

1940

Jesse Smith and Ella May Smith v. Arrowhead
Freight Lines Limited; Joseph E. Nelson and Mary
Jane Nelson v. Arrowhead Freight Lines Limited :
Abstract of Record

Utah Supreme Court

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R. W. McMullin; Elias Hansen; Attorneys for Plaintiffs;
Bagley, Judd, Ray and Nebeker; Attorneys for Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

SMITH and WILSON
SMITH, his wife,

Date S.

Plaintiffs and Appellants,

Case No. 6213

-VS-

AMERICAN FREIGHT LINES
LIMITED, a corporation,

Defendant and Respondent,

JACOB E. HUNSON and MARY
JANE HUNSON, his wife,

Plaintiffs and Appellants,

Case No. 6212

-VS-

AMERICAN FREIGHT LINES
LIMITED, a corporation,

Defendant and Respondent,

ABSTRACT OF RECORD

APPEAL FROM THE FOURTH JUDICIAL DISTRICT
COURT IN AND FOR UTAH COUNTY, STATE OF UTAH

Wm. A. W. TURNER, Presiding

H. W. McMULLIN

Attorney for Plaintiff

FILED

ROBERT, JUDG. JAN 20 1928
Attorneys for Respondent

CLERK SUPREME COURT UTAH

IN THE SUPREME COURT OF THE STATE OF UTAH

**JESSE SMITH and ELLA
MAY SMITH, his wife,**

Plaintiffs and Appellants,

-vs-

**ARROWHEAD FREIGHT LINES
LIMITED, a corporation,**

Defendant and Respondent,

**JOSEPH E. NELSON and MARY
JANE NELSON, his wife,**

Plaintiffs and Appellants,

-vs-

**ARROWHEAD FREIGHT LINES
LIMITED, a corporation,**

Defendant and Respondent,

ABSTRACT OF RECORD

**APPEAL FROM THE FOURTH JUDICIAL DISTRICT
COURT IN AND FOR UTAH COUNTY, STATE OF UTAH**

HON. ABE E. TURNER, Presiding.

COMPLAINT OF JESSE SMITH AND ELIA
RAY SMITH, HIS WIFE.
(Title of Court and Cause)

Plaintiffs complain of defendant and allege:

1. That the defendant, Arrowhead Freight Lines Limited is a corporation organized and existing under the laws of the State of California and is qualified and authorized to do business in the State of Utah and has for many years and does now drive and operate trucks in the State of Utah.

2. That the Plaintiffs above named are the father and mother respectfully of Ramona Smith an unmarried girl of the age of 16 years, and said Ramona Smith died in Utah County, Utah on the 19th day of November, 1937, from causes and under circumstances hereinafter set out, and at the time of her death she was living with her parents in Santaquin, Utah.

3. That between the City of Santaquin and the City of Poyson in Utah County, State of Utah, is a certain public highway which is known as U. S. No. 91, and is now and for

1. many years last past has been used by the traveling public and especially by those who have occasion to drive automobiles and trucks between said cities.

4. That on or about the 17th day of November 1937 the said Ramona Smith was riding from Sentsquin City, Utah County, Utah, to Payson City in said County in a 1933 Ford Coupe driven by Vaughn Sheffield who was then and there driving said 1933 Ford Coupe between said cities upon said U. S. Highway No. 31, in a Northeast-erly direction at a point about one and one-half miles Southwest of the town of Spring Lake in said County and while Vaughn Sheffield was so driving said Ford Coupe he was exercising due care and caution for his own safety and for the safety of Ramona Smith, who was then and there riding with him as aforesaid, and said Vaughn Sheffield was then and there driving said Ford Coupe on the right hand side of said highway which was proper for him to drive said automobile at said place.

5. That on or about the 17th day of November 1937, the defendant by and through its servants agents and employees was then and there operating and driving a certain truck on and along and upon said highway aforesaid and was traveling in the opposite direction along and upon said highway to that which said Ramona Smith was then and there so traveling as aforesaid, and the plaintiffs allege that the said defendant by and through its servants, agents and employees in charge of said truck carelessly and negligently ran and operated said truck at a great, unusual and unnecessary rate of speed, to-wit, at a rate of speed in excess of fifty miles per hour, and then and there carelessly and negligently, failed to exercise due care and caution for the safety of said Ramona Smith or others who were in and upon said highway aforesaid, and then and there carelessly and negligently failed and omitted to keep any look-out for persons and especially for said Ford Coupe and said Ramona Smith, deceased, who might be upon,

rs. along and on said highway aforesaid, and carelessly and negligently ran said truck on the side of the highway upon which the said Ramona Smith, deceased, was then and there traveling and then and there carelessly and negligently and with great force and violence drove said truck in and upon and against said Ford Coupe in which said Ramona Smith was riding so that said Coupe was then and there and thereby struck by said truck and said Ramona Smith was thereby severely injured in her body and vital organs and was instantly killed.

6. That the said plaintiffs are the only heirs of said Ramona Smith, deceased, and said plaintiff Ella May Smith is in poor health and at the time of the death of said Ramona Smith and for many months prior thereto she was doing and had done the housework for plaintiffs and their family and that by reason of said negligent and careless acts of the defendant in the operation of said truck, as above described, the said Ramona Smith, deceased, was killed and the plaintiffs have thereby been deprived of

3. the care, comfort, association, aid and support of the said Ramona Smith, deceased, and have thereby suffered great and permanent loss and damage in the sum of \$2850.00. That as a result of the death of said deceased it was necessary that funeral arrangements be made for her burial and that the reasonable and actual cost of said funeral arrangements and burial was the sum of \$135.00

WHEREFORE PLAINTIFFS PRAY JUDGMENT AGAINST THE SAID DEFENDANT IN THE sum of \$2985.00 and for their costs herein incurred and for general relief.

(Signed) ELIAS HANSEN

R. W. McMULLIN
Attorneys for plaintiffs.

Duly verified.

Filed in Clerk's office,

Utah County, Utah, July 30, 1938.

(Title of Court and Cause)

DEMURER

Comes now the defendant and demurs to plaintiffs' complaint herein on the grounds and for the reasons;

1. That said complaint does not state facts sufficient to constitute a cause of action against this defendant.
2. That said complaint does not state facts sufficient to constitute a cause of action in favor of plaintiff Jesse Smith.
3. That said complaint does not state facts sufficient to constitute a cause of action in favor of the plaintiff Ella May Smith.
4. That said plaintiffs have not legal capacity to sue.
5. That there is a misjoinder of parties plaintiff.

(Signed) BAGLEY, JUDD, RAY & NEBEKER
Attorneys for Defendant.

Filed in Clerk's office,

Utah County, Utah, August 30, 1938.

Order overruling Demurrer, dated September 16,
1938. Abe W. Turner, Judge.

(Title of Court and Cause)

ANSWER

Comes now the above named Defendant, ARROW-
HEAD FREIGHT LINES LIMITED, a corporation, and

2. U. S. No. 21, between the city of Santaquin and the city of Payson, in Utah county, state of Utah, much used by the traveling public, including this defendant.

4. Admits that RAMONA SMITH, now deceased, was riding in an automobile from Santaquin to Payson, in Utah county, Utah, on the 17th day of November, 1937, but this defendant has no knowledge or information sufficient to form a belief as to whether VAUGHN SHEFFIELD or someone else was driving the Ford coupe in which said RAMONA SMITH was riding, or as to whether she was a guest or gratuitous passenger in said automobile, and basing its denial upon that ground denies the same; and in this connection this defendant denies that the person driving said Ford coupe, whether VAUGHN SHEFFIELD or someone else, was, in the driving thereof, exercising due or any care or caution for his own safety or for the safety of others, and denies that the driver of said Ford coupe, whether VAUGHN SHEFFIELD or someone else, was driving the same in a careful or prudent manner.

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SALT LAKE CITY UTAH 84103 • PHONE (801) 364 5677

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SALT LAKE CITY UTAH

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5. This defendant admits that a certain truck belonging to it was being operated upon and along the highway referred to in plaintiffs' complaint but denies that said truck was carelessly or negligently operated at any great, unusual or unnecessary speed; to the contrary, this defendant alleges that said truck was being driven in a careful and prudent manner and at a lawful and proper rate of speed and without any negligence on the part of the driver thereof.

6. This defendant denies each and every allegation, matter or thing in plaintiffs' complaint contained not hereinbefore specifically admitted, modified or denied.

7. Further answering said complaint, and as its separate and additional defense thereto, this defendant alleges that if MARIONA SMITH died as the result of the negligence of any person, the same was directly caused, or the cause thereof was proximately contributed to, by the negligent and careless acts, conduct and omissions of the driver of said Ford coupe, which negligence and carelessness consisted in driving said

W. Ford coupe at a high and dangerous rate of speed without keeping any safe or proper lookout ahead, and in driving and operating the same on the wrong side of the highway, and in failing to keep the said Ford coupe under safe or any control, and in failing to exercise reasonable care and caution for the safety of the driver thereof and for the safety of the other occupants of said coupe, and for the safety of other persons and vehicles upon said highway, which negligence of the driver of said Ford coupe was the proximate cause of said collision and injury.

B. Further answering said complaint, and as its separate and additional defense thereto, this defendant alleges that if the death of said EAMONA SMITH was caused or contributed to by the negligence of any person other than the driver of said coupe, then the same was caused, or the cause thereof was contributed to, by the negligence and carelessness of said EAMONA SMITH in failing to exercise reasonable care and caution for her own safety on the occasion in question.

and in taking up a dangerous position in said Ford coupe, and in failing and neglecting to keep a proper or any lookout, and in failing to exercise such care and caution for her own protection as was reasonably required under the circumstances at and prior to the collision described in said complaint.

9. Further answering said complaint, and as its separate and additional defense thereto, the defendant alleges that said HARONA SMITH and the driver and other occupants of said Ford coupe, were at the time of the accident referred to engaged in a joint enterprise for their mutual advantage, in which each was equally interested in the purpose of the trip.

WHEREFORE, this defendant having fully answered, prays that plaintiffs take nothing by their said complaint, and that this defendant be dismissed hence and have and recover its costs herein incurred.

BAGLEY, JAMES, JR. & HEDGECOCK
Attorneys for Defendant

Truly verified.

12. Filed in Clerk's Office,

Utah County, Utah, October 2, 1930

The pleadings in the Nelson case are substantially the same as those in the Smith case. Paragraphs one and three of the complaint are identically the same as those in the Smith case. Paragraphs two, four and five are the same, except that the name of Paul L. Nelson appears instead of that of Remona Smith. The other paragraphs are the same except as to the amount of damages and funeral expenses. So also the demurrer in the Nelson case is substantially the same as the demurrer in the Smith case. The demurrer in the Nelson case was overruled, and the answer filed in the Nelson case is substantially the same as the answer in the Smith case, with the substitution of the name of Paul L. Nelson instead of that of Remona Smith. The questions involved in both cases are identical and therefore we deemed it unnecessary to set out the pleadings in the Nelson case.

ABSTRACT OF EVIDENCE

Alta Swell, a witness called by Plaintiff

2. testified on direct examination:

My name is Alta Swell. I am sixteen years old and reside at Santaquin, Utah. I was fifteen years of age on November 17, 1937. I was in a Ford car that had a collision with a truck between Santaquin and Spring Lake on the night of November 17, 1937. On that night before I got into the car I had been to chorus practice and then went to Bell's Inn, which is on the South side of Santaquin. I was with Ramona Smith, Don Simmons, Paul Nelson and Vaughn Sheffield and I got into the Ford. They asked us to get into the car. We were going to Spring Lake. Vaughn asked us and Ramona Smith to get into the car. I don't recall whether it was raining that night. Vaughn got in first and sat at the steering wheel. I sat next to him. Ramona sat on my lap. Don Simmons sat next to me on the outside and Paul Nelson sat on Don's lap. The collision occurred about half way between Santaquin and Spring Lake. I did not notice anything unusual about the way the car was driven. I was thrown out of the car when

1. the collision occurred. I saw the truck approaching from the North between Holloway's and the bridge. Just at the time of the collision I saw the side of the truck. I showed Jesse Smith where the truck and Ford were when I just saw the truck approaching. I saw Mr. Smith take the measurements of the distance by stopping it. I was knocked unconscious but not injured very much.

