

and he appears to have watched it in its descent down the hill until the actual moment of collision.

Prior thereto, Finmark alleges that as the taxicab approached him, he observed that it was bearing to the north side of the road, namely, in the direction of his car, and he says that (evidently for greater safety) he ran his car close to the north edge of the road, but he did not sound his horn from the time he saw the taxicab on the top of the opposite hill until the accident.

The plaintiff's car was lighted by two oil sidelights, but had no headlights. The night was misty, and Allan, the driver of the taxicab, according to his evidence, was not aware of the presence of the plaintiff's car until the very moment of impact, and from all that appears Allan had no warning by horn, headlight, or otherwise in regard to the plaintiff's car.

At the bottom of the two hills a roadway turns off towards the south, and Allan had intended to take that road, and naturally would have descended the hill on the right side. When about reaching this side road he was asked by one of the occupants of the taxicab to go up the opposite hill, and he says that before he had changed his direction in order to do as requested, the plaintiff's car struck the taxicab on the side. Allan's evidence on this point would indicate that he was turning to take the side road at the time of the accident and therefore was not on what was to him the left hand side of the centre of the main road, which was 29 feet wide, and Allan says he kept to the south of this centre line.

Each driver alleges that as his car descended it was going at a moderate speed and was under proper control. There was much conflicting evidence as to the position of the cars and other circumstances after the accident, and it was for the jury to find whether it was caused by the negligence of either party, and if so, which, or whether it was the product of their joint negligence. There was evidence which, I think, would justify any one of such findings.

A careful perusal of the evidence leaves me in great doubt as to which, if either party alone caused the accident. In a case like the present it would have been preferable if questions had been submitted to the jury. They might have served the useful purpose of not only directing the jury's attention to the determining issues of fact, but also that of