

## INDEX

	PAGE
Summons .....	1
Complaint .....	2
Answer .....	4
Reply .....	5
Postea .....	6
Order for Judgment .....	7
Judgment .....	8
Notice of Appeal .....	9
Grounds of Appeal .....	10
Charge to Jury .....	171
Exceptions to Charge .....	179

### TESTIMONY.

#### *For Plaintiff.*

Mrs. Ida Jackson,	
direct examination .....	14
cross " .....	26
re-direct " .....	34
John Simmons,	
direct examination .....	35
cross " .....	41
re-direct " .....	49
Mrs. Katherine DeL. Morris,	
direct examination .....	52
Miss Lillian R. Greenbaum,	
direct examination .....	57
Clarence Jackson,	
direct examination .....	61
Mrs. Julia Roberts,	
direct examination .....	66
Mrs. Gussie Burden,	
direct examination .....	68
Dr. Louis Lipton,	
direct examination .....	71
cross " .....	78

	PAGE
<i>For Defendant.</i>	
Mrs. Christine Smith,	
direct examination .....	83
cross " .....	88
re-direct " .....	104
Benjamin Thomas,	
direct examination .....	105
cross " .....	110
re-direct " .....	114
re-cross " .....	114
Ernest Weyl ,	
direct examination .....	115
cross " .....	121
re-direct " .....	149
re-cross " .....	149
Toefle Smith,	
direct examination .....	152
cross " .....	158

*Summons.*

**SUMMONS.**

**New Jersey Supreme Court**

The State of New Jersey to Ernest Weyl, YOU ARE SUMMONED to answer (L. s.) the annexed complaint of Ida Jackson, in an action at law in the Supreme Court. And TAKE NOTICE, that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this 11th day of July, nineteen hundred and twenty-five.

EDWARD J. KELLEHER,  
Clerk.

JOSEPH B. STADTMAUER,  
Attorney.

30

40

*Complaint.*

**COMPLAINT.**

Filed July 11, 1925.

NEW JERSEY SUPREME COURT.  
PASSAIC COUNTY.

10

IDA JACKSON