Cross Examination:

I know Vaughn Sheffield, the driver of the car, before that night. He was a grown man. He was about the same size as Doc Dimmons. He sat under the wheel. I was a good-sized girl at the time of the accident, weighing about 140 pounds. Paul Nelson was a good-sized boy about twenty years old. The five of us were in one seat. I do not know how fast the Ford car was going at the time of the accident. I sat on the seat of the car with one person on each side of me and one on my lap. I could not see very well. It might or might not have been raining. I did not pay any attention to the lights of the

re. approaching truck and did not know it was a truck. I did not pay any attention to the truck until just at the time of the accident.

Redirect Examination:

He did not see any automobile between the time I first saw the lights of the truck and the time of the collision.

Donald Simmons, a witness called by plaintiff testified as follows:

Direct examination:

Q- name is Donald H. Simmons? I am twenty years old and reside at Spring Lake. I was an occupant of the Ford car when it had a collision with a truck on the 17th of November, 1947. I got into the Ford at Bell's Inn in Sanguin. Vaughn, Paul, Lemons, Alta and myself were in the Ford. I made arrangements with Vaughn Sheffield to ride with him. Vaughn mentioned something to Alta and asked about going to Payson. Vaughn sat under the wheel. Alta was next to him and then I was on the outside. Lemons was sitting on Alta's lap and Paul was sitting on the floor. It was about 10 or a quarter

ter after when we got into the car. It was raining a little. The rain was coming from the West. The road from Santequin to Spring Lake runs North and South, or Northeast and Southwest. We were about two miles from Bell's Inn when the collision occurred. I have ridden in automobiles and have a judgment as to the rate the Ford car was going. It was being driven around thirty-five to forty miles per hour. There was nothing unusual about the way the Ford was being driven. There is a turn in the road about three hundred feet before the collision occurred. Just before the collision occurred I was looking at the truck. When the truck was about ten yards away the truck was three feet over the yellow line which was along the middle of the road. I was knocked unconscious in the collision.

Cross Examination:

I was a witness in my own behalf in a case involving this accident. I testified that it was raining and that the Ford was equipped with a windshield wiper which was operating. The

22 The coupe had four windows; the windshield, two
sides and one in the rear. The windows were
25 all closed. The rain came from the West. After
24 we left Bell's Inn we went West for a distance
and then North. The window at the driver's left
26 and the windshield on his side would have more
water on it than on the other side. Vaughn
Sheffield was a little huskier than I am. I am
five feet eleven inches tall. Paul Nelson was
28 not as tall as I but a little huskier. Alta was
on the seat with me and Vaughn. Paul sat on my
lap and Ramona sat on Alta's lap. We did not
29 change our position. I said at the other hear-
ing that we were probably going forty-three miles
an hour. I was not paying any particular atten-
tion to the speed we were going. We were not
30 tucked in so much. I have ridden in tighter
places. My view was not the best. I was look-
ing over Paul's shoulder. I could see out of
the window to the right. I sat back in the seat
as far as I could. I probably could not see the
running board on my side, but pretty close to it

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Fre. to be five in the car. I do not remember anything being said about the ability of the Ford to gain speed. The Ford was a 33 or 34 model.
37 I couldn't see the edge of the pavement through the side window.

38 Jesse Smith, a witness called by plaintiffs, was duly sworn and testified as follows:

On Direct Examination:

My name is Jesse Smith. I reside at Santaquin, Utah. I am one of the plaintiffs in one of these actions. Ramona Smith, who was killed in the automobile accident on November 17, 1937 was my daughter. She lived with me up to the time of her death. I knew Vaughn Sheffield, the driver of the Ford coupe. He once lived with his father-in-law and he came there to get milk.
10 Ramona was born June 8th, 1921. She was a little past sixteen when she died. She was in the first year in high school. She was intelligent and in perfect health. She helped about the house. Her funeral expenses were right around \$150.00. I was at the scene of the accident about one
1 o'clock on the morning after the accident. The

rs. body was taken to the undertaker at Payson, Uta
I recall Miss Swell pointing out to me the place
where the Ford coupe was when she said she
first saw the lights of the truck, and the point
of the accident. I measured these distances by
stepping them. It was three hundred thirty-five
steps from where Miss Swell said the Ford was
when she first saw the lights of the truck to the
place of the accident, and five hundred eighty-
five steps from where the accident occurred to
where Miss Swell said the truck was when she
first saw it.

Joseph E. Nelson, a witness called by the
plaintiffs, upon being sworn, testified as
follows:

Direct Examination:

My name is Joseph Nelson and I am one of the
plaintiffs in one of the causes being tried. I
reside at Spring Lake. I am the father of Paul
Nelson, who was killed in the accident which
occurred on November 17, 1937. He was living
with me at the time of the accident. He was
twenty years old. Paul worked whenever he got

33. job. he contributed to the support of me and
44 my wife in a sum of \$25.00 to \$30.00 per month.
I am unable to work because of my hip having
been broken. Paul was in good health. Paul was
45 of average intelligence. He did not go to high
school because he thought he had to work. The
funeral expenses of Paul were \$215.00, which I
paid.

93 W. W. McKullin, a witness called by plaintiff
being first duly sworn, testified as follows:
(In Direct Examination:

My name is W. W. McKullin. I am an attorney
at law residing at Poyson, Utah. On the morning
after the accident here involved I went out to
where the accident occurred. I saw the location
of the truck and the Ford after the accident.
I went out to the place of the accident again
with John Lant and Ben W. Argyle and pointed out
the place where the accident occurred and saw
some measurements made.

4 Cross Examination:

The measurements were made in April, 1936.

5 redirect:

rs. The marks made by the wheels of the truck could be readily seen.

46 Ben E. Argyle was called as a witness by plaintiffs, and upon being first duly sworn testified as follows:

Direct Examination:

My name is Ben E. Argyle. My occupation is engineering. I am a graduate of the University of Utah. About a year ago I accompanied Mr. McMullin, Mr. Lant and Mr. Hansen to a point on the highway between Spring Lake and Santaquin. Mr. McMullin and Mr. Lant pointed out some lines on the highway. Leading from the highway were some well-defined tracks of a truck or automobile with dual wheels leading from the highway. The outside tracks of the truck extended sixteen feet from the side of the pavement. The tracks were plain and the hind wheels completely covered up the front wheel tracks as far as the hind wheels had advanced. The line of the wheels from the edge of the pavement out apparently were in a due straight line. I made some measurements. I took the measurement of the angle

He. of what extension of the line of those tracks to where it intersects the side of the pavement and runs with the general direction of the pavement, and the angle there was forty-seven degrees as shown on the map. The width of the pavement is eighteen feet. There were gravel shoulders four feet wide from the pavement to the slope. The slope is a one and one-half to one. I have drawn a map of the road to scale. I checked the map with the measurements in the office of the State Road Commission. The State Road map shows a cross-section at the point where I made the measurements, the slope of the shoulders, and the general contour on both sides. Plaintiffs' Exhibit "A" in cases numbered 11199 and 11211 shows a cross-section of the road as though the pavement was cut through at right angles. The scale used was one-half inch equals one foot. The middle of the map represents the eighteen foot pavement. The shoulders are of earth foundation covered with gravel. The shoulders are shown on the map to the East and West of the pavement. The slopes are shown and

re. are a one and one-half to one slope; that is, for every foot you go out vertically you go down one and one-half feet. On the East side the distance down at places is three feet but the average is two and one-half feet. On the West side there is a fall of about two feet of the slope. At a distance of sixteen feet East of the shoulder the ground in its original state was five feet below the surface of the road. The map shows the slopes as they were in the ground when I measured them. At the bottom of the map is a drawing of the road as if you were looking down on it, and shows the width of the pavement and shoulder. On the left side of the map is indicated where the slope begins. On that part of the map one inch represents four feet. In the left hand corner of the map the lines represent the center of the tire tracks as they appeared on the ground when I was there. They are in the same relative position with respect to the highway as they were on the ground when I was there. The inside angle between the edge of the shoulder and the tire marks was

ire. forty-seven degrees. The tire marks are also
35 drawn to scale. Going North from where I made
the measurements the slope is towards the South
approximately three per cent. The slope contin-
ues about two hundred feet North of where the
measurement was made and about four hundred feet
South, but to the South it flattens out some.
About four hundred feet South of where the
tracks were there is a curve in the road. The
curve is not difficult to make in driving an
automobile.

45 Cross Examination of Mr. Angyle:

The word difficult is a relative term. What
7 may be difficult for one person may not be to
another. I have driven over the road a number
of times, but prior to the time I made the
0 measurements I had not paid particular attention
to it. The distance between where the truck
trucks left the road and where I was shown the
Ford stopped was 76 feet. Plaintiff's Exhibit
"A" was received in evidence.

5 Curtis L. Lufgren, a witness called by the
plaintiffs, being first duly sworn, testified

re. as follows:

Direct Examination:

My name is Curtis Leuffgren. I am nineteen years of age and reside at Santaquin, Utah. On November 17, 1937 I went out to where the collision occurred between a Ford coupe and a truck. The collision occurred about one and one-half miles North of Santaquin. I got out there between ten-thirty and a quarter to eleven. There were others there when I came, among them Olive Smith and his wife. When I got there the truck was on the West of the road and the Ford on the East. The truck was facing to the South-west. There was quite a bit of glass on the highway to the North of the truck on the East of the pavement about midway between the center line and the East edge. There was a considerable quantity of glass. There was a pile at one spot and some was scattered. The glass was about half way between the truck and the Ford. The glass was closer to the East edge. Other cars were travelling along the highway while I was there.

Was. Vernon Smith. I did not see the body of Paul Nelson.

101 Cross Examination:

I am trying to state what I saw to the best of my recollection. I saw the wrecked automobile. I did not examine the truck at that time
102 I stopped North of the Ford. I did not go down to the truck, but turned around and went back to Payson.

103 Olive Smith, a witness called by Plaintiffs, being first duly sworn testified as follows:

Direct Examination:

My name is Olive Smith. I reside at Genola, Utah. On November 17, 1937 I was travelling along the highway between Spring Lake and Monticuin. I saw two cars that had been in a collision. The Ford was on the East side of the highway and the truck, on the West. There were two other cars
4 there when I arrived. I got out of the car and walked down the road. One of the persons on the road was apparently alive and we picked him up and put him in another car. His name was Nelson. There were two other dead persons there. Two of

100 Mrs. then went near the car. There was considerable
105 glass and the hood of the Ford car was on the
highway. The hood of the Ford was South of the
Ford between the center line and the East edge
110 nearer the East edge. The glass was about two
and one-half to three feet East of the center
line. East of the glass was piled up. The Ford
was off the highway on the East side. I drove
115 on past the place of the accident and in order
to avoid running over the glass I had to drive
two wheels off the pavement to the East. It was
raining slightly that night and the pavement was
wet.

Cross Examination:

120 The first I knew of the accident was when I
125 arrived at the place of the accident. Mrs. Smith
did not get out of the car. The glass on the
130 pavement was a few feet, eight or ten, South of
the Ford car. When I drove on to go home I drove
on to the East side of the road to get around the
car parked in head of me and to avoid running
into the glass on the pavement.

Re-direct examination:

110 Tra. The man in the car in front of me when I
parted my car did not get out. He had a Calif.
111 erria license on his car. There were other cars
parked at the scene of the accident, but I do
not know whose they were. Cars came from the
South and from the North and stopped there.
They were lined up on both sides of the highway

112 cross Examination:

I am a cousin of Jesse Smith, a plaintiff in
one of these actions. .

Margaret Smith, a witness called by the plain-
113 tiffs, being first duly sworn, testified as fol-
lows: Direct Examination:

My name is Margaret Smith. I reside at
Candela and Clive Smith is my husband. I was
with him on the night of November 17, 1937. It
was raining on that night. It began raining
as we left Spanish Fork and continued to rain
until we reached the scene of the accident. I
did not get out of the car at the scene of the
accident. I did not know that an accident had
occurred until I saw a man with a flashlight
who stopped us and said that there was an acci-

13. dont and all were killed. My husband got out
14 of the car but I stayed in the car. I don't
know how long Mr. Smith was out of the car.

When we left we had to go around the car in
front of us and went off the road on the East
side to get around a pile of glass. The pile
of glass was on the East side of the road. The
pile of glass was about half way between the center
line and the East edge of the pavement. I
15 do not know how many cars were there at the time
we were there.

16 Cross Examination:

I testified before about the pile of glass
and said I thought there was a tub full, but I
have decided it wouldn't quite fill a big wash
tub. I saw the wrecked automobile but cannot
say how far the glass was from the automobile,
but the glass was South of the automobile.

