn't you? A. But I did not have to judge time on that.

Q. Well, you cannot judge speed; you cannot judge time? A. I can—

Q. Well, you want this jury to believe that is precisely the way that automobile turned? A. It is. I saw that. 20

Q. Though you admit you could not judge the time or the speed? A. Not the time.

Q. And you could not judge the speed of the motorcycle, could you? A. No, sir.

Q. You were here the last time, weren't you? A. Yes.

Q. That point on the map which you have marked "C;" that is the point you say the accident happened? A. Yes, sir. 30

Q. Did you notice the automobile after the collision? A. Yes, sir.

Q. Was the automobile damaged in the front or in the back? A. To the side.

Q. On the side; the right-hand side, wasn't it? A. Yes.

Q. Near the front? A. Right near the front.

Q. Yes; on this right-hand side, near the front, the automobile was damaged? A. Not so far to the side. It was more near the front. 40

Q. So that the front of the automobile was at this point marked C, wasn't it? A. Well, no, not exactly.

Q. Well, now, which do you mean? A. The front of the mudguard and side were damaged on the automobile.

10 Q. And was the front of the mudguard at this point marked C? A. Yes.

Q. And the rest of the automobile stuck out into the Boulevard? A. Yes.

Q. How far from the curblin was that point marked C? A. Very close to the curblin.

Q. But how many feet, one foot or two feet away? A. About one foot away.

Redirect examination by Mr. Walscheid:

20 Q. Did you notice in what direction the motorcycle was turned at the time of the collision? A. It was trying to get into Humboldt Street.

MINNIE HEIDE, sworn.

Direct examination by Mr. Walscheid:

Q. You are the sister of this last witness? A. Yes.

30 Q. Did you live in the same house with her? A. Yes.

Q. And were on the porch with her at the time of the accident? A. Yes.

40 Q. Tell us what you saw? A. Well, I heard a man call "Stop," which drew my attention, and it was a man on a motorcycle; so I looked to see who he had called "Stop" to, and I saw a man in an automobile on the—bound south on the west side of the Boulevard over towards our door.

Q. Turning over toward your door? A. Well,

over toward—well, it was not right in front of our door, but over toward our door.

Q. By that you mean—

Mr. Autenreith: I object to that.

A. Turned over to the east side, about in front of our door; and then the crush came.

Q. And where was the crash? A. Well, right near the northeast corner of Humboldt Street.

10

Q. And how near to the northeast corner, how near to the curb of the northeast corner? A. Well, I do not know just how many feet; it was not very far away from the curb.

Q. And did you notice in what manner the automobile which you saw came across the street towards that corner—from the point where you first saw it? A. Yes, sir.

Q. Tell us how; in what manner. A. Well, the automobile come this way, on that side of the street. We were on this side on our porch, and the automobile came this way, and the motorcycle was coming this way, bound north on the east side, and then they just met that way; it seemed both were trying to turn into Humboldt Street.

20

Q. When they met, in which direction was the motorcycle going? A. North.

30

Q. At the time they met in which direction were they going?

Mr. Autenreith: She has just answered that.

A. I do not know just how they were turning at the time they met; when they hit I did not notice any more.

Q. At the time they met in which direction was the automobile turned? A. He was turning around half for Humboldt Street; he had his wheels turned for Humboldt Street.

40

Cross examination by Mr. Autenreith:

Q. Mrs. Heide, I show you a photograph or what purports to be a photograph of the situation there. Is this house off the right-hand corner of that picture your house? A. It is on the east side of the Boulevard.

Q. This is facing south.

10

Mr. Walscheid: That is running north.

Q. Yes; running north; but this house next to the electric light pole is the one you refer to?

A. Yes.

Q. And you were on the porch? A. Here.

20

Q. Mark on the photograph 1. Does that photograph correctly represent the way the Boulevard and the streets and corners were at the time of the accident? A. Yes; it should show more over here.

Q. Well, for what it shows? A. For what it shows. I cannot show where the automobile was, when it—

Mr. Autenreith: I ask that that be marked.

Mr. Walscheid: Mark it in evidence.

Marked D1.

30

Q. I show you another photograph which is facing in the opposite direction, showing the corner of Humboldt Street and the Boulevard. This building on the left, that is Landau's cafe?

Mr. Walscheid: That is that corner saloon?

A. Yes.

Q. Cafe is better.

40

Mr. Walscheid: All right; have it cafe.

Q. And this corner where the electric light

pole is, is the corner where the accident happened, isn't it, on that picture? A. Yes.

Offered in evidence and marked D2.

Q. I show you another photograph of a view up Humboldt Street at the corner of the Boulevard. That is a view east.

Mr. Walscheid: East up Humboldt Street. 10

Q. That correctly represents the situation? A. Yes.

Offered in evidence and marked D3.

Q. You did not go up to the corner after the collision? A. No; not all the way up to the corner.

Q. You had your children there? A. I had my child and I came down off the porch with the baby. 20

Q. Didn't you testify the last time that you remained on the porch because your child was with you? A. No; I do not think I did. I saw the crowd, and I thought it was best not to get in the crowd with the baby and I went back.

Q. Can you judge the speed of the automobile? A. No, sir. 30

Q. Can you judge of the speed of the motorcycle? A. No, sir.

Q. Or how long a time it took after you heard the man say "Stop" before the collision? A. No, sir.

Q. Did you actually see the collision? A. Yes.

Q. Do you remember testifying on the last trial as follows: "When the crash took place, did you see how it took place, what was struck?" and the answer, "No, sir, not exactly." Do you remember that? A. I did see the accident. I saw them 40

crash together. I did not go up to the corner to see any more of it. I went in with the baby.

Q. Did you testify at the last trial in this manner? A. I did.

Q. "When the crash took place did you see how it took place and what was struck? A. No, sir; not exactly?" A. I said that?

10 Q. I do not know. I am asking you. A. You have it black on white. I must have said it.

Q. How is your memory; do you remember saying it? A. No; I do not.

Q. Is your memory any different on this trial than it was on the last trial? Do you think it is any better or worse than at the last trial? A. No—I don't know.

20 Q. Do you remember testifying at the last trial as to where this accident happened, as follows: "Then did he turn into Humboldt Street—referring to the automobile? A. No; he was not into Humboldt Street"? A. No; he was not.

Q. And that is correct; he was not into Humboldt Street? A. Not yet when the crash happened.

Q. No part of his automobile was in Humboldt Street at all, was it? A. No.

30 Q. You have no doubt about that, have you? A. No.

Plaintiff Rests.

Mr. Autenreith: For the purposes of the record, I move for a nonsuit on the ground of contributory negligence.

40 The Court: All right; I will deny the motion and you may have an objection entered.

Objection noted.

FRED J. HEROLD, sworn.

Direct examination by Mr. Autenreith:

Q. What is your business? A. Manager of an automobile garage and salesman.

Q. What automobile garage is that? A. Henry Brothers.

Q. Up in Union Hill? A. Yes, sir.

Q. Do you remember the time of this accident? 10

A. I do not know anything about this accident.

Q. Do you remember the time?

Mr. Walschied: He examined the machine and repaired, did he?

Mr. Autenreith: Yes.

Mr. Walscheid: Go ahead. He saw the automobile.

Q. Do you recall seeing Mr. Neuweiler's automobile some time after the accident? A. I presume it was in an accident. It was up to our place, yes. 20

Mr. Autenreith: I will connect that up afterward.

Q. About when was it you made your examination, do you know? A. Around the latter part of October—early in November. 30

Q. Of last year? A. Yes, sir; 1916.

Q. What condition did you find the automobile in? A. Why, it was damaged at the front at the right side from the dashboard forward.

Q. On the right side at the front you say? A. Yes, sir.

Q. What parts of the car were damaged? A. The bracket that holds the cranks, holds the motor in fact onto the frame. 40

Q. Holds the motor onto the frame? A. Yes.

Q. How about the front mudguard; what con-

dition was that in? A. That was damaged beyond repair.

Q. And did you notice the front lamps on the right side? A. The front lamps were damaged.

Q. How about the runboard; was anything damaged on that? A. The runningboard, the bracket was bent in.

10 Q. Did you examine the frame of the car? A. The frame was bent.

Q. Of what material is the frame of the automobile made? A. Steel.

Q. Whereabouts on the automobile was this bent, that you mention? A. Around about under the dashboard, that is about four or four and a half feet from the tip of the gooseneck, that is the front end of the frame.

20 Q. That would be about at that part of the hood near the cowl, wouldn't it—about under there? A. Yes, sir; under the dashboard, under the cowl.

Mr. Walscheid: Just in front of where you would step into the front seat?

A. Under the instrument board where the speedometer is.

30 Q. You say the steel frame there was bent, and bent which way, in or out? A. It was bent to the left when you are sitting in the car, sitting in the car looking forward the frame was bent left.

Q. That would be bent in toward the car? A. Bent toward the centre of the frame.

Q. It was not a direct bend? A. No.

Q. About what was the extent of this bend in the frame? A. I could not say offhand.

40 Q. As near as you recall it? A. About from four to six inches I guess.

Q. Did you notice anything about the radiator?

A. The radiator was damaged.

Q. It was? A. Yes.

Q. Now, this mudguard that you have mentioned, and the runningboard were on which side of the car? A. On the right hand side looking forward.

Q. As you sit in the car and look forward it was on the righthand side? A. Yes.

10

Cross examination by Mr. Walscheid:

Q. When did you see this car last—on this occasion? A. I do not know what you mean, when I saw it last.

Q. How many times altogether did you see this automobile? A. Mr. Neuweiler was in our place—

Q. Oh, he brought it to your shop for repairs at that time? A. Yes.

20

Q. And you did make repairs at that time? A. Yes; we made repairs.

Q. And at that time as I understand it you also repaired the brakes, didn't you?

Mr. Autenreith: I object to that. There is no charge against brakes. The question of negligence is a question not of speed but of careless management—operation—not of defective brakes.

30

Mr. Walscheid: There is a charge here "At an excessive rate of speed and in a negligent manner;" and if an excessive rate of speed is produced by the absence of proper brakes I think it is material.

The Court: I will permit the question, but I will charge the jury that the mere fact that the brakes were out of order would not be any ground of recovery.

40

Mr. Autenreith: I think also that the question as to whether he repaired these

brakes at this time, over a month after the accident, is—

Mr. Walscheid: Your contention is that the car came to him in the condition in which it was immediately after the accident.

Mr. Autenreith: There is no question about that.

The Court: That disposes of the present objection.

Question repeated.

A. We did repair the brakes.

Q. You found the brake lining worn out, didn't you?

Mr. Autenreith: I make the same objection.

The Court: I overrule the objection.

Mr. Autenreith: Objection noted.

Q. Didn't you? Yes or no. A. We found the brakes worn.

Q. Worn down? A. Yes, sir.

Q. You made no record of any measurements which you took of that car, did you? A. No, sir.

Q. And you did not take any measurements, did you? A. (No answer.)

Q. You did not take any measurements? A. No, sir.

Q. You personally did not make the repairs? A. No, sir.

Q. Who did personally make the repairs? A. Why, three of our mechanics.

Q. And you are in business with somebody else, aren't you? A. I am the manager for the Henry Brothers.

Q. And what does the business of Henry Brothers consist of? A. Selling and repairing motor cars.

Q. And you have agencies for cars there? A. Yes.

Q. What particular agencies have you? A. Dodge Brothers, Cole and Chalmers.

Q. And your particular line of work is to sell cars, that is what you do most, isn't it? A. Sell cars and manage the business.

Q. Aren't you out most of the time selling cars? A. No; I am in and out.

10

Q. But you have not any steady hours in there? A. I have to keep things going inside as well as outside.

Q. Who else is in charge of the garage? A. No one else.

Q. In your absence who is in charge of it? A. Just a stenographer in the office, that is all.

Q. Who is in charge of it now? A. That is all, the stenographer in the office.

20

Q. Suppose a repair job came in there now, who would take it? A. They would run it in on the floor until I got back.

Q. Doesn't Mr. Henry take any part in that? A. No, sir.

Q. Aren't there any of the partners in it? A. There are two partners, William and Edward Henry.

Q. And doesn't William Henry take part in the work up there? A. He devotes such time as he can; that is all.

30

Q. What does he do there? A. He is outside mostly.

Q. What does the other partner do? A. He comes in whenever he gets a chance.

Q. And who has charge of the shop work? A. Mr. Paul Chard.

Q. And he is a practical mechanic? A. Yes.

40

Q. And he is the man who dismantled this car

if it was dismantled for its overhauling? A. Yes, sir.

Q. How often did you see this car while it was there? A. Every day.

Q. You mean you saw it standing there? A. No; I would go in and see how much work was done on it.

10 Q. To check up the work on it? A. Yes.

Q. Well, didn't the time card show that? A. Yes, sir.

Q. What would you want to do that for? A. Well, I would have to report to the owner how the work was getting on.

Q. How often would you report to the owner how the work was getting on? A. Every time the owner asked me.

20 Q. Then you mean to say you would go in to look at how the work was progressing in anticipation of a call by the owner? A. Yes.

Q. So that you might be sure that you would know in the event that the owner would ask; is that right? A. That is my business.

30 Q. And that is how you happened to become acquainted with the physical condition of this car? A. No; I became acquainted with this job—when Mr. Neuweiler brought it in he asked me to give him an approximate estimate of the cost of repairing the car and replacing the damaged parts.

Q. You had to go to Paul Chard for that, didn't you? A. I could see what was broken on the car.

Q. You cannot see what is broken on a car until you take it down? A. This was mostly outside.

40 Q. And all on the right side? A. Yes.

Q. And you say the radiator was injured? A. Yes.

Q. You mean it was pushed over toward the left? A. Yes.

Q. As if something had come in collision with the side of that car? A. Yes.

Q. And that injury extended from the front of the car back to the driver's seat, didn't it? A. No; I would not say to the driver's seat; to about the dashboard.

Q. Well, didn't you say it came to the cowl just before the point where the driver gets into the car? A. Yes; where the cowl meets the dashboard.

