

bond as security for the payment of the damages mentioned in the preceding paragraph, namely; that portion of the \$5,000 damages remaining after the application of the 1906 drawback and interest.

(8) Against both defendants for the plaintiffs' costs of the action.

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HONOR V. BANGLE—MIDDLETON, J.—DEC. 28.

*Negligence—Collision of Motor Vehicles upon Highway—Each Driver Guilty of Negligence—Concurrent Negligence—Each Negligence a Proximate Cause of Collision—Claim and Counterclaim—Dismissal—Costs.*—The plaintiff owned a milk-waggon, a one-ton Ford car; the defendant owned a Hudson super-six, which, when a collision with the plaintiff's car occurred, was carrying a large quantity of liquor, admittedly illegally. At the street intersection the plaintiff had the right of way, being on the right of the other car, but the defendant's car passed in front of the milk-waggon, and so nearly escaped contact that it was hit upon the rear wheel. Both cars turned over, and neither driver was injured, but both milk and whisky were a complete loss. The plaintiff sought to recover for the damage to his car and for the lost milk. The defendant counterclaimed and asked for the amount of damage done to his car, admitting that the value of the lost liquor could not be recovered, and that the amount paid as a fine was too remote. The action was tried without a jury at Sandwich. MIDDLETON, J., in a written judgment, said that the driver of the milk-waggon had no license for the current year, but had passed all necessary examinations and had held a license the previous year. The illegality of the conduct of both parties was not the cause of the accident, and nothing turned on the right of way. Each driver was guilty of negligence; and the negligence of each was a proximate cause of the accident. Had either used due care or caution, the accident would not have taken place. It was a case of concurrent negligence. Both claim and counterclaim failed, and both should be dismissed without costs. W. D. Roach, for the plaintiff. F. W. Wilson, for the defendant.