7 Alvin A. Samuelson was called as a witness
by plaintiffs, and being first duly sworn, testified as follows.

Direct Examination:

My name is Alvin A. Samuelson. I was driving

17 the truck at the time of the accident with the
18 Ford coupe. It was a GMC. It was a 1937 model
19 It weighed around nine thousand pounds. I had
20 load of ten thousand pounds. Mr. Fritz Bach was
21 in the truck. I weigh one hundred sixty-five
22 pounds. He was smaller than I, weighing one
hundred thirty-five or one hundred forty pounds

19 Wayne Thomas called by the Plaintiffs, being
first duly sworn, testified as follows:
Direct Examination:

My name is Wayne Thomas. I am twenty-eight
years of age and reside at Spring Lake, Utah.
I was at the scene of the accident between
Santquin and Spring Lake at about 9:00 o'clock
on the morning after the accident. I observed
the two automobiles. I heard of the accident
20 and went out to see it. It was raining when I
was there. The Ford was on the East of the
21 Highway. The truck was on the West side stand-
ing at an angle of about forty-five degrees
with the pavement. There were two dark tracks
22 extending from the rear of the truck four or
five feet on to the cement. The marks on the

122 Mrs. cement lead directly to where the truck stood.
123 The marks were the same distance apart as the
124 wheels of the truck. The marks were about three
125 inches wide.

Cross Examination:

126 My observation was not so casual that I have
127 no recollection of what I saw there. I was not
128 there for the purpose of making an investigation.
129 I testified before that the rubber marks extend
130 ed on to the pavement two or two and one-half
131 feet. I did not stop or measure the length of
132 the rubber marks.

133 WBS
134 A. E. McMullin/ recalled and testified as
135 follows:

136 About nine o'clock on the morning after the
137 accident I was at the place where the accident
138 occurred. Mr. John Kent was with me. There
139 were ten or twelve other people there when we
140 arrived. The sheriff was there and deputy sher-
141 iff Christensen, John Terry, Deputy County At-
142 torney, and others, one of whom I took to be an
143 agent of defendant. I observed the truck off
144 the pavement at an angle of about forty-five

degrees from the pavement. The bumper on the
left side of the truck was bent back. I don't
know if the bumper was bent back far enough to
come in contact with the front wheel or not.
The truck was rubbed along the side. I observe
that there were two tracks leading from the as-
phalt and extending on to the pavement four or
five feet. The tracks extended to the truck.
These two marks appeared to be the same distance
apart as the wheels of the truck. The tracks
could be followed across the shoulder of the
highway. When the wheels got into the soft di-
stribution sank in four or five inches. The rear
wheel tracks followed the front wheels. There
were five wheels on each side of the truck.
I did not observe that the rear wheels had been
interfered with. As far as I observed the rear
wheels were not damaged. I went out there out
of curiosity. The officers were making measure-
ments. The marks I observed were six or eight
inches wide. As they went on to the pavement
they narrowed up. I observed one mark extend-
ing four or five feet to the rear of the

135
P.M. of the little car. I observed other scratches on the pavement and a piece or two of tin. The scratches were near the middle of the pavement. The hood of the little car was to the West of the pavement. The two cars were between seven five and one hundred feet apart.

136 Cross Section:

I had no interest in this case when I first went out to the scene of the accident. A few days after that I was employed by plaintiffs. I took part in one of the cases growing out of that accident that has been tried. I saw officers making measurements. They were not making observations, but making measurements with a tape. I did not make any measurements. We had no record of the measurements. I have no recollection of any points that I have not testified about. I was told the hood of the Ford had been removed from the pavement. The tin on the pavement was a sort of brown or brownish red in color. It appeared to be from the little car. I was there probably ten minutes. It was cold

Mr. or not it was raining.

142 John T. Lent, a witness called by plaintiffs
being first duly sworn, testified as follows:

Direct Examination:

By name is John T. Lent. I reside at Paysen
and I am and since January 6, 1937, have been
marshal of Paysen. On November 10, 1937, a little
after nine o'clock I went with Mr. McMullin to
the scene of the accident between Santaquin and
Spring Lake. The scene of the accident is four
143 or five miles from Paysen. There were probably
fifteen or twenty people at the scene of the
accident when we arrived there. The Sheriff was
there and Deputy Sheriff Christensen. Mr. Terry
144 was there. Measurements were being made while
I was there. They were apparently measuring the
145 distance between the truck and the Ford, and
some other measurements. The truck was probably
thirty feet from the pavement. The truck stood
146 at an angle of about forty-five degrees from
the pavement. I was out to the scene of the ac-
cident about a year ago and pointed out to Mr.

Argyle the position of the Ford and truck after

Truck. the accident. . . Argyle made some measurements
The tracks of the truck could readily be seen
147 when I was out there with Mr. Argyle. The
tracks made a straight line from where the
truck stopped to the highway. The only tracks
to the rear of the truck were those of the hind
148 wheels, but the tracks of the front wheels as-
tended to the rear wheels. As the truck moved
forward the rear wheels followed in the tracks
of the front wheels and covered them up. The
slope of the shoulders was about one and one-
half to one. There is a trench on the East
side and a slope of three or four feet on the
West side. The tracks made by the rear wheels
149 of the truck could be seen as they left the
shoulder of the road. The same double tracks of
the truck extended across the shoulder. The
tracks of the rear wheels extended two or three
feet on to the pavement. There had been travel
on the pavement and you could not follow the
150 tracks of the truck on the central part of the
pavement. The Ford coupe was about seventy-five
feet North of the truck. The Ford was just off

the shoulder of the highway on the East. The
151 Ford was absolutely demolished. The left fender
of the truck was bent back pretty close, if not
against the front wheel. The left front wheel
of the truck was a little off a straight angle.
The bumper of the truck was bent back. It was
152 bent back close to the front wheel. The side of
the truck was damaged some. The damage to the
body of the truck extended probably two-thirds
of the way back from the front. There were some
scratches on the pavement, nine or twelve feet
South and West of where the Ford rested. The
153 marks were to the East of the center of the pav-
ment. There were some materials scattered along
the highway and the hood of the Ford was on the
West side of the highway about thirty feet from
the Ford.

Cross Examination:

154 I recall saying on the former trial that I was
impressed with the bumper being bent back as it
was extremely heavy. I couldn't say that the
bumper had driven the front left wheel of the
truck back. The front wheels were turned to the

Mrs. left. I did not make any measurements but
155 stepped the distance between the Ford and its
156 hood. I would say that I was there more than
ten minutes. At the former trial I testified
that the rear wheels of the truck came off the
pavement perhaps two feet at an angle of forty-
five degrees.

157 E. W. Winn, a witness called by plaintiffs,
being first duly sworn, testified as follows:
Direct Examination:

My name is E. W. Winn. I reside at Nephi.
I am a deputy sheriff and have been such for 10
years. I was at the place where the accident oc-
158 curred between Santaquin and Spring Lake about
ten o'clock on the morning after the accident.
I saw Mr. McMullin, Sheriff Durnell and Chris-
tensen and others there at the time I was there
I looked the situation over generally. I saw
the Ford resting partly in the barrow pit and
partly on the shoulder on the East side of the
159 road. The truck was farther South against an
old wire fence, about twenty-five feet from
the pavement. It stood at an angle of a little

re. less than forty-five degrees with the road. The
wheels of the truck tracked each other. The
60 wheels apparently tracked across the shoulder of
the highway and over on to the pavement. There
had been traffic on the pavement and the truck
marks could not be followed there. There were
marks on the pavement, most of them being near
the center. I didn't determine the point of im-
pact. There were marks on either side of the
yellow line.

61 E. W. McCallin recalled as a witness for
plaintiffs and testified as follows:

Direct Examination:

About two weeks ago I secured a General Motors
truck to perform some experiments. The wheel
base of the truck was approximately thirteen
feet. The wheel base of the truck that was in
62 the accident was approximately the same. The
truck used to perform the experiment was the
same make and model as the truck that was in the
collision.

Cross Examination:

The truck used to perform the experiment had

Ten wheels. It was the same type as the one that was in the accident.

Hugo Price, a witness called by plaintiffs, being first duly sworn, testified as follows:

Direct Examination:

My name is Hugo Price. I am an engineer.

63 I am a graduate of the Engineering Department of the University of Utah. Since graduation from the University of Utah in June, 1911, I have been engaged in civil engineering, mining engineering and construction work. I was out at the steel plant about two weeks ago with yourself, Mr. McMullin, the truck driver and two state patrolmen, one of them a Mr. Grant. I do not remember the name of the other. The truck that was there measured 17 feet 4 inches from the 64 front wheels to the collision, and the wheel base was 13 feet 2 inches. The traction of the truck comes from the wheels in front of the collision. There were five castings on each side of the truck. On each rear wheel there were two castings. 65 Some experiments were performed on a strip of road that had eighteen feet of pavement

Trs. with shoulders eight feet wide on each side.

16. The shoulders sloped about one to one over from the shoulder down off the road. When a force is applied changing the direction of a car in motion it makes no difference in the direction it will take whether it is done by the steering apparatus or otherwise.

Over objection Mr. Price testified to experiments performed with the truck:

"I placed the truck just about in the center of the eighteen feet of pavement; that is, the right wheel was about the same distance from the center line of pavement as the left wheel was, and I laid out an angle of forty-five degrees on the pavement and I constructed the line through. We started the truck up down the center of the pavement and followed the forty-five degree line, and the wheels were hardly tracking when they got off the shoulder, which was seventeen feet from the center of the pavement."

A motion by defendant to strike the answer was denied.

It would make no difference whether the truck

167 T-8. was empty or loaded. The truck used for the
experiment was empty. When the truck was turned
at an angle of forty-five degrees it would re-
quire the truck to travel about twenty feet be-
fore the rear wheels would track with the front
wheels. The rear wheels of the truck were not
in alignment with the front wheels, that is the
center of the rear wheels is in alignment with
the front wheels. The center line of the front
68 wheels strikes between the dual wheels.

Cross Examination:

69 I did not run the truck so that the right
wheels were out in the shoulder. Momentum is
the result obtained by multiplying the mass by
71 the velocity. If the Ford weighed one-fourth
as much as the truck and was being driven four
times as fast as the truck the momentum of the
two would be the same. The impact of the two
cars might change the direction of the truck.

72 Redirect Examination:

If the Ford struck the corner of the truck
it would have to skid before its course would

72. struck the left front corner it would tend to veer the truck to the right, and if it scraped along the side it would tend to throw it back, that is to straighten it back.

Recross Examination:

73 An experiment is useful for comparative purposes to the extent that all the factors are similar.

74 **Redirect Examination:**

There are some factors that do not affect the results.

75 Reuben Christensen, a witness called by Defendant, being first duly sworn, testified as follows:

Direct Examination:

77 My name is Reuben Christensen. I reside at Spanish Fork. I am forty-two. In November, 1937 I was a deputy sheriff of Utah County and had been such for nearly seven years. On November 17th I had occasion to go to where the accident occurred between Santaquin and Spring Lake. I went in my official capacity to investigate the accident. I went over with patrol-

78

Mrs. Ann Sharley Allred. It was between 11:15 and
11:30 that I went over there. It was some time
after eleven thirty that I arrived at the scene
of the accident. There were probably twenty or
thirty at the scene of the accident when we ar-
rived. Len Huff and Mr. Chappel from Payson
were there when we arrived. It was cloudy and
cold, but not raining. The highway was dry,
but the shoulders were wet when we got there.
They were loading the bodies into an ambulance
when we arrived at the scene of the accident.
The coupe was on the East side of the highway
and the truck on the West side. We remained
there about an hour or an hour and a half. Mr.
Huff was directing the traffic. We had a flash
light. The highway at that point runs North and
South. The highway at that point is practically
level. I returned the next morning. Mr. Allred
had lights on his car which we used also. When
we returned the next morning the truck and the
Ford were in the same position. Defendant's
exhibit one correctly shows the truck.

Tra. Exhibit one shows the truck, looking from
the North. Exhibit one received in evidence.
I examined the truck on the evening when I first
184 went to the scene of the accident. The truck
was headed practically due West. The left bumper
or was back against the wheel. It was a heavy
iron bumper, about one-half inch thick and about
eight inches wide. The left front wheel was
driven back against the frame. The front fender
was bent. The truck had been hit on the corner
185 and there were scratches underneath the body.
A gas tank had been torn off. Exhibit two cor-
rectly shows the side of the truck as it appears.
Defendant's Exhibit two was admitted in evi-
dence.

