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NOTICE OF APPEAL.

**New Jersey Supreme Court**

HUDSON COUNTY.

LESTER M. GERMAN and JACOB  
GERMAN,

*Plaintiffs,*

*vs.*

WILLIAM HARRIS and JOEL  
SCHLESINGER,

*Defendants.*

10

*Action at  
Law.*

*Notice of  
Appeal.*

To John L. Ridley, Esquire, attorney for plain- 20  
tiffs.

SIR:

PLEASE TAKE NOTICE, that the defendant, Wil-  
liam Harris, in the above-entitled cause appeals  
to the New Jersey Court of Errors and Appeals,  
court of last resort of all causes in New Jersey,  
from the whole of the judgment entered in this  
cause in favor of the plaintiff, Lester M. Ger-  
man, and against this defendant in the New Jer-  
sey Supreme Court.

30

Dated: May 21, 1929.

Yours truly,

SCHNEIDER & SCHNEIDER,  
Attorneys of Defendant, William Harris.

40

**GROUND OF APPEAL.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10	LESTER M. GERMAN and JACOB GERMAN, <i>Plaintiffs-Appellees,</i> <i>vs.</i> WILLIAM HARRIS, <i>Defendant-Appellant.</i>	<i>Action at Law. On Appeal. Grounds of Appeal.</i>
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The defendant-appellant, William Harris, hereby sets up the following grounds of appeal:

- 20     1. The trial court erroneously denied defendant's motion for a non-suit.
2. The trial court erroneously denied defendant's motion for a direction of verdict.
3. The trial court erroneously refused defendant's request to charge the jury as follows:  
 30     "Plaintiff, Lester German, was under a duty to make reasonable observations for other vehicles, so that even if you find that he looked before crossing the path of the Cadillac, if you also conclude that he did not look efficiently and that had he made a reasonable observation he would have seen the Cadillac and avoided the accident, then your verdicts must be in favor of the defendants."

SCHNEIDER & SCHNEIDER,  
Attorneys for Defendant-Appellant.

## SUMMONS.

STATE OF NEW JERSEY to WILLIAM  
HARRIS and JOEL SCHLESINGER.

(L. S.) You are summoned to answer the annexed complaint of LESTER M. GERMAN, in an action at law in the New Jersey Supreme Court. And TAKE NOTICE that unless you file your answer to said complaint with the Clerk of the New Jersey Supreme Court, at Trenton, within twenty (20) days after service upon you of this writ, and the annexed complaint, plaintiff may proceed with the suit and judgment may be entered against you. 10

WITNESS, William S. Gummere, Esq., Chief Justice of the New Jersey Supreme Court, at Trenton, this 20th day of January, 1928. 20

EDWARD J. KELLEHER,  
Clerk.

JOHN L. RIDLEY,  
Attorney.

## COMPLAINT.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY CIRCUIT.

10	LESTER M. GERMAN,	}	<i>Plaintiff,</i>	<i>Action at</i>
	<i>vs.</i>			
	WILLIAM HARRIS and JOEL SCHLESINGER,		<i>Defendants.</i>	<i>Law.</i>
				<i>Complaint.</i>

The plaintiff, Lester M. German, residing at  
3715 Hudson County Boulevard, Jersey City,  
20 New Jersey, says that:

## FIRST COUNT.

1. On December 18, 1927, the defendant William Harris was the owner of an automobile.

2. On that day the said automobile of the defendant William Harris was being driven, managed, operated and controlled by his servant or agent Joel Schlesinger in a westerly direction on a public highway, in Hudson County,  
30 Jersey City, New Jersey, known as Hoboken avenue, near the intersection of another public highway known as Baldwin avenue.

3. The automobile of the defendant William Harris was so negligently maintained and operated that it ran into and against, struck and collided with the automobile of the plaintiff.

4. The negligence of the defendant William Harris through his servant and agent Joel  
40 Schlesinger, consisted in this:

*Complaint.*

(a) Said defendant, through his said agent or servant failed to keep a proper lookout for the safety of other vehicles in the vicinity, including the plaintiff's automobile.

(b) Said defendant, through his said agent or servant was operating his said automobile at a reckless and unlawful rate of speed. 10

(c) Said defendant, through his said agent or servant drove his said automobile on the wrong side of said highway.

(d) Said defendant, through his said agent or servant failed to give any warning of his approach.

(e) Said defendant, through his said agent or servant failed to keep his said automobile under proper control, so that the same could be stopped within a reasonable distance, if the necessity required. 20

(f) Said defendant failed to equip the said automobile with proper brakes and other safety appliances and he failed to keep the brakes and safety appliances with which said automobile was equipped, in proper repair.

(g) Said defendant failed to keep the said automobile equipped with proper lights, and he failed to keep the lights that said car was equipped with, in proper order. 30

(h) Said defendant, through his agent or servant operated said automobile at such time and place without regard to the rights of plaintiff.

(i) Said automobile was operated contrary to municipal and State rules and regulations.

5. As a result of the negligence of the defendant William Harris, through his servant or agent Joel Schlesinger, the plaintiff received contusions of the right thigh with rigidity of all of the 40

*Complaint.*

thigh muscles and swelling of the thigh and muscles, extensive ecchymosis of the entire medial, lateral, and inferior surfaces, rigidity of all the muscles of the thigh, abrasion on right side of forehead with swelling, and received various other internal and external injuries of a severe nature. The injuries received by him are permanent in character, and he has suffered, still suffers and will in the future suffer great pain and torture, nervous shock, loss of sleep, headaches and dizziness. He has been prevented and will be prevented from attending usual business or avocation. He has been obliged to spend a large sum of money, and will in the future be obliged to spend large sums of money for medical aid and attendance. His clothes were ruined and his automobile was so severely damaged that it was a total loss.

## SECOND COUNT.

1. On December 18, 1927 the defendant, Joel Schlesinger was driving, managing and operating an automobile in a westerly direction on a public highway of Hudson County, Jersey City, New Jersey, known as Hoboken avenue, near the intersection of another public highway known as Baldwin avenue.

2. The defendant, Joel Schlesinger so negligently maintained and operated said automobile that it ran into and against, struck and collided with the automobile of the plaintiff.

3. The negligence of the defendant Joel Schlesinger consisted in this:

(a) Said defendant failed to keep a proper lookout for the safety of other vehicles including the plaintiff's automobile.

*Complaint.*

(b) Said defendant was operating said automobile at a reckless and unlimited rate of speed.

(c) Said defendant drove said automobile on the wrong side of said highway.

(d) Said defendant failed to give any warning of his approach.

(e) Said defendant failed to keep said automobile under proper control, so that the same could be stopped within a reasonable distance, if the necessity required. 10

(f) Said defendant failed to see that the said automobile was equipped with proper brakes and other safety appliances, and he failed to see that the brakes and safety appliances with which said automobile was equipped, were in proper repair.

(g) Said defendant failed to see that the said automobile was equipped with proper lights, and he failed to see that lights that said car was equipped with, were in proper order. 20

(h) Said defendant operated said automobile at such time and place without regard to the rights of plaintiff.

(i) Said automobile was operated contrary to municipal and State rules and regulations.

4. As a result of the negligence of the defendant Joel Schlesinger, the plaintiff received 30  
contusions of the right thigh with rigidity of all of the thigh muscles and swelling of the thigh and muscles, extensive ecchymosis of the entire medial, lateral, and inferior surfaces, rigidity of all the muscles of the thigh, abrasion on right side of forehead with swelling, and received various other internal and external injuries of a severe nature. The injuries received by him are permanent in character, and he has suffered, still suffers and will in the future suffer great pain 40

*Complaint.*

and torture, nervous shock, loss of sleep, headaches and dizziness. He has been prevented and will be prevented from attending his usual business or avocation. He has been obliged to spend a large sum of money, and will in the future be obliged to spend large sums of money for medical aid and attendance. His clothes were ruined and his automobile was so severely damaged that it was a total loss.

Plaintiff demands as damages: on the first count \$25,000; on the second count \$25,000.

JOHN L. RIDLEY,  
Attorney for Plaintiff.

20

30

40

## ANSWER.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY CIRCUIT.

LESTER M. GERMAN,

*Plaintiff,**vs.*WILLIAM HARRIS and JOEL  
SCHLESINGER,*Defendants.*

10

*Action at  
Law.**Answer.*

The defendants, William Harris and Joel Schlesinger, residing in the City of Newark, County of Essex and State of New Jersey, answering the complaint filed herein, say that: 20

## ANSWER TO FIRST COUNT.

1. They admit the contents of paragraph 1.
2. They deny the contents of paragraphs 2, 3, 4 and 5.

## ANSWER TO SECOND COUNT.

1. They admit the contents of paragraph 1. 30
2. They deny the contents of paragraphs 2, 3 and 4.

## FIRST SEPARATE DEFENSE.

The plaintiff was guilty of contributory negligence in that at the time and place set forth in the complaint he or his servant and agent was operating his automobile in a negligent and careless manner, without giving proper warning of 40

*Reply.*

his approach, without making proper observation, at an excessive rate of speed, without keeping the same under control so as to avoid colliding with other vehicles and generally in a careless and negligent manner.

10

SCHNEIDER & SCHNEIDER,  
Attorneys of Defendants.

**REPLY.**

NEW JERSEY SUPREME COURT.

HUDSON COUNTY CIRCUIT.

20

LESTER M. GERMAN,

*Plaintiff,*

*vs.*

WILLIAM HARRIS and JOEL  
SCHLESINGER,

*Defendants.*

*Action at  
Law.*

*Reply.*

30

The plaintiff denies all the allegations in the answer of the defendants.

JOHN L. RIDLEY,  
Attorney for Plaintiff.

40

**AMENDED COMPLAINT.**

Filed March 23, 1929.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY CIRCUIT.

---

 LESTER M. GERMAN and JACOB  
 GERMAN,
*Plaintiffs,**vs.*WILLIAM HARRIS and JOEL  
 SCHLESINGER,*Defendants.**Action at  
 Law.**Amended  
 Complaint.*

10

The plaintiffs, Lester M. German and Jacob  
 German residing in Jersey City, Hudson County,  
 New Jersey, say that:

20

## FIRST COUNT.

1. On December 18, 1927 the defendant, Wil-  
 liam Harris was the owner of an automobile.

2. On that day the said automobile of the de-  
 fendant William Harris was being driven, man-  
 aged, operated and controlled by his servant or  
 agent Joel Schlesinger in a westerly direction on  
 a public highway, in Hudson County, Jersey  
 City, New Jersey known as Hoboken avenue,  
 near the intersection of another public highway  
 known as Baldwin avenue.

30

3. The automobile of the defendant William  
 Harris was so negligently maintained and oper-  
 ated that it ran into and against, struck and col-  
 lided with the automobile of the plaintiff Jacob

40

*Amended Complaint.*

German which was being driven by the plaintiff Lester M. German.

4. The negligence of the defendant, William Harris through his servant and agent Joel Schlesinger, consists in this:

10 (a) Said defendant, through his said agent or servant failed to keep a proper lookout for the safety of other vehicles in the vicinity, including the plaintiff's automobile.

(b) Said defendant, through his said agent or servant was operating his said automobile at a reckless and unlawful rate of speed.

(c) Said defendant, through his said agent or servant drove his said automobile on the wrong side of said highway.

20 (d) Said defendant, through his said agent or servant failed to give any warning of his approach.

(e) Said defendant, through his said agent or servant failed to keep his said automobile under proper control, so that the same could be stopped within a reasonable distance, if the necessity required.

30 (f) Said defendant failed to equip the said automobile with proper brakes and other safety appliances and he failed to keep the brakes and safety appliances with which said automobile was equipped, in proper repair.

(g) Said defendant failed to keep the said automobile equipped with proper lights, and he failed to keep the lights that said car was equipped with, in proper order.

40 (h) Said defendant, through his agent or servant operated said automobile at such time and place without regard to the rights of the plaintiffs.

*Amended Complaint.*

(i) Said automobile was operated contrary to municipal and State rules and regulations.

5. As a result of the negligence of the defendant William Harris, through his servant or agent Joel Schlesinger, the plaintiff Lester M. German received contusions of the right thigh with rigidity of all of the thigh muscles and swelling of the thigh and muscles, extensive ecchymosis of the entire medial, lateral, and inferior surfaces, rigidity of all the muscles of the thigh, abrasion on right side of forehead with swelling, and received various other internal and external injuries of a severe nature. The injuries received by him are permanent in character, and he has suffered, still suffers and will in the future suffer great pain and torture, nervous shock, loss of sleep, headaches and dizziness. He has been prevented and will be prevented from attending his usual business or avocation. He has been obliged to spend large sums of money and will in the future be obliged to spend large sums of money for medical aid and attendance and his clothes were ruined.

## SECOND COUNT.

1. On December 18, 1927 the defendant, Joel Schlesinger was driving, managing and operating an automobile in a westerly direction on a public highway of Hudson County, Jersey City, New Jersey known as Hoboken avenue, near the intersection of another public highway known as Baldwin avenue.

2. The defendant, Joel Schlesinger so negligently maintained and operated said automobile that it ran into and against, struck and collided with the automobile of the plaintiff, Jacob Ger-

*Amended Complaint.*

man, which was being driven by the plaintiff Lester M. German.

3. The negligence of the defendant Joel Schlesinger consisted in this:

10 (a) Said defendant failed to keep a proper lookout for the safety of other vehicles including the plaintiff's automobile.

(b) Said defendant was operating said automobile at a reckless and unlawful rate of speed.

(c) Said defendant drove said automobile on the wrong side of said highway.

(d) Said defendant failed to give any warning of his approach.

20 (e) Said defendant failed to keep said automobile under proper control, so that the same could be stopped within a reasonable distance, if the necessity required.

(f) Said defendant failed to see that the said automobile was equipped with proper brakes and other safety appliances, and he failed to see that the brakes and safety appliances with which said automobile was equipped, were in proper repair.

30 (g) Said defendant failed to see that the said automobile was equipped with proper lights, and he failed to see that lights that said car was equipped with, were in proper order.

(h) Said defendant operated said automobile at such time and place without regard to the rights of plaintiffs.

(i) Said automobile was operated contrary to municipal and State rules and regulations.