10

Q. And from the cowl forward to the front of the car it looked as if something had come in contact with that whole stretch, didn't it? A. Yes, sir.

Q. And how long is that stretch? A. Why, about four feet, four and a half feet.

20

Q. So that for a distance of four and a half feet, beginning at the cowl, forward, there was evidence of damage along the whole line? A. Yes, sir.

Q. You would not expect such damage from the mere impact of the front wheel of a motorcycle, would you, covering a distance of four and a half feet? A. That is hard to say.

Q. Isn't this so: the very fact that that damage extends over a stretch of four and a half feet at least is proof to your mind as an automobile man— A. Yes.

30

Q. —that the thing which came into collision there was wider than a front wheel of a motorcycle; isn't that so? A. Yes.

Redirect examination by Mr. Autenreith:

Q. But suppose the front of the motorcycle hit it with a terrific speed, would you then expect that such damage might follow?

40

Mr. Walscheid: I object to that.

The Court: Why?

Mr. Walscheid: Oh, I withdraw the objection.

A. Terrific speed, yes.

Recross examination by Mr. Walscheid:

10 Q. From here to there is about four and a half feet, isn't that right? From this point up to here is about four and a half feet? A. Yes.

Q. Now, you say that if a motorcycle going into this side at terrific speed—you would expect a stretch of your car four and a half feet long to be damaged from such a head-on collision, would you? Now, would you? A. That is possible.

20 Q. Is it probable? A. Yes.

Q. It is probable? A. Yes, sir.

Q. With a motorcycle wheel so striking in right here in the center—strike that out a minute—How wide is the front wheel of a motorcycle? A. About two and three quarters inches—two and a half inches.

30 Q. Now, you are driving into the center of this with terrific force, right in the center; isn't it much more probable that you would have a very deep indentation at the point of contact and that the motorcycle would crumple up in front of that point? A. It depends on what part of the frame is hit right there, you see.

Q. Coming head-on, isn't that so? (No answer.)

Q. Oh, I withdraw the question and leave it to the jury.

40 Mr. Autenreith: Let him answer it.

Q. Answer it if you want to.

(Question repeated.)

Q. Can you or can't you answer that question?

A. I could answer that question, but there is a cross member of the frame right there, and if it hit there it certainly would crumple up, but I could not say whether the motorcycle would hit that or not. If it hit the cross member of the frame—

10

Q. Wouldn't it crumple up by the very fact that the steel frame is there and it could not go beyond that steel frame? A. It probably would crumple up, yes.

Redirect examination by Mr. Autenreith:

Q. That is the front wheel of the motorcycle would crumple up possibly? A. Yes.

20

Q. Do you know what make motorcycle this was? A. I do not.

Q. Well, how much did an Indian motorcycle of the 1915 model weigh?

Mr. Walscheid: If you know.

A. Approximately 200 pounds.

Recross examination by Mr. Walscheid:

Q. And how much did this automobile weigh, approximately? A. About 3,700 pounds.

30

Redirect examination by Mr. Autenreith:

Q. Have you ever operated an Indian motorcycle? A. No, sir.

Q. Do not know much about their speed then? A. No, sir.

40

ERNEST NEUWEILER, sworn.

Direct examination by Mr. Autenreith:

Q. You are the defendant in this case? A. Yes, sir.

Q. And you are the man who was operating this automobile on October 10th last? A. Yes, sir.

10 Q. You got into a collision with Mr. Siegeler's motorcycle? A. Yes, sir.

Q. What kind of automobile was it? A. Cole.

Q. Cole? A. Yes; four cylinder.

Q. Four cylinder car? A. Yes, sir.

Q. And it seated how many people; what did they call it, five passenger or seven passenger or what? A. Five passenger, 1914.

Q. Do you remember the day of this accident? A. Yes.

20 Q. Prior to the accident, just prior to the accident, which direction were you going on the Boulevard? A. I was from north to the south coming, from.

Q. Coming from north to south? A. North to south.

Q. Where were you going to? A. I was going on the Boulevard south, and trying to turn into Humboldt Street.

30 Q. As you came up the Boulevard before you got to Humboldt Street, the block before, which side of the Boulevard were you riding on? A. On the right hand side of the Boulevard.

Q. That is on your right hand side? A. On the right hand side of the Boulevard.

Q. As you came toward Humboldt Street about what speed were you going at? A. When I turned in Humboldt Street, do you mean?

40 Q. No; before you turned in? A. Before I turned in, about twelve miles.

Q. About twelve miles— A. Yes.

Q. —per hour? A. Yes, sir.

Q. And just as you started to make the turn what speed were you going at? A. Well, I slowed it down a little bit.

Q. Slowed down a little bit? A. Yes, sir.

Q. Now, when you started to make the turn did you see this motorcycle of Mr. Siegeler's? A. Yes.

10

Q. And how far away from Humboldt Street was it? A. Approximately a block and a half.

Q. That is a block and a half in which direction? A. To the south of Humboldt Street.

Q. When you started to make the turn into Humboldt Street, about what point on the Boulevard were you; were you at Humboldt Street or where were you? A. You mean how far from the—

20

Q. When you started to make the turn just where were you on the Boulevard? A. When I started to make the turn I was on the right hand side of the Boulevard, about six or seven feet from the curb.

Q. On the right hand side? A. Yes, sir.

Q. How near were you to Humboldt Street? A. About the centre of Humboldt Street.

Q. About the centre of Humboldt Street? A. About the centre of Humboldt Street.

30

Q. That would bring you at about a point where I indicate? A. Well, about—it was maybe six—maybe seven or eight feet away from the curb in the centre of Humboldt Street.

Q. That was where you were when you started to turn? A. Yes.

Q. Just come down and mark on this map just about where you were. Mark on the Boulevard about where it was when you started to turn. Mark a "1" where you started. A. I was going that way up.

40

Q. Coming down that way? A. When I passed an automobile here.

By Mr. Walscheid:

Q. Now, start and show us how you turned. A. I was turning in like that.

By Mr. Autenreith:

10 Q. Line "1" to— A. I was not so far.

Q. Indicate how far in you came toward Humboldt Street where the collision occurred.

Mr. Walscheid: You have already marked it. You have already put a "2" on there.

Mr. Autenreith: That is the end of the line.

20 Q. Whereabouts on the Boulevard did this collision occur? A. It was about we will say between two and four feet from the curb—from the line from the curb.

Q. From the line of what? A. From the end line.

Q. The curblineline of Humboldt Street? A. Yes; from Humboldt Street.

Q. Or of the easterly side of the Boulevard? A. Yes.

30 Q. When you started to make this turn I understand that the motorcycle you say was about a block and a half away? A. Yes, sir.

Q. Now, as you started to come down into Humboldt Street, when did you next see the motorcycle? A. When I started to turn I saw the motorcycle steady.

Q. You saw it all the time you mean? A. Yes.

40 Q. And did you start right across the Boulevard? A. I started right across, yes.

Q. And he was then you say a block and a half away? A. Before I started to turn, yes.

Q. When was your attention called to the motorcycle again? A. How do you mean that?

Q. As you started to go into Humboldt Street, were you looking at the motorcycle? A. Yes.

Q. Now, what happened? A. Well, they run in my—between my front wheel and the mudguard.

Q. They ran into you between your front wheel and the mudguard? A. Yes.

10

Q. And how many feet were you from the easterly curb of the Boulevard when they ran into you? A. From the easterly curb of the Boulevard? About three feet.

Q. Now, how fast was your automobile going after you made the turn going towards Humboldt Street? A. Sir?

Q. After you made the turn here on this diagram and coming toward Humboldt Street, how fast were you going? A. I was slowing up probably from six down to two miles, because I started to stop. I was starting to stop.

20

Q. When did you start to stop? A. When I was over the half of the Boulevard—when I was over the half line of the Boulevard.

Q. Why did you start to stop? A. Because I see they are still running in the same direction; they don't move in either direction, to the left or the right.

30

Q. Whom do you mean? A. The motorcycle.

Q. Did you notice how fast the motorcycle was going? A. Yes—not exactly how fast, but I noticed they were going fast.

Q. You have driven your automobile? A. Yes.

Q. And you have got some idea of speed from riding in your automobile? A. Yes, I have got.

Q. From riding in automobiles? A. Yes.

Q. About how fast would you say this motorcycle was going when you started to slow up? A.

40

Well, I did not see it then. He was going as fast when I see him first as when he meet me.

Q. You mean he kept on the same speed? A. Yes; I do not see any difference.

Q. How fast was that? A. Well, anyhow, over forty miles. When a car goes fast you can't tell it five miles, but over forty miles.

10 Q. Over forty miles an hour? A. Yes.

Q. What kind of a motorcycle was this, did you notice? A. An Indian.

Q. And did you see this man Iltman riding on the back? A. Yes.

Q. As you approached the point on the Boulevard just before you turned into Humboldt Street, did you blow your horn or signal of any kind? A. Yes.

20 Q. What kind of a horn has your automobile got? A. An electric horn.

Q. One of those electric buzzers? A. What?

Q. You press a button, don't you?

Mr. Walscheid: I object as leading.

A. Yes; you press a button.

Q. You say you blew that? A. No; it is not the horn; it is what you blow, a—what is the name of it? What they usually have—what do you call it?

30 Q. A Klaxon? A. Not a Klaxon; a Klaxonette; an electric Klaxonette.

Q. As you approached that turn, did you use it? A. Yes.

Q. How often? A. I blow three times.

Q. Who was with you in the car? A. My little girl.

Q. She is here in Court, isn't she? A. She is right here, yes.

40 Q. Now, did Mr. Siegeler on this motorcycle as he came up to you— A. Yes.

Q. —blow any horn? A. No; he did not blow any horn; I did not hear anything.

Q. Did you hear any signal from the motorcycle? A. I did not hear a signal except my own.

Q. None except your own? A. No.

Q. Were there any other automobiles on the Boulevard between you and Siegeler at any time?

A. No; I did not see anybody on the Boulevard.

Q. What is the condition of the Boulevard there; is it smooth or was it rough? A. Smooth, good road, in best condition.

Q. And grades? A. No.

Q. Or was it level? A. Level.

Q. What kind of a day was it? A. It was a nice day.

Q. Was the road dry? A. It was a sunny, Summer day; the road was dry.

Cross examination by Mr. Walscheid:

Q. You know where the North Bergen Town Hall is, do you not? A. Yes.

Q. And that is at Main Street, Union Hill, isn't it? A. Yes, sir.

Q. And Main Street, Union Hill, is one block to the north of Liberty Street on this map? A. Yes, sir.

Q. The cross streets run Main Street, Liberty Street and then Humboldt Street, coming south on the Boulevard? A. Yes.

Q. And when you first saw this motorcycle you were just past the town hall, weren't you? A. Yes; right past the town hall, surely.

Q. You had just passed it? A. Just passing?

Q. Isn't that so? A. Well, just passing; but you mean how many feet away? How do you mean that? I do not understand how you mean. I just passed him. That goes quick with the automobile. Just passing right up a few blocks away.

Q. When you saw this motorcycle for the first time you had just passed the North Bergen Town Hall, hadn't you? A. Yes, I was about away maybe 200 feet.

Q. Two hundred feet? A. Yes—approximately, or more.

Q. You had passed it about 200 feet you say?

10

Mr. Autenreith: Or more.

A. Not exactly. I can't tell you that exactly any more.

Q. Then if you had passed it approximately two hundred feet you had almost reached the corner of Liberty Street? A. Oh, I was further away than Liberty Street.

Q. Didn't you testify at the last hearing in this case— A. Yes.

20

Q. One minute—that you saw this motorcycle when you were passing the town hall of North Bergen—didn't you? That you then saw it for the first time? Didn't you? A. I said—

Q. Didn't you say so? Yes or no. Didn't you? A. Yes; when I passed the town hall. That is right; when I passed it, yes.

Q. When you were passing the town hall? A. Not passing when I passed him I said.

30

Q. When you passed it? A. That is different, passing or passed him. Excuse me.

Q. When you had passed—just as you passed the town hall, you for the first time saw the motorcycle?

Mr. Autenreith: He did not say that.

A. Correct.

40

Q. Where was the motorcycle then in reference to Humboldt Street? A. When I saw the motorcycle— Oh! When I saw him first?

Q. Yes. A. He was about two and a half blocks—a block and a half or two blocks away.

Q. A block and a half or two blocks away? A. Yes.

Q. That is down here beyond Morgan Street, and the next street to the south of Morgan Street is Lewis Street, isn't it? A. Lewis? Garden.

Q. You know it better than I do. And those blocks are all 200 feet long? A. Yes, sir. 10

Q. And across in between there, Garden Street is about 30 feet wide, including the sidewalks, or 35 feet wide including the sidewalks? A. Yes.

Q. So that when you first saw this motorcycle it was at least 335 feet to the south of this corner, wasn't it? A. No, sir; two blocks are more than 335 feet.

Q. You say it was more. How much more? What was the distance? In feet now. A. I did not measure it. 20

Q. You say two blocks or more? A. Yes. You figure a block 200 feet. That is as much as I know.

Q. Then it was at least 400 feet to the south of Humboldt Street when you first saw it; is that right? A. Yes.

Q. And when you first saw it, how far were you from Humboldt Street to the north, in feet? A. Before I turned? 30

Q. When you first saw it? A. Before I turned?

Q. Of course before you turned; when you first saw this automobile— A. Yes.

Q. —how far to the north of Humboldt Street were you? A. I was about near as high as Humboldt Street.

Q. Come here and point out and put an X mark on this map where you were when you saw this automobile four hundred feet away—the 40

motorcycle four hundred feet away. Put an X there. A. About here.

Q. Put an X there.

Adjourned to April 23, 1917.

10 Q. You testified on Thursday as I remember it, that when you reached this point where you put this cross— A. Yes.

Q. —you saw the motorcycle four hundred feet down the Hudson Boulevard. A. About, yes.

Q. About that; and then you also saw how fast it was going, didn't you? A. About 45 miles an hour? A. Well, I said over forty miles.