There was a furrow immediately behind the truck.
186 It was two or three inches deep. It lead from
the East cement over the shoulder to the left
front wheel of the truck. I was unable to follow
the furrow on to the cement. There was a rubber
burn on the cement where the furrow began. The
burn was six or seven inches wide. It went
North on the cement about eighteen feet and was

100 Tre. a continuous line. I saw the rubber burn on the
night of November 17th. The line was a short
curve. At that point the cement was eighteen
feet two inches wide. The rubber burn was on
the West edge of the cement. Eight feet North
of the North end of the heavy line there was
another mark on the pavement. It extended North
and East a little. I didn't measure that line
but it was eight to ten feet long. It was a rub-
ber burn and scratches. The South end of that
line was about eight feet North of the other
69 line. The North line was West of the center of
the cement. The south end of that line was
heavier than the North, and North of these sec-
ond dark marks were some scratches leading over to-
wards the Ford coupe. The scratches were curved.
80 The second line was black spots and scratches.
I did not make any measurements on the evening
of the 17th, but I stepped on and estimated the
distances. Mr. Huff was taking care of the
traffic, but occasionally he came over and
talked to us. Mr. Alfred assisted me. Cars
were stopping on the line and he was slowing

Mrs. down traffic. I noticed where water and oil had been on the pavement. The oil and water were just North of the second black mark. It was nearly all over the second mark. The spot was about eight by eight and was on the west side of the center of the pavement. I did not see a pile of glass that looked like it would fill a tub. I went back to the scene of the accident on the 18th, arriving there sometime between eight and nine o'clock. When I left the scene of the accident the first time I saw marks; one on the North of the first black mark. I rode a line with my heel on the edge of the West shoulder and I rode a line with my heel on the shoulder straight across from the second dark mark--to South end of it. I placed another mark farther North where there was a spot of blood on the pavement. On the morning after the accident I went with Sheriff Larnell and Assistant County Attorney Dean Terry to the scene of the accident. The marks I made on the shoulder were still there. The marks on the pavement were also still there.

190. and one other. I thought it was the Sheriff,

191 but he says it wasn't. I measured the width
192 of the pavement and the shoulders. The pavement
193 was eighteen feet two inches wide and the should-
194 ers and the pavement was twenty-seven feet wide.
195 The two shoulders were about the same width.

196 The shoulders were of gravel and would support
197 a trolley. It was sixteen feet from the rear
198 right wheel of the truck to the edge of the
199 pavement. I made a map of the measurements.

200 The map claimed to have been made by Christensen
201 and varied Defendant's Exhibit three. The dis-
202 tance between the North end of the heavy line
203 and the center of the highway was five feet and
204 eight inches. I took the yellow line as the cen-
205 ter of the highway. That line was about three
206 inches wide. I measured the distance from the
207 North end of the heavy line to the edge of the
208 pavement. That distance was three feet six in-
209 ches. The distance from the South end of the
210 second line and the center of the highway was
211 three feet six inches. The South end of the
212 second line was west of the center line. The

00 The second line crossed the center line. The dis-
01 tance of the South end of the second line to the
02 rear of the Ford coupe was forty-seven feet.
03 The South end of the second line to the West end
04 of the pavement was five feet five inches. The
05 second dark line at first was wide and then it
06 was lighter and then wide again. The second line
07 was wider than the first in one place. The cars
08 on the North line were about from two to three
09 feet apart. The Ford was sitting on the shoulder
10 and about a foot and a half East of the cement.
11 It faced Northeast. There was a spot of blood
12 in the center of the pavement one hundred forty
13 four feet North of the South end of the Ford.
14 There were no spots of blood between the one
15 hundred forty-four feet North of the Ford and
16 the Ford. It was four hundred feet from where
17 I determined the impact occurred to the curve
18 to the South. The top of Exhibit three is North
19 and the bottom South. The two straight lines
20 about two and one-half inches long partly paral-
21 leled to each other running from the top represent
22 the East and West edge of the cement slab. The

the dotted line between the two solid lines represents the center of the corner. The dotted line outside of the solid lines represent the edge of the shoulders. The parallelogram in the upper right hand corner represents the Ford coupe. The figure on the left also represents the Old time the two heavy lines about an inch long on the left half of the highway represent the eighteen foot dark lines or South marks. The other mark a few inches long represents the North marks. The series of shorter marks between the Ford coupe and the North end of the North mark represent the spots and excavations on the cement. The dotted straight line between the South end of the North mark and the coupe represents the distance between those two points. The dotted line between the South marks and the Northmost corner of the truck represents the distance between those two points. The curved line from the front end of the South line to the rear of the truck represents the furrow that I testified to. The dotted line across the highway represents the distance from one edge of the shoulder to the

fire. writing. It was made on November 18, 1937. Ex
200 Exhibit three was offered in evidence and objected
to by Plaintiffs. The objection was sustained.
The marks between the North end of the North
line and the South end of the Ford were dark
spots, like rubber burns, and then there were
scratches like some iron or hard instrument had
210 scraped the pavement and they were of lighter
color than the cement itself. In the North end
there was some paint of a gray and red colored
marks. Near the gray paint of the Ford coupe
was scraped off it was dull red. The color on the
211 pavement was similar to the color of the Ford
coupe.

C. H. Allred, a witness called by defendant,
being first duly sworn testified as follows:
Direct Examination:

212 His name is C. H. Allred. I am a highway
patrolman and reside at Spanish Fork, Utah. I
was so employed on November 17, 1937. I went
with Nathan Christensen to the scene of the
accident between Santaquin and Spring Lake on
the night of November 17, 1937. He used flashlight-

fire lights and fuses on that night. I went from
Spanish Fork. It is about twelve miles. At the
scene of the accident the road runs North and
South. About four hundred feet South of the scene
of the accident the road curves to the right.
At the scene of the accident the road is prac-
tically level. When we arrived at the scene of
the accident there were automobiles and people
there, among them Officer Huff of Panguitch. There
were a number of automobiles which came there
while we were there. Mr. Huff was directing the
traffic when we arrived. He was using a flash-
light and he used some fuses. The wrecked Ford
was a little distance from where we stopped the
automobile. It was not storming when we ar-
rived at the scene of the accident but had been
in the early evening or afternoon of that day.
It was cold and cloudy. The highway was dry but
the shoulders were deep. The Ford was East of
the shoulder, free from the current. There were
two shoulders--one on the East side and one on
the West. The shoulders were gravelled and firm.
The shoulders were between four or five feet wide

Tra. There is a borrow pit on the West side of the
road. The truck was on the West of the highway.
The Ford and the truck were about eighty or
ninety feet apart. We were at the scene of the
accident in the neighborhood of an hour and one
half. I did not return the next day. The truck
was sixteen feet West of the highway. There was
a heavy mark leading from the pavement to the
truck on the left side. The mark was deeped in
the soft soil. There was a mark on the pavement
at the end of the mark across the shoulder. The
mark on the cement was rubber abrasion. The
rubber abrasion or rubber burn mark extended off
to the North. The line was practically straight.
It began on the West edge of the cement and ex-
tended North about eighteen feet. It was on the
West half of the pavement. It was a solid line.
It did not cross the center line of the pavement.
The cement portion of the road was eighteen feet
wide. The shoulders were about the same width.
The truck had a dent in the bumper, the fender
and the cab, the side of the bed, and a large
gas tank under the left side had been broken off.

218. The left one of the bumper was bent backward.
225 The bumper had been bent back on to the fender
and the left front wheel, and the wheel had been
pushed over on to the side of the frame. The
left corner of the truck was splintered and the
were marks along the side. The wheels of the
truck seemed to be in proper alignment. The
treads of the dual wheels came off the shoulder
but did not make ^{the} impression that was made by
the left front wheel. There were marks between
236 from the wheels of the truck back on to the
shoulder. Back on the highway there was the
black mark eighteen feet long about three feet
from the West edge. There were no marks on the
243 North of the black mark, but beginning some six
feet North on the shoulder there were truck
marks. The marks were on the shoulder North of
the truck, near the edge of the shoulder. These
treads extended fifty feet to the North. The
250 black mark on the West of the pavement was about
five feet from the center of the pavement. The
was a rubber mark on the pavement to the North
about five feet of the south mark. There was

Fre. a mark to the North of the South marks. It was
229 longer than the other mark. That mark was near
er the center of the highway. It was about three
feet over on the left of the pavement. It con-
230 tinued North about eight feet. The mark was
solid. To the North of these marks was some we-
er. It was quite a wet spot. It was near the
center of the highway. There were other marks
231 to the North in a kind of a curve. These marks
were broken. The marks extended North and East.
These marks began at the North of the solid mark.
It extended to the rear of the Ford. It crossed
232 the center line near the North end of the solid
mark. I made notes of my observations. From the
notes I made, it was forty-seven feet from the
Ford to the eight foot abrasion. It was ap-
proximately eight feet from the South end of the
233 eight foot mark to the center of the pavement.
It was about three and one-half feet. The North
end of the eight foot mark was four feet to the
center of the pavement. On the night we were
there we dug in the shoulder of the road and
234 placed rocks there for the purpose of making

136 rearmaments the next morning. I had a broom
137 with me and swept up some of the glass but did
not sweep up a tub full into a pile. I do not
138 recall seeing a head on the night I was there.
The shoulders were uniform in width.

139 Leuben Christensen recalled and further tes-
tified:

Direct Examination:

I have prepared a map showing the observation
which I made. The same was marked Defendant's
140 Exhibit Four. The map is drawn to scale. The
141 top is the North. The road at the point of the
collision runs North and South. The heavy line
represents the East of the pavement, the North
end of which is marked with a figure one and the
bottom two. The East edge of the pavement is
marked as line 3,4. Line Y represents the yellow
line along the center of the pavement. The line
marked 5 represent the Shoulder. The scale of the
map is one inch to four feet. The figure in the
upper right hand corner marked Ford coupe is
where the Ford was. The position of the truck
marked by OTC truck. The lines 6 represent the

240 sides of the highway in a separate diagram. Q
242 represents the center of the highway. The curve
to the South is shown on the map. The position
243 of the spot of blood is shown on the separate map
by a small circle. The line A B represents the
South rubber marks. C D represents the North
244 rubber marks. The letters D E represent the rub-
ber burns from the rear of the Ford to the second
rubber burns. The word water spot is on the map
where the water spot was. The line running from
the edge of the pavement to the truck represent
245 the furrows I testified about. The letter L re-
246 presents where the shoulder was caved off. I
have indicated the distances on Exhibit Four.
247 Cross Examination:

The spot marked GMC truck is intended to be
made to scale. I know the dimensions of the
truck only by hearsay. I assumed the truck to
249 be twenty-four feet long and about eight feet
wide. The mark from the rear of the GMC truck
represents a furrow. There was no one plowing
250 in there. The line on that line represents the
West side of the shoulder. The furrows continue

250. in a straight line from the shoulder to the front
251 wheel of the truck. There was only one definite
line from the shoulder to the truck. There was
252 no difficulty of seeing the tracks between the
front and rear wheels of the truck. You could
follow where the rear wheels of the truck left
the pavement to where they stood, but the tracks
were not distinct even in the soft dirt. I was
told the horse was unloaded there. I could not
see where the right wheels of the truck left the
253 shoulder. There was some curving off after the
truck went off the road. There was nothing on
254 the highway where the truck changed its course.
The line I referred to as an impression was a single
255 line. The fourth line was about the same
throughout its course and was six or seven inches
wide. I said something about a car running over
a blood spot. I saw track marks in the blood
spot and assumed it got in the tire and as the
256 wheel revolved the blood was placed back on the
pavement. I think I could tell that the blood
had been on the tire and redeposited on the

Yes, but was at that time. It was between eleven-
thirty and twelve o'clock when I arrived at the
247 scene of the accident, or probably fifteen min-
utes to twelve. It ceased raining where I was
258 at about ten-thirty that night. It was not
raining when I left Spanish Fork. I don't recall
whether there were any puddles of water in the
26 road as I went from Spanish Fork to the scene of
the accident. We stopped our car fifty-to sev-
enty-five feet North of the Ford car. I had a
three cell flashlight with me. That was the
light I used to make the investigation. Mr.
Alfred fixed the car so that its lights were
60 partially down there. I saw the two truck driv-
ers there and talked to them. I saw no evidence
of any skidding on the pavement. There was no
indication of a skidding along the line A B. As
61 that line continued backward it crossed the
shoulder. There was no indication that the truck
62 had slipped sideways. There had been no side
slipping in making the mark on the pavement on
the line A B. The left rear wheel of the truck
was in absolute alignment with the left front

188 Cross Examination of Mr. Alfred:

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was fifteen. I don't remember whether the road was
set when I drove to the scene of the accident.
I parked my car probably thirty to fifty feet
North of the Ford car. I saw some agents or
servants of the defendant just before we left
the scene of the accident. There was quite a
crowd of people going and coming from the scene
of the accident. I talked the matter over with
Mr. Rush and Mr. Semmlsen. They told us how
the accident happened. There was no evidence of
any one slipping on the marks on the pavement.
The line back of the truck was quite uniform.
The tracks of the left wheels of the truck as
they extended back to the pavement. The marks
made by the truck did not change their course
from the pavement to where it stood. I could
not trace the right wheel of the truck because
there had been so many people there.