40 5. As a result of the negligence of the defendant Joel Schlesinger, the plaintiff Lester M. German received contusions of the right thigh with rigidity of all of the thigh muscles and swelling

*Amended Complaint.*

of the thigh and muscles, extensive ecchymosis of the entire medial, lateral, and inferior surfaces, rigidity of all the muscles of the thigh, abrasion on right side of forehead with swelling, and received various other internal and external injuries of a severe nature. The injuries received by him are permanent in character, and he has suffered, still suffers and will in the future suffer great pain and torture, nervous shock, loss of sleep, headaches and dizziness. He has been prevented and will be prevented from attending his usual business or avocation. He has been obliged to spend a large sum of money, and will in the future be obliged to spend large sums of money for medical aid and attendance and his clothes were ruined.

10

## THIRD COUNT.

20

1. Plaintiffs repeat the allegations of the first, second, third and fourth paragraphs of the first count.

2. As a result of the negligence of the defendant William Harris through his servant or agent Joel Schlesinger, the automobile of the plaintiff Jacob German was so severely damaged that it became a total loss and the plaintiff Jacob German was forced to expend large sums of money in hiring another car and in having the wreck of his car towed away from the accident and in storage of same, and lost the entire value of the car.

30

## FOURTH COUNT.

1. Plaintiffs repeat the allegations of the first, second and third paragraphs of the second count.

40

*Amended Complaint.*

2. Plaintiffs repeat the allegations of the second paragraph of the third count.

Plaintiffs demand as damages:

On the first count \$25,000.

10 On the second count \$25,000.

On the third count \$1,000.

On the fourth count \$1,000.

JOHN L. RIDLEY,  
Attorney for Plaintiffs.

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40

## ANSWER TO AMENDED COMPLAINT.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY CIRCUIT.

---

 LESTER M. GERMAN and JACOB  
 GERMAN,
*Plaintiffs,**vs.*WILLIAM HARRIS and JOEL  
 SCHLESINGER,*Defendants.*


---

10

*Action at  
Law.**Answer to  
Amended  
Complaint.*

Defendants, residing in the City of Newark, County of Essex and State of New Jersey, answering the amended complaint filed herein, say that: 20

## ANSWER TO FIRST COUNT.

1. Paragraph 1 is admitted.
2. Paragraph 2 is denied.
3. Paragraph 3 is denied.
4. Paragraph 4 is denied.
5. Paragraph 5 is denied.

30

## SEPARATE DEFENSE.

Plaintiff, Lester M. German, was guilty of negligence which caused or contributed to the happening of the alleged accident.

40

*Answer to Amended Complaint.*

## ANSWER TO SECOND COUNT.

1. Paragraph 1 is admitted.
2. Paragraph 2 is denied.
3. Paragraph 3 is denied.
- 10 4. Paragraph 4 is denied.
5. Paragraph 5 is denied.

## SEPARATE DEFENSE.

Plaintiff, Lester M. German, was guilty of negligence which caused or contributed to the happening of the alleged accident.

## ANSWER TO THIRD COUNT.

- 20 1. Defendants repeat the allegations contained in the first, second, third and fourth paragraphs of the answer to first count and make the same a part hereof.
2. Paragraph 2 is denied.

## SEPARATE DEFENSE.

30 Plaintiff, Jacob German, by his agent, servant or employe in that behalf, was guilty of negligence which caused or contributed to the happening of the alleged accident.

## ANSWER TO FOURTH COUNT.

1. Defendants repeat the allegations contained in the first, second and third paragraphs of the answer to the second count and make the same a part hereof.
- 40 2. Defendants repeat the allegations contained in the second paragraph of the answer to the third count and make the same a part hereof.

*Answer to Amended Complaint.*

## FIRST SEPARATE DEFENSE.

Plaintiff, Lester M. German, was guilty of negligence which caused or contributed to the happening of the alleged accident.

## SECOND SEPARATE DEFENSE.

10

Plaintiff, Jacob German, by his agent, servant or employe in that behalf, was guilty of negligence which caused or contributed to the happening of the alleged accident.

SCHNEIDER & SCHNEIDER,  
Attorneys of Defendants.

20

30

40

**POSTEA.**

Filed April 24, 1929.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY CIRCUIT.

10

LESTER M. GERMAN and JACOB  
GERMAN,

*Plaintiffs,*

*vs.*

WILLIAM HARRIS and JOEL  
SCHLESINGER,

*Defendants.*

*Action at  
Law.*

*Postea.*

20

This case was tried before Judge Henry E. Ackerson, Jr., with a jury at the Hudson Circuit on April 22nd, 1929.

The jury rendered a general verdict against the defendants William Harris and Joel Schlesinger and in favor of the plaintiff Lester M. German for \$1,200.00.

30

The jury rendered a general verdict against the defendants William Harris and Joel Schlesinger and in favor of the plaintiff Jacob German for \$250.00.

HENRY E. ACKERSON, JR.,  
*Judge.*

40

## JUDGMENT.

## NEW JERSEY SUPREME COURT.

LESTER M. GERMAN and JACOB GERMAN, <div style="text-align: right; padding-right: 20px;"><i>Plaintiffs,</i></div> <div style="text-align: center; padding: 5px 0;"><i>vs.</i></div> WILLIAM HARRIS and JOEL SCHLESINGER, <div style="text-align: right; padding-right: 20px;"><i>Defendants.</i></div>	}	<i>Action at Law.</i>  <i>On Postea.</i>	10
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It is ordered that judgment be and hereby is entered against the defendants and in favor of Lester M. German, plaintiff, for the sum of one thousand two hundred dollars, and in favor of Jacob German, plaintiff, for the sum of two hundred and fifty dollars, besides costs to be taxed nisi. 20

Entered April 24, 1929.

On motion of

JOHN L. RIDLEY,  
Attorney.

\$1200.00	L. M.G.	30
250.00	J. G.	
\$1450.00		
72.74		
\$1522.74		

*Lester M. German, direct.*

**TESTIMONY.**

NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT.

10 LESTER M. GERMAN and JACOB  
GERMAN,

*Plaintiffs,*

*vs.*

WILLIAM HARRIS and JOEL  
SCHLESINGER,

*Defendants.*

20 Before: Hon. Henry E. Ackerson, Jr., J.,  
and a Jury.

Jersey City, N. J., April 22, 1929.

Appearances: John L. Ridley, Esq., for the  
plaintiffs.

Schneider & Schneider, Esqs., (by Mr. William  
P. Braun.) for the defendants.

LESTER M. GERMAN, sworn.

30

*Direct examination by Mr. Ridley.*

Q Where do you live? A 3715 Boulevard,  
Jersey City.

Q What is your business? A Plumber.

Q Who do you work for? A My father.

Q And your place of business is where? A  
3715 Boulevard.

Q On the evening or morning of December  
18, 1927, were you driving your father's car? A  
40 Yes, sir.

*Lester M. German, direct.*

Q What kind of a car was that? A A four-door Ford sedan.

Q And where were you driving? A North on Baldwin avenue.

Q And the Baldwin avenue you mentioned is the exit from the Holland Tunnel? A I crossed the entrance to the tunnel. 10

Q And you approached the exit to the tunnel? A Yes.

Q On that night were there lights at that place, Mr. German? A No, sir, no signal lights.

Q There are signal lights there now, are there not? A Yes, sir.

Q Was anybody in the car with you? A Yes.

Q Who was with you? A John Weiss.

Q About what time was this? A I imagine about three o'clock. 20

Q And where had you been? A To a restaurant.

Q And you were then going where? A Going home.

Q Now as you approached the exit of the Holland Tunnel just tell us what transpired? A I drove up to the corner, slowed down, blew my horn and started to cross the street.

Q What street? A Across the exit from the tunnel and I was smashed. That is all. 30

Q And where were you when you were smashed as you describe it? A About ten or twelve feet from the curb.

Q Which curb? A From the south curb of the exit.

The Court: Were you going north or south?

The Witness: North.

*Lester M. German, direct.*

Q How wide a street is that exit to the tube at that point, do you know? A I guess about thirty feet.

10 The Court: You mean you had gotten ten feet into the exit or within ten feet of the further side?

The Witness: Ten feet from the curb I was coming from.

The Court: You had not reached the center of the exit?

The Witness: Near the center.

Q That is a one-way street, isn't it? A Yes, sir.

20 Q The exit of the tube at that point? A Yes.

Q When you were smashed what happened to your car, do you know? A I don't remember.

Q What happened to you? A My leg was hurt; I could not stand.

Q You say you do not remember what happened. What was the next you remember? A Sliding out of the car.

30 Q Where was the car when you slid out of the car? A Up against the house on the north-west corner of Hoboken and Baldwin avenue.

Q Which way was your car facing? A East.

Q And was it turned over or on its wheels? A It was on its wheels.

Q What is that, a brick house or a frame house? A Brick.

Q Where was Mr. Weiss? A He was on the street about forty feet—

40 Mr. Braun: I don't think that is material.

*Lester M. German, direct.*

The Court: Proceed.

Q Where was Mr. Weiss, where was he? A About forty or fifty feet up the street.

Q And when you got out of the car did you see the car that had struck you? A Yes, that was up the street.

10

Q When you say up the street was it further west or further east? A Further west.

Q Whereabouts up the street? A About 100 feet.

Q And in the street or on the sidewalk or where? A On the sidewalk.

Q How far on the sidewalk? A I don't know just how far. It was resting on the sidewalk, four wheels on the sidewalk.

Q And when you got out of the car then what happened to you? A I was taken to the hospital.

20

Q Who took you to the hospital? A Mr. Freed.

Q Was Mr. Weiss taken to the hospital? A Yes.

Q Now, how long were you in the hospital? A About three-quarters of an hour.

Q Then where did you go? A To the police station.

30

Q Were you taken to the police station? A Yes.

Q And do you know who it was that was operating the car that ran into you?

Mr. Braun: I object unless he knows of his own knowledge.

The Court: Who was operating it, do you know?

A Mr. Schlesinger.

40

*Lester M. German, direct.*

Mr. Braun: I move to strike that out unless it is shown that he knows of his own knowledge.

The Court: Well, do you?

The Witness: I found out in the police station. I didn't see him driving the car.

10

The Court: Is he here this morning?

The Witness: I don't see him.

Mr. Ridley: I think it is admitted in the pleadings that Mr. Schlesinger was driving the car and that Mr. Harris owned the car.

Mr. Braun: I don't think so.

Mr. Ridley: Your answer admits it.

Mr. Braun: I will withdraw the objection, but I don't want to have hearsay interjected into the case.

20

Q As a result of this accident what happened to you? I mean, what were the results of this collision? A I had a cut on the knee, a scratch on the head and a bad leg.

Q Anything else? A That is all.

Q Now, did you receive any medical treatment? A Yes.

Q And who treated you? A Dr. Pontari.

30 Q Were you able to go to work? A No.

Q Why not? A I could not walk.

Q How long were you unable to go to work?

A I was in the house for six weeks, then for a few weeks after that I could not do anything.

Q Your business is what, plumber? A Plumber.

Q And you go out on jobs working for a plumber? A Yes.

40 Q What wages do you receive? A Sixty dollars a week.

*Lester M. German, direct.*

Q Did you have any medical bill? A Yes, I had.

Q A bill has been submitted to you? A Yes.

Q What happened to Mr. Weiss as a result of the accident?

10

Mr. Braun: I object.

Mr. Ridley: I think I ought to show why he is not in court.

Q Is Mr. Weiss here in court? A No.

Q Why not?

Mr. Braun: I will admit he is dead.

Q Did you see this car that struck you before it struck you? A No. 20

Q Did you make an observation? A Yes, I did.

Q In what direction did you look? A East.

Q That is, to your right? A Yes.

Q Did you see any car? A I saw one car down the street that was far enough away to give me a chance to cross.

30

The Court: How far away?

The Witness: About 300 feet.

Q Did the car that struck you come from your right? A Yes.

Q Whereabouts did the car strike you? A Right on the two doors on the right hand side.

Q Front or rear? A Right in the center.

Mr. Ridley: Cross examine.

40

*Lester M. German, cross.*

*Cross examination by Mr. Braun.*

Q Will you step down to the blackboard and just sketch the layout of this scene? A All right.

10 (Witness complies.)

Q Now mark Baldwin avenue. A Here.

Q Just explain what those other marks are?

A This is the entrance to the tunnel and this is the exit.

Q And what is this? A That is the driveway underneath Baldwin avenue.

Q That is a little out of proportion, isn't it? A Yes, I think so.

20 Q The driveway underneath is not as wide as that? A No.

Q Each one of those lines is wide enough for two lines of traffic, is it not? A Yes.

Q Now take the stand. You said something about making an observation. Where were you when you made that observation? A Right at the corner.

Q Which corner? A The southwest corner of Baldwin and Hoboken avenues.

30 Q Is that before you started to cross the eastbound line? A Yes, sir.

Q Are you sure about that? A Yes—no, I am not. I thought you meant the westbound line.

Q Well, which was it? Was it before you started to cross the eastbound line? A I looked there too.

Q Are you sure about that? A Yes, I am.

40 Q Now, which observation did you refer to in your direct testimony? A I don't remember what the question was.

*Lester M. German, cross.*

Q Well, you said you looked to the eastbound line and you looked to the westbound line. Now which observation did you refer to in your direct testimony when you said you made an observation?

Mr. Ridley: He was asked whether he made an observation of the westbound line? 10

The Court: Which did you refer to?

Q Which observation did you mean? A I don't know which one you refer to.

The Court: You said you saw a car 300 feet away. What observation was that on?

The Witness: To the westbound line.

Q Could you see a distance of 300 feet there? 20

A I could see lights.

Q You could see further, couldn't you? A I don't know. I guess you can.

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

Q And it is wide? A Yes.

Q And when you reach the corner of either one of these lines, looking in an easterly direction you can see quite a distance, a number of blocks, isn't that so? A No. 30

Q Well, how far can you see? A I guess during the day you can see down to the next corner, but it is pretty dark there at night, or it was at that time.

Q Well, you can see lights the same distance; there is no obstruction there, is there? A Well, there is the wall around the driveway.

Q The lane there is pretty straight for a considerable distance? A Yes. 40

*Lester M. German, cross.*

Q And it does not rise or fall any? There is no up or down grade sufficient to hide vehicles approaching, is there, for a considerable distance? A No.

Q So that if there were lights or vehicles you can see them when they are quite a long  
10 ways away if you look? A Yes.