Q. Yes; you saw that at that point at that time, didn't you? A. Yes.

20 Q. And from that time on you saw that motorcycle all the way, didn't you? A. Yes.

Q. And was that the first that you had seen of the motorcycle? A. Yes; that was.

Q. Before that you had not seen the motorcycle? A. Yes; before I turned.

Q. Had you? A. Yes, I think.

Q. You did see it before that? A. No; I did not see it before it.

30 Q. Which is it; did you or didn't you?

Mr. Autenreith: He said he did not.

Q. You said both. Did you or didn't you see it before you turned? A. When I turned did I see it?

Q. Before you reached that point where you made this X? A. When I reached that point.

40 Q. How close to this westerly curb of the Boulevard were you then? A. Well, we will say about eight feet.

Q. And with your westerly wheels, the wheels

on the west side of your car, you were eight feet from the westerly curb, is that right? A. Yes, sir.

Q. And then you moved south, did you, along the Boulevard, across the centre line of Humboldt Street? A. No; I moved east, on the side.

Q. From that point on? A. From that point on I moved east.

Q. You mean from this point on you immediately turned? A. Yes. 10

Q. So that you turned in this way then? A. I turned in to go about in the centre of Humboldt Street.

Q. If you turned at this point where this cross is how sharp a turn did you make? A. No; I did not make a sharp turn.

Q. Well then, you did go further south according to your idea, along the Boulevard from this point? A. Well, southeasterly. 20

Q. Southeasterly? A. Yes.

Q. And how fast were you going when you left this cross? A. When I turned—

Q. When you left this point. A. Yes; when I left that point I was going about, well, about six miles, maybe only five.

Q. You said two miles on Thursday.

Mr. Autenreith: I object to that. 30

Q. You said two miles an hour.

Mr. Autenreith: I do not think the witness did say two miles an hour.

A. No; I did not say that when I turned.

Mr. Autenreith: Well, he has answered you.

A. In the street, yes, when I crossed the street. 40

Q. When you started to cross the street you

were going two miles an hour? A. When I crossed the street, yes, but not when I turned.

Q. When you turned you were going how fast? A. About six miles.

Q. Then when you got straightened out toward Humboldt Street you were going about two miles an hour? A. I reduced the speed, yes.

10 Q. Do you know how far you go in a second, going at two miles an hour? A. Yes.

Q. How far do you go in a second, going at two miles an hour? A. About as a baby walks.

Q. That does not tell how far you go. A. What do you mean?

Q. How far do you travel in a second going at the rate of two miles an hour? A. How far can I go?

20 Q. Oh, you understand the question. A. No; I do not understand that question.

Q. How far do you travel; what distance do you cover going at two miles an hour? A. Oh, over the street?

Q. Less than three feet, isn't it? (No answer.)

Q. Less than three feet, isn't it? A. Well, I do not know.

30 Q. That is so, isn't it? Two and a fraction feet, going at the rate of two miles an hour? A. Yes; when you figure it out.

Q. And you were eight feet from this curb, weren't you, the westerly curb, when you were making that turn? A. No; you can't—

Q. Oh, answer my question. Were you or weren't you eight feet from that curb when you started in on your turn? A. Yes.

40 Q. And how long did it take you to get across the Boulevard? A. I cannot tell you that exactly. I do not know any more.

Q. You did not increase your speed? A. I reduced the speed.

Q. You could not reduce it below six miles an hour, could you? A. I mean from six to two.

Q. So that you came across the Boulevard at the rate of two miles an hour? (No answer.)

Q. That is right, isn't it? A. I said I reduced my speed from six to two.

Q. And this Boulevard here is sixty feet wide? A. Yes, sir.

Q. And it took you almost thirty seconds to cross that Boulevard, didn't it? A. I did not have time to look at the watch.

10

Q. And half a minute, according to your testimony, didn't it? (No answer.)

Q. Is that right? A. Maybe it is right.

Q. And during all that time you saw this motorcycle coming, didn't you? A. Yes, sir.

Q. And you saw that it was going at the rate of forty miles an hour? A. Yes.

20

Q. Why didn't you stop if you saw it was coming and let it go by? A. Didn't I stop?

Q. Why didn't you stop before you got across where you were to be hit, and let it go by? A. Oh—that—

Q. If you were going at the rate of two miles an hour and it was coming at the rate of forty miles an hour, and you saw it all the time, why didn't you stop and let it go by? A. Yes, I saw it all the time.

30

Q. Why didn't you stop and let it go by? A. I didn't stop because I didn't think the motorcycle wanted to cut me off. I thought they have forty feet on back of me, they can go on the back.

Q. You saw it coming; and on the easterly side of the road, didn't you? A. Yes, sir.

Q. And you saw it coming up there near the easterly gutter, didn't you? A. But I was on the easterly side already.

40

Q. You were crossing over? A. Yes.

Q. From the westerly side, weren't you? A. Yes.

Q. And all the time that you were coming across this street at the rate of two miles an hour you saw this motorcycle coming up here on the easterly side of the Hudson Boulevard? A. Yes, sir.

Q. Going at the rate of forty miles an hour? A. Yes.

10

Q. You could not stop and prevent the accident? A. Yes; I could stop before.

Q. Well, why didn't you? A. I could stop before.

Q. Why didn't you, if it happened as you say? A. I never thought they want to cut me off, they want to cut through there. I thought they pass me on back of the automobile.

20

Q. But you saw they were going to pass, they could not stop? A. They had plenty of room to move.

Q. You know that a machine going at the rate of forty to forty-five miles an hour can not be stopped very easily, don't you? A. Correct.

Q. And you saw this coming toward you? A. Yes.

30

Q. And you were in that position where you were not going faster than three feet a second; you could have stopped your machine— A. Yes.

Q. —inside of two feet, couldn't you? A. Yes.

Q. Why didn't you do it? A. Because I never thought they want to cut me off. I thought they go on the back of me, because they have forty feet room on the Boulevard.

40

Q. Now, you are sure, are you, that you went beyond the centre line of Humboldt Street here before you turned? You are sure of that, are you—in trying to go into Humboldt Street you are sure you came down and went beyond the centre line of Humboldt Street and then turned? A. I do

not know exactly the point any more; it may be a couple of feet out of the way.

Q. Did you come down on the southerly side of the centre line of Humboldt Street in crossing the Boulevard? Yes or no? A. Did I come from the southerly?

Q. Here is the centre line of Humboldt Street running across like that. A. Yes.

10

Q. Did you in crossing that Boulevard come in on the southerly side of that line? A. No; I started to go.

Q. Did you go on the southerly or on the northerly side?

Mr. Autenreith: Northerly side of what?

Mr. Walscheid: Of the middle line of Humboldt Street extended through the Boulevard.

20

A. No; I did not start in the middle line of the Boulevard.

Q. I do not care where you started. In coming across the Boulevard on which side of that centre line, when you got here? A. About in the centre of Humboldt Street.

Q. About in the centre of Humboldt Street? A. Yes; about in the centre.

Q. Straddling it then, right on the centre line; is that what you want us to understand? A. Not on the centre line. I can't tell you that exactly. I don't know exactly.

30

Q. Don't you know that you did not do anything of the sort; that you did not come in along the centre line, and you did not come in to the south of the centre line of Humboldt Street extended across the Boulevard? Don't you know it? (No answer.)

40

Q. You testified in this room on February 17th, didn't you (No answer.)

Q. In this same case; didn't you? A. Yes.

Q. Well, why don't you speak up? And you were examined by Mr. Autenreith, your present counsel, weren't you? A. At that time?

Q. Yes. A. Yes.

Q. And since that time have you had any talks with anybody about the testimony you gave at the last hearing, the last trial? A. No, sir.

10

Q. Nobody at all? A. No, sir.

Q. Didn't Mr. Autenreith talk to you about it? A. No, sir.

Q. Didn't you talk to somebody as you left the court room out in the hall about your testimony? A. About my testimony? No, sir.

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

Q. Do you remember upon your examination by Mr. Autenreith saying, "I was in the right hand side driving on the Boulevard"? You said that?

20

A. That is correct.

Q. "Q. That is on your right hand side in the direction you were going? A. Yes, sir." You said that, didn't you? A. Yes.

Q. And then he asked you: "Q. When you approached the corner did you change your direction in any way?" and you answered: "I started, I really started to turn a little before I ought to should, because—because—er—I—" Do you remember testifying to that? A. Yes; all right.

30

Q. Then you did start to turn? A. I didn't state the contrary now.

Q. Then you did start to turn before you should, didn't you? A. All right; did I say the contrary? That mark I made over there, that is not the contrary.

40

Q. But there you carry that mark down below the centre line, in the line you drew on the map.

A. Yes; all right; that is not much out of the way anyhow.

Q. And didn't you say that you turned when you reached the north curb of Humboldt Street instead of crossing the centre line; didn't you say that? A. I do not know.

Q. "Q. Where were you when you turned, when you first started to make your turn? A. I was about may be on the corner of—as high as the north corner of Humboldt Street, when I turned." You said that, didn't you? A. Yes.

10

Q. Is that right? A. Yes. I said that.

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

Redirect examination by Mr. Autenreith:

Q. But this line you have indicated on the diagram represents the way you turned, doesn't it?

Mr. Walscheid: I object as leading.

20

The Court: Objection sustained.

Mr. Autenreith: I will withdraw it.

Q. You have indicated that point X on this map. What is that point? A. That is about the point where I started to turn.

Q. That is about where you started to turn? A. Yes.

Q. And this line as you have indicated it here represents what? A. That represents about—how I was going to Humboldt Street, the turn I made—about the turn I made.

30

MINNIE NEUWEILER sworn.

Direct examination by Mr. Autenreith:

Q. You are the daughter of Mr. Neuweiler? A. Yes.

Q. The man that was on the stand just a minute ago? A. Yes.

40

Q. And were you riding with your father in the automobile on the day of this accident? A. Yes.

Q. You will have to talk a little louder now. And you were here at the last trial, weren't you?

A. Yes.

Q. How old are you? A. Thirteen.

Q. Do you go to school? A. Yes, sir.

10 Q. And on this day the accident happened, just before you reached the corner of Humboldt Street, which side of the Boulevard was your car on? A. The right-hand side.

Q. Now, as you got near the corner of Humboldt Street, did you see a motorcycle? A. Yes.

Q. And as you got to the corner of Humboldt Street how far away was the motorcycle, if you remember? A. Well, I could not just say how far it was.

Q. Was it a block away from you? A. Well, about three-quarters of a block.

20 Q. That is as you remember it? A. Yes.

Q. And at that point where was your automobile—your father's automobile? A. Well, just about making the turn.

Q. Now, when the automobile approached Humboldt Street where, with respect to Humboldt Street, did it first make the turn? A. Not quite in the centre of Humboldt Street.

30 Q. Not quite in the centre of where Humboldt Street is? A. Yes.

Q. How far from the curb of the Boulevard—the right-hand curb of the Boulevard—was it just before it made the turn? A. Between seven and nine feet, I guess.

Q. Between seven and nine feet? A. Yes.

Q. Were you going fast at that time? A. No, sir.

40 Q. Had you ridden in an automobile much before this accident? A. Rode on an automobile?

Q. Ridden in one? A. Yes.

Q. Frequently or not? A. Yes, very often.

Q. You ride out with your father quite a bit, don't you? A. Yes.

Q. And how fast was your automobile going just before it made this turn? A. About twelve miles.

Q. Now, as the automobile made the turn and went over toward Humboldt Street, about how fast was it going? A. About seven or eight.

Q. Had it slowed up? A. Yes.

Q. Now, did you see this motorcycle approaching? A. Yes, sir.

Q. And how fast would you say that the motorcycle was coming toward you? A. About forty miles.

Q. That is your best judgment of the speed, is it? A. Yes.

Q. Did you see the motorcycle collide with your automobile? A. Yes.

Q. And about where was your father's automobile struck? A. About a yard and a half from the left-hand corner.

MI. Walscheid: What is that?

The Witness: About a yard and a half from the left-hand corner.

Q. Left-hand corner of what; of the street or the automobile or what? A. Of Humboldt Street.

Q. That is the place where the accident happened, you mean? A. Yes.

Q. But where, on the automobile, was the automobile struck? A. On the right side.

Q. Near the front was it? A. Yes.

Q. And how far from the front, or how far from the fender, the front of the fender? A. Well, from the fender, the front of the fender? A. Well, it was—the mudguard and right into the radiator.

Q. About where the mudguard is? A. Yes.

Q. And radiator? A. Yes.

Q. And did you notice the damage that was done to the automobile? A. Yes.

Q. After the accident? A. (No answer.)

Q. What could you see? A. Oh, the whole front was smashed in.

Q. Did you see the mudguard? A. The front—

Q. I say, could you see the mudguard? A. Yes.

10

Q. And what was the condition of the mudguard? A. The top of the mudguard was like torn off.

Q. Torn off, you say? A. Yes.

Q. And did you notice the hood or the radiator? A. Yes, sir.

Q. And what did that look like? A. It had two bumps in it, one on each side.

20

Q. Did you notice any other damage which you could see? A. The front light and the—

Q. Speak a little louder. A. The front light and the radiator and the bumper.

Q. Now, as your father made this turn on the Boulevard there, do you know whether he blew a signal of any kind? A. Yes.

Q. And what was it? A. Electric horn.

Q. And is that one of these buzzers? A. A Klaxon.

30

Q. A Klaxon horn. And how often did he blow it, do you remember? A. I could not just say.

Q. Do you remember that he blew it though? A. Yes.

Q. And could you see this motorcycle as you were coming across? A. Yes.

Q. Anything in between your car and the motorcycle? A. No, sir.

40

Q. Any other cars around? A. No, sir.

Q. A clear space? A. Yes.

Q. And about how far from this curb to this northeast corner of Humboldt Street and the

Boulevard was it that the accident happened? A. About a yard and a half or two.