Direct Examination of Mr. Allred:

Near the truck I could not see any marks made
by the right wheels, but there were large tire
marks farther North on the shoulder. The tire
marks on the shoulder were North of the line A

Trs. Everett Weigand, a witness called by defendant
274 being first duly sworn, testified as follows:

Direct Examination:

My name is Everett Weigand. I reside at Los Angeles, California. I am employed by the Arrowhead Freight Lines. I am twenty-six and engaged in operating one of the trucks of defendant. I went down to pick up the cargo on the truck that was in the accident on November 17, 1917. I arrived there about three or three-fifteen on the morning after the accident. I remained there until about ten or ten-thirty. I saw some people making measurements there. I saw the truck and the Ford and some marks on the highway. There were marks where the truck left the highway. There were skid marks on the highway fourteen to sixteen feet long. There were tire marks on the shoulder for about forty feet. The marks were about eighteen inches wide. You could tell where the truck left the highway. The dual marks left the pavement about forty feet North of the truck and continued South. There were black skid marks on the West of the yellow

1re. Alvin A. Samuelson, a witness called by the
60 defendant, having theretofore been duly sworn,
testified as follows:

Direct Examination:

11 My name is Alvin A. Samuelson. I am twenty-
nine years of age. I reside at Los Angeles. I
am a truck driver for the Arrowhead Freight Line
the defendant in this case. I have been in
Court and heard the witnesses who have testified
I was driving the truck involved in the collision
testified about. There was no one in the rest
with me at the time of the collision. My com-
panion was in the sleeping berth. I have been
driving a truck for three and one-half years be-
tween Salt Lake and Los Angeles. I was familiar
with the highway over which the truck was being
driven. At the time of the collision I was on a
way from Salt Lake City to Los Angeles. I had
general freight and a horse in the truck. I had
two barrels of grinding balls in the rear portion
of the truck, and general freight in front. The
grinding balls were about three inches in di-
ameter and used for grinding up ore. They were

in two barrels with a lid on. The lid was loose
and pushed down like a lid on a can. In the
night of the accident it was cloudy and the moon
would occasionally shine through. I stayed at
the scene of the accident until the next morn-
ing. At the time I saw the Ford approach, I was
going about twenty miles per hour. A little
later I was going about twenty-five miles per
hour. When I first saw the Ford it was some
distance Southwest of the curve. I paid no par-
ticular attention to the Ford as it approached
the curve. I don't know how fast it was travel-
ling. I made some observations around the scene
of the accident after it occurred. The curve is
around four hundred feet South of the place of
the accident. It appeared as the Ford approached
the curve they couldn't quite make the turn. The
Ford was on the East side and then came back on
to the cement again and across the road so that
the front wheels were on the yellow line, and the
left front wheel was on the East side of the yellow
line, then it looked as if they were going to
take their course on the East side of the road

Truck, and then just before they got to me the car took
a lurch--a fast swing, and ran into me. I felt
the impact on the front of my truck, and then it
appeared to be clear under the body of the truck.
Then the car hit I was thrown up against the
steering wheel and to the left corner of the
truck in the top of the cab. At the time of the
impact the front of the truck raised up and then
the rear of the truck raised up. When I saw the
Ford car go out on the right shoulder I was driv-
ing on the West shoulder of the road. I went on
on the shoulder when the Ford came on to my side
of the road. As the Ford came around the curve
I saw they were in trouble and pulled the truck
to the shoulder. When they were one hundred fif-
ty to two hundred feet away I thought they were
going to get on to their side of the road. I am
unable to say how far the Ford was away when it
again turned towards me. It happened so quickly
I did not have time to judge the distance. Ac-
cording to my judgment my left front wheel was
about two or three feet West of the edge of the
concrete at the time the collision occurred. By

The right wheels were as close to the edge as I
dared to go. The truck stopped to the west of
70 the road after the collision. I got out of the
truck by rolling down the window, as the door
would not open. I went up the road when I got
out and saw Miss Swell. The Ford was on the
71 West side of the shoulder. I observed that two
or three people had been killed. Donald Simon
was lying on the highway. We got a flashlight
and some flares and directed the traffic. As
72 soon as the bodies were removed we let the traf-
fic go by. The accident occurred about twenty
minutes to eleven. After the accident I saw one
73 of the balls on the West shoulder of the road,
and one in the borrow pit on the West side. The
truck stopped sixteen to eighteen feet from the
cement. The horse was removed from the truck
by taking out the tail gate, putting one end on
74 the shoulder of the road and leading the horse
down the tail gate. The truck remained where it
stopped until the afternoon of the 18th. Mr.
Christensen, Mr. Huff and Mr. Chappel came to
the place of the accident and the next morning

75 tra. the Sheriff and Mr. Terry came. The Ford
stopped about a foot or a foot and a half from
the edge of the canyon. It remained there until
after the Sheriff and others had been there.
Mr. Valgard came down and transferred the load
76 from the truck. I saw some measurements being
made, but did not assist. The shoulders of the
road were moist but firm. The Ford was North-
east from the truck. The truck was about fifty
feet from the Ford. I was not on the East side
of the yellow line any time after the Ford came
77 into the curve. I observed rubber marks on the
pavement. Some of the marks were heavy and
others appeared as if the tires had jumped from
spot to spot. The heavy marks were North of the
truck and were ten or twelve feet long. The
heavy marks were on the West side of the pave-
ment. The broken marks lead from the West side
of the yellow line to the East side of the road
towards the Ford. I observed my truck tires on
78 the West shoulder. I followed the marks from
the rear of the truck to the shoulder and up

122. to rain and sleet about three o'clock in the morning. People came to the place of the accident all night and morning. After M. Huff and . Chappel came they directed traffic by flashlight and fuses. People were getting in and out and walking around. I saw the lines on the pavement the night of the accident and could see them the next morning.

80 Cross Examination:

When I was first called as a witness I did not testify that the truck weighed nine thousand pounds, but nineteen thousand pounds. The truck weighed nine thousand pounds and the load ten thousand. I did not give the weight of the load. It weighed about eleven hundred pounds. The truck and the load weighed twenty-thousand one hundred pounds. It was fifteen or twenty minutes after the truck left the road when we unloaded the horse. That was one of the first things we did. I put the tail gate on the left hand side of the truck when I unloaded the horse. I stated that I examined the courses the truck took after

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7m. about the course it had taken. You could follow the right hand truck tire right off the shoulder. It was about eight feet back where the truck went off. I picked up the marks on the left shoulder about eight feet up from where they left the shoulder. From the outer edge of the dual wheels to the outer edge of the wheels on the opposite side of the truck is seven feet one inch. The two sets of dual wheels are the same distance apart. The dual wheels are about an inch apart on the same axle. The dual wheels do not follow directly in the trail of the front wheels. The dual wheels straddle the tread of the front wheels. As the truck travels in a straight course the space between the dual wheels follows the course of the first wheels. I have not measured the distance between the front wheels, but it is about six and one-half feet. That is, to the outer edge of the wheels.

87 I said I was thrown up in the truck at the time of the impact. The truck was rolled up; that is one side was raised up. The right wheels stayed on the ground. I felt the truck leave the road

71a. and we dove if it would tip over. I did not
attempt to turn the steering wheel at that time.
80 I testified that I examined the marks on the
pavement and found them substantially the same
as Mr. Christensen testified. The black marks
90 did not show any signs of slipping. There was
only one mark to the rear of the truck. As so
on the impact occurred the speed of the truck
was slowed down. The Ford came from the opposite
side of the road and darted right into me. I
91 not know how far I went on the pavement after
the impact until I got out and examined the road.
Direct Examination:

I would say I went about twenty-four feet on
the pavement after the impact.

Recross Examination:

It is between nine and ten feet from the
front wheels to the drivers. The body of the
92 truck extends two or three inches out beyond the
wheels of the truck on the sides. The body of
the truck is seven feet seven and one-half in-
ches according to my judgment.

Defendant, being first duly sworn, testified as follows:

Direct Examination:

983 My name is Ralph E. Smith. I am chief to the
Public Service Commission and reside at Salt
Lake City. I was at the scene of the accident
between Santaquin and Spring Lake on November
984 1937. I saw one mark on the highway. It was
about eighteen feet long, not exactly straight.
It was three feet six inches West of the yellow
985 center line. The line was like a rubber burn.
The line ended at the truck. The line did not
986 project beyond the cement. It was raining when
I was there. The mark was about a foot wide.
The truck was a Studebaker. I measured the line
I am testifying about and it was three and a
half feet from the yellow line.

Lynn Huff, a witness called by Defendant testified as follows:

987 Direct Examination:

My name is Lynn Huff. I am thirty-six years
of age. I reside at Payson and am traffic officer
of Payson. I was at the scene of the acci-

Acc. went on November 17, 1937. Mr. Chappel accom-
panied me. I left Payson about 10:30. It was
288 a cloudy night. It was not storming at Payson.
The highway was dry. There were other persons
at the scene of the accident when I arrived.
there; probably about seven. I stopped my car
down where the GMC truck was off the road on the
right hand side. It was over on the shoulder
290 on that side. I put some flares on the road.
Mr. Chappel remained there only a short time.
I went over to where the two dead bodies were.
Those who were injured had been taken to Payson.
I remained there about two hours. A number of
291 cars came and I directed them to go South to the
turn to park. The truck was twelve or fourteen
292 feet off the highway. There was a mark about
five feet West of the center of the yellow line
that angled off to the right. The line was
about twelve feet long. The North end was about
293 five feet West of the center. It was just a
black mark on the pavement. There were two
294 furrows where the truck left the highway down
295 to the truck. The bumper of the truck was bent

the back against the left front wheel. The marks
of the wheels of the truck came up over the
998 shoulder. The tracks across the shoulder were
practically due West of the black marks. The
black line didn't go off the pavement. There
107 was a tire mark across the shoulder. It was a
108 single tire mark. The black mark was a slight
109 curve and stopped at the edge of the pavement.
100 The furrow was about a foot wide and four inches
101 deep. I do not know what kind of tire mark ran
from the point A to the edge of the pavement.
There was a tire mark where the right hand wheel
102 came off the cement. It wasn't raining at that
time. There was a tire mark North of where the
truck stood. It was a single mark about fifty
103 feet North of where the truck stood. The tire
104 mark was about eight inches wide. The tire mark
left the pavement about fifty feet North of the
place where the furrow was. There was mark on
105 the edge of the shoulder where the right wheel
went off. I saw other marks on the pavement.
There was a water spot on the pavement. It was
106 about three feet long. It was about three feet

Tre. West of the yellow line. It was six or seven feet off the line I mentioned. North of the black line was a spot of blood. The blood was thirty of our steps North of the Ford. It was on the yellow line. I did not see any other black lines. There was glass on the pavement but it was not piled up. The traffic was permitted to take either side of the highway. Mr. Allred and Mr. Christensen came while I was there. I did not return the next day.

Cross Examination:

What I called a furrow was a very distinct tire mark. The wheel just sank into the dirt there. There was a tire mark back of the right wheels of the truck. It was about the same as the mark back of the left wheels. The tire mark of the right wheels extended upon and on to the shoulder. The course of the tire marks as they left the shoulder did not change. The front and rear wheels followed the same line. There was nothing to indicate the truck struck anything just before it left the shoulder. The mark to

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Yes, right. The line did not take a zigzag course
 until left the cement. The line was about six
 inches wide. It was a single line. It did not
 rain at Jayson that night. I don't know whether
 it rained that afternoon.

310 Defrost examination

Q17 Accidents like this one do not happen every day. It was out of the ordinary for me to investigate an accident like that one.