Q Now, where was the car traveling that you saw when you made this observation? A It was coming west.

Q And you were going north and were about at what point when you made the observation? Right at the corner of the westbound lane? A Yes.

Q That was where you first looked east, to your right? A At that corner.

Q That was the first time you looked to your  
20 right though? A Yes.

Q And that was right at the corner? A Yes.

Q It was not before you got to the corner or after you passed it? A Right at the corner.

Q Which part of the westbound lane was this car traveling in? A Which car?

Q The car that you saw? A On the north side of the road.

Q And you say it was about 300 feet away?  
30 A About that.

Q Was that more than a block? A No.

Q Or less than a block there? A About a half block I imagine.

Q About a half block? A I think so.

Q And about how fast was that car going?  
A I don't know.

Q Did you watch it? A I looked at it; I didn't sit there and watch it.

Q Didn't you continue to look to your right?  
40 A Yes.

*Lester M. German, cross.*

Q Until the accident happened? A Yes.

Q And yet you did not see anything? A No, I didn't.

Q Nothing at all? A Nothing at all.

The Court: Did you hear any signal of any kind? 10

The Witness: No.

The Court: Did you give any signal?

The Witness: I did.

The Court: Where?

The Witness: Right at the corner when I looked to the right.

The Court: Which corner?

The Witness: The southwest corner of Hoboken and Baldwin on the west side drive-way. 20

Q So you gave a signal? A Yes.

Q And was that to warn the car that was 300 feet away? A Yes.

Q What was your reason for doing that? A Probably habit.

Q You blow your horn at every corner? A Yes.

Q All the time? A All the time. 30

Q Under all circumstances and conditions? A Yes.

Q You never got a ticket for making an unnecessary noise, did you?

Mr. Ridley: I object.

The Court: Sustain the objection.

Q At the time of the impact you say you had just gone ten feet out into the intersection? A About ten or twelve feet. 40

*Lester M. German, cross.*

Q And there was this collision although you did not see what hit you, although you were still looking to your right, is that right? A That is right.

Q And then what happened? A That is all; I was smashed.

10 Q And were you conscious all the time? A I don't know.

Q You do not know? A No.

Q Which way was your car headed after the accident? A East.

Q And you say the other car was further west? A Yes.

Q That would put it behind you? A That is right.

Q And your head was hurt? A Yes.

20 Q Your leg was hurt? A Yes.

Q What else was it? A A cut on the knee.

Q You got out of your car? A I slid out.

Q What was the first thing you did? A I looked for the fellow that hit me.

Q Well, how long did you stay around the scene of the accident? A Until I was taken to the hospital.

Q Your first consideration was about anybody that was hurt, wasn't it? A Yes.

30 Q And to get yourself to the hospital as quickly as possible, is that right? A That is right.

Q You were not interested in what happened to your car, were you? A No.

Q You were not interested in what happened to the other car? A No.

Q Well, it is not so, that you looked for the other car, is it? A No, I didn't look for it.

40 Q So you do not know where the other car went, do you? A Yes, I do.

*Lester M. German, cross.*

Q Well, how do you know that that was the car that hit you? A It was the only one there and up on the sidewalk and on that side of the street.

Q Well, was the other car there, the car you say you saw 300 feet away? A Yes.

Q You saw that all the time up to the impact? A It was not up that far. 10

Q But you saw that car up to the time of the impact? That was constantly in your view, wasn't it? A Yes.

Q Because you were looking to your right all the while you were crossing this intersection? A Yes.

Q And you know that that is not the car that struck you? A I didn't know it then; I didn't know what hit me. 20

Q Didn't you say you saw that car all the time? A Not after I was hit.

Q Now, but at the time you were hit it was still in your vision, wasn't it? A Yes.

Q You could see it right up to the time you were struck? A Yes.

Q And how far away was that when you were struck? A I don't know.

Q Well, you know how far it was when you started your car; now, why can't you tell us how close it got? You were worried about that car, weren't you? A No, I was not worried about it. 30

Q Well, you sounded your horn at least? A Yes.

Q And you wanted to warn him that you were crossing? A Yes.

Q And you were watching it? A Yes.

Q And you saw it coming along on the north side; you saw it right up to the time you were struck? A Yes. 40

*Lester M. German, cross.*

Q Yet you cannot tell us how far away it was then? A No.

Q Well, wasn't it far enough away at that time so that you can say that that was not the car that struck you? A I know that that was not the car that struck me.

10 Q Well, this car was always in your vision, wasn't it? A Yes.

Q And you cannot say that that was not the car that struck you?

Mr. Ridley: He said that two or three times, that it was not the car.

Q Can you say that of your own knowledge, because of what you saw? A No.

20 Q Do you know where that car was after the accident? A Yes.

Q Did you see it? A Yes.

Q Where was it? A East of Baldwin avenue.

The Court: Then there were two cars, one east of Baldwin avenue and the other up on the sidewalk on the other side of the street?

30 The Witness: Yes, sir, that is right.

Q And you never saw what struck you? A No.

Q Did you see what kind of a car this was on the sidewalk? A No.

Q Was there any light on it? A What kind of a light.

Q Light to see? A I don't know.

40 Q Well, how could you see this car? A There was enough light from the corner.

*Lester M. German, cross.*

Q Did you see from the light that was around the vicinity or because the car itself was illuminated by its own lights? A I didn't see any lights on the car.

Q When did you make this observation to see where this car was? A When I looked up to the west. 10

Q Did you see anybody around the car? A Yes.

The Court: Did you notice whether it was damaged or not?

The Witness: No, I didn't see it.

The Court: It was up on the sidewalk?

The Witness: Yes, sir.

Q You do not know what kind of a car it was? A I was not near the car. 20

Q You did not see any number on it or anything to identify it? A No.

Mr. Braun: Under the circumstances, if the Court please, I move to strike out his testimony about this car that was up on the sidewalk, not having any bearing on the issue, being improper and immaterial and not binding upon the defendant. 30

The Court: It will be allowed to stand as part of the res gestae.

Mr. Braun: Exception.

Q Now what time in the morning did this accident happen? A About three o'clock, I think.

Q What day of the week was it? A Sunday morning. 40

*Lester M. German, re-direct.*

Q Had you worked the previous day? A Yes.

Q And then you had been out with a young lady and another couple? A Yes.

Q And what did you do during the evening? You danced? A Danced, ate.

10 Q Then you took a ride? A Rode them home.

Q Well you took a little ride before you took them home, didn't you? A No; it was ride enough to take them home.

Q And you were tired? A No, I was not so tired.

Q You were not tired? A No.

Q After working and dancing? A No.

Q Your mind was alert? A Yes.

20 Q You never saw what struck you? A No.

Q Who did you work for at the time of the accident? A My father.

Q Was he a master plumber? A Yes.

Q You were not in business with him? A No.

Q Just worked on a salary? A Yes.

Mr. Braun: That is all.

30 *Re-direct examination by Mr. Ridley.*

Q As you approached this corner, Mr. German, you say you blew your horn as you approached the westerly lane or the exit of the tunnel? A Yes.

Q How fast were you going then? A I slowed down on the corner altogether and started off again.

40 Q About how fast were you going as you crossed this exit of the tunnel? A About ten miles an hour I guess.

*Lester M. German, re-direct.*

Q And when you blew your horn were you in motion or had you slowed up? A I slowed up before.

Q You were still rolling along, going along?  
A Yes.

Q How long after you got out of the car was it that you went to the hospital? A I guess about twenty minutes after. 10

Q And you said on cross examination that your first impulse was to look for Mr. Weiss?  
A Yes.

Q And you were in the car and where was he, in the car or out of the car? A He was out of the car.

Q Whereabouts? A About fifty feet up the street.

Q That is, in a westerly direction? A Yes, sir. 20

Q Of what street? A Up Hoboken avenue, west of Baldwin.

The Court: Now, is that what you call the exit of the tubes?

The Witness: Yes, sir.

Q Was he standing or what was he doing?  
A Lying on the sidewalk. 30

Q Which sidewalk? A There is only one sidewalk on the north side of Hoboken avenue.

Q When you say fifty feet up do you mean fifty feet from— A From the car.

Q And the car was on the northwest corner of the sidewalk? A Yes, sir.

Q Which side of Baldwin avenue were you on as you started to cross Baldwin avenue? Were you on the east or the west side of Baldwin? A The east side. 40

*Lester M. German, re-cross.*

Q How near to the right hand curb? A About two feet off the curb.

Q How wide is Baldwin avenue, if you know? A Thirty or thirty-five feet.

Q Did you receive medical treatment at the hospital? A Yes.

10 Q And when was the last you received treatment from Dr. Pontari? A I don't know when I received treatment; a few weeks ago I went to see him.

Q Are you still suffering from any condition as a result of the accident? A Yes; when I kneel in my work I feel it in my knee.

Q Which knee is that? A The right knee.

20 Q Your work necessitates your kneeling? A Yes, most of it.

Mr. Ridley: That is all.

*Re-cross examination by Mr. Braun.*

Q How fast did you say you were crossing that street? A About ten miles an hour.

Q You were driving a Ford? A Yes.

Q The old model? A Yes, sir.

Q With the planetary shift? A Yes.

30 Q But you were moving fast enough so that this car coming from your right at the time did not endanger you? A The car I saw?

Q You were moving fast enough to clear him? A Yes.

Q He could not possibly have struck you? A I don't know whether he could or not.

Q Do you remember testifying at the last trial? A I don't remember. What are you getting at?

40 Q Do you remember testifying at that time—

*Herbert Pontery, direct.*

Mr. Ridley: I object. I don't think this case has ever been tried before.

Mr. Braun: No, in the case of *Weiss v. Harris*.

Q Do you remember last time you testified about this accident, here in this very court room? 10

A Yes.

Q March 25, 1929. A Yes.

Q You remember at that time testifying in answer to my question: "As a matter of fact this other car would have to go at aeroplane speed to catch you at the rate it crossed the street? A Yes, it probably would"? Is that true? A Yes.

Mr. Braun: That is all. 20

The Court: Can you gentlemen agree whether or not the buildings at the place where this accident took place are more or less than 100 feet apart on the average?

Mr. Ridley: Less than 100 feet apart?

Mr. Braun: Yes, so far as I know.

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HERBERT PONTERY, sworn. 30

*Direct examination by Mr. Ridley.*

Q You are a practicing physician of the State of New Jersey? A Yes, sir.

Q And you have been for how long? A Since 1924.

Q And you have an office where? A 89 Bowers street, Jersey City.

40

*Herbert Pontery, direct.*

Q Are you connected with any institution?  
A The City Hospital, Jersey City, and the public schools.

Q Connected with the public schools of Jersey City in the capacity of visiting doctor? A Yes.

10 Q You are a graduate of what college? A Ecclesiastic.

Q Did you have occasion to treat Lester German? A I did.

20 Q For what? A There happened to be an automobile accident one morning; I received a telephone call about three o'clock Sunday morning saying he was down at the hospital and I left immediately, but when I came there he already received treatment and they were bringing him over to the precinct. So after he got through at the precinct, I think about six o'clock, they brought him home and then I looked him over.

Q Brought him to his house? A Yes.

Q What did you find was wrong with him?  
A He had an abrasion of the forehead, contusion of the right leg and a small laceration of the knee.

30 Q Did you treat him after that? A I treated him right along for about five or six weeks.

Q What for, doctor? A The day after the accident his leg swelled up to twice its size and there was a large area of ecchymosis, that is, black and blue from the hips to below the knees. It was dark blue.

Q Did that prevent him from going out and attending to business? A Absolutely. He could not walk on it; he could not stand on it.

40 Q And you treated him for five or six weeks you say? A Yes.

*Herbert Pontery, direct.*

Q He testified that he still feels pain in that knee? A He was at the office I think only two weeks ago, complaining of the knee. Every time he has hard work, like climbing stairs, carrying heavy work upstairs, kneeling on that knee, he still complains of pain.

Q Now, is that the usual result or the probable result of the injuries he received? A I believe it is due to the injury. 10

Q Well, will that clear up or not? A Well, I imagine it will clear up much quicker if he could stop working for a while and not do the kind of work he is doing.

The Court: It is not a permanent injury?

The Witness: I don't think it would be permanent, no. 20

Q You know that his business is that of plumber? A Yes, and if he keeps kneeling on it and using it in that way, he is liable to have a permanent injury.

Q You rendered a bill to Mr. German? A Yes.

Q How much was that, doctor? A I didn't look it up; I don't know exactly. 30

The Court: But will you tell us what would be a reasonable charge for your services, doctor?

The Witness: I remember it was up around ninety dollars.

Q Would that be a reasonable charge? A Yes, it is.

Mr. Ridley: Cross examine. 40

*Herbert Pontery, cross.*

*Cross examination by Mr. Braun.*

Q Did you ever render a bill, doctor? A I did.

Q When? A Well, that was right after maybe about six or seven weeks after I treated  
10 him; about the time he was ready to go to work.

Q And do you know what that bill was? A I just told you the amount approximately; I don't remember exactly what it was.

Q It was about sixty dollars, wasn't it? A I don't know, I cannot tell you the exact figures.

Mr. Braun: As I understand the interrogatories state the doctor's bill was sixty dollars.

20 Mr. Ridley: You objected to Mr. German testifying to what bill had been rendered him.

Mr. Braun: I didn't object.

The Court: There is nothing before me.

Q Well, do you know how much your charges were, doctor? A I cannot give you the exact figure. I can look it up.

30 The Court: But can you give it to us approximately?

The Witness: Eighty or ninety dollars.

Q Do you know how many visits there were? A I cannot tell.

Q So that eighty or ninety dollars is a guess? A Just about; figuring around six treatments, I know in the beginning I went every day to see him, then I cut it down maybe two or three times  
40 a week, but I cannot give you the exact figure.

*Francis A. Miller, direct.*

Q There were no broken bones? A No.

Q No permanent injury at all? A None whatever.

Q You had not seen him for a long while after the first six weeks, had you, doctor? A What do you mean afterward?

Q I mean he didn't come continuously ever since the accident? A No, only maybe after he had done a hard day's work, maybe once or twice a month he would start complaining about that; if he had to climb a lot of stairs. 10

Q The last time you saw him was about two weeks ago? A Yes.