Q. About a yard and a half; and was your automobile after the collision, that is right after it, in the Boulevard or in Humboldt Street? A. In the Boulevard.

Q. On the Boulevard? A. Yes.

Q. Had any part of your automobile gotten into Humboldt Street before the collision? A. No, sir. 10

Cross examination by Mr. Walscheid:

Q. You also testified in this last case, didn't you? A. Yes, sir.

Q. In that same chair you sat? A. Yes, sir.

Q. Do you remember calling your father's attention to the motorcycle that was coming? A. Yes, sir. 20

Q. What did you say to him? A. "There is a motorcycle coming."

Q. And why did you say that to him? A. Well, just to let him know there was one coming; but he saw it himself.

Mr. Walscheid: I ask that that conclusion be stricken out, that he saw it himself.

The Court: I will strike that out. She can state what she saw. 30

Q. When you said that, how near were you to the easterly side of the Boulevard? A. I guess about forty feet.

Q. About forty feet from the easterly side of the Hudson Boulevard? A. Yes.

Q. And you were then how near to Humboldt Street—you were headed in to Humboldt Street, weren't you? A. Yes. 40

Q. So that at that point you saw this motor-

cycle coming and you called your father's attention to it? A. I saw it before that.

Q. You had seen it before that too? A. Yes.

Q. But at that point you called his attention to it? A. Yes, sir.

Q. Then did he start to put on the brakes? A. He slowed down.

Q. What is that? A. He slowed down.

10

Q. Do you mean to say he did not slow down until he was within forty feet of the easterly side of the Hudson Boulevard? A. No, sir; before that.

Q. Had not slowed down until then? A. No, sir; before that.

Q. You know that this Boulevard is sixty feet wide, don't you? A. Yes, sir.

20

Q. And he was within forty feet you say of this side of the Boulevard here when he started to slow down? A. Yes, sir.

Q. Speak up. I cannot hear you? A. Yes, sir.

Q. And how fast had he been going when he started to slow down? A. About fifteen miles.

30

Q. So that after he was headed in to Humboldt Street as you say and was about forty feet away from the easterly side of the Boulevard, he was going at the rate of fifteen miles? A. Yes, sir.

Q. And then what did he slow down to? A. Well, to about eight, I guess.

Q. Down to about eight. Then he was not going two miles an hour? A. Well, after we got almost to the corner, about that.

Q. After he got over to this corner he was going two miles? A. Almost.

40

Q. Then in crossing the Boulevard he was first going at the rate of fifteen, and then eight, and then finally two miles an hour? A. Yes, sir.

Q. Well, you were going at the rate of two miles an hour when the accident happened? A. We were stopped when the accident happened.

Q. Well, didn't you go right on again after the accident? A. No, sir.

Q. Don't you remember after the motorcycle and your car came together that your car stopped for a moment and then shot forward another distance? A. No, sir; my father went to the rear, and then after awhile we started off again, after we had gone in the car.

10

Q. I mean before that, after the collision, your car stopped? A. Yes, sir.

Q. And then started up again, and went about— A. No, sir.

Q. —five or six feet further on? A. No, sir.

Q. You made a picture, or rather you drew some lines on a diagram here at the last hearing, didn't you? A. Yes, sir.

20

Mr. Walscheid: May I have that diagram?

Q. And on that diagram you show the course of your car, don't you? A. Yes, sir.

Q. In lead pencil? A. Yes, sir.

Q. And the point where the accident happened? A. Yes, sir.

Q. That is the diagram, isn't it? A. Yes, sir.

30

Q. And this lead pencil line running through that letter C over here to this X is the line that you drew, isn't it? A. Yes, sir.

Q. And that X is the point where you say the accident happened? A. Yes, sir.

Q. And that C is the point where you say your car started to turn? A. Yes.

Q. And that is the way it happened, isn't it? A. Yes, sir.

40

Q. Then your father did not go down as you did

testify to almost the centre line of Humboldt Street before he turned, did he? (No answer.)

Q. He did not, did he, if he went across like that? A. No, sir.

Mr. Walscheid: I offer this in evidence.

Mr. Autenreith: No objection.

Marked P2.

10 Q. The point C is the point where you say your father started to turn, isn't it? A. Yes.

Q. And the point X is the point where you say the accident happened? A. Yes.

Q. And the curved lead pencil line is the curve that he traveled to get to the point of the accident? A. Yes.

20 HUGO LANDAU, sworn.

Direct examination by Mr. Autenreith:

Q. Where do you live? A. 553 Humboldt Street, corner of the Boulevard.

Q. You own this cafe that is on the corner here? A. Yes, sir.

Q. And do you remember the day of the accident? A. Well, I forget the date of it exactly.

30 Q. Well, you remember it? A. Yes.

Q. I show you Exhibit D-2, Mr. Landau; this building on the corner—Landau's restaurant—that is the place where you live, isn't it? A. Yes.

Q. You did not see the accident, did you? A. No, sir; I did not.

Q. And when was it with respect to when the accident happened that you came out? A. I heard the crash and I ran out.

40 Q. At the time you heard the crash where were you? A. I was behind the door in my cafe there.

Q. Did you notice where the automobile was the

minute you came out? A. Why, the automobile was on the northeast corner.

Q. Was it in Humboldt Street or out on the Boulevard? A. It was some part in Humboldt Street.

Q. Which part? A. The front wheel.

Q. And how far from the curb was it? A. About a foot or two.

Q. Did you notice the condition of the automobile? A. All I seen was the mudguard in the front was badly bent. That is all I seen.

Q. The Boulevard is level there, isn't it? A. Yes.

Q. And at that time was a nice, smooth road? (No answer.)

Cross examination by Mr. Walscheid:

Q. This automobile you say was about at this point D, wasn't it? A. On the northeast corner.

Q. Well, that is the northeast corner? A. Yes.

Q. And partly around the corner? A. Yes; it was partly around the corner.

Q. And within about two feet of that corner, two feet of the curb? A. Yes.

Q. Close up to the curb? A. Yes.

JOHN BOUTON, sworn.

Direct examination by Mr. Autenreith:

Q. Do you remember this accident, Mr. Bouton? A. Yes, sir.

Q. Where were you at the time? A. Why, the minute that the accident happened I was looking from Mr. Landau's window.

Q. You were in the cafe, were you? A. Sir?

Q. You were in the cafe? A. In the cafe, looking from the window.

Q. What attracted your attention to the acci-

dent? A. Well, the minute that the accident happened I seen it.

Q. That is, did you see either the motorcycle or the automobile before the accident? A. No, I did not.

10 Q. You say the minute it happened you saw it. You mean you saw the smash, saw them collide? A. I saw the automobile and the other come together, yes, sir.

Q. Now, you were standing where at that particular time? A. If you have a picture I can show you in the picture.

Q. One of the jury has it. Which one do you want, the cafe or— A. No; it is on the Humboldt Street side.

Q. Well, there you are. A. Here it is, here—see?

20 Q. You are referring to Exhibit D2. A. This is the Boulevard.

Q. You were standing in the window? A. This is the Boulevard; this is Humboldt Street.

Mr. Walscheid: Speak up louder.

30 A. I am looking from the window in Humboldt Street when the accident happened. I was waiting for a friend to come along, and while looking for him I see the accident happen from this window here.

Q. That window is the Humboldt Street—the window on the Humboldt Street side? A. The window on the Humboldt Street side.

Q. And you were looking out over the Boulevard? A. Yes, sir.

Q. There is a screen in that window, isn't there? A. No, sir.

40 Q. Isn't there a wooden screen or something part way up? A. On the bottom here across there

is a sort of a framework, a glass framework, but about from here up is all clear.

Q. That is what I mean; you were looking over the top of that? A. Yes.

Q. Did you notice the speed of the motorcycle? A. Well, the speed—I could not judge the speed; I could not judge that.

Q. What is the condition of the Boulevard there? A. Pretty level; very good; very fine. 10

Q. You mean level? A. Neat; fine; very level; fine.

Q. And the block toward Morgan Street; is that level? A. It is all level along that section there.

Q. At that time was it smooth or bumpy, the road? A. It was smooth.

Q. Did you notice where the motorcycle and the automobile collided? A. Yes, sir. 20

Q. What part of the automobile was struck? A. The first blow on the automobile was struck on the righthand—on the righthand mudguard.

Q. On the righthand mudguard of the automobile? A. The righthand mudguard; that is the first blow that was struck.

Q. You say the righthand mudguard; do you mean the front or rear mudguard of the automobile? A. The front; the righthand mudguard was struck, on the front. 30

Q. Did you notice the condition of the automobile afterward? A. Well, when I went out I called Mr. Landau's attention—he has testified previous to myself—I called his attention to it; I said, "Mr. Landau"—

Mr. Walscheid: I object.

Q. Never mind what you said to him. Did you see the automobile? A. Yes. 40

Q. What condition was it in? A. I found the

condition when I went out—I found that the mudguard was badly bent and the radiator was bent.

Q. Did you notice anything in respect to the lamp or the running board? A. The glass was broken in one lamp.

10 Q. Which one was it? A. The righthand lamp, the lamp on the front on the righthand side was broken.

Q. You say you saw the collision? A. I seen the collision. I seen the two come together.

Q. Did you see Mr. Iltman just at that minute when there was a collision? A. I seen Mr. Iltman go right over the radiator and land on the sidewalk.

Q. That is over the car? A. The front of the car.

20

Cross examination by Mr. Walscheid:

Q. You were here at the last trial, weren't you? A. Yes.

Q. Here under subpoena by the other side? A. On the other side, yes.

Q. And you did not testify? A. I was not called upon.

30 Q. You do not know why you were not called that day? A. I do not know.

Q. This window that you were standing in looks north, doesn't it? A. It looks north, yes, sir.

Q. And where did you expect your friend to come from? A. From the northerly side.

Q. Of what street? A. Of Humboldt Street.

Q. You expected him to come from Union Hill? A. From Union Hill, yes.

40 Q. From the direction of Bergenline Avenue? A. No, sir; he lives between Liberty and Humboldt Streets on the Boulevard.

Q. And you expected him to come down on

the easterly side of the Hudson Boulevard toward you, is that right? A. I do not know what side he was coming from. I expected to meet him.

Q. That is where you were looking for him? A. He has also a motorcycle.

Q. Isn't that where you were looking for him, along the easterly side of the Boulevard?

A. Well, you put the question wrong, counsellor. Now, if he has a motorcycle—

Q. Yes or no. Answer my question. A. He is supposed to run on the westerly side because that would be the right side to run.

Mr. Walscheid: I ask that that be stricken out.

The Court: I will strike it out.

Q. (Question repeated.) A. I was looking at the Boulevard. I will not say—I was looking on the Boulevard for him, for my friend to come to see me.

Q. Then you were not looking for him on the easterly side of the Boulevard, isn't that so? A. I was looking from the Humboldt Street side of the street—from this cafe.

Q. Looking north? A. Waiting for him—looking north for him to come to see me.

Q. And the first thing you heard was this collision or blow? A. Then while looking out of this window I seen the collision.

Q. And you heard it, didn't you? A. Yes.

Q. And that is what attracted your attention to it—the blow? A. Naturally.

Q. Yes; and having heard the blow you immediately turned and then you saw that the collision was on; isn't that so? A. Well, when I seen it of course I—I naturally did witness it, you know.

Q. I do not say you did not witness it; I am just trying to get the manner in which you witnessed it. You were looking north from this window, weren't you? A. I certainly was, yes, sir.

Q. Were not thinking of any automobile or any collision? A. I was thinking of anything, naturally.

10 Q. And suddenly there is a blow right in under your nose? A. Yes.

Q. And you heard it, and then you looked there? A. Yes, sir.

Q. And from that moment on you saw what was happening; isn't that so? A. Yes.

Q. And that blow occurred on the northerly side of Humboldt Street and at this corner, didn't it? A. Northeast corner, yes, sir.

20 Q. At the northeast corner? A. Yes, sir.

Q. And within two or three feet of that corner, didn't it? A. The automobile—

Q. Yes or no. Within two or three feet of this corner curb? A. About two feet, I will say, about two feet.

Q. About two feet out from the curb? A. Yes.

30 Q. And when the blow was struck the automobile was turned into Humboldt Street? A. Yes, sir.

Q. And was partly in Humboldt Street, wasn't it? A. The front wheels were just touching pretty nearly the curb—the curb line.

Q. What is that? A. The front wheels were nearly touching the curb line.

Q. The north curb line? A. Yes; the north curb line.

40 Q. The front wheels of the automobile were nearly touching the north curb line of Humboldt Street? A. Yes.

Q. And how far in to Humboldt Street had they

gotten? A. He had just arrived at the point of the curb line—the curb line of the Boulevard and Humboldt Street. He had not yet reached Humblodt Street.

Q. What? A. He was not in Humboldt Street, but his front wheels were right at the intersection of the curb line.

Q. So that you would say this point here, D, would that be about where the front wheels were?

10

Mr. Autenreith: If he can see it from there.

A. I can see it from here.

Q. Is that where you saw the front wheels were? A. How far is D from the curbline?

Q. I am supposing that it is about—you come up here and make the mark yourself. Now, what is your last name? A. Barton.

20

Q. Just put a B in there where the front wheels were? A. This is the curbline of the Boulevard, right here. Here is Humboldt Street. Now, right here has been omitted a manhole.

Q. We do not need the manhole. A. Here is a manhole supposed to be right here. Now, I can describe the entire thing just exactly—

Q. Just answer my question. Put the point B where you say the front wheels of that auto were when the collision took place. A. Right here.

30

Q. So you agree practically with the young lady who testified that the accident happened at the point D. You say it happened at about B? A. Yes; that is where it happened.

Q. And you think B is about how far from this curbline? A. About two feet away; about two feet away.

40

Q. Then as a matter of fact this automobile

was blocking this road right across this way, wasn't it—

Mr. Autenreith: I object.