Ralph Chappe, a witness called by the Defendant, testified as follows:

First Examination

My name is Ralph Chappel. I reside at Payson. I am and on November 17, 1937, was a peace officer of Payson. I went to the place where the collision occurred between the truck and Ford at about a quarter to eleven on the night of November 17, 1937. It was a cloudy night and cold but not raining. When we arrived there we stopped the car on the East side of the highway. I saw the Ford on the East of the highway and the truck on the West. The distance between the truck and Ford was about 100 to 150 feet.

Q18. I was there about fifteen minutes the first time.
There were a number of other people there. When
I went back to witness I identified Mr. Christensen
of the accident. I returned to the scene of the
accident about one o'clock. I did not make an
careful examination of either the truck or the
Ford. I saw some black marks on the pavement.
The mark was seventeen or eighteen feet long.
The mark ran North and South. It was on the
of the pavement. The South end of the line was
down near the truck. It was on the West side
the pavement and ended down near where the truck
stood. The line was solid. The North end of
the line was four or five feet West of the yellow
line. I did not see any other marks. There
was a wet spot on the pavement and glass. The
furner going down to the truck appeared to be a
continuation of the black line. I saw the other
tracks of the truck to the South of the furrows.
I did not follow the lines down to the truck.
I did not observe any marks near the Ford.

Cross Examination:

Q19. The truck on the left going off the shoulder

328 re. led up North. The cark I saw going off the
329 shoulder went up to the edge of the shoulder.
330 I merely saw where the wheels left the shoulder.
331 The water spot was North of the truck. The po
of water was about two feet South of the West
the Ford.

332 Sean K. Perry, a witness called by Defendant
being first duly sworn, testified as follows:
Cross Examination:

I reside at Provo and am thirty years of age.
I am Juvenile Judge. I have been such since
333 December 8th of last year. Before that I was
deputy county attorney. As deputy county attor
ney I investigated cases where there was crimin
334 al liability. I went to the scene of the acci
dent between Santaquin and Spring Lake with
Sheriff Durnell and Deputy Christensen on Nov
ember 28, 1937. I saw the Ford and truck; the
335 Ford on the East side and the truck on the West
of the highway. We made some measurements. The
truck was sixteen feet from the pavement. There
336 was a tire mark on the West of the pavement
eighteen feet long. There was a distance of

Two. eight feet from that tire mark to the next tire
mark. From the second tire mark to the Ford was
337 forty-seven feet. The Sheriff assisted in making
these measurements. The second tire mark began
three feet six inches West of the center yellow
line. That line ran in a Northeasterly direc-
338 tion, towards the rear of the Ford. The first
tire mark on the North end was three feet from
339 the West edge of the pavement. That mark went
South eighteen feet to the West edge of the
pavement. That mark was five inches wide. It
was less distinct as it continued South. From
the edge of the pavement to the truck was a
340 groove three or four inches deep. You could
341 see it on the shoulder. The mark to the North
was two inches wide. It would continue three or
four feet and then there would be a break of a
few inches, and at times for a few feet. It was
a broken line. The highway was twenty-seven feet
from shoulder to shoulder. The pavement was
eighteen feet two inches. The shoulders were
about the same width. The West shoulder was
inferior, the East shoulder was better.

339. extending from the shoulder to the truck about
342 two inches deep. On the North marks there was
grayish paint mixed with the rubber marks. The
343 color of the paint on the Ford was the same as
that in the rubber marks. The front and rear
wheels of the truck stood in the same groove of
tire marks. The rear wheels followed the groove
344 seen by the front wheels. You could see the
tire marks down off the shoulder and on the
shoulder. The marks on the shoulder might have
345 been caused by either a truck or an automobile.
You could see the mark made by the right wheel.
The rear wheels apparently went over the same
marks as the front wheels. I do not know the
346 angle the truck stood with the road, but I can
draw it. The South mark on the pavement was 11
347 inches wide. The North end of the South mark was
three feet from the West edge of the pavement.
The South marks had a curvature towards the out-
348 er edge of the pavement. The South end curved
349 most. The line did not show any slipping. It
350 was a single line. I took the notes when the
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1. Sheriff helped make the measurements. The
South end of the North line was three feet six
inches West of the center line. The North line
proceeded North parallel with the center line.
The North line was parallel with the center line
for about twenty feet. The North line curved
towards the East at the North thereof. The
North line ran towards the Northeast. The North
line was not continuous. It could be seen for
a few feet and then there was no mark. The paint
I saw at places was on top of the rubber marks
and at places in the marks. I did not observe
any paint except where the tire marks were.

At the conclusion of the evidence the Defendant requested the court to direct a verdict in its favor as to each of the Plaintiffs. The motion was denied and the Court gave the following instructions to the jury.

(Title of the Court and Causes).

INSTRUCTIONS TO THE JURY
LADIES AND GENTLEMEN OF THE JURY:

No. 1

By stipulation of counsel for the respective

parties to the above entitled causes, these

The cases have been consolidated for the purposes of trial before the jury; and the evidence especially applied to either cause, or generally to both should be considered by you in arriving at your verdicts.

The pleadings in each case, out of which the issues arise, consist of a complaint, and an answer. The allegations of the complaint and the answer thereto, being similar, a statement of the issues, in substance, is as follows:

Paragraph number one of the Complaint, alleges that the defendant is a corporation existing under and by virtue of the laws of the State of California, and is qualified to do business in the State of Utah and operates trucks within the State of Utah.

In paragraph number two, as to the complaint of the Nelsons, it is alleged that Joseph E. Nelson and Mary Jane Nelson are father and mother of Paul L. Nelson, an unmarried man of the age of 20 years; that he died on the 19th day of November, 1937 from causes hereafter stated, leaving his parents, with whom he was

residing at the time of his death, at Spring
14 Lake, Utah County, Utah.

As to the complaint of the Smiths, it is al-
leged that Jesse Smith and Ella May Smith, are
the father and mother of Emma Smith, an un-
married girl of the age of sixteen years; that
she died on the 10th day of November, 1937 from
causes hereafter stated, and that she was living
with her parents at the time of her death, at
Sentaquin, Utah.

The third paragraph alleges that there is a
highway known as U S No. 91 between the City of
Sentaquin and the City of Payson, Utah County,
and has been used by the travelling public for
driving of trucks and automobiles thereon.

The fourth paragraph alleges that on the
10th day of November, 1937, Paul L. Nelson and
Emma Smith were riding from Sentaquin to
Payson in a 1933 Ford Coupe driven by Vaughn
Sheffield upon the said U. S. Highway 91, as
guests, and at a point about one and one-half
miles southwest of the Town of Spring Lake,
while Vaughn Sheffield was so driving such to

Ford Coupe, he was exercising due care and caution for his own safety and for the safety of Paul E. Nelson and Lemons Smith, who were then riding with him as aforesaid; that said Ford was being driven on his right hand side of the highway.

The fifth paragraph alleges that on the 17th day of November, 1937, the defendant, by its servant, was then and there operating a truck along said highway and was travelling in the opposite direction to the Ford Coupe in which Paul E. Nelson and Lemons Smith were riding; that the driver of the said truck carelessly and negligently ran and operated said truck at a great and unusual rate of speed, to-wit: at a speed in excess of fifty miles per hour; and then and there carelessly and negligently failed to exercise due care and caution for the safety of Paul E. Nelson and Lemons Smith, or others, who were in and upon said highway aforesaid; and said defendant then and there carelessly and negligently failed to keep any lookout for persons and especially for said Coupe and occupants thereof; and then and there carelessly and negligently

Q. ran said truck on said highway on which said Paul E. Nelson and Emma Smith, both now deceased, were then travelling; and then and there carelessly and negligently and with great force and violence drove said truck in and upon and against the said Ford Coupe, so that the said Coupe was then and there struck by said truck, and Emma Smith was thereby severely injured in her body and vital organs and was instantly killed; that the said Paul E. Nelson was thereby severely injured thereby; that he languished a short time and on the 15th day of November, 1931 and as a result of the negligent acts aforesaid and injuries, died.

Number six of the Nelson Complaint, alleges that plaintiffs are the father and mother of Paul E. Nelson and are the sole and only heirs of said Paul E. Nelson; that at the time of his death he was living with his father and mother, Joseph E. Nelson and May Jane Nelson, and supporting them from his earnings and was the principal support of said parents at the time of his death; that there were no brothers or sisters of

the said Paul E. Nelson living with him, at said time, entitled to his support.

Number six of the Smith Complaint alleges that Jesse Smith and Ella May Smith, being the father and mother of Mamona Smith, and are the only heirs of said deceased; that Ella May Smith is in poor health; that at the time of the demise of Mamona Smith and for many months prior she was doing and had been doing the housework for plaintiffs and their family and that by reason of said negligent and careless acts of defendant in the operation of said truck and the death of Mamona Smith, the Plaintiffs have been deprived of the care, comfort, association, aid and support of the said Mamona Smith, deceased, and have suffered great and permanent loss and damage in the sum of \$2250.00; and that the reasonable and actual cost of funeral arrangements and burial of Mamona Smith, was in the sum of \$135.00, for both of which sums the Plaintiffs pray judgment against the defendant company.

Number seven of the Nelson Complaint, alleges

that by reason of the negligent and careless

effects of the defendant in the operation of said truck, Paul L. Nelson was killed and plaintiff have thereby been deprived of the care, comfort, association, aid and support of the said Paul L. Nelson, and have suffered great and permanent loss and damage in the sum of \$2750.00.

Number Eight of said complaint alleges that as a result of said death, the funeral arrangements and burial costs were actually and reasonably the sum of \$228.80, for both of which sums the said plaintiffs pray judgment against the defendant company.

The answer, filed by the defendant to each of said complaints, is in substance, as follows:

Admits that defendant is a corporation organized under the laws of the State of California and is qualified and authorized to do business in the State of Utah, and in pursuance of which operates trucks upon the highways of this state.

Number two alleges that defendant has no knowledge sufficient to form a belief as to whether plaintiff is the author of

17 The. Emma Smith, or whether at her death she was
an unmarried girl, or that she had been or con-
tributed to the support of her parents and bas-
ing its denial upon that ground denies the same.

As to the Nelson answer, the defendant alleges
it has no knowledge sufficient to form a belief
as to whether plaintiffs are the father and
mother of Paul E. Nelson or whether at his death
he was unmarried or a minor or that he contribu-
ed to the support of his parents, and basing its
denial upon that ground, denies the same.

Defendant admits that there is a highway known
as "H. H. No. 91 between Monticello and Panguitch,
Utah County, Utah, used by the travelling public.

Defendant admits that Paul E. Nelson and
Emma Smith were riding in an automobile from
Monticello to Panguitch, on the 17th day of Novem-
ber, 1937, but states it has no knowledge as to
whether Vaughn Sheffield or some one else was
driving the Ford Coupe in which said Paul E.
Nelson and Emma Smith were riding, or whether
he or she was a guest or gratuitous passenger
in said automobile, and hence denies the same;

re. and defendant also denies that the person driving said Ford coupe was exercising due or any care or caution for his own safety or for the safety of others, and further denies that Vaughn Sheffield, or some one else was driving the Ford coupe in a careful or prudent manner.

The defendant admits that a cart in truck belonging to it was being operated upon and along said highway referred to in the complaints, but denies that said truck was carelessly or negligently operated at a great, unusual or unnecessary speed; to the contrary, this defendant alleges that said truck was being driven in a careful and prudent manner and at a lawful and proper rate of speed and without any negligence on the part of the driver thereof.

Defendant denies each and every allegation in the complaints, not hereinbefore admitted, notified or denied.

Further answering said complaint, and as its separate and additional defense thereto, this defendant alleges that if Paul W. Nelson and

the. of any person, the same was directly caused or the cause thereof was proximately contributed to by the negligent and careless acts, conduct and omissions of the driver of the Ford Coupe, which negligence and carelessness consisted in driving said Ford Coupe, at a high and dangerous rate of speed, without looking any safe or proper lookout ahead, and in driving the same on the wrong side of the highway, and in failing to keep the said Ford coupe under safe or any control, and in failing to exercise reasonable care and caution for the safety of the driver or occupants of said coupe, which negligence of said driver was the proximate cause of said collision and injury.

Further answering, and to its separate and additional answer, the defendant alleges that if the death of the said Paul L. Nelson and Emma Smith were caused or contributed to by the negligence of any person other than the driver of said coupe, then the same was caused, or the cause thereof was contributed to, by the negligence and carelessness of Paul L. Nelson

Fre. and Emma Smith in failing to exercise reasonable care and caution for his and/or her own safety on said occasion and in taking up a dangerous position in said Ford Coupe, and in failing and neglecting to keep a proper or any lookout, and in failing to exercise any such care and caution as was reasonably required under the circumstances at and prior to the collision.