Q And that was the first time for a considerable period? A No; he came to me about maybe three or four weeks before that. 20

Q And what did you do for him at that time? A Well, I just told him to rest it. 20

Q To take it easy? A That is the main thing for him.

Q There is nothing structurally wrong there? A I don't think there is.

Q It is just a soreness? A Yes, if he kneels on it for a long time or climbs stairs with heavy weights which he has to carry. That is what hurts it. 30

Mr. Braun: That is all.

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FRANCIS A. MILLER, sworn.

*Direct examination by Mr. Ridley.*

Q You are connected with the Jersey City Police Department? A Yes. 40

*Francis A. Miller, direct.*

Q And where are you located? A The Third Precinct, Jersey City.

Q On December 18, 1927, Sunday morning, were you doing a tour of duty? A Yes, sir.

Q And where were you? A I was on Baldwin avenue between St. Pauls and Hopkins.

10 Q Did you see the collision between the German car and the Harris car? A I saw the collision, but I heard a crash first. When I got there I seen two cars there; I seen the German car piled up on the sidewalk and I seen the Cadillac car on the sidewalk also about 75 or 80 feet away from Baldwin avenue.

The Court: On what street?

20 The Witness: On the west driveway of the Holland vehicular tunnel.

Q About 75 or 80 feet from Baldwin avenue? A Yes, sir.

Q That is the northwest corner of Baldwin avenue? A Yes.

Q You say it was on the sidewalk? A Yes, sir.

Q The whole car on the sidewalk? A Yes.

30 Q Which way was it facing? A It was facing—the Cadillac car was facing west.

Q And the German car was where? A The German car was on the northwest corner of Baldwin and the vehicular tunnel, about 22 feet from the center of Baldwin avenue, about six feet away from the house facing east.

Q And were both cars on their wheels or were they turned over? A Well, they were both on their wheels.

40 Q When you got there were the occupants of the car in or not? A No, sir.

*Francis A. Miller, direct.*

Q Well, what did you do when you went to the scene of the accident? A Well, the first thing we tried to do was to get the injured people to the hospital.

Q Where was Mr. German? A Mr. German was standing up alongside the car, holding on this way. 10

Q Did you see the other occupants of the car? A Yes, sir.

Q Did you go to the hospital with them? A No, sir.

Q Did you go to the hospital with anyone? A No, sir.

Q You stayed right there? A Yes, sir.

Q How far away were you when you heard the crash? A Well, it was about a block and a half away. 20

Q Now, how wide is Baldwin avenue, do you know? A About thirty feet.

Q And how wide is the westbound traffic lane from the tunnel? A About thirty feet.

The Court: Did this Cadillac car appear to be damaged?

A Why, yes. The right mudguard and the front headlights. 30

The Court: And the car in which Mr. German was, was that also damaged?

The Witness: Yes, sir.

The Court: Those were the only two cars in the vicinity that were damaged at the time?

The Witness: Yes, sir. 40

*Francis A. Miller, cross.*

*Cross examination by Mr. Braun.*

Q You were a block and a half away? A Yes, sir.

Q You heard the crash? A Yes, sir.

Q Is this your beat? A Yes, sir.

10 Q How far does your beat extend in that vicinity? Is this the dividing line between your beat and someone else's beat? A The beats are divided there. Hopkins, Fleet and St. Pauls, one; Waverly and Jefferson another beat and Prospect and Reservoir is another beat.

Q And was another officer there? A Yes.

Q What was his name? A I do not know.

Q Was he a member of the Hoboken police force? A I could not tell you.

20 Q You know what police force he was on, don't you? A I do not. I know there was a man in uniform there.

Q And you did not recognize the uniform? A No, sir.

Q What did he do? A He went with Mr. Weiss to the hospital.

Q Did he have a badge? A I could not tell you. He had a uniform on, that is all I know.

30 Q You testified last March, didn't you, last month? A I did.

Q Why did you testify then that he belonged to the same precinct that you do? And you did not know who he was? A I didn't testify to any such thing. I said I didn't know who the man was.

Q Didn't you say he belonged to the same precinct you did? A No, sir, I did not.

Q You had been in the same precinct for a number of years? A Yes, sir.

40

*Francis A. Miller, cross.*

Q And he was a Hoboken policeman? A No, sir.

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

Mr. Braun: Your Honor, I would like to have an opportunity to get the stenographer's record for the preceding trial, the testimony of this witness, and have the stenographer here who took it. 10

The Court: We cannot go into that.

Q But he was in uniform? A Yes, sir.

Q And he was helping? A He picked up Weiss' body and placed it in the car. He went to the City Hospital and I took care of German.

Q Where did you go? A I stayed with German until he went to the hospital, then I stayed with the prisoner, Mr. Schlesinger and Mr.— I don't remember the other name. 20

Q How did they get to the hospital? A In private cars.

Q Do you know whose cars? A I think the gentleman sitting there in the front seat was one of them.

Q And who took Mr. Weiss to the hospital? A I could not tell you. 30

Q As a matter of fact you had nothing to do with Mr. Weiss going to the hospital, did you?

A No, I did not.

Q How did you know the headlight was damaged on the Cadillac? A Because we tried to get the mudguard apart from the tire.

Q What was damaged about the headlight?

A It was just kind of pushed in.

Q Do you know whether it was out of order?

A No, sir, just bent in. 40

*Bert F. Fread, direct.*

Q Still on, wasn't it? A Yes.

Mr. Braun: That is all.

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10 BERT F. FREAD, sworn.

*Direct examination by Mr. Ridley.*

Q Where do you live, Mr. Fread? A 17 West West 25 street, Bayonne, New Jersey.

Q And on the night of December 18, 1927, did you witness a collision between two cars on Baldwin avenue and the exit of the Holland Tunnel?

A I witnessed an accident, yes.

20 Q Where were you, in an automobile? A I was driving in an automobile.

Q And where did you come from? A Coming from New York through the vehicular tunnel.

Q And where were you when this collision took place? A I was about forty or fifty feet from the intersection of that corner.

Q Baldwin avenue and the exit? A Yes, sir.

30 Q Did you see the car that struck the German car? A I certainly did.

Q Did you see it before the accident? A I had occasion to see it quite some time before that.

Q Where did you first see it? A In the tunnel.

Q And where was it in the tunnel, in back of you or in front of you? A In back of me.

40 Q And after you came out of the tunnel did it continue in back of you? A No, he passed me and I passed him several times.

*Bert F. Fread, direct.*

Q And as you were coming up, approaching Baldwin avenue, coming up Hoboken avenue, did you see the German car? A I didn't see the German car until I was about a block away from the intersection.

Q Where was that car when you first saw it?  
A It was between the two driveways of the vehicular tunnel, between the east and the west driveways, nearest the westerly driveway, just about nosing out. 10

Q And he started to cross across the westerly driveway; then where was the Cadillac driven by Mr. Schlesinger? A Just about passing me then.

Q And how fast was he going? A At a terrific rate of speed; if I am any judge of speed I might say about fifty miles an hour. 20

Q How fast was German going? A He was just creeping, from what I saw, just nosing his way out to cross the vehicular driveway.

Q Then what happened? A Then I just saw him pass me and I saw this German car. I had my wife alongside of me and I said to my wife, "Say there is going to be an accident" and I no sooner said that—

Mr. Braun: I object to what he said. He knows better than that. It was ruled out the last time. 30

A I beg pardon, it was not ruled out.

The Court: Well, it is out now. Continue.

A Well, I turned to my wife—I cannot say that.

The Court: Never mind what happened in your car. What else happened outside? 40

*Bert F. Fread, direct.*

10 A Well, I jammed my brakes on and I just about stopped dead and I saw this Packard—this Cadillac strike the Ford just about midships and a little toward the back, I might say three-quarters toward the back of the Ford and throw it to the right, that is, northerly; it threw the  
10 Ford to the north and the Ford made two or three somersaults before it stopped rolling and I saw this body flying through the air, it looked to me about seventy feet, sixty or seventy feet through the air, and the minute I stopped my car that is the first thing I ran for, and my wife ran to the Ford.

Mr. Braun: I object. I think the witness should be kept down to the facts.

20 The Court: Just give a direct answer to the question and then stop.

Q Where was the German car. You got out of the car and your wife got out? A Yes, I ran to the body the first thing and I noticed as I did, that this Cadillac could not stop and went up on the sidewalk to the right; it went up about three-quarters of a block or a half a block anyway before it stopped and I saw that and I ran to the body at the same time.

30 Q Where did the Cadillac come to a stop? A Oh, it was about 100 feet from the point of contact, I imagine.

Q The point of contract was whereabouts? A Well, practically in the middle of the intersection of both driveways.

Q And did the Cadillac go to the right or to the left? A It went up on the right, on the sidewalk, mounted the sidewalk.

40 Q It mounted the sidewalk on the right? A Yes.

*Bert F. Fread, direct.*

Q And where was the Ford? A The Ford was up on the right, on sort of a slight embankment, a few feet away from a brick wall.

Q As you came up Baldwin avenue you say you saw the German car nosing out. Where were you then? A I was about almost a block away. There is a street there that does not cut across the intersection, and I was just about passing that street. 10

Q And where was the Cadillac car then? A He was in back of me, but he was giving me the horn to pass me, so I pulled over to the right and he was just about passing me and the Ford was just about starting to making the crossing.

Q And how long from the time this Cadillac came from in back of you was it until the collision occurred? A Oh, just like that. It didn't take, perhaps a half minute; not even that. It was no length of time, practically. 20

Q Where did you bring your car to a stop? A As soon as I could, a few feet from the corner, I believe.

Q And what did you then do? A I jumped out and ran to the body which I saw going through the air.

Q How long were you around the scene of the accident? A I picked up the body with some other people who had stopped there and we tried to get it in a coupe which stopped but we could not get it in, it was too small, so we let him go and finally put him in another car. 30

Q Then what did you do? A Then I ran over to my wife who had been helping German and we put him in our car and we took German to the hospital.

Q Is your wife in court today, Mr. Fread? A No, sir. 40

*Bert F. Fread, cross.*

Q Why not? A She is in her confinement bed now.

Q She was not able to come here today? A No, sir.

Mr. Ridley: Cross examine.

10

*Cross examination by Mr. Braun.*

Q You brought your car to a stop as soon as you could? A Yes, I did.

Q A few feet from the corner? A Yes, sir.

Q And how fast were you going? A About thirty or thirty-two miles an hour maybe.

Q You did that as soon as the Cadillac passed you? A No, as soon as I saw the accident.

20 Q Didn't you say that as soon as he passed you you saw the Ford car and you knew there was going to be an accident and you jammed on your brakes and brought your car to a stop? A As soon as—

Q As soon as he passed you and you saw the Ford car you knew there was going to be an accident and you jammed on your brakes and you stopped your car within a few feet of the corner, isn't that right? A No, that is not what I said.

30 Q All right, what did you say? A I said as soon as I saw the accident I brought my car to a stop as soon as I could.

Q A few feet from the corner? A Well, I stopped—I didn't want to go to the corner because there was glass there and I didn't want to take a chance of cutting my tires.

Q Could you see that? A I sure could.

Q Plenty of light there? A Yes, sir.

40 Q Lights all along there? A Well, they were the regular distance that the posts are up; there were no signal lights.

*Bert F. Fread, cross.*

Q How did you know that this car was in back of you going through the tunnel? A I looked through my rear vision mirror and what brought my attention to the car more or less was the fact that the occupants of the car were in full dress. They had stovepipes, and I made the remark to my wife to that effect; I said, "Look at the people in the back, they have stovepipes on." 10

Q And you could see the occupants of the car in the rear? A Yes, because the men were sitting in the front.

Q Did they have a light on in the car? A Yes.

Q Inside the car? A Inside?

Q Yes. A The lights of the tunnel were enough to reflect and let people see with them. 20

Q This was a closed car? A Yes.

Q Yet you could see inside the car? A I could see the front seat, the people in the front seat only. The male occupants were in the front seat.

Q Didn't this car have lights on, headlights? A Yes.

Q That did not affect your vision? A Not at all; they had dimmers on, I guess.

Q Now, you say you passed and repassed a couple of times? A Yes. 30

Q Where did that happen? A Well, that happened after we left the tunnel proper, and there is a long series of turns, wide streets and turns, and they would slow down and I kept on about the same speed, but they would slow down and pick up speed; it happened that we kept on going along until we were going up the incline. There is a sort of viaduct that leads from the lower Jersey City to the upper part of Hoboken avenue. 40

*Bert F. Fread, cross.*

Q And how far was that from the scene of the accident? A This is Baldwin avenue? Is that what you speak of? The top of the hill?

Q Yes. A This was about two blocks from Baldwin avenue.

10 Q And they were behind you then as you were approaching Baldwin avenue? A Well, my car went up the hill better than theirs and I passed them just as I was going over Palisade avenue.

Q What kind of a car did you have? A A Flint.

Q And who was in the car with you besides your wife? A There were four occupants in the back.

Q What are their names? A Their names?

20 Q Yes, who were they? A Mr. and Mrs. Harry Book and daughter and a Mr. Ray Reis.

Q I mean, they were all adults, they were not children? A All adults.

Q And as this Cadillac passed you you say it went at a terrific rate of speed? A Yes.

Q Now, where were you when he passed you in the roadway? A Well, he gave me the horn several times and I went over to the right to let him pass me. I didn't want to, but the wife told me, so I did.

30 Q How fast were you going when you pulled over to the right? A I should judge about—well, as I pulled over I don't know, because I went slower, but I took my foot off the gas when I slowed over, but I was going just prior to turning thirty or thirty-two miles an hour.

Q Did you look in your mirror before you pulled over? A Yes.

Q And could you see them? A Why, he was out of my line of vision, I could not see him then.

40

*Bert F. Fread, cross.*

Q I mean before you pulled over, when you got the horn. A Yes, sir.

Q How close was he to you then? A Oh, about fifty feet in back of me, maybe more.

Q And did he stay fifty feet behind you? A After I pulled over?

Q Did he stay fifty feet in back of you from the first horn? You say he gave you the horn two or three times. Did he stay fifty feet in back of you until the last horn? A Yes, he was in back of me until I pulled over. 10

Q He stayed there until you pulled over? A Yes.

Q Although he gave you the horn two or three times? A He was gaining on me and I pulled over.

Q He gave you the horn two or three times before you started to pull over, is that right? 20

A You know how it is when you want to pass anyone, you keep on giving them the horn.

Q And you looked in your mirror and he was fifty feet in back of you at the time? A At that time.

Q And you were going about thirty miles an hour, then you took your foot off the accelerator and pulled to the right? A Yes.

Q Why did you take your foot off the accelerator? Were you anxious to get out of the way? A I would not make a turn at full speed. 30

Q Were you going full speed? A Well, the speed of the car, I mean at that speed; I would not start turning over abruptly, which I did.

Q Did you pull over abruptly? A Well, I would not say I went over all of a sudden, but I nosed my way over like you do when you drive.

Q And how far did you travel from the time you pulled over until you saw the accident? A Not long; a few seconds. 40

*Bert F. Fread, cross.*

Q I know, but how far did you travel? A The car traveled say maybe fifty feet.

Q And they passed you a block before the accident? A No, he did not pass me a block before the accident.

10 Q Didn't you say you had just passed this corner when he pulled by? A As he was pulling by. When he started to pass me I was about past the intersection of the preceding corner and as he passed me I was just in front of the musician's union which is about the middle of the block.

Q And you only went then about how far before the accident happened, from the time he passed you? A About fifty feet.

20 Q And he didn't pass you then right near the other corner? A In the middle of the block.

Q Didn't it take him from the corner to the middle of the block to get by you? A Well, he was about fifty feet in back of me.

The Court: Yes or no.

The Witness: Yes.

30 Q He started to pass you at the preceding corner and didn't get by you until the middle of the block, is that right? A Yes, sir.

Q And how fast were you going during this time you were slowing down? A I was going thirty miles an hour.

Q But you took your foot off the accelerator as you pulled over? A Yes.

Q And do you figure he was going fifty? A He was going very, very fast.

Q Now, where were you when you first saw the Germans' car? A Just about that time—

40 Q A block away? A About a block away.

*Bert F. Fread, re-direct.*

Q And he was just nosing out then, he was just nosing out across your part of the roadway?

A Yes.

Q And the Cadillac was just passing you? A Yes.

Mr. Braun: That is all.

10

*Re-direct examination by Mr. Ridley.*

Q When you refer to a block, is that a block that goes right through or is it a street that comes to a dead end at Hoboken avenue? A It is a dead end street there between Palisade and Baldwin avenues; it does not cross the vehicular driveway.

Q And is that the block you were speaking of? A That is the block I am referring to. 20

Q Now, where was Mr. Harris' car when you were passing that corner? A He was gaining; he was way in back of me gaining.

Mr. Braun: I object. That has already been gone over.

The Court: You brought this out on cross examination. Overrule the objection.

30

Q Where was Mr. Harris' car when you were passing that corner? A He was gaining on me. That is where he was at the time I was about crossing that dead end street.

Q How far had he traveled from the corner of that dead end street when he passed you? A About a half block.

Q And how did you locate that, Mr. Fread, as half a block? A Well, between Baldwin and the dead end street.

40

*Bert F. Fread, re-cross.*

Q Is there anything on that street that makes you think it is half a block? A Yes, the Musicians' Union, and there is a garage there.

Q Has the Musicians' Union a building? A The Musicians' Union has a building on that block.

10 Q And that is what you locate it by? A Yes.

Q And was that the place where you pulled over for him, near the Union Building? A Yes, around that.

Q And that is the place that he passed you? A Yes.

Q Did you begin to slow your car or put some brakes on after he passed you or— A Just—

20 Q Let me finish please or did you begin to put your brakes on as he passed you or when the collision occurred? A At the time of the collision.

Mr. Ridley: That is all.

*Re-cross examination by Mr. Braun.*

30 Q You were looking then at the Union Building? A No, I was not looking at it then; I was looking at it before that when I came to the corner.

Q Which way was this building, to your right or to your left? A Right in front of me practically, to the right.

Q And that was at the corner? A No. As I was approaching the corner I spoke of it. May I say this—I am afraid to say it—

Q When did you look at it, you understand the question? A The left—

40 The Court: Just yes or no.

*Stephen Tanzer, direct.*

Q Do you understand the question? A When I looked at the building? Is that the question?

Q Yes. A As I was approaching this dead end street I told the wife I would—

The Court: No, no.

Q You are too anxious. 10

Mr. Ridley: I move to strike that out.

The Court: Strike it out.

Mr. Braun: I think it is self apparent, your Honor.

Q You did look at the building? A Yes.

Q And that building was to your right? A Directly in front of me at the time.

Q It was also to your right, wasn't it? A 20 Yes.

Q And German was coming from your left?

A At that time I had not seen German, when I was looking at the building.

Q German was coming from your left when you first saw him? A Yes.

Q And Harris was coming from your rear? A Yes.

Mr. Braun: That is all. 30

STEPHEN TANZER, sworn.

*Direct examination by Mr. Ridley.*

Q What is your business? A Automobile mechanic.

Q How long have you been an automobile mechanic? A Eighteen or twenty years. 40

*Stephen Tanzer, direct.*

Q Where are you in business now? A I am not in business just now. I am sold out and working for a party in Hoboken, but I intend to start in again this week.

Q I mean, you are still in the automobile repair business? A Yes.

10 Q In December, 1927, where were you in December? A 3716 Boulevard, Jersey City.

Q What business was that, a general garage? A General repairing, general garage.

Q Had you ever bought and sold automobiles? A Yes.

Q You had bought and sold Ford automobiles? A All makes.

Q And had you bought and sold automobiles prior to December, 1927? A Well, yes, I sold cars for the last ten years, all makes of cars, not only Fords.

20 Q Did you know this Ford that was owned by Jacob German? A Yes, sir, I knew it well.

Mr. Braun: I object to that because it has not been shown yet that it did belong to Jacob German.

30 Mr. Ridley: Well, we will withdraw the witness and put Mr. German on the stand.

The Court: Assume it did. If it did not we will strike it out.

Q How were you familiar with the car? A Well, I knew the car from the day the man bought it.

Q Had you repaired the car? A Yes, I worked on the car, small odds and ends, tightening up and putting in speed bands.

40

*Stephen Tanzer, cross.*

Q Had you seen it shortly before December 18th? A I seen it practically every day; he was right across the street from me.

Q And you did work on it? A Yes, sir.

Q Have you bought and sold cars similar to this particular Ford? A Yes, sir.

Q Now, in your opinion what was the car worth immediately prior to this accident? A About \$450. 10

Q And did you see the car after the accident? A Yes, sir. I took care of it after the accident.

Q What did you do? A I towed it to the garage and it was there until we disposed of it.

Q What was its condition after the accident? A Completely wrecked, body, chassis, rear end and everything. 20

Q What was it worth? A It was not worth anything. He sold it for junk for twelve dollars.

Mr. Ridley: Cross examine.

*Cross examination by Mr. Braun.*

Q It was worth \$12 anyway? A Well, I don't think you would give \$12 for all the good it was to anybody. 30

Q What kind of a car was this? A A Ford sedan, four-door.

Q Yes, but what year? A Early 1926 or a late 1925; it was an early 1926 model.

Q A 1925 car? A Yes.

Q Bought in early 1926? A No, a 1926 model bought late in 1925. The models came out about three months before the year.

Q It was bought in 1925 but it was a 1926 model? A Yes, an early 1926 model, as they say. 40

*Stephen Tanzer, cross.*

Q Do you know what date it was bought? A That I could not say.

Q I thought you said you knew the car from the time he bought it. A Certainly, from the time he bought it but do you think I keep that in my mind, the day he bought it?

10 Q Were you with him when he bought it? A No, sir. I know the car when he got it.

Q This was a model T, wasn't it? A Yes, sir.

Q Do you know about when in 1925 he bought it? A I have no idea. It didn't concern me any. I could not say whether it was January or February or any time. I know the day when he bought the car I seen it, I looked at it, and that is all I could tell you.

20 Q Do you know the number of the car? A No, sir.

Q Well, how do you know it was a 1926 model? A Well, I know when he bought it, I was right across the street from the man and I know the model.

Q It was a model T? A Yes, sir.

Q Four doors you say? A Four-door sedan.

30 Q Do you know how much he paid for it? A Why, I really don't recollect what he paid for it, it was around \$735 and he had a lot of extras which brought it up. I don't know what it came to, but about \$800 anyway.

Q The list price was about \$735? A Yes, around that.

Q And what extras were there on the car? A Spare tire, bumpers and stuff like that, that do not go with the car. He had all that on.

40 Q Do you know how far the car had been driven? A Well no, I could not say; I looked

*Stephen Tanzer, cross.*

at the speedometer but I could not just remember how far it went.

Q Would that make any difference in your estimate? A No, sir, not for a car that age.

Q Why not? A The car was not quite two years old.

Q Do you know what date this accident happened? A I know it was around December some time, 1927. 10

Q And the car was bought in 1925? A Yes, sir.

The Court: What date do you know?

The Witness: The date I don't know.

Q When in 1925? A I don't know.

Q It might have been two years old at the time of the accident? A Well, it was not quite two; it was going on two years. 20

Q Don't you know this accident happened in December, 1927? A Yes, sir.

Q And if the car was bought in 1925, even if it was bought in December, it would have been two years old? A Yes, sir, two years.

Q Were you figuring on two years for this car? A Yes, I figured a year and a half or two years. 30

Q When you made this estimate? A Yes, I figured from a year and a half to two years. I don't know the date the man bought the car but I figure a year and a half or two years.

Q Didn't it make any difference to you whether it was a year and a half or two years old? A No.

Q It would not make the least bit of difference? A Not on this particular model, no, sir. 40

*Stephen Tanzer, cross.*

Q It would not make any difference how far the car had been driven? A No, sir, it is the condition of the car, the appearance of it.

Q Can you tell the condition of a car without knowing how far it has been driven? A Yes, sir, you can tell if you are a mechanic at all.

10 Q How can you tell? A From the sound and the looks.

Q By the sound and the looks? A Yes, sir. I drove the car myself and when he had a miss or anything he came over and asked me to find it and I tried it out.

Q What can you tell by the sound, for instance? A Well, you can tell when the motor has gone 50,000 miles and when it has gone 10,000 miles from the sound or the noise of it when  
20 the parts are worn.

Q That is assuming that the bearings have not been tightened up, isn't it? A Yes, sir.

Q And whether light or heavy oil is in the crank case? A It does not make any difference. A loose motor will make a noise with heavy or light oil.

Q And it cannot be concealed? A No, sir, not with oil.

Q In no way? A Repairs are the only way.

30 Q Well, even if it were repaired after going a great number of miles it would still be an old car, wouldn't it? A Certainly.

Q How did you make this figure of \$450? A The car was bought for \$735. Figuring two years depreciation on the car, \$200 off that. The car should really be worth more than I appraised it.

Q Do you figure a percentage off for age? A Well, that is what I did.

Q What percentage do you figure off a year?  
40 A About \$100 a year on a Ford.

*Jacob German, direct.*

Q Would it make any difference what model it was? A Well, the new models only came out lately. All the others were models T. It wouldn't make any difference outside of the year.

Q It wouldn't make any difference whether it was a coupe, a runabout or a sedan? A Naturally there is a difference. 10

Q How much would you knock off per year on a touring car? A About \$150 a year.

Q And of course you did not take into consideration the fact that there was a new model coming on the market? A No, sir, not at the time.

Q And that would not affect the price of a second hand model T, would it? A No, sir.

Q Do you know when the first model A came out? A I don't know just what date it came out. I know they are out about six months now. 20

Q Six months? A I would not say exactly, around that.

Q How long have you been in the automobile business in the selling business? A About ten years.

Q And you say the model A has only been out about six months. Do you want that to go in as your answer? A About nine months. 30

Mr. Braun: That is all.

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JACOB GERMAN, sworn.

*Direct examination by Mr. Ridley.*

Q You are the father of Lester German? A Yes, sir. 40

*Jacob German, cross.*

Q This automobile that your son was driving on December 18, 1927 was owned by whom? A By me.

Q And when did you buy the car? A I think around about August, 1925.

10 Q What did you pay for it? A Eight hundred and some odd dollars.

Q After this accident what did you do with the car? A I had it towed to a garage and kept it there about six months.

Mr. Braun: Now if the Court please, I don't think that is material.

The Court: You towed it to the garage?

The Witness: Yes, sir.

20 Q Did you dispose of the car? A Yes, sir.

Q How did you dispose of it? A I sold it.

Q What did you get for it? A Twelve dollars.

Q Why did you sell it? Could you repair it? A No, sir, it was a complete wreck. I was told it would cost about four hundred dollars to repair it.

Mr. Braun: I object.

30 The Court: Never mind that.

Mr. Ridley: That is all.

*Cross examination by Mr. Braun.*

Q Did you drive the car, Mr. German? A Yes, sir.

Q And your son drove it? A Yes, sir, both of us.

40 Q Did anybody else in the family drive it? A No.

*Motion for a non-suit.*

Q You bought it in August, 1925? A About August I think.

Q Who did you sell it to after the accident?  
A An Italian man, a coal man.

Q You do not know what mileage this car had made? A I could not say, maybe about 10,000 miles. 10

Q About 10,000 miles? A About that; I wouldn't say for sure.

Q In two and one half years? A Yes, sir.

Q Didn't you use this car in your business?  
A No, sir.

Mr. Braun: That is all.

Mr. Ridley: Do I understand that it is admitted that this Cadillac car was owned by William Harris and operated by Joel Schlesinger? 20

Mr. Braun: It is admitted in the pleadings. Agency is not admitted.

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DEFENSE.

Mr. Braun: I move for a non-suit on the grounds: First that there has been no proof of negligence on the part of the defendants or either of them; second there is conclusive proof on the plaintiff's own story that he himself was guilty of contributory negligence. 30

The Court: The motion is denied.

Mr. Braun: Exception.

*Harold J. Hoops, direct.*

HAROLD J. HOOPS, sworn.

*Direct examination by Mr. Braun.*

Q Doctor, you are a licensed practicing physician in this State? A Yes, sir.

10 Q And have been for how long? A About ten years.

Q And where is your office? A Ege avenue, Jersey City.

Q Did you make an examination of Mr. German? A Yes, sir.

Q When did you make this examination, doctor? A At his home on the Boulevard on January 18th, 1928.

20 Q That was how long after he had been injured? A Why, he told me he was injured December 18th, 1927.

Q And what condition did you find him in at the time? A Why, he was black and blue on the right leg from the hips to above the knee on the outside.