Q. Blocking the north and south traffic on the most easterly portion of the Hudson Boulevard when the blow occurred? A. I don't—

10 Q. I will withdraw the question. A. Blocking the traffic?

Q. I will withdraw the question.

ERNEST BOLA, sworn.

Direct examination by Mr. Autenreith:

Q. What business are you in? A. In the motorcycle business.

20 Q. And did you know Mr. Rudolph Siegeler? A. Yes, I did.

Q. In his lifetime? A. Yes.

Q. Were you familiar with the motorcycle that he used to ride? A. Yes; we sold it to him.

Q. You sold it to him. You have a place of business where? A. Near Blum Street. Between Blum and Union on the Boulevard.

Q. In West Hoboken? A. No; Union Hill.

30 Q. Is that anywhere near Humboldt Street? A. That is three blocks away—four blocks away.

Q. Do you know Mr. Landau's place of business? A. Yes.

Q. Is it on the same side or the other side of the Boulevard? A. It is on the same side of the road.

Q. Do you remember the day that Mr. Siegeler's motorcycle got into a collision? A. Yes.

40 Q. And do you remember getting this motorcycle after this collision? A. Yes.

Q. Where has it been ever since? A. It has been in our alleyway right next to the store.

Q. Your place of business there? A. Yes.

Q. Have you changed its condition in any way by repairing it or otherwise? A. No; we just put a cover over it and left it there the way it was.

Q. Just before the accident did you see Mr. Siegeler? A. I seen him pass our place; I was working outside.

10

Q. You were working out in the front? A. Yes.

Q. And you say you are about four blocks away? A. Yes.

Q. And how fast was he going?

Mr. Walscheid: I object as immaterial, how fast he was going four blocks away.

20

The Court: What do you think the relevancy of it is, Mr. Autenreith?

Mr. Autenreith: Well, he was right on a straight-away, going up toward the accident.

The Court: The same thing would be applicable if he were forty blocks away.

Mr. Autenreith: I merely thought it was a circumstance that the jury might consider. If your Honor thinks it is remote I will withdraw it.

30

The Court: Unless he was running recklessly, or was drunk, or there was something of that kind—or something that might indicate the continuity of it—

Mr. Autenreith: I thought the speed might indicate continuity.

Q. You knew the kind of motorcycle he ran?
A. Yes.

40

Q. Do you know what the condition of that

motorcycle was just before the accident? A. Yes; it must have been in fair condition because—

Q. Had you examined it? A. No; I did not examine it.

Q. I mean before the accident? A. No, I did not. He had it around there several times before for quite a while.

10 Q. What kind of a motorcycle, what make was it? A. It is an Indian.

Q. What is the horsepower? A. Seven horsepower.

Q. When they are in good condition what is the maximum speed they attain? A. About sixty to sixty-five miles.

20 Q. Sixty to sixty-five miles an hour. You say this motorcycle is in the same condition today as it was when you got it at the place of the accident? A. Just the same.

Q. And did you bring that motorcycle down to court this morning? A. Yes, sir.

Q. Have you got it here? A. Yes.

Mr. Autenreith: I will offer it in evidence, Mr. Walscheid, as soon as it is brought inside.

30 Mr. Walscheid: Bring it in now.

Q. Will you go get it? You say that the motorcycle as it is now is in the same condition as it was the day you got it down at the accident? A. Yes.

Q. What year model is that? A. 1912.

Q. I show you what puports to be a picture of an Indian motorcycle, 1917 model; is that the way that motorcycle looked before the collision?

40 Mr. Walscheid: I object to that as immaterial.

Mr. Autenreith: It can look the same, can't it.

Mr. Walscheid: Anybody can judge how it looked before the accident. It did not have that dish in it, it hadn't that curvature in it that it has now.

Mr. Autenreith: And the rest of the front was normal, so to speak.

Mr. Walscheid: Yes. Oh, I will withdraw my objection. You mean generally did it look like that?

10

Q. Did it look like this? A. Yes, just about the same, only this machine is a little lighter than this.

Q. Take the front wheel here, the forks and the mudguard; is that the same? A. The construction is about the same.

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Mr. Autenreith: I will offer this in evidence.

Q. Which one is the lighter; the wrecked machine or the picture? A. The wrecked machine.

Machine designated Exhibit D5.

Picture marked D6.

Q. About how much does the injured machine, the one that was in the collision, weigh? A. That weighs about 250 pounds.

30

Cross examination by Mr. Walscheid:

Q. You say that this machine is just in the condition in which it was immediately after the accident? A. Yes.

Q. Now come down here a minute. Do you notice that this machine is bent here in the centre? A. Yes.

40

Q. As if it had received a blow from the left side as we stand; isn't that so?

Mr. Autenreith: If he is able to tell.

Q. As if it had received a blow from our left side. Doesn't the frame there look as if it had received a blow from this left side? A. It does in a way.

Q. Now look in here; and what do you call this thing in here? A. That is the oil can.

10 Q. Look at that oil can a minute. Is it dented in? A. Yes.

Q. Have you a rule? A. No.

Q. How far would you say this dent is in there? A. About three inches.

Q. About three inches the oil can is dented in? A. Yes.

Q. And the oil can is right in the centre of the machine, isn't it? A. Yes.

20 Q. And it sticks out correspondingly three inches on the other side, doesn't it? A. Yes; about that.

Q. How far would you say that this dent here in the frame is off true? A. It is probably off a half inch.

Q. Is that all? A. It is not a very big bend.

Q. What is this frame made of? A. Steel.

Q. And this front wheel; that is also bent, isn't it? A. Yes.

30 Q. And yet the tire on it is not torn, is it? A. Yes; it is.

Q. Where is it torn? A. It has a hole in it.

Mr. Autenreith: There it is. He indicates the torn spot.

Q. But that is on the other side, isn't it? A. Yes.

40 Q. The hole which you find now—when did you first see this hole? A. When I wiped the dust off.

Q. When? A. This morning.

Q. Do you notice the condition of the fabric in that hole? Look at it. Why is that fabric so white in there? A. That is white. You know there is fibre fabric inside of the tire.

Q. And this machine as it stands here now was in your alleway, wasn't it? A. Yes.

Q. Since the date of the accident? A. Yes.

Q. Subjected to rain and air? A. It was covered up. 10

Q. When was it covered up? A. The same day.

Q. When did you last see the covering on it? A. When I took it off this morning. This morning when I took it off.

Q. Don't you know there was no covering on it last week? A. Yes, there was.

Q. Did you see any there last week? A. No; I did not.

Q. You were not there last week? When was this motorcycle first inspected on behalf of the defendant? A. Well, we looked at it several times, whenever anybody came around. 20

Q. When did Mr. Neuweiler look at it? A. I think over about a week.

Q. I want you to look at the condition of this fabric and I want to ask you whether from your knowledge of cuts and tears in such casings that is not a new cut? A. You see— 30

Q. Just look at the condition of the goods. A. I understand.

Q. The ravelled portion, doesn't that look like a new cut? A. It would look like a new cut, but it is—

Q. It does look like a new cut, doesn't it?

Mr. Autenreith: He should be allowed to answer. 40

A. It does look like a new cut, yes.

Q. It does. All right. And that cut is on

the very right-hand side of the motorcycle, isn't it, near the right edge of the rim, facing forward?

A. Yes.

Q. And if this motorcycle had come into collision with an automobile from the left side, such a cut on the right rim would not possibly occur, would it?

10 Mr. Autenreith: I object to that question.

Mr. Walscheid: I withdraw the question.

Redirect examination by Mr. Autenreith:

Q. Will you just turn that tire around and see if there is any other cut on it? A. I cannot turn it (witness examines it). There don't seem to be.

20 Q. This little portion on the front here is what—the mudguard? A. This is an extended mudguard.

Q. And that is fastened as is indicated in this picture Exhibit D6? A. Yes, sir; with two nuts right here and two braces.

Q. And this mudguard goes down inside as is shown on the picture here, doesn't it? A. Yes; it goes down here.

30 Recross examination by Mr. Walscheid:

Q. Was there a cap on this (indicating)? A. No.

Q. Isn't there a shell that goes over that on your motorcycle, like this shell here in D6, like this housing? A. No; that is on this side (indicating).

Redirect examination by Mr. Autenreith:

40 Q. This dent in the oil can that Mr. Walscheid has pointed out to you, would you say that that

would come from a head-on collision or coming in contact with any other part of the cycle? A. Well, as I understand—

Mr. Walscheid: Not as you understand.

Q. From a head-on collision? Do you understand the question? A. I understand the question, yes.

Q. Could that dent in this oil can come from a head-on collision, that is, a collision in front, or might it come from falling over in the road after the collision? A. I don't know how he hit him, see?

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Q. I see; you do not know how he was struck.

Recross examination by Mr. Walscheid:

Q. But you did see the point of contact in here. Put your finger in here, where something stuck into this oil can; put your finger in there and see whether you can't find it. A. Yes.

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Q. It is there, isn't it? That's all.

Redirect examination by Mr. Autenreith:

Q. You did not see Mr. Walscheid around your shop, did you? A. No.

Q. Did anybody tell you he was around? A. No.

Q. Did he subpoena you here today or did Mr. Neuweiler, the defendant? A. I got a subpoena; I do not know who it was from.

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Q. It wasn't from Mr. Walscheid personally? A. No.

TESTIMONY CLOSED.

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Charge.

Gentlemen of the Jury:

10 This suit is brought by Betty Siegeler as Administratrix of the estate of Rudolph Siegeler, deceased, against Ernest Neuweiler, and the object of the suit is to recover damages for what she claims was the negligent causing of the death of her husband by the defendant. The negligence that she alleges against the defendant is in effect that on the 10th of October, 1916, while the defendant was driving an automobile in a southerly direction along the Hudson County Boulevard near Humboldt Street, in the town of Union, and while Rudolph Siegeler, the plaintiff's intestate, was riding on a motorcycle along the easterly side of said highway in a northerly direction, the defendant operating his automobile attempted to turn from the Hudson County Boulevard into Humboldt Street at an excessive rate of speed, and in a negligent manner, and in doing so lost control of said automobile and collided with the motorcycle and the person of the said Rudolph Siegeler, destroying the said motorcycle and injuring the said Siegeler so severely that he died as a result of the said injuries on October 13, 1916.

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30 Now, in the case there is no dispute whatever made by the defendant but that the intestate, the young man who died, did die as a result of injuries inflicted upon him in this accident. That question need give you no trouble. There is no dispute about it. The real issue in the case is as to whether or not those injuries were inflicted upon him by the negligence of the defendant who was operating his automobile along the Hudson County Boulevard and attempting to turn with it into Humboldt Street. On that issue, as upon all the other issues raised in the case, the burden rests

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upon the plaintiff, this widow, to make out by the greater weight of the evidence that the accident was due to the negligence, in the manner pointed out by her in her written complaint, of this defendant, before there can be any recovery on the part of the plaintiff or any assessment of damages. The mere fact, gentlemen, that the accident happened does not give you a right to infer that either party, the driver of the motorcycle or the driver of the automobile, was negligent. Negligence is a matter that has to be proven, and it is an inference generally from the facts in the case; and the plaintiff, therefore, has the burden upon her of producing before you facts which by the greater weight of them require you to infer that the accident happened as a result of the negligence of the driver of the automobile. If she has done that, she would be entitled to a verdict. If she has not done that, of course she would not be entitled to any verdict.

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Now, that brings us to consider what the law has provided by way of legislation with respect to the rules that govern people in driving motor vehicles along public highways in this State. And first of all, inasmuch as both counsel have laid much stress upon the element of speed, I direct your attention to what the Legislature has directed upon that subject:

30

“The following rates of speed may be maintained, but shall not be exceeded, upon any public street, public road or turnpike, public park or parkway, or public driveway or public highway in this State by anyone driving a motor vehicle—and both an automobile and a motorcycle are motor vehicles— First, on curves and crossings a speed of one mile in seven minutes upon the sharp curves of a street or highway or when turning a

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10 corner, and a speed of one mile in four minutes at the junction or intersection of a prominent cross-road where such a street, road or highway passes through the open country, the term open country meaning where houses are on an average more than 100 feet apart. In built-up sections, a speed of one mile in five minutes, where such street or highway passes through the built-up
10 portion of a city, town, township, borough or village, where the houses are on an average less than 100 feet apart."

20 Now, those, gentlemen, are the rates of speed that may be maintained, but shall not be exceeded; but they are not in the last analysis the measure of the care with regard to speed that a person driving a motor vehicle is obliged to exercise, for the very section which I have been reading to you
20 provides later on:

"That nothing in this section contained shall permit any person to drive a motor vehicle at any speed greater than is reasonable, having regard to the traffic and use of highways, or so as to endanger the life or limb or to injure the property of any person."

30 So that in the last analysis the duty which rests upon the driver of any motor vehicle, whether it be automobile or motorcycle, is to use reasonable care to so operate his vehicle with respect to speed as not to endanger the safety of another person lawfully using the highway along which he is riding. And therefore in this case you are to say whether the plaintiff has made out by the greater weight of the evidence that her husband was
40 brought to his death as a result of a neglect on the part of Mr. Neuweiler to exercise reasonable care, having regard to the circumstances in which

he found himself, in operating his automobile along the highway at the time and place when it is charged this accident happened. If the plaintiff has made that out by the greater weight of the evidence, as I said before, so far as her case is concerned, she would be entitled to have you give a verdict and to assess her damages. If she has not she would not.

Now that part of the statute has to do with the aspect of this case that deals with the speed of automobiles; but we have another statute in this state known as the vehicular traffic law, and that provides certain things to which your attention must be directed.

“On all public roads, highways, turnpikes or streets, the following rules and regulations shall be effective: A vehicle shall keep to the right, and when the improved portion of a road is of sufficient width the vehicle shall keep to the right of the centre of such road, except when passing a vehicle ahead.”

So that you see where the roadway is of sufficient width a man, except when passing a vehicle ahead, must keep to the right of the centre of that road, under this statute. And then it further provides that:

“A vehicle turning into another road (as the defendant was turning his automobile into Humboldt Street from the Boulevard) to the left shall before turning pass, when possible, to the right of and beyond the centre of the intersection of the two roads.”

Now those, gentlemen, are the rules of law which govern the matter and manner of operating a vehicle under the vehicular traffic act so far as they have any relation to cases of this kind. And then the law requires, as you know, that motor vehicles shall be equipped with plainly

audible signal trumpets, and that they shall be equipped with brakes; and of course the law requires, inasmuch as it exacts of a man the duty to use reasonable care in the management and control of his motor vehicle, that when the exigencies of the case in the exercise of reasonable care on the part of the driver requires it, that he shall sound that signal trumpet to give warning to others of his approach. So that you can see in determining how these parties acted before and at the time of the happening of the accident it becomes an important inquiry to ascertain whether a person exercising reasonable care, driving a vehicle along the highway, would have sounded a signal trumpet to warn others of his approach; and this applies as well to the driver of the motor vehicle known as a motorcycle as it does to the driver of the motor vehicle known as an automobile. Neither of them had any superior right in using the highway; they both had a right there, and each was obliged to comply with the law, and each had a right to assume that the other would comply with the law and to govern himself accordingly, always, however, exercising reasonable care for his own safety in the light of the circumstances in which he found himself.

Now those, gentlemen, are the rules of law that have to do with the question of liability as it is charged on the part of this defendant. If the plaintiff has made out, as I have told you before, by the greater weight of the evidence, that the defendant was guilty of negligence in the manner pointed out by the plaintiff in her written complaint, and that that negligence was the proximate cause of the death of her husband, then she is entitled to have you give a verdict in her favor and to assess her damages, unless the

defendant shall have made out by the greater weight of the evidence that the intestate, the deceased man, contributed by his negligence, either in whole or in part, to the production of the injury which resulted in his death, because if he did she cannot recover anything in this case no matter how negligent the defendant may be proven to have been. And the reason for that is this; that where both parties in an accident are negligent neither party can recover anything against the other. The law leaves them where the mutual negligences have placed them. If the motorcyclist was negligent and the automobilist was negligent and their mutual negligences proximately caused this accident, neither party has any right against the other; neither party could recover anything against the other. It is only in a case like this when one party has been made out by the greater weight of the evidence, and that party the defendant, to have been guilty of negligence causing the death of the plaintiff, that there can be a recovery; and when that is made out then, as I say, there can be such a recovery; otherwise there can be none.

Now so much for the question of liability, and so much for the question of negligence of the defendant and of the plaintiff's deceased husband. This action differs from the ones that are generally brought because it is not an action brought by the husband for the injury; but it is an action brought by a personal representative of a deceased person who was injured and whose injury was caused in the accident; in other words, it is an action brought under the death statute. Now on that subject it becomes important to say a few words with respect to the measure of the damages. The right of action under the death statute grows entirely out of the statute. Prior

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to 1848 there was no right in this state to recover anything from a person negligently causing the death of another. In that year our Legislature passed a statute conferring such a right, and it is on that statute that this action is rested; and our court in indicating the manner in which damages should be assessed under such a statute has used these luminous words:

10 “The action is created by statute, which supplies the sole measure of the damages recoverable therein. They are to be determined exclusively by reference to the pecuniary injury—that is the injury in a money sense—resulting to the widow of the deceased by his death. The injury to be thus recovered for has been defined to be the deprivation of a reasonable expectation of a pecuniary advantage which would have re-

20 sulted by a continuance of the life of the deceased. Compensation, or payment, for such deprivation is therefore the sole measure of damages in such cases. A difficult task is thereby imposed upon a jury, for they are obliged to determine probabilities, and must to a large extent form their estimate of damages on conjectures and uncertainties.”

30 Now, first of all it becomes necessary to say to you that in an action of this kind nothing could be given to solace the feeling of the wife. Nothing could be given for funeral expenses, because the statute is the sole measure of the damage, and the statute says—so our Courts have construed it—that the only damage that she can recover is such sum as she would have profited in a money sense from the continuance of the life of the deceased. In other words, if he had

40 not been cut off by the accident, how much in a money sense would she have profited from the continuance of his life? And when you have

arrived at that sum and found its present value, its present worth, that would be the sum that you would find your verdict for.

Now, the Court said, as you remember, as I read a moment ago, that that is rather a difficult task for a jury because you have to a certain extent to base your verdict upon uncertainties, conjectures and probabilities; and that is true. This young man was twenty-eight years of age, so the testimony seems to indicate; and the wife was twenty-five. Now, what are some of the conjectures, the uncertainties and the probabilities in a case of that kind? Of course the first important fact to be borne in mind is that she could only profit so long as they both lived, because if he should die, of course, she could expect nothing more from him in a pecuniary sense then; and if she should die she could not get anything. Now, some of the other probabilities and uncertainties are these: First of all, he might have been injured in some other accident shortly afterwards; he might have been stricken by some disease, he might instead of having continued to be, if he was, a bread winner, have been turned by the irony of fate or by accident into being a mere bread consumer, and instead of being a help to her he might have been a burden to her. All those things are to be considered by you in the light of the evidence, and then you are to say what sum of money represents such sum, in its present value, as she would have profited if he had continued to live and not been cut off by this accident. When you arrive at that sum, if you find for the plaintiff, that would be your verdict in the case. If you find for the defendant you simply say: "We find for the defendant."

Now, you will take the case under these rules and decide it.

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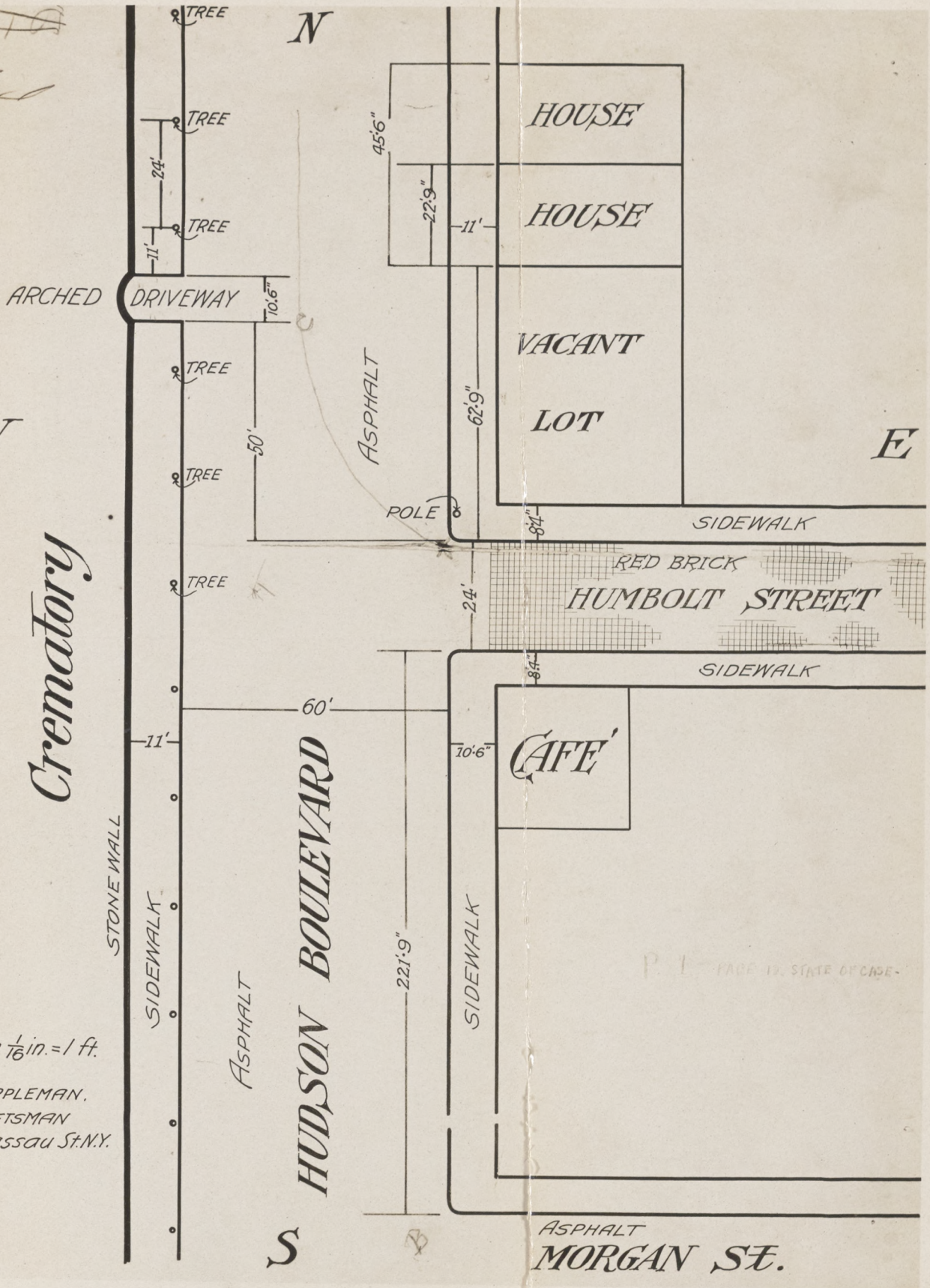
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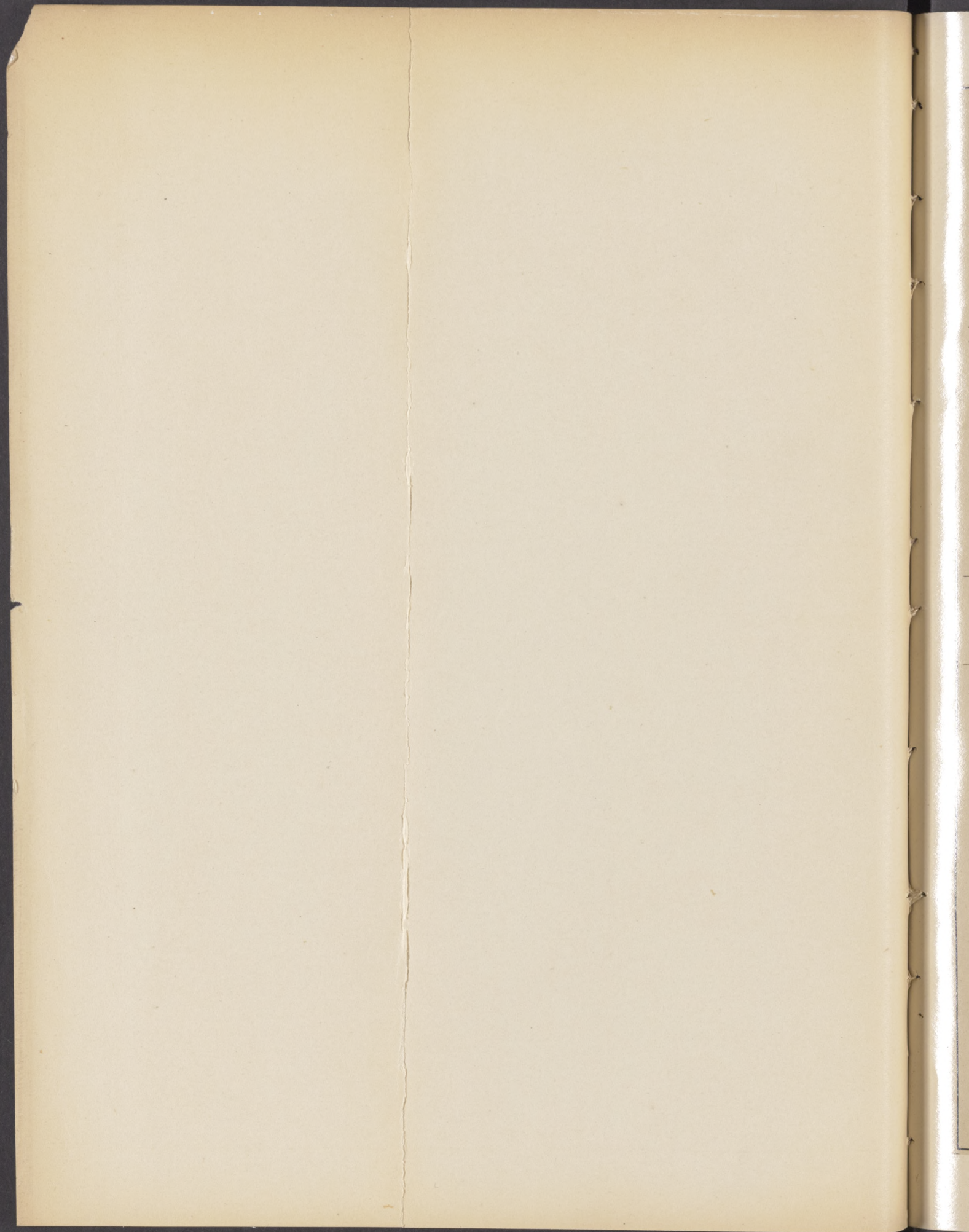
Crematory

Scale $\frac{1}{16}$ in. = 1 ft.

A. RAPPLEMAN,
DRAFTSMAN
87 Nassau St. N.Y.



P. 1 - PAGE 12, STATE OF CADE.



MORGAN ST.

HUDSON

Asphalt

60'0"

Building Line

86'2"

86'2"

86'2"

110'

86'2"

80'

240'

80'

110'

257'

83'

83'

83'

83'

Other

Sidewalk

Carb

Sidewalk

Carb

Other

Sidewalk

Carb

Other

Other

Scale 10 feet = 1 inch

Flats

grocery

Cafe

HUMBOLDT ST.

Red Brick

Sidewalk

Jersey City April 13th 1917
Surveyed by
Albano & Ketchum
City Surveyor
82 Monticello Ave

Employment

Dwellings

Gas Light

60'0"

BOULEVARD

Asphalt

LIBERTY ST.

Wood rail on building line

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

110' Sidewalk

Entrance

ARCHED DRIVEWAY

Stone Wall

Sidewalk

CREMATORY



New Jersey Court of Errors and Appeals.

BETTY SIEGELER, as Adminis-
tratrix, etc.,

Plaintiff-Appellee,

vs.

ERNEST NEUWEILER,

Defendant-Appellant.

Appeal
from
Supreme
Court.

BRIEF FOR PLAINTIFF-APPELLEE.

Statement of Facts.

Betty Siegeler, as administratrix of the estate of Rudolph Siegeler, her husband, brought this action to recover damages for his death.

Rudolph Siegeler died as the result of a collision between a motor cycle upon which he was riding, and an automobile of the defendant, which took place at the corner of the Hudson County Boulevard and Humboldt Street in the Town of Union in the County of Hudson.

The plaintiff recovered a verdict and defendant now urges that this verdict be set aside for error in the record. He argues three points of law:

1. That a motion to non-suit ought to have been granted on the ground of contributory negligence.
2. That certain evidence to be referred to was illegally admitted.
3. That the verdict is against the weight of the evidence.

ARGUMENT

Point I.

The motion to non-suit was properly denied.

The accident which resulted in the death of the plaintiff's intestate took place on the corner of the Hudson Boulevard and Humboldt Street in the Town of Union in the County of Hudson.

The Hudson Boulevard at the point in question is eighty feet wide, each sidewalk being ten feet wide and the roadway being sixty feet wide. It is level. It is covered with a smooth pavement. It runs north and south.

Humboldt Street runs into the Hudson Boulevard on the easterly side. It terminates in the Hudson Boulevard. It runs east and west. The street is about forty feet wide. The sidewalks are each about eight feet wide. The roadway is twenty-four feet wide. The roadway of Humboldt Street is laid with a brick pavement.

On the day of the accident Rudolph Siegeler was driving a motor cycle in a northerly direction along the eastern edge of the roadway of the Hudson Boulevard and within six feet of the easterly curb of said Boulevard. The motor cycle was a two-passenger machine and he carried one Alfred Ilgman as a passenger on this machine on this occasion.

At the same time the defendant, Neuweiler, was operating an automobile along the Hudson Boulevard in a southerly direction. It was a four-passenger touring car. He had with him in this motor car as a passenger his daughter, Minnie Neuweiler, who was then thirteen years of age. He intended to turn to his left into Humboldt Street and under the law was supposed to keep to the

right of the middle line of the Boulevard until he had passed beyond the center line of Humboldt Street extended across the Hudson Boulevard, before turning to the left into Humboldt Street. The evidence for the plaintiff indicates that the motor cycle was running approximately at from ten to twelve miles an hour and when it reached a point about twenty-five feet south of the southwest corner of Humboldt Street and the Boulevard, the passenger, Ilgman, noticed the automobile in the left side of the center line of the Hudson Boulevard, and coming south on the Hudson towards the motor cycle. At that time there was sufficient room for the motor cycle continuing its course along the easterly edge of the roadway of the Hudson Boulevard, to pass between the automobile on the easterly curb of the Hudson Boulevard. The automobile, however, swerved in towards the northeast corner of the Hudson Boulevard and Humboldt Street without first running along the Boulevard beyond the medium line of Humboldt Street extended across the Boulevard, and in doing so, ran across and shut off the course upon which the motor cycle was to travel. The driver of the motor cycle raised his hand to the defendant and yelled to him to stop, at the same time putting on his brakes and turning his motor cycle to the east into Humboldt Street. The automobile, however, did not stop but came on, and motor cycle and automobile came together at the northeast corner of Humboldt Street and the Boulevard; the motor cycle then being headed into Humboldt Street having been turned in that direction by Siegeler, and the automobile also being turned into Humboldt Street. The front of the automobile had passed the easterly curb line of the Hudson Boulevard perhaps three or four feet,

when the collision occurred, while the northerly wheels of the automobile were within two feet of the curb on the northerly side of Humboldt Street and the easterly side of the Boulevard, the accident occurring practically opposite that point. The automobile, after striking the motor cycle, stopped for a moment and then went forward a distance of five or six feet before it was finally stopped.

The evidence of the witness, Minnie Neuweiler, indicates that her father cut diagonally across the Hudson Boulevard to make the turn. A map (Exhibit P-2) indicating the course of the automobile and the point of collision was introduced in evidence. This exhibit plainly shows that the plaintiff's intestate was cut off by defendant in making his turn into Humboldt Street. The evidence of Katie Heinbach and of Minnie Heide, witnesses produced for plaintiff, also indicates that defendant suddenly swerving to the left, turned his motor car into Humboldt Street in an unlawful manner and in such a manner as to cut off the further progress of plaintiff's intestate. The evidence of the defendant himself upon cross-examination contains an admission that he started to turn a little before he ought to (p. 68-69).

A motion for a non-suit or to direct a verdict for the defendant based upon the insufficiency of the evidence to establish a cause of action for the plaintiff, admits the truth of the plaintiff's evidence and of every inference of fact which can be legitimately drawn therefrom, but denies its sufficiency in law.

Fox vs. Great Atlantic & Pacific Tea Co.,
84 N. J. L. 726.

Dallas vs. Sea Isle City, 84 N. J. L. 679.

It is our contention that in this case there is sufficient evidence for the submission of the case

to the jury on the question of contributory negligence and that the court would not have been justified in finding the existence of contributory negligence as a question of law.

Napodensky vs. West Jersey, etc., R. R. Co., 85 N. J. L. 336 at page 338.

.....*Peterpolo vs. Public Service Railway Co.*, 81 N. J. L. 390.

POINT II.

There was no error in admitting the evidence as to defective brakes on the defendant's automobile.

The plaintiff's declaration charged that defendant operated his automobile at an excessive rate of speed, *and* in a negligent manner, and in doing so *lost control of said automobile*. The witness, Katie Heinbach, testified that the automobile did not stop at the point of collision, but went on (p. 35, fol. 20-30).

It is the contention of the plaintiff that the fact that the brakes of the motor car were defective is evidence in support of the proposition advanced in the complaint that defendant lost control of his automobile.

To drive an automobile with defective brakes is to drive an automobile in a negligent manner. The driving of the automobile in a negligent manner was distinctly alleged as one of two causes for the accident, the other cause being the excessive rate of speed.

To drive a motor car at an excessive rate of speed with defective brakes is also to drive it in a negligent manner. We, therefore, contend that

the testimony objected to was clearly within the issues framed.

The only objection made to the testimony is that it produced a variance. There is no claim of surprise. There was demand for a defence because of variance and surprise.

We therefore submit that defendant can take nothing by this objection.

Point III.

Defendant's Point III is that the verdict should be set aside and a new trial granted because the verdict was contrary to the weight of evidence.

This cause comes before the court upon appeal.

Weight of evidence and objection that a verdict is contrary to the weight of evidence cannot be reviewed upon appeal, for an appeal is a re-hearing upon questions of law involved in any ruling, order or judgment below and nothing more.

Section 25, Practice Act of 1912.

CONCLUSION.

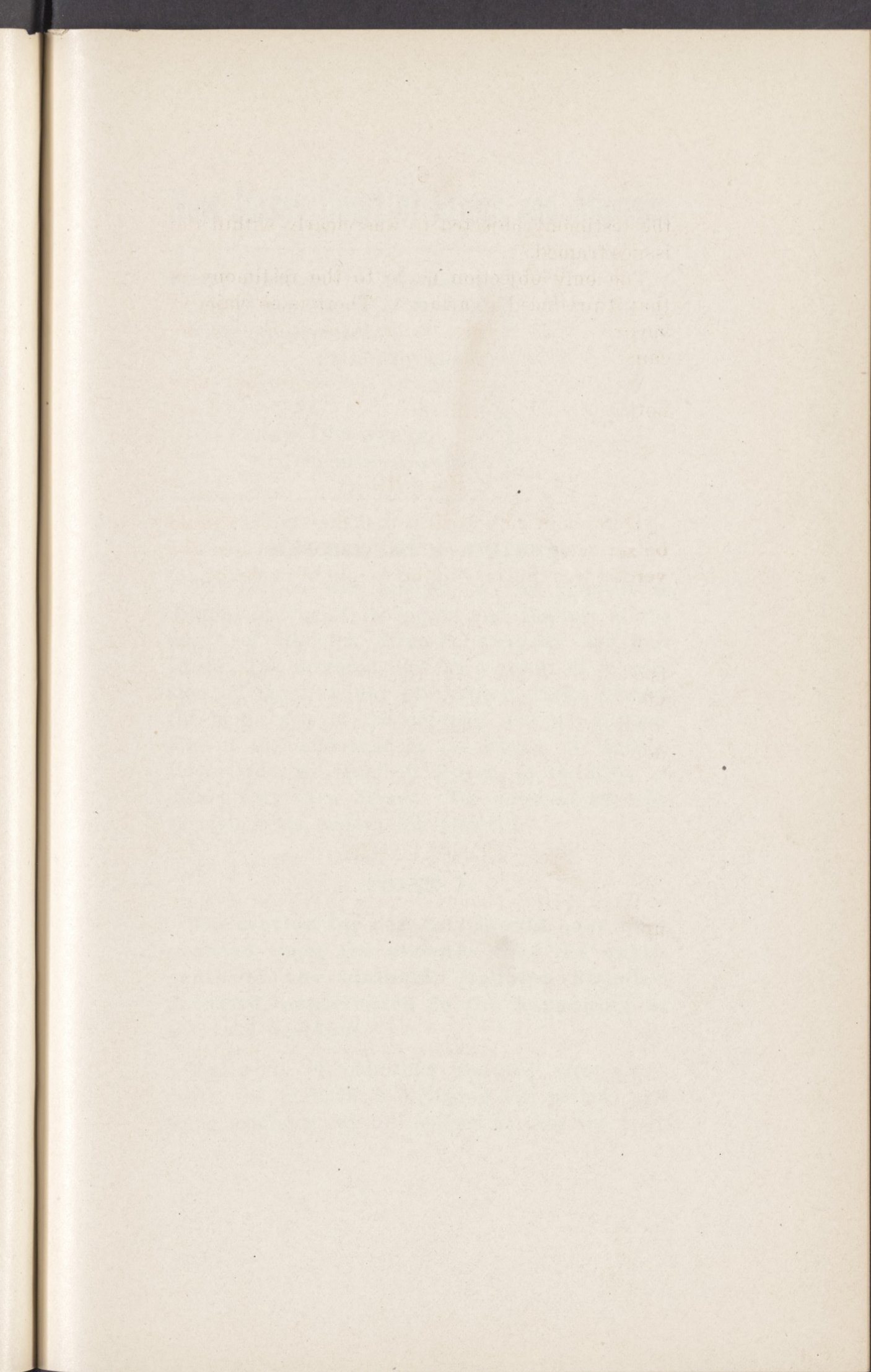
We therefore submit that the judgment brought up for review should be affirmed.

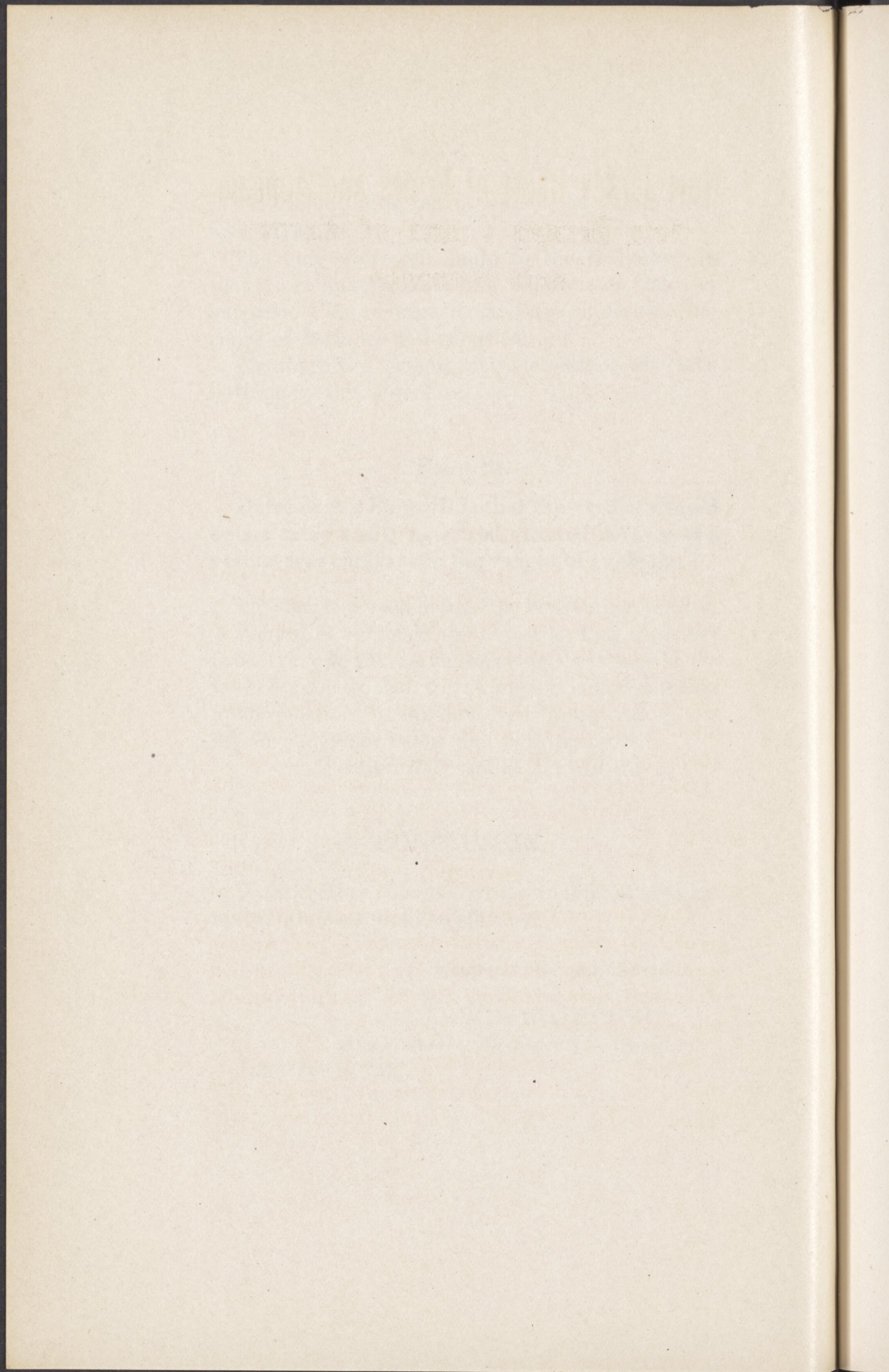
Respectfully submitted,

J. EMIL WALSCHEID,

Of Counsel with Plaintiff-Appellee.

June Term, 1917.





New Jersey Court of Errors and Appeals.

BETTY SIEGELER, as Administra-
trix of the Estate of Rudolph
Siegeler, deceased,

Plaintiff-Appellee,

v.

ERNEST NEUWEILER,
Defendant-Appellant.

APPELLANT'S POINTS.

This action was brought by the plaintiff as Administratrix of the goods and chattels of the estate of Rudolph Siegeler, deceased, her husband. The deceased died as a result of a collision on the 10th day of October, 1916, between the motorcycle of the deceased and the automobile of the defendant at the corner of Hudson Boulevard and Humbolt Street, in the City of Jersey City, New Jersey. The deceased left him surviving, his widow, the plaintiff.

POINT 1.

The motion for non-suit should have been granted upon the grounds that the negligence of the plaintiff, Rudolph Siegeler, deceased, contributed to the happening of the said accident.

Testimony of plaintiff's deceased (for whose death the plaintiff is bringing her action) not being available, we are obliged to take the testi-

mony of Alfred Ilgmann, who was on the motorcycle with Rudolph Siegeler as to the conditions apparent at the time of the said accident and as it would be apparent to Rudolph Siegeler, deceased, who was operating the motorcycle immediately in front of the witness (pp. 16 & 17 of the State of Case) :

“A. I was about thirty feet, I guess, off the corner of Humbolt Street, and I saw this automobile coming.

“Q. You were thirty feet from the corner?

A. From that corner of Humbolt Street.

“Q. On Hudson Boulevard? A. Yes.

Then further on page 17 of the State of Case :

“Q. When you arrived at this point thirty feet south of Humbolt Street on Hudson Boulevard, what did you see? A. I seen the automobile coming from the north of the street.

“Q. And where was that automobile? A. When I seen that automobile, it was on the left side of Hudson Boulevard and it turned—

“Q. When you first saw the automobile where was it? A. It was on the Hudson Boulevard.

“Q. And where on the Hudson Boulevard? A. About thirty feet up from the corner of Humboldt—from the northeast corner of Humboldt Street.

“Q. About thirty feet from the northeast corner of Humboldt Street? A. Yes, sir.

“Q. To the north of it? A. To the north.

“Q. And how far out from the curb of the Hudson Boulevard about? A. Fifteen to twenty feet, I guess.”

Then further, on page 18 of the case on appeal :

“Q. And when you saw the automobile at that point tell us again where you were with your motorcycle from the southeast corner

of Humboldt Street? A. I was this time about thirty feet away on the other side on the corner of Humboldt Street."

And on page 24 of the state of case the witness testified as follows:

"Q. Now you say you could see this automobile sixty feet away; and when you saw the automobile it was on the lefthand side of the street? A. On the lefthand side, yes, sir.

"Q. On the lefthand side of the street? A. Yes.

"Q. And it was coming toward you? A. Yes, sir.

"Q. And nothing in the way; you could see clear, couldn't you? A. Yes; it was clear.

"Q. And you were sitting behind Siegeler all the time you saw this? A. Yes.

"Q. And Siegeler kept right on going, didn't he? A. Yes."

And then further, on page 27 of the State of Case:

"Q. Now the motorcycle that you were on—you were watching everything? A. Yes.

"Q. You were watching Siegeler, weren't you? A. Yes.

"Q. And did you tell Siegeler to stop or anything when you first saw the automobile? A. No; I told Siegeler an automobile is coming there.

"Q. You told him an automobile was coming? A. Yes.

"Q. But he could see it; nothing in front of him? A. Yes, he could see it himself."

From the foregoing testimony it will be seen that the deceased, Rudolph Siegeler, saw the automobile coming toward him and did not make any effort whatsoever to avoid the collision, but kept on going until the collision happened and the proof shows amply that the motorcycle ran into the side of the automobile.

The deceased was chargeable with the knowledge that the automobile was coming and if he looked and saw it and did not make any endeavor to avoid the collision, he is guilty of contributory negligence and if he looked and saw it, he is also guilty of contributory negligence.

In the case of Daniel Brown v. Elizabeth, Plainfield and Central Jersey Railroad Co., 68 New Jersey Law, page 618, on page 620, the Court said, after reviewing the evidence of the plaintiff:

“As the plaintiff did not pause to discover what the light which he saw up on the hill was, or whether it was the light of an approaching vehicle, he did not place himself in the position of one who, having occasion to cross a track of this sort, and having observed an approaching car, exercises his judgment as to his being able to cross safely without risk of a collision, a situation which has been dealt with in many cases.”

And on page 621, the Court says:

“But by his evidence, the plaintiff put himself in another category. He admitted that when he started to cross the tracks he saw lights ‘away up on the hill,’ and did not know what light it was. Prudence then required him to wait a sufficient time to enable him to observe whether the lights which he saw were those of the street lamps on the side of the avenue or were those of a car in the middle of the avenue. Without waiting he proceeded to cross. When he says that, at that time, he could see no trolley car in sight, he conclusively establishes that he did not then make the observation which duty required of him, because if he had done so, he would undoubtedly have discovered the approaching car and have been able to avoid the collision.”

In the case at bar, we have this situation: When the witness Ilgmann, who was a passenger on the motorcycle, saw the approaching automobile and that Siegeler did nothing except slow down a little, how much he, does not know (Case on Appeal, pp. 24 and 29), and continued to proceed until the accident happened, which certainly was not the action of a reasonably careful and prudent man, who did not exercise the ordinary care in regard to his own safety. There is very little doubt that this was the proximate and contributory cause of the accident. For if the deceased had given the proper attention to the approach of this automobile when it was more than sixty feet away from himself he could have stopped or turned out into Hudson Boulevard, or into Humboldt Street, neither of which things he did, but continued to come straight ahead (Case on Appeal, pp. 24-25-26).

In the case of *Henry Schnackenberg & Company v. The Delaware, Lackawanna and Western Railroad Company*, 86 New Jersey Law, page 517. On page 519, middle of the page, Justice Minturn says:

“It seems to us, inconceivable that with a complete view of the track for a distance of four hundred feet, with no disturbing element intervening to annoy or distract him, this plaintiff could, as we must view it, drive upon the track with his eyes open to the possibilities of impending danger, and claim that he was unable to see the conditions or appreciate the dangers inhering in the situation. He cannot, practically, invite a calamity of this character by his negligence or indifference, and make it the basis of a legal injury. *Volenti non fit injuria* is the maxim at the basis of the doctrine of contributory negligence, and may properly be invoked here.”

This is practically on all fours with the case at bar, and it seems inconceivable that with the dangers of an approaching automobile apparent as plaintiff's witness testified, that the plaintiff's deceased should continue to drive his motorcycle ahead without endeavoring to stop or to avoid the collision, but continued straight ahead and ran into the front of the automobile, as is clearly proven by the testimony in the case (see also, the case of *Ruggiere v. Public Service Railway Co.*, 92 Atl., p. 61).

POINT 2.

The Court erred in admitting the evidence as to defective brakes on the defendant's automobile.

The plaintiff lays the foundation of her cause of action against the defendant in her complaint as follows (Paragraph 4):

"The defendant operating said automobile attempted to turn from the Hudson County Boulevard into Humboldt Street and at an excessive rate of speed and in a negligent manner and in doing so lost control of said automobile and collided with the motorcycle and the person of the said Rudolph Siegeler * * *."

Now, the evidence (p. 53 of the State of Case), which this defendant alleges was erroneous and which was fully objected to at the time of the trial was:

"Q. And at that time as I understand it, you also repaired the brakes, didn't you?"

"Mr. Autenrieth: I object to that. There is no charge against brakes. The question of negligence is a question not of

speed, but of careless management—operation—not of defective brakes.

“Mr. Walscheid: There is a charge here ‘At an excessive rate of speed and in a negligent manner;’ and if an excessive rate of speed is produced by the absence of proper brakes I think it is material.

“The Court: I will permit the question, but I will charge the jury that the mere fact that the brakes were out of order would not be any ground for recovery.

“Mr. Autenrieth: I think also that the question as to whether he repaired these brakes at this time, over a month after the accident, is—

“Mr. Walscheid: Your contention is that the car came to him in the condition in which it was immediately after the accident.

“Mr. Autenrieth: There is no question about that.

“The Court: That disposes of the present objection.”

“(Question repeated.) A. We did repair the brakes.

“Q. You found the brake lining worn out, didn’t you?

“Mr. Autenrieth: I make the same objection.

“The Court: I overrule the objection.

“Mr. Autenrieth: Objection noted.”

It will readily be seen that this proof is entirely at variance with the pleadings in the case. There is no contention made in the complaint that the proximate cause of the accident was due to the fact that there were defective brakes on the car, but it lays the crux of the action upon the theory of an excessive speed and the admission of this testimony had its effect upon the jury and if the testimony would have been excluded the ver-

dict very likely would have been different. In the case of *Albert M. Jordon v. H. Phelp Reed*, 77 New Jersey Law (48 Vroom) page 584 and on page 590, the Court said:

“Variance or discrepancy, between a material averment in pleading and the evidence adduced in support of it was, in early times of vital importance [1 Chit. Pl. (3d Lond. Ed.), 303, 308, *Bristow v. Wright*, 2 Doug., 665, 667a; *Mulford v. Bowen*, 4 Halst., 315, 318]. Since the enactment of the provisions now embodied in the Practice Act (Pamph., L., 1903, p. 571, Sec. 125), variance has with us been of less consequence. Nevertheless, today, it is sound law and sound reason that there must be no variance to the prejudice of the adverse party between the case declared upon and the case proven, and that a recovery must be *secundum allegata et probata*” (*Hallock v. Commercial Insurance Co.*, 2 Dutcher, 268, 274; *Bristow v. Wright*, *supra*; *Martinez v. Runkle*, 28 Vroom, 111, 117, 122).

The defendant was called upon to answer the complaint of the plaintiff and was prepared to meet the issue set forth in such complaint and to bring into the trial of the case, evidence which is at variance with the pleadings and which the defendant is not prepared to meet is to cause a miscarriage of justice, as the jury might infer something from such evidence which they should not infer from the evidence in accordance with the pleadings.

POINT 3.

The verdict of the jury was contrary to the weight of evidence.

The plaintiff alleged in her complaint that the defendant was negligent in the operation of his

automobile in driving from the Hudson County Boulevard to Humboldt Street at an excessive rate of speed and in a negligent manner and in so doing lost control of the automobile (see Complaint, p. 5 of the State of Case). The evidence nowhere in the case showed that the defendant was operating his automobile at an excessive rate of speed. The evidence of Alfred Ilgmann nowhere shows that the automobile was going fast, in fact he did not testify at all as to the speed of the same, but his testimony on page 17 says that the motorcycle was going ten or twelve miles an hour; and on page 24, folio 31, in answer to the question "And Siegeler kept right on going, didn't he?" His answer was "yes." And from these facts the proximate cause of the accident must have been the continuance of the plaintiff's deceased in driving the motorcycle without stopping and running into the automobile.

Witness Katie Heinbach (on p. 37, cross examination), on folio 10, in answer to:

"Q. And this automobile, at the point marked 'B,' was that going fast or slow? A. I could not say.

"Q. How did it impress you? A. I could not judge. And she could not tell the speed of the automobile or the speed of the motorcycle" (p. 38 of the State of Case).

And Minnie Heide, sworn on behalf of the plaintiff, on cross examination, testified on page 43 of the state of case, folios 29 and 30:

"Q. Could you judge the speed of the automobile? A. No, sir.

"Q. Could you judge the speed of the motorcycle? A. No, sir."

They were the only witnesses sworn on behalf of the plaintiff and in none of their testimony does it appear that the automobile was going at an excessive rate of speed.

On behalf of the defendant, the defendant testified that before he started to turn into Humboldt Street, he was going at about twelve miles an hour (on page 54 of the State of Case, fol. 40), and that as he started to make the turn he slowed down a little bit, and at page 50 he testified at folio 5, that the motorcycle was going at, at least 40 miles an hour. In this he was corroborated by his daughter, Minnie Neuweiler, on page 71 of the state of case, folio, 15, who said that the motorcycle ran into the right front mudguard, too, corroborates the fact that the motorcycle must have been going at a rapid rate of speed as would be indicated by the testimony of Fred J. Herold (page 51 of the State of Case, fol. 40), in his answer to:

“Q. But suppose the front of the motorcycle hit it with a terrific speed, would you then expect that such damage might follow?”

And on page 52, folio 8:

“A. Terrific speed, yes.”

From the whole testimony of the plaintiff and defendant it appears that the proximate and contributory cause of the happening of this accident, was due to the fact that the plaintiff's deceased did not reduce his speed or attempt to avoid the accident.

SUMMARY.

It is respectfully submitted that the Court was in error in refusing to grant the motion for non-suit on behalf of the defendant as the evidence on the part of the plaintiff clearly showed that the plaintiff's deceased was guilty of contributory negligence.

2. The Trial Court was in error in admitting evidence as to defective brakes.

3. The verdict should be set aside and a new trial granted upon the grounds that the same was contrary to the weight of evidence.

Respectfully submitted,
GEORGE P. LAIBLE,
Attorney of Defendant-Appellant.