Further answering the defendant alleges that the said Paul W. Nelson and Emma Smith and the driver and other occupants of said Ford Coupe, were at the time of the accident engaged in a joint enterprise for their mutual advantage, in which each was equally interested in the purpose of the trip. Wherefore defendant prays that plaintiffs take nothing by their complaint.

No. 2.

The preceding instruction given to you is not to be considered by you as a statement upon the part of the Court as to what facts are, or are not, proved in this case; but such instruction is a mere recital and statement to you to

1st. what the respective parties in the case claim be the facts. Where it is stated that the defendant admits a certain fact, or facts, you are to take such fact, or facts, as admitted, as true and as having been established; but beyond that, you are not to draw any conclusions concerning the facts from the mere recital or statement of the claims of the respective parties as set out in the preceding instruction. The Court does not express to you any opinion on the fact or as to what fact, or facts, are or are not proved, except such as heretofore stated are admitted by the respective parties. It is your duty to accept the law as given to you by the Court, and it is solely and exclusively for the jury to find and determine the facts in the case, which you must do from the evidence introduced before you.

No. 3.

This is a civil action, wherein the burden is on the plaintiffs to prove by a preponderance, or greater weight of the evidence, the allegations of the complaint. ~~which is not admitted by the~~

Ans. answer of the defendant. The burden is on the defendant to prove by a preponderance or great weight of the evidence, the affirmative matter set forth in the answer. The burden of proof thus changed as being on either the plaintiff or the defendant does not mean that such burden may be sustained by evidence adduced by the party himself. It is enough if such burden is sustained by a consideration of all the evidence, both on the part of the plaintiffs and on the part of the defendant.

Co. 4.

You are instructed that on all public highways of this state, it is unlawful for any person to drive a vehicle upon a highway at a speed greater than is reasonable and prudent, having regard for the traffic, surface and width of the highway, and the hazard at intersections and any other condition then existing.

nor shall any person drive at a speed which is greater than will permit the driver to exercise proper control of the vehicle and to decrease speed or to stop or to go on as necessary to

ins. avoid colliding with any person or vehicle upon or entering the highway in compliance with legal requirements and with the duty of drivers and other persons using the highway to exercise due care.

21 No. 5.

You are further instructed that outside the business and residence districts, the speed of vehicles shall at all times be reasonable and safe under the general conditions prevailing upon the highway, provided that such speed shall not exceed fifty miles per hour, which speed is controlling at the point where the collision in this case took place.

And in this connection, you are further instructed that any speed, in excess of that here in indicated in this instruction, shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful.

No. 6.

You are instructed that drivers of vehicles proceeding in opposite directions shall pass each other to the left, and upon roadways having

Traveling width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the main travelled portion of the roadway, as nearly as possible.

Ex. 7.

You are further instructed that it is provided by the laws of the State of Utah, that it shall be unlawful for the driver of any vehicle to drive the same when such vehicle is so loaded or when there are in the front seat of such vehicle such number of persons, as to obstruct the view of the driver to the front or sides, or to interfere with the driver's control over the mechanism of the vehicle. It is further provided by law that it shall be unlawful for any passenger in any automobile to ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the automobile.

And in this connection, you are instructed that it is for the jury to find and determine from all the facts and circumstances shown to

8. exist at the time of the collision herein, whether either of the occupants, to-wit: Paul I. Nelson or Ramona Smith, was guilty of negligence in becoming a passenger in said Ford Car along with the driver and other occupants therein, and whether or not such negligence contributed in any degree to the collision and to the injuries suffered, as complained of.

No. 8.

In order to recover in this action, the burden is on the plaintiff to prove by a preponderance of the evidence, first, that he, Paul I. Nelson, and/or also, Ramona Smith, was killed by reason of the negligence of the defendant; second, that such negligence consisted of one or more of the acts or omissions alleged in the Complaint as negligence; and third, the damage resulting to respective plaintiffs by reason of such negligence. And if upon either of these issues the preponderance of the evidence is in favor of the defendant, or if it is equally balanced, you should find such issue for the defendant.

Tr. Mr. P.

Q. If you find from a preponderance of the evidence that either the said Paul L. Nelson or Lemons Smith, was killed by reason of the negligence of the defendant, as alleged in the Complaint herein, then, in order to defeat the plaintiffs' rights of recovery on the ground of contributory negligence, the burden is on the defendant to prove by a preponderance of the evidence that the said Paul L. Nelson or the said Lemons Smith, was guilty of negligence that proximately contributed to his or to her own death. And if upon the issue of contributory negligence, the preponderance of the evidence is in favor of the plaintiffs, in either case, or if it is equally balanced, you should find such issue in favor of the plaintiff.

Pa. 10.

You are instructed that Mr. Samuelson, the driver of the OGC truck, was required to exercise such degree of care as would have been exercised under the circumstances by a reasonably

Tra. from all of the evidence that he acted as a reasonably prudent and careful person would have done under the circumstances; and that he was driving on the right hand or West side of the road and at a lawful rate of speed, then he was not guilty of any negligence, and, in such case, your verdict should be for the defendant.

No. 11.

You are instructed that even though you should find that the said Paul L. Nelson and Emma Smith were, on the day in question, passengers or guests in the Ford Coupe, nevertheless, you are instructed that they were required to exercise ordinary care and caution in order to avoid injury. Therefore, if you should find that the defendant was guilty of some negligence, still, if you find from the evidence that said deceased persons, or either of them, failed to do any of the things which an ordinarily prudent person under the same circumstances would have done and such omission or acts in anywise contributed proximately to his or her injury, then your verdict must be in favor of the defendant.

the, and against the plaintiffs whose child was guilty of such negligence.

No. 12.

You are instructed that if the deceased persons, Paul W. Nelson and Ramona Smith, were invited by the driver of the Ford Coupe to ride with him, then and in such case, said deceased persons would not be chargeable with the negligence, if any, of the driver of the Ford coupe and the fact, if it be a fact, that the driver of the Ford coupe was negligent, would not defeat the right of plaintiffs to recover in this action.

No. 13.

You are instructed, members of the jury, that if you find the issues in favor of the plaintiffs, Joseph Nelson and Mary Jane Nelson, you should award them such amount as you may find from the evidence will fairly and justly compensate them for the pecuniary loss of damages, if any, which they have sustained by reason of the death of their son, if you find he was their

ps. In determining the amount of such damages, any, you may take into consideration the age, health and intelligence of their son at the time of his death; his disposition to labor and assist his parents; the probable amount of money, if any, that he would, had he not been killed, have contributed to the plaintiffs, both before and after he reached his majority, less such amount, if any, his parents would probably spend for his care and keep; the value of the pecuniary loss of any probable aid, assistance, society, comfort and companionship that their son Paul L. Nelson, probably would have given to the plaintiffs in future years, had he not been killed, and the cost, if any, incurred by the plaintiffs in burying their son Paul. In this connection, however, you are instructed that the plaintiffs are not entitled to any damages for the grief and suffering that may have been occasioned by the death of their son.

26 No. 14.

You are instructed, members of the jury, that if you find the issue in favor of the plaintiff

8. Jesse Smith and Elia May Smith, you should award them such an amount as you may find from the evidence will fairly and justly compensate them for the pecuniary loss or damages, if any, which they have sustained by reason of the death of their daughter, if you find she was their minor daughter, not exceeding the sum of \$2000.00.

In determining the amount of such damages, if any, you may take into consideration the age, health and intelligence of their daughter at the time of her death; her disposition to labor and assist her parents; the probable amount of money, if any, that she would, had she not been killed, have contributed to the plaintiffs both before and after she reached her majority, less such amount as her parents could probably spend for her care and keep; the probability or improbability that she would have outlived her parents; the value of the pecuniary loss of any probable aid, assistance, society, comfort and companionship, that Lemona Smith probably would have given to the plaintiffs in future years; had she not been killed, and the cost, if any, incurred by

6. the plaintiffs in burying their daughter,

among. In this connection, however, you are instructed that the plaintiffs are not entitled to any damages for grief and suffering that may have been occasioned by the death of their daughter.

No. 15.

You are instructed that it is the imperative duty of the jury to hear and determine this case precisely the same as if it were between two individuals. The fact that the plaintiffs in each case are individuals and the defendant in each case is a corporation should make no difference whatever with the jury. A corporation is entitled to the same protection of the law as is an individual. Sympathetic feelings have no place whatever in the trial of a case in a court of justice. You should disregard all influence and determine the case at bar, according to the law and the evidence before you, regardless of who the parties are, with fairness and impartiality.

No. 16.

No. measure of damages, should you find for the plaintiffs, is not to be taken by you as any instruction that I either believe or do not believe that either plaintiff is entitled to recover damages. Such an instruction is given to guide you in case you find from the evidence that the plaintiff is entitled to recover, as it is the duty of the Court to charge you fully upon all the law in the case; and if you should determine that plaintiffs in either action are not entitled to recover, then, and in that event, you should entirely disregard the instruction as the measure of damages, in respect to such plaintiffs.

No. 17.

You are instructed that negligence is the failure to do what a reasonably prudent person would ordinarily have done under the circumstances of the situation, or doing what such person under such existing circumstances would not have done. The essence of the fault may lie in acting or omitting the act. The duty is dictated and measured by the exigencies of the occasion.

No. 18.

re. reasonable diligence, and implies such watchfulness, caution and foresight as, under all the circumstances of the particular case, would be exercised by a reasonably careful prudent person.

No. 19.

You are instructed that contributory negligence means the failure to observe that degree of care which ordinarily careful and prudent persons usually observe under the same or similar circumstances to protect themselves from injury, and, by reason of such failure, helped to cause or bring about the injury complained of.

No. 20.

By proximate cause, you are instructed, is meant that cause which in a natural and continuous sequence, unbroken by any new cause, produced the injury, and without which the injury would not have occurred.

No. 21.

You are instructed that the mere fact that an accident happened or that plaintiff suffered damages constitutes no proof of negligence

Twp.

No. 22.

You are instructed that the plaintiffs recover, if at all, only by proving to your satisfaction by a preponderance of all the evidence, that defendant was guilty of one or more of the acts of negligence alleged in the two complaints. It is alleged that defendant was driving said truck carelessly and negligently on the side of the highway upon which the deceased persons, Paul L. Nelson and Remond Smith, were then and there travelling and carelessly and negligently drove said truck against said Ford coupe, in which said deceased persons were riding. If you believe that defendant's truck was being driven on the right side of the highway and, at the time of the collision, was then and there on the right side of the highway, your verdict should be for the defendant; but if you find by a preponderance of the evidence that said truck was being driven on the wrong, or least one-half of the correct highway at the time of the collision, then your verdict may be for the plaintiffs, and each of them.

No. 23.

I charge you, Gentlemen of the Jury, that you are not to consider any statements made by counsel on either side of this case as evidence in the case.

No. 24.

By a preponderance of the evidence is meant greater weight of the evidence, that which is the more convincing as to its truth. It is not necessarily determined by the number of witnesses for or against a proposition, although, all things being equal, it may be so determined.

No. 25.

You are the sole judges of the facts proved, of the credibility of the witnesses, of the weight and effect of the evidence, and of the inferences to be drawn therefrom; and in determining these matters you are to exercise your best judgment, based upon your experience in life. You may take into consideration the conduct and manner of the witnesses while testifying before you; their intelligence and means of observation; their opportunities to know and their capacity

Qrs. to remember and to state the facts to which they testify: their interest or lack of interest, if any has been shown, in the result of the trial; their prejudice or bias, if any has been shown; and the probability or improbability of the truth of their statements in view of all the other evidence. You are not bound to believe all that any witness may have testified to, nor are you bound to believe any witness. You may believe one witness as against many, or many witnesses as against one. If you believe any witness in this case has wilfully testified falsely on any material matter, then you have the right to disregard the entire testimony of such witness, except as such witness may have been corroborated by a credible witness or credible evidence in the case.

No. 26.

In case there is a conflict in the testimony of the witnesses, it is your duty to reconcile such conflict so far as you can, but if you cannot do so, then you must determine what you do believe.