Q Did you see any wound on his head? A He didn't have any wound at the time.

Q Did he tell you he had had a cut? A He told me that.

30 Q And that had healed up? A Yes, sir.

Q Did it leave any scar visible? A Not that I saw.

Q How about the knee, doctor? A The knee was slightly swollen at the time, half an inch in circumference.

Q Were there any visible marks of injury other than swelling? A He was black and blue.

Q I mean in the knee. A No.

40 Q This cut that he had had healed at the time? A Yes, it had.

*Harold J. Hoops, cross.*

Q Did it leave any scar? A Not that I remember.

Q What did you find to be the extent of his injuries? Was there anything that in your opinion would be permanent? A Well, I concluded that the injuries were not permanent at the time.

10

Q There was no bone pathology? A No.

Mr. Braun: Cross examine.

*Cross examination by Mr. Ridley.*

Q You only saw him once? A Yes.

Q And the leg was then black and blue? A Yes.

Q Was it swollen? A The leg was not, the knee was.

20

Q To what extent? A A half an inch in circumference; I measured both knees at the time

Q And was it sufficient to prevent him from going to work at that time? A Yes.

Q And you could not prognosticate the limit of this swelling, could you? A Other than to say it would not be permanent.

Q It would not be permanent, but you do not know how long the swelling would continue? A Not in a period of weeks, no.

30

Q And that was three weeks after the accident you saw him? A Three weeks, yes.

*Walter J. Loomis, direct.*

WALTER J. LOOMIS, sworn.

*Direct examination by Mr. Braun.*

Q What is your business, Mr. Loomis? A  
Inspector and appraiser of damaged automobiles.

10 Q Did you inspect a car of Mr. German after  
this accident? A I did.

Q What year model was it? A 1925 four-  
door Ford sedan.

Mr. Ridley: What are you looking at?

The Witness: Some notes I took at the  
time of my inspection.

Mr. Ridley: May I ask when you made  
that inspection?

20 The Witness: January 3rd, 1928.

Q Do you know what the market value of a  
1925 four-door model Ford sedan was on De-  
cember 18, 1927?

Mr. Ridley: I object. I think it is what  
the market value of this particular car was  
in its condition prior to the accident.

30 The Court: Sustain the objection.

Mr. Braun: Exception.

Q Do you know the value of a 1925 four-door  
model T Ford sedan in good condition of repair,  
first class condition, we will say, as to repair and  
paint and rubber and everything else on De-  
cember 18th, 1927?

40 Mr. Ridley: I object because that car, it  
has been testified, had a number of accessor-  
ies on it. I think that certainly would enter

*Walter J. Loomis, direct.*

into the value of the car. It is the value of this particular car we are speaking of.

The Court: I will allow the question.

A Yes, I do.

Q What was it?

10

The Court: This is without any extra accessories?

The Witness: Yes. A car purchased in 1925, the market value in 1928 of this model—

The Court: Not 1928, December 18th, 1927.

The Witness: December 18th, 1927, this particular model Ford was worth about \$150.

20

Q And was there any special condition in the market which affected the value of model T Fords. A Yes, there was.

Q What was that? A The new model A was in process of manufacture and was about to be delivered to dealers on the market and the sale of model T Fords was very, very much in the discard. They didn't want them any more. They were all waiting for the new models and the prices went down. The price was very low on all the model Fords.

30

Q Do you know what the list price of that model was? A Yes, sir, in 1925 the list price was \$660. That was the list price of a four-door Ford sedan in 1925.

Mr. Braun: Cross examine.

40

*Walter J. Loomis, cross.*

*Cross examination by Mr. Ridley.*

Q By list price you mean the price in Detroit? A F. O. B. Detroit without any extra tire, freight or accessories of any kind.

Q Now, would that include a self starter? A  
10 Oh, yes.

Q And what would be the price in Jersey City for that car? A Well, it would run around \$700, something like that, delivered.

Q What does something mean, fifty dollars, twenty-five dollars or one hundred dollars? A Somewhere around twenty-five or thirty dollars.

Q You do not know what accessories were on this particular car, do you? A Well, I know what was on it at the time I examined it.

Q Well, when you examined it, what condi-  
20 tion was it in? A In damaged condition

Q Very badly damaged? A Yes, it was practically beyond repair.

Q What was it worth in junk? A The salvage on it was worth about fifteen dollars, considering tires and one thing and another.

Mr. Ridley: That is all.

Mr. Braun: Will your Honor favor me  
30 by adjourning at this time, instead of one o'clock. I don't know what has happened to Mr. Harris or Mr. Schlesinger. We have been 'phoning trying to get them. They knew the case was on and I do not know if they have had another accident or what. I cannot get any word from them at all.

The Court: Yes. We will adjourn now until two P. M.

*Statement by Defendants' Counsel.*

AFTER RECESS—TWO P. M.

Mr. Braun: I would like to offer, by consent, a photograph looking east on Hoboken avenue from the northwest corner of Baldwin avenue, with the understanding, however, that while these signal lights appear on here, it is agreed that they were not in operation at the time of the accident, and they have no bearing on the negligence or contributory negligence in the case because they were not in operation at the time. 10

Mr. Ridley: As I understand it the lights were erected but not operating after twelve o'clock.

The Court: It may be marked with that qualification. 20

(Admitted and marked Exhibit D. 1 in evidence.)

Mr. Braun: Now, if the Court please, I would like to have stated on the record the fact that I have made every effort to find out what has become of Mr. Harris and Mr. Schlesinger and—

The Court: They have not appeared? 30

Mr. Braun: They have not appeared and I have not been able to trace them and their office insists that they have not been able to trace them, and for my own protection I would like that on the record so that there will be no criticism for my proceeding under the circumstances.

The Court: Have you any other witnesses?

Mr. Braun: With that I rest. 40

*Francis A. Miller, recalled, direct.*

Mr. Ridley: If I may recall the officer, his explanation of this picture may assist the jury.

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REBUTTAL.

10

FRANCIS A. MILLER, recalled.

*Direct examination by Mr. Ridley.*

Q I show you Exhibit D. 1, which is the picture looking east on Hoboken avenue from the northwest corner of Baldwin avenue, in Jersey City, and ask you where the cars were when you arrived at the scene of the accident. A When I arrived at the scene of the accident the Ford sedan was placed about 14 feet from Baldwin avenue curb and about 12½ feet from this viaduct roadway, almost up against the apartment house there.

20

Q Was there an apartment on this lower left hand corner of the picture? A Yes, about six feet away from the house.

30

Q And where was the Cadillac car. A The Cadillac car was on this walk about five feet away from the viaduct road curb and about five feet from the curb of Baldwin avenue.

Q Indicating the lower left hand corner of the picture? A Yes, sir.

Q Do you know what that black mark is on the photograph? A That is the oil from the Ford sedan.

Mr. Ridley: That is all.

Mr. Braun: No cross examination.

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Mr. Ridley: We rest.

*Lester German, recalled, direct—cross.*

The Court: I would like to have the driver, Lester German, come back.

LESTER GERMAN, recalled.

*By the Court.*

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Q This car you were driving I understood you to say was not your own? A No, sir.

Q Whose car was it? A My father's.

Q What were you doing with it that evening? A I had gone out for a drive with my friends.

Q Were you out or had you done any business for your father that evening? A No.

Q Did he know that you had the car? A 20  
Yes.

Q Did you get permission from him? A  
Yes.

Q The other occupants of the car had been, as I understand, to this place of amusement with you? A Yes.

Q And you were at the time of the accident proceeding where? A I was on my way to Weiss' home, taking him home.

Q You had not yet started for home yourself? A No. 30

The Court: That is all.

Mr. Ridley: No questions.

*Cross examination by Mr. Braun.*

Q How many members were there at home in your family? A Only my mother and father.

Q Just the three of you? A Yes.

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*Motion for direction of a verdict.*

Q You lived there? A Yes, sir.

Q And the car was used generally for the family? A Yes.

Q It was not a business car? A No.

10 Q And you did not have to ask permission every time you took the car out, did you? A I had to find out if my father was going to use it.

Q But you sometimes drove your mother out? A Yes.

Q And you frequently drove your father as well? A Yes.

Mr. Braun: That is all.

The Court: Neither of them had been with you on this occasion?

20 The Witness: No.

The Court: And you were doing nothing for them at this time?

The Witness: No.

(Witness excused.)

30 Mr. Braun: I move for a direction of a verdict in favor of the defendants, at least on the case of the plaintiff Lester German on the ground stated in my motion for a non-suit, that legally there is no evidence which constitutes legal negligence on the part of the defendant, and there is evidence which constitutes legal contributory negligence as a matter of law.

The Court: You do not deny that this car was owned by William Harris and driven by his agent Joel Schlesinger?

40 Mr. Braun: The agent is presumed. We do not admit it, but that is presumed by the fact of ownership.

*Charge to Jury.*

The Court: Motion denied.

Mr. Braun: Exception.

(Both sides sum up to the jury.)

**CHARGE.**

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The Court thereupon charged the jury as follows:

The Court: Gentlemen of the Jury: On December 18th, 1927, an automobile owned by William Harris and driven by his agent, Joel Schlesinger came in contact with another automobile belonging to Jacob German and driven by his son Lester M. German at or near the intersection of Baldwin avenue and the exit of the Holland Tube, generally referred to as Hoboken avenue, in this city.

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Now, the mere fact that these two cars came together and there was a collision and there may have been injury sustained in that collision, standing alone and by itself, is not sufficient to justify the plaintiffs here, Lester M. German and Jacob German, his father, in recovering damages from the driver of the other car, Joel Schlesinger and the owner William Harris. You see, if you were to do that, considering nothing more, it would be equivalent to saying that the driver of an automobile on the public highway is an insuror. He is not. The defendants here can only be held liable in the event that the driver, Schlesinger, was negligent, and further that his negligence was a proximate cause of the accident, leaving out for the moment the question of contributory negligence insofar as it may be raised as against either of these plaintiffs.

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*Charge to Jury.*

Negligence presupposes the violation of or failure to perform some duty which one person owes to another. Now, what duty does the driver of an automobile upon the public highway owe to other drivers. It is required, gentlemen, to so manage, control and operate his car, to make such  
10 observations for other traffic upon the highway and to exercise such judgment to avoid collision as a reasonably prudent person would have exercised under the same circumstances. So you see, the degree of care with which the driver of an automobile is charged is reasonable care. That does not necessarily mean what you would have done or would not have done under the same circumstances, because you may be very careless or  
20 very careful; but the standard that you are to choose is what would have been expected from the average every day individual whom we recognize as possessing and exercising reasonable care, caution and prudence.

Now with that standard in mind, judge the conduct of Mr. Schlesinger on this occasion and find out whether or not he was negligent. So much, you see, depends upon the circumstances under which you are asked to apply the rule of care, and in this case it is your peculiar duty to  
30 decide what the facts in the case are. It makes no difference what counsel may recite to you that the evidence discloses, nor what reference the Court may make to the evidence. After all, it is for you to say, if your recollection or your understanding of the evidence does not agree with the statements made.

Now, in deciding this question of whether or not this defendant driver was negligent—and I might add here that if the driver was negligent  
40 his negligence would be imputable to the owner,

*Charge to Jury.*

Harris, and if he were not negligent, that would free Harris as well as the driver—you have to consider certain so-called traffic rules. One has to do with speed. Where the buildings are on an average of less than one hundred feet apart the rate of speed which may be maintained but which shall not be exceeded, as the rule ran at that time, is twelve miles an hour. Of course, in the open country, so-called, where the buildings are a greater distance apart than indicated, the rate of speed was thirty miles an hour except at the intersection of prominent crossroads where it was six miles an hour. Of course there has been some change to that section, but that was the rule at the time. But there is a qualification to that rule, that nothing therein contained shall be held to permit an automobilist to drive his car recklessly or at any speed greater than is reasonable under the circumstances, or so as to endanger the life or limb or property of any other person. Then, too, a machine must be equipped with a signalling device and the operator of it shall give reasonable warning whenever necessary to insure the safety of other users of the highway, or when overtaking a vehicle or a pedestrian using any part of the highway other, of course, than the sidewalk, or at street intersections where the view is obscured. But there you have a qualification also that a signal shall not be given unnecessarily. Then, too, gentlemen, there is a rule that an automobile approaching and entering an intersection shall grant the right of way to another machine coming from the right.

That is not a hard and fast rule applicable to all hazards and in all situations so as to relieve from responsibility one who invokes the exact

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*Charge to Jury.*

letter of the law but is otherwise neglectful and disregardful of the rights of others. You see, gentlemen, you would have little difficulty if both machines reached the intersection at exactly the same time, because it is undoubtedly the case in the application of that rule that where  
10 two cars are proceeding to an intersection in such a manner as to reasonably indicate that they would arrive there at exactly the same time, the car coming from the right should have the right of way. So much, you see, depends upon the location of the cars at the time you are called upon to apply that rule. Then you must remember at all times that the mere violation of a traffic rule, standing alone by itself, is not of itself alone negligence. It is evidence, of course, which you  
20 must take into account and give due consideration to along with all the other circumstances of the case in order that you may say whether or not the driver whose conduct you are investigating exercised reasonable care under all the circumstances in order to say whether or not reasonable care was exercised.

If you find the driver was not negligent you should bring in a verdict for both of these defendants, Mr. Harris and Mr. Schlesinger against  
30 these plaintiffs, of no cause of action. But, if Mr. Schlesinger, the driver of the defendant's car was negligent, then you must proceed to determine whether or not such negligence, if any, was a proximate cause of this accident.

Now, what do we mean by proximate cause? It is a difficult thing to grasp when you come to state a cold, legal definition of it, but it can be best explained by saying that in the great generality of cases it is that cause which naturally  
40 and probably led up to and might have been ex-

*Charge to Jury.*

pected to bring about the thing that it complained of. It is the moving, efficient cause of an accident without which the accident would not have happened. So, if in some respects, this defendant driver was negligent, but if that negligence was not a proximate cause of the accident and the accident would have happened whether that was in the case or not, you could not find for the plaintiff and against the defendant. You would have to find for the two defendants and against the plaintiff, because, as I said, the two elements must be connected up together, negligence and proximate cause. 10

Now, if you find that that is the situation here, then, gentlemen, the plaintiff Jacob German, is entitled to a verdict against the defendants and the reason is that under all the evidence that has been produced here in this trial there is nothing whatever to charge any negligence on the part of his son Lester M. German to him. Of course there is a rule that the owner of a car who allows it to be operated upon a public highway must shoulder the presumption that the driver of it is his agent, but when that is overcome, gentlemen, by clear and uncontradicted evidence to the contrary the presumption falls. And that is the situation here. So, if the defendants' driver was negligent, and his negligence was the proximate cause of the accident, you would bring in a verdict in favor of Jacob German and against both of these defendants, no matter what you may find in regard to the case at bar as to Lester M. German's claim is concerned. 20 30

So far as the claim of Lester M. German, the other claimant here is concerned, the charge made by the defendants is that he was guilty of 40

*Charge to Jury.*

contributory negligence. Now you see here the burden rests upon the defendants of establishing that to your satisfaction by a fair preponderance of the evidence. That does not necessarily mean the evidence produced only by the defendants, but it does mean all the evidence in the case.

10 Here you have the driver of another car whose conduct you must consider. He too, was required to exercise reasonable care in the operation, control and management of his car, and such of the traffic rules as would fit his situation must also be considered in weighing his conduct, but it follows that if Lester M. German was negligent, and if he thereby contributed in any degree to the happening of this accident, that would bar a recovery by him against the defendants even if

20 you should at the same time find that the defendants' driver was negligent, too, and even if the defendants' driver was more negligent than Lester German was. In a case like this you are not privileged to weigh the relative degrees of negligence. So it follows here that if these defendants were negligent and their negligence was a proximate cause of the accident, you would find for the plaintiff Jacob German and against these defendants, but it does not follow that you would

30 also at the same time find in favor of the plaintiff Lester M. German and against the defendants, and it would not be so if you found that Lester M. German was himself guilty of contributory negligence, so that his negligence contributed in any degree to the happening of this accident. But if you reach the conclusion that Lester German should also have a verdict against these defendants, then you will express your verdict in that way, and state the amount that you find for

40 him.

*Charge to Jury.*

Now, if he is entitled to a verdict against the defendants, Lester M. German is entitled to be compensated or the injuries he personally received as the natural and proximate cause of this accident. The duty rests upon him, as it does upon the other plaintiff, of proving damages to your satisfaction by a fair preponderance of the evidence. Now, fair compensation to Lester German would include pain and suffering for so long a time as you find that he has experienced pain and suffering, and I think there is some testimony to the effect that even until today he does experience some pain. There is testimony in the case that he was taken to the hospital and was there about three-quarters of an hour, and that his knee was cut and he had a scratch on his head, as he describes it, and he was injured on the leg. The doctor on being called said that he found the leg swollen, and that it was that way for some time, and the leg black and blue from the hip down to about the knee. There is also testimony that he could not walk on it for a considerable length of time. If those things are true this plaintiff is entitled to be compensated. He is entitled to be compensated for the loss of his freedom of action during that time, if he was confined to his home, prevented from working; he is entitled to be compensated for that incapacity so long as it existed. Then if he lost any wages as a result of this accident he should be compensated for that loss. There is testimony in the case that he was working in the plumbing line at that time, and that he was making about sixty dollars a week, and that he was out of work for several weeks. You will remember the length of time. There is also testimony that a doctor's bill was incurred of eighty or ninety dol-

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*Exception to Charge.*

lars. Of course he is entitled to be compensated for the reasonable expenses incurred in an effort to cure himself of the injuries received as the result of this accident, if he is entitled to recover at all.

10 Now, with respect to the father, Jacob German, if he is entitled to a verdict he is entitled to be compensated for the damage done to his automobile, and the rule which you will apply is the difference between what the car was worth immediately before the accident and what it was worth immediately after the accident in its damaged condition. The plaintiff's contention is that the car was worth before the accident about four hundred and fifty dollars, and that after the accident it was practically worthless. He said he  
20 sold it for junk for about twelve dollars. Of course there is a sharp dispute on that. An expert produced by the defendants says that the car was only worth about one hundred and fifty dollars before the accident, and about fifteen dollars afterwards. Whatever is the truth of the situation, if this plaintiff, Jacob German, is entitled to a verdict, he is entitled to have the difference between the value of the car before the accident, and the value after the accident.

30 I refuse to charge the defendants' request to charge except as already charged.

The jury may now retire.

Mr. Brown: I respectfully ask an exception to the refusal of the Court to charge the second request. I waive the other.

*Defendants' Requests to Charge.*

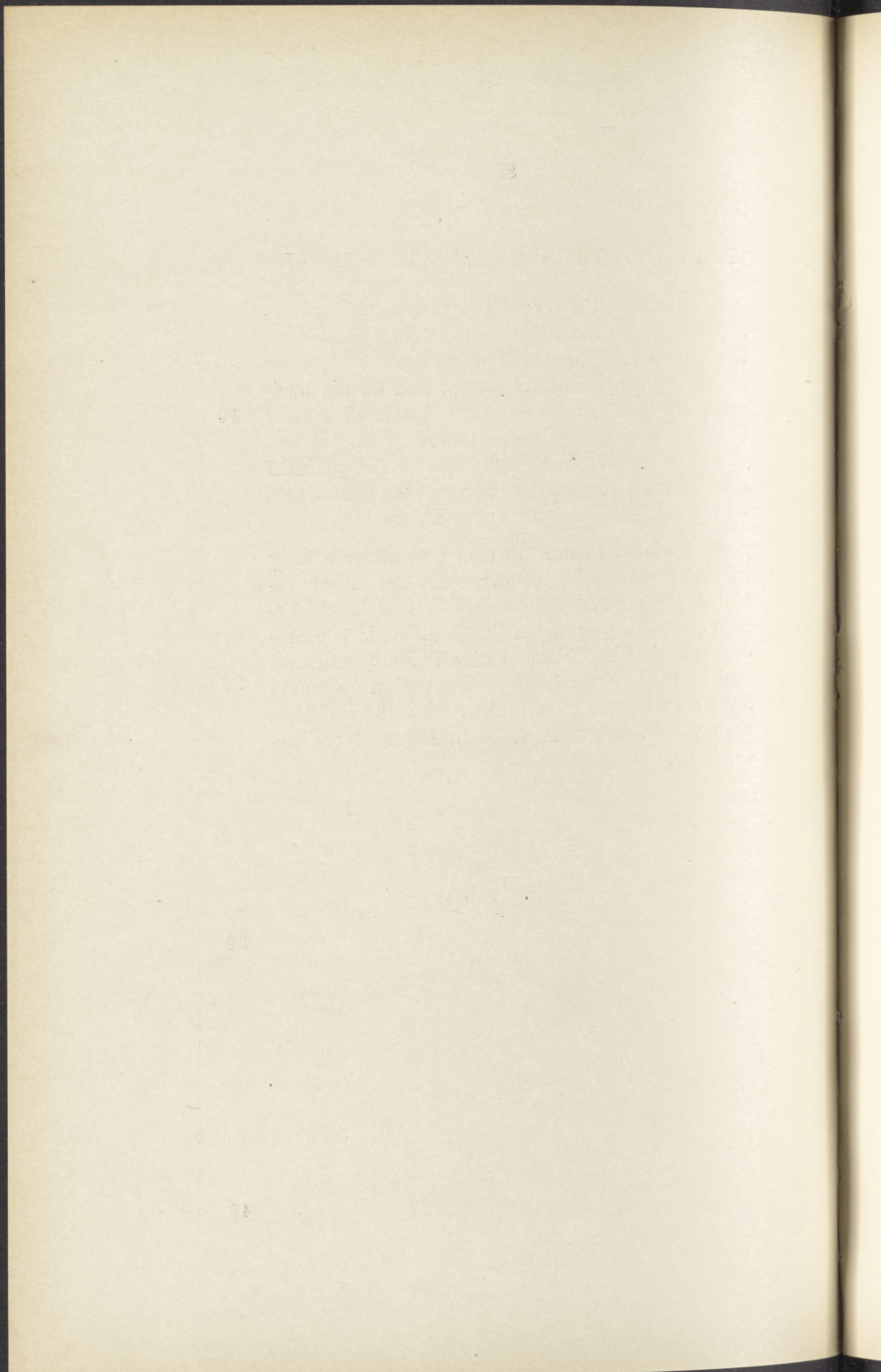
## DEFENDANTS' REQUESTS TO CHARGE.

1. Proof of the ownership of a vehicle raises a presumption that when it is being operated on the public highway it is being operated by or under the control of the owner and on his business, so that if you find that plaintiff Lester German was guilty of contributory negligence, you may impute that negligence to the plaintiff Jacob German and find in favor of the defendants on his suit for damages to the automobile. 10

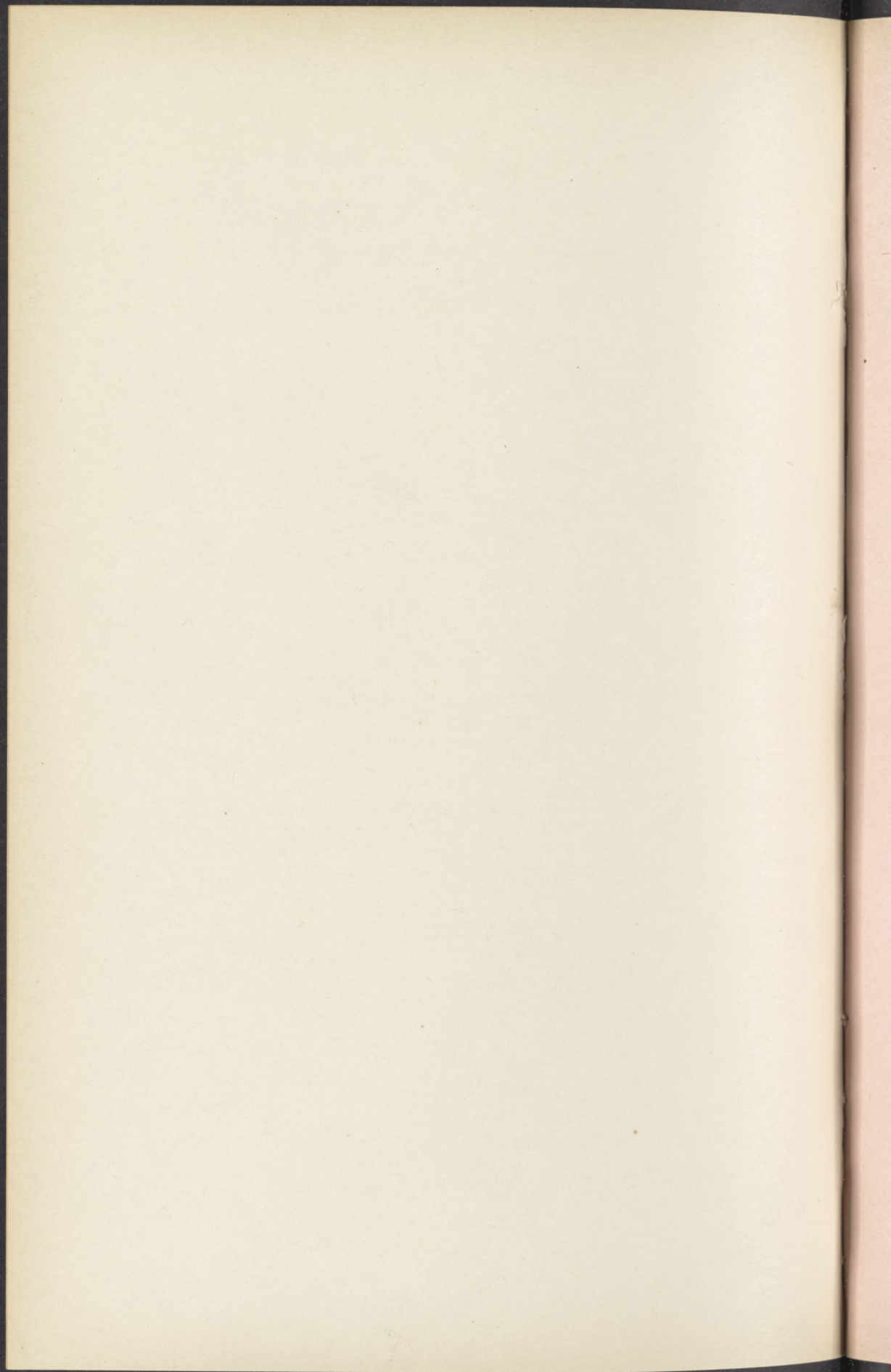
2. Plaintiff Lester German was under a duty to make reasonable observations for other vehicles, so that even if you find that he looked before crossing the path of the Cadillac, if you also conclude that he did not look efficiently and that had he made a reasonable observation he would have seen the Cadillac and avoided the accident, then your verdicts must be in favor of the defendants. 20

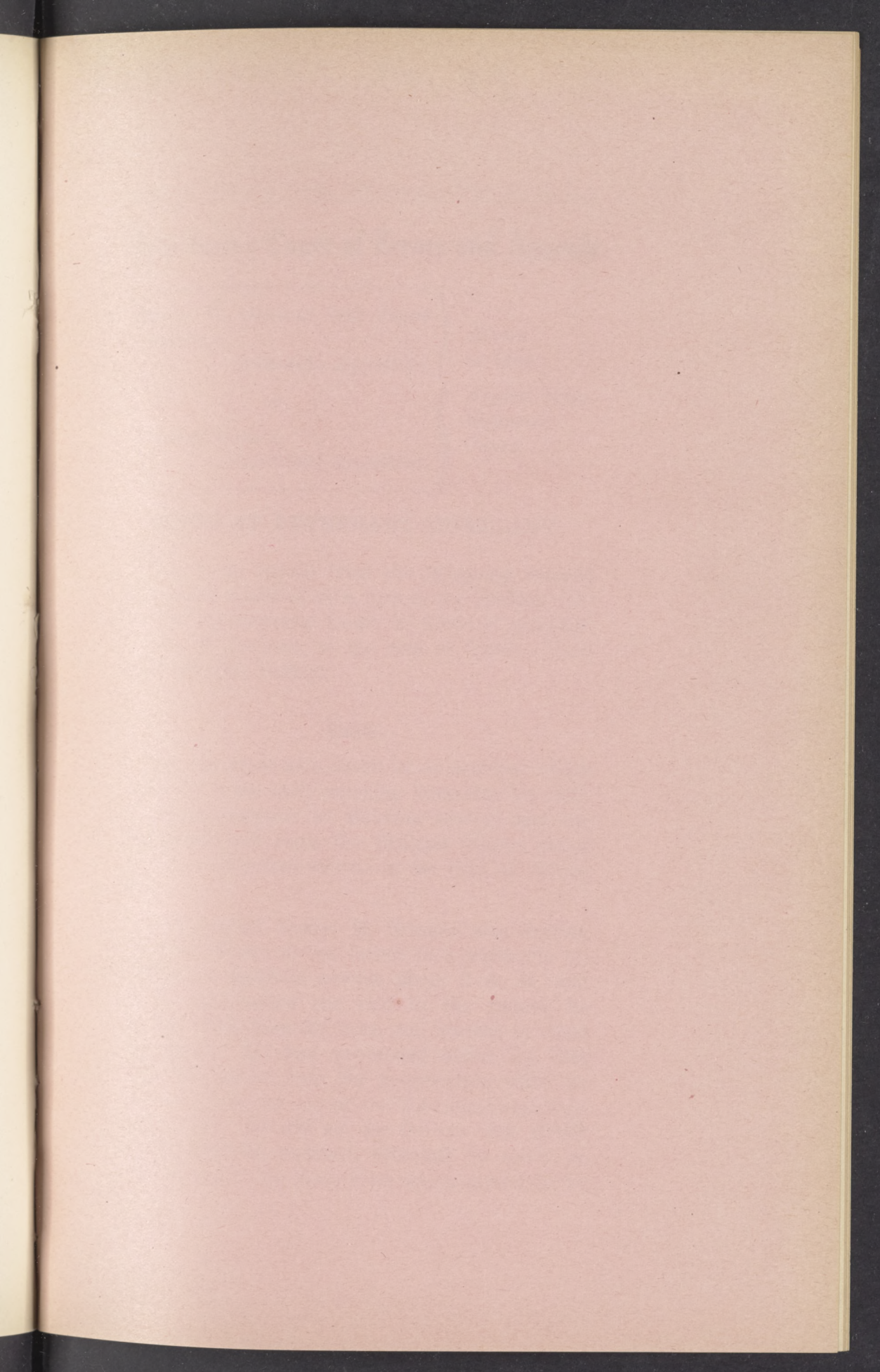
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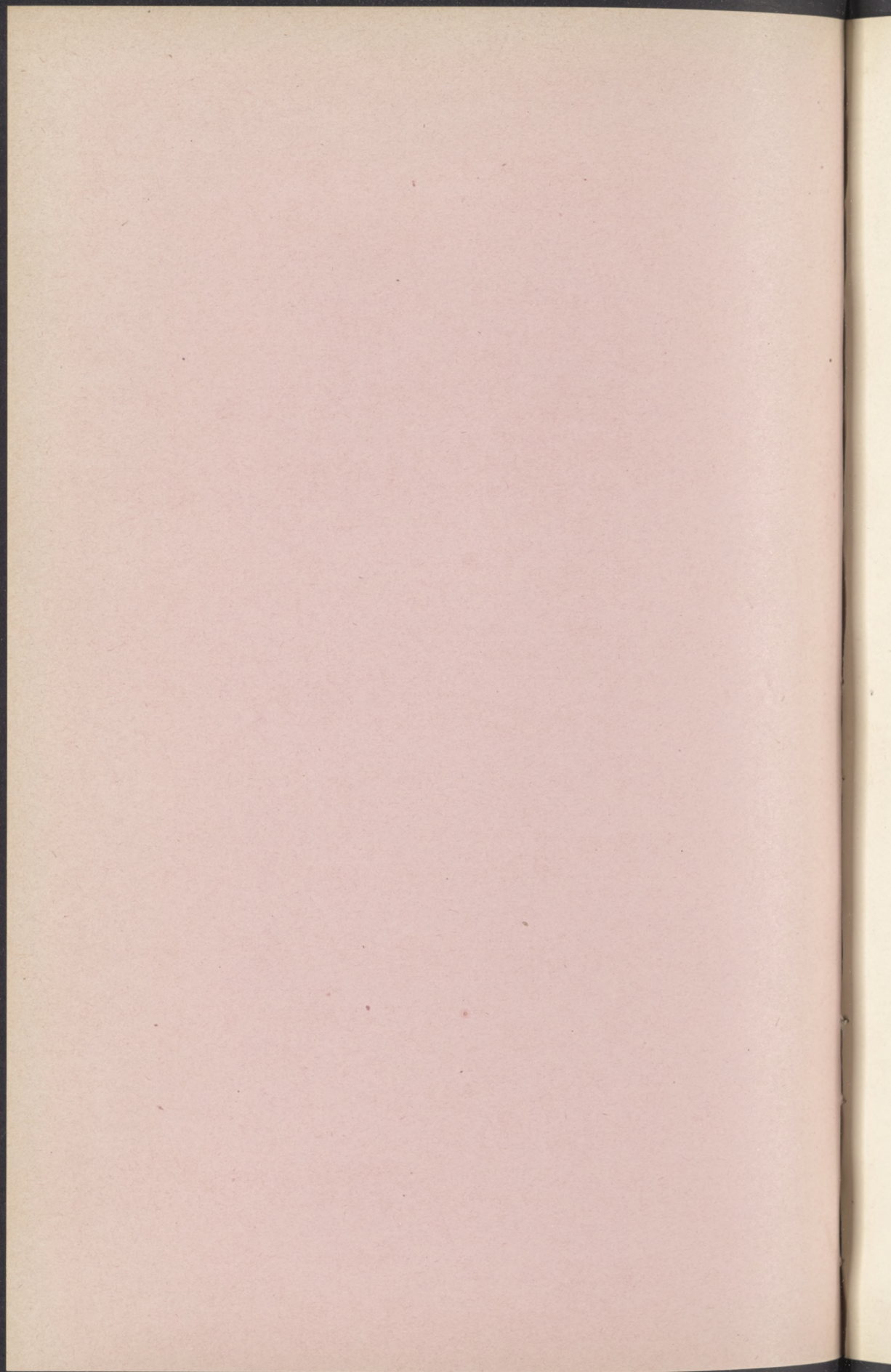
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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

LESTER M. GERMAN and JACOB  
GERMAN,

*Plaintiffs-Appellees,*

*vs.*

WILLIAM HARRIS,

*Defendant-Appellant.*

*Action  
at Law.*

*Appeal from  
Supreme  
Court.*

### BRIEF OF DEFENDANT-APPELLANT.

This is an appeal from the judgment entered on verdict rendered by a jury at the Hudson Circuit of the Supreme Court in favor of plaintiff, Lester M. German, in the sum of Twelve Hundred (\$1,200) Dollars.

#### Facts.

The suit arose as a result of an accident which occurred in the early morning December 18, 1927, at the intersection of Baldwin avenue and the westbound exit from the Holland Tunnel being known as Hoboken avenue in the City of Jersey City.

The plaintiff, Lester M. German was driving the Ford Sedan of his father in a northerly direction on Baldwin avenue about 3 A. M. and as he approached the exit to the tunnel, he slowed down, blew his horn and started to cross the street. He had proceeded about ten feet from the corner into the intersection when he was struck by the car of the defendant-appellant (C., p. 23). He did not see the car that struck him before the accident, although he made an observation to the east, from which direction the

car came, and at the time of making the observation he saw a car approaching about 300 feet away (C., p. 27, ll. 20-32). At the time German made his observation, he could see lights or vehicles quite a long way off (C., p. 30, ll. 8-10) but although he continued to look to his right (C., p. 30, ll. 39-40) until the accident happened, he did not see anything until after the collision (C., p. 31, ll. 1-3). At the time of the collision he was still looking to his right (C., p. 32, ll. 1-4). The other car which he had first observed three hundred feet away was not the car which struck him (C., p. 33, ll. 8-40). The car of the defendant-appellant was illuminated inside so that the occupants were visible; (C., p. 53, ll. 1-17) had head lights on; (C., p. 53, ll. 26-27) and the lights were still on after the accident; (C., p. 47, ll. 39-40) (C., p. 48, l. 1) it had passed the automobile of witness Fread (which was the automobile the lights of which German had seen three hundred feet away approaching in a westerly direction). This passing took place in the middle of the block, east of the scene of the accident (C., p. 56, ll. 28-30) and the Harris car was therefore presumably in full vision of the plaintiff up to the time of the accident.

German, according to the testimony was just creeping across the intersection (C., p. 49, ll. 21-23). A motion was made for a non-suit at the conclusion of the plaintiff's case (C., p. 67) which was denied as was a motion for direction of verdict also, based on contributory negligence (C., p. 76). Defendant requested the Court to charge as follows: "2. Plaintiff Lester German was under a duty to make reasonable observation for other vehicles, so that even if you find that he looked before crossing the path of the Cadillac, if you also conclude that he did not

look efficiently and that had he made a reasonable observation he would have seen the Cadillac and avoided the accident, then your verdicts must be in favor of the defendants" (C., p. 85), which was refused and an exception noted (C., p. 84, l. 30).

### **Errors Alleged.**

The errors set forth in the Grounds of Appeal are as follows:

1. The trial court erroneously denied defendant's motion for a non-suit (C., p. 67).

2. Trial court erroneously denied defendant's motion for direction of verdict (C., p. 76, ll. 26-34) (C., p. 77, ll. 1-2).

3. Trial court erroneously refused defendant's request to charge the jury as follows: "Plaintiff Lester German was under a duty to make reasonable observations for other vehicles, so that even if you find that he looked before crossing the path of the Cadillac, if you also conclude that he did not look efficiently and that had he made a reasonable observation he would have seen the Cadillac and avoided the accident, then your verdicts must be in favor of the defendants."

As the defendants interposed no evidence regarding the happening of the accident, the same facts apply to grounds 1 and 2, and they therefore will be argued together for the convenience of the Court under the heading of Point I.

## POINT I.

The Trial Court erroneously denied defendant's motion for a non-suit and direction of verdict.

In approaching the intersection, the plaintiff under the evidence, slowed down and claims to have made an observation to the right at a point where he could see for a distance of at least three hundred feet (C., p. 23, ll. 26-29) (C., p. 29, ll. 21-22) and in fact did see a car approaching at about that distance (C., p. 29, ll. 17-19). He also testified that he continued to look to his right until the accident happened (C., p. 30, ll. 39-40) (C., p. 31, l. 1) and yet failed to see anything until he was struck (C., p. 31, ll. 2-4). The car which he did see was the Fread car and not the car which struck him (C., p. 33, ll. 8-26). The Fread car had been passed by the car of the defendant which was involved in the accident at a distance of half a block from the scene of the accident, it having started to pass the Fread car at the preceding corner (C., p. 56, ll. 9-15). The defendant's car was well lighted (C., p. 53, ll. 1-12) (C., p. 53, ll. 26-27) before the accident and the head lights were still in working order and on after the accident, according to the testimony of Officer Miller (C., p. 47, ll. 49-50) (C., p. 48, l. 1). Obviously from the time he arrived at the intersection until the accident occurred and he was just creeping or nosing his way across the vehicular driveway (C., p. 49, ll. 21-23) German should have seen the Harris car and been able to avoid the accident.

Under the law as laid down in *Carambas v. Bergida*, 103 L. 313, at page 314, he was guilty of contributory negligence in failing to see and avoid the Harris car; for, in the case cited, it

was held that "one who sees, or could have seen if he had looked, and has the faculties to understand the dangers to which he is exposed, is charged with a knowledge of them, and his failure to act on the knowledge as a prudent and cautious man would act under like circumstances is negligence, which would defeat recovery."

So, also was it held in *Sharpe v. Public Service Railway Company*, 103 L. 583, wherein the plaintiff was adjudged guilty of contributory negligence by running into the trolley car of the defendant which was operated at a high rate of speed, when he could have seen and avoided the trolley car by making reasonable observations.

Under the cases cited and on the facts of the case, it is respectfully contended that the plaintiff, Lester M. German, was guilty of contributory negligence as a matter of law, and the motions for a non-suit or direction of verdict should have been granted.

## POINT II.

The Trial Court erroneously refused to charge the jury as follows: (Grounds of Appeal 3.)

"3. The trial court erroneously refused defendant's request to charge the jury as follows: Plaintiff Lester German was under a duty to make reasonable observations for other vehicles, so that even if you find that he looked before crossing the path of the Cadillac, if you also conclude that he did not look efficiently and that had he made a reasonable observation he would have seen the Cadillac and avoided the accident, then your verdicts must be in favor of the defendants."

Under the cases cited in support of Point I. the plaintiff, Lester M. German, was chargeable with knowledge of any conditions which a reasonable observation would have disclosed, and was under the duty of acting on such information as a prudent and cautious man would act under like circumstances. It is therefore respectfully contended that the jury should have been instructed in view of the facts, that it would be negligence for the plaintiff, Lester M. German, not to have avoided the accident if by making a reasonable observation he could have seen the Cadillac automobile of the defendant, Harris, and avoided the accident. Under the facts, the Harris car was well lighted so much so that the wearing apparel of the occupants was visible to the witness, Fread, through his car when he was preceding it. There were no obstacles blocking German's vision of the Harris car from the time it started to pass the Fread car a block away from the accident up to the time it actually did pass him in the middle of the block; and from that time on up to the time of the collision it should certainly have been more visible than the Fread car. German admitted that he saw the Fread car and kept it in vision up to the time when the Harris car struck him, but he never saw the Harris car until after the collision had taken place.

It is therefore respectfully contended that it was error for the trial court to refuse to instruct the jury that they could take into consideration whether or not German made a reasonable observation; and also whether or not, if he had made such an observation, he could have seen and avoided the Harris car in view of his own slow rate of speed. A finding of contributory negligence by the jury on the part of German would certainly have been logical under the

facts; and by being deprived of the benefits of instructions to the jury on the law with respect to the conduct of the plaintiff German, the defendant's interests were seriously prejudiced and injured.

It is therefore respectfully contended that the trial court was guilty of reversible error in denying the request above set forth and for that reason, the judgment should be reversed and a new trial granted.

Respectfully submitted,

SCHNEIDER & SCHNEIDER,  
Attorneys of Defendant-Appellant.

WILLIAM P. BRAUN,  
Of Counsel.