2000-1
-100-
15. You should not pick out any particular fact in evidence or any particular statement of any witness and give it undue weight. You should give such weight to inference from the facts proved as in fairness you think they are entitled to. You should arrive at your verdict solely upon the evidence introduced before you upon the trial. You should not consider nor be influenced by any evidence offered which was not admitted by the court, nor are you to consider any evidence given, if the same was afterwards by the court ordered stricken out.

No. 28.

It is your duty to consider the evidence all together fairly, impartially, conscientiously, and without prejudice of any kind and from such consideration in connection with the instructions given to you by the court, you should reach a verdict such as will do justice between the parties.

No. 29. These instructions are to be construed and considered together, as a whole, and each instruction should be read and understood

the. with reference to and as a part of the entire charge, and not as though each instruction were intended to present the whole law of the case at any particular point.

No. 30.

When you retire to consider of your verdict you will select one of your members as foreman. Your verdict must be in writing, signed by your foreman, and when found must be returned by you into this court. A concurrence of at least six members of the jury is necessary to your verdict and six jurors thus concurring may find a verdict and sign the same.

You may take these instructions with you to your jury room and return them with your verdict. I will hand you blank forms of verdicts, and when you have agreed upon what your verdicts shall be, notify the officer having you in charge, and he will conduct you into court.

These instructions dated this 17th day of March, A. D. 1939.

JUDGE W. T. TURNER,

J u d g e

Trv. **EXCEPTIONS TO INSTRUCTIONS TO JURY**

360 Come now Joseph E. Nelson and Mary Jane Nelson, his wife, and James Smith and Ella May Smith, his wife, Plaintiffs in the above entitled actions and jointly and severally object and except to the refusal of the court to give the requested instructions in the form and as requested. Plaintiffs Nelsons object and except to the refusal of the court to give their requests in the form requested in requests No. 1, No. 2 and No. 3. James Smith and Ella May
361 Smith object and except to the refusal of the Court to give their requests No. 2, No. 3 and No. 4.

Motion for new trial filed March 22,
1939.

New trial denied April 14, 1939.

TITLE OF COURT AND CAUSE IN SHORT CASE

MOTION TO STRIKE COST BILL

Now move the Plaintiffs in the above entitled
action and move the court to strike the entire
cost bill filed by defendant in this action for
the reason that the same was not filed within
five days after the verdict of the jury was ren-
dored in said cause, and therefore the cost
bill was not filed within the time provided by
law. In the event the entire cost bill is not
stricken, the Plaintiffs request the court to
tax costs of the following items:

1. Reduce the item of mileage of Lynn Huff
from twenty-nine (29) miles to nineteen (19)
miles, for the reason that it is not twenty-nine
miles from Payson to Prove.

Reduce the item of mileage of John Chapple
from twenty-nine (29) miles to nineteen (19)
miles, because the distance from Prove to
Payson is not twenty-nine miles, but approxi-

... actually nineteen miles.

Reduce the item of mileage of Dean M. Terry from Forty-five (45) miles to One (1) mile, because the said Dean M. Terry did not travel from Salt Lake City to Provo to attend the trial, but on the contrary was in Provo at the time he was subpoenaed and called to testify in this cause.

8 2. To reduce the number of days of Leuben Christensen from four (4) days to one and one-half (1½) days, for the reason that said Leuben Christensen did not attend Court for more than three days and that while he attended court he was a witness in the above entitled case and the case of Joseph E. Nelson and Mary Jane Nelson against the same defendant. Also to reduce the mileage of Leuben Christensen from eleven (11) miles to five and one-half (5½) miles, for the reason that at the time said witness came to Provo to testify in the above entitled case he also came to Provo to testify in the case of Joseph E. Nelson and Mary Jane Nelson against the same defendant.

To reduce the number of days actual atten-

J. . Cause of C. H. Allred from four days to one and one-half days for the reason that said C. H. Allred was required to attend court for only three days and while so required to attend court was present for the above entitled cause as well as the case of Joseph E. Nelson and Mary Jane Nelson against the same defendant. And also to reduce the mileage of C. H. Allred from eleven miles to five and one-half miles, for the reason that at the time said witness came to prove to testify in the above entitled case he also came to prove to testify in the case of Joseph E. Nelson and Mary Jane Nelson against the same defendant.

To reduce the number of days of Lynn Huff from four days to one and one-half days for the reason that Lynn Huff was not required to attend court more than three days and because during the time he attended he was required to attend not only for this case but also the case of Joseph E. Nelson and Mary Jane Nelson against the same defendant. And also to reduce the mileage of Lynn Huff from nineteen miles to nine

J. J. and one-half miles, for the reason that at the time said witness came to Prove to testify in the above entitled case, he also came to Prove to testify in the case of Joseph E. Nelson and Mary Jane Nelson against the same Defendant.

To reduce the number of days of Ralph Chapple from four days to one and one-half days for the reason that Ralph Chapple was not required to attend court for more than three days and during the time he so attended he attended not only for the above entitled cause, but also for the cause of Joseph E. Nelson and Mary Jane Nelson against the same Defendant. And also to reduce the mileage of Ralph Chapple from nineteen miles to nine and one-half miles, for the reason that at the time said witness came to Prove to testify in the above entitled case, he also came to Prove to testify in the case of Joseph E. Nelson and Mary Jane Nelson against the same Defendant.

§ To reduce the number of days of Alvin A. Samuelson from four days to one and one-half days for the reason that Alvin A. Samuelson was not required to attend court for more than

... it is says, and while so attending court was required to attend court not only for the above entitled case, but also for the case of Joseph E. Nelson and Mary Jane Nelson against the same defendant. And also to reduce the mileage of Alvin E. Samuelson from Forty-five miles to twenty-three and one-half miles for the reason that at the time said witness came to prove to testify in the above entitled case, he also came to prove to testify in the case of Joseph E. Nelson and Mary Jane Nelson against the same defendant.

To reduce the number of days of Ray Smith from one day to one-half day, for the reason that Ray Smith was required to attend not only in the above entitled case, but also in the case of Joseph E. Nelson and Mary Jane Nelson against the same defendant. And also to reduce the mileage of Ray Smith from forty-five miles to twenty-three and one-half miles for the reason that at the time said witness came to prove to testify in the above entitled case, he also

came to prove to testify in the case of Joseph

... F. Nelson and Mary Jane Nelson against the same defendant.

To reduce the number of days of Leon E. Terry from one day to one-half day for the reason that Leon E. Terry attended court not only for the defendant in the above entitled case, but also for the defendant in the case of Joseph E. Nelson and Mary Jane Nelson against the said defendant. And also to reduce the mileage of Leon E. Terry from one mile to one-half mile, for the reason that at the time said witness came to Court to testify in the above entitled case, he also came to Court to testify in the case of Joseph E. Nelson and Mary Jane Nelson against the same defendant.

To reduce the days of attendance of Eve Everett Legend from one day to one-half day for the reason that the said Everett Legend in attending court in the above entitled cause as a witness for the defendant, also attended court for the same defendant in the case of Joseph E. Nelson and Mary Jane Nelson against the same defendant. And also to reduce the mileage of

Everett elegant from forty-five miles to Twenty three and one-half miles, for the reason that at the time said witness came to Preve to testify in the above entitled case, he also came to Preve to testify in the case of Joseph E. Nelson and Mary Jane Nelson against the said defendant.

3. That the various items of costs filed by the defendant herein in the above entitled case are improper and should be stricken for the reason that they were called to testify in the case of Joseph E. Nelson and Mary Jane Nelson against the same defendant and were not required to attend as witnesses in the above entitled cause.

This motion will be made upon the records, files and proceedings had in the above entitled cause.

E. E. KENULIN

ELIAS HANSEN

Attorneys for Plaintiffs

Filed March 24, 1939.

Motion to strike cost bill in Nelson case to same of \$4.

J. E. Order extending time to prepare bill of
VI exceptions filed May 13, 1933.

Order extending time to prepare bill of
72 exceptions filed June 26, 1933.

Order extending time to prepare bill of
73 exceptions filed August 18, 1933.

TITLE OF COURT AND CAUSE IN EACH CASE

ORDER

78 The Plaintiffs having filed a motion to reduce
costs in the above entitled action and the matter
having been argued by counsel and submitted to
the court, it is now ordered that the cost bill
heretofore filed in the above entitled action be
amended in the following particulars:

The mileage of Dean E. Terry, who was called
as a witness in said cause is reduced from 45
miles to 1 mile.

The mileage of Lynn Huff is reduced from 27
miles to 10 miles.

The mileage of Ralph Chapala is reduced from
29 miles to 10 miles.

The per diem of Leuben Christensen is reduced
from 4 days to 3 days.

The term of O. E. Alfred is reduced from 4 days to 3 days.

The term of Lynn Buff is reduced from 4 days to 3 days.

The term of Ralph Chepple is reduced from 4 days to 3 days.

The request to divide costs is denied because the two cases were tried jointly and the defendant has a right to look to either party or both parties for recovery of costs expended.

Dated this 13th day of October, 1939.

BY THE COURT:

ABE W. TURNER
Judge.

Filed October 13, 1939.

A similar order was made in the Nelson case.

TITLE OF COURT AND CAUSE IN BOTH CASES

IN RE

The plaintiffs having heretofore filed a motion to set aside the cost bill in the above entitled action upon the ground that said cost bill was not filed within time, and the court having considered the motion and records in this

dated this 15th day of October, 1939:

BY THE COURT:

ABE W. TURNER, Judge

Filed October 15, 1939

A similar order was made in the Nelson case.

TITLE OF SUIT AND CAUSE IS SMITH CASE

NOTICE OF APPEAL

TO THE ABOVEHEAD FARMERS LINEN LINTING, a corporation, and to its attorneys, DADLEY, JUDG, MAY & HENDERSON:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the plaintiffs Jesse S. Smith and Ella May Smith, his wife, and each of them, jointly and severally appeal to the Supreme Court of the State of Utah from that certain judgment made and entered by the above entitled court in the above entitled action on the 17th day of March, 1939, where a judgment was rendered in favor of Defendant and against the Plaintiffs, and each of them, upon the verdict of the jury rendered in said cause.

The Plaintiffs, and each of them, further appeal from the order made by the above entitled

J.S. court on the 15th day of October, 1938, denying Plaintiffs' motion to strike the cost bill filed by the defendant in said action.

This appeal is taken from the whole of said judgment and is so taken upon both questions of law and of fact.

H. E. DONULLIS

ELIAS HANSEN

Attorneys for Plaintiff

Filed October 15, 1938.

A similar Notice of appeal was filed in the Nelson case.

TITLE OF COURT AND CAUSE IN WHITE CASE

ASSIGNMENT OF ERRORS

Come now the Plaintiffs in the above entitled cause and assign the following errors upon which they rely for a reversal of the verdict and judgment rendered in the above entitled action.

1. The trial court erred in refusing to include in its instructions to the jury, Plaintiffs' following requested instruction:

"You are instructed, members of the jury, that the defendant has alleged that Ramona Spitz was guilty of contributory negligence. The burden is on the defendant to establish

7. By a preponderance of the evidence that Jennie Smith was guilty of contributory negligence. That is, negligence, which directly contributed to her death. In this connection you are instructed that if the fact that five persons were riding in the Ford coupe at the time of the collision did not directly cause or directly contribute to the collision in which Jennie Smith was killed, then, and in that case, the mere fact that Jennie Smith was riding in a Ford coupe with four other persons would not defeat any right that Plaintiffs Jennie Smith and Ella May Smith may have to recover in this action." Trans. 38. Exception taken to such refusal. Trans. 381.

8. The trial court erred in refusing to include in its instructions to the jury Plaintiff's following requested instruction:

"You are instructed, members of the jury, that contributory negligence is the want of ordinary care and prudence on the part of a person injured, contributing directly and proximately to the injury complained of. In this connection you are instructed that Jennie Smith was required to exercise only that degree of care and caution which persons of like age, capacity and experience might be reasonably expected to naturally and ordinarily use in the same and under like circumstances." Trans. 37. Exception taken Trans. 381.

9. The trial court erred in refusing to grant Plaintiff's motion to strike defendant's cost bill. Trans. 67. Over denying motion Trans. 70.

4. The trial court erred in refusing to apportion the costs so that only one-half thereof be taxed against the plaintiffs in this action. Trans. 69-70. Order denying motion. Trans. 70.

E. W. McMULLIN

ELIAS HANSEN

Attorneys for Plaintiffs.

Similar assignments of error were filed in the Nelson case.

E. W. McMULLIN

ELIAS HANSEN

Attorneys for Plaintiffs.

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WITNESSES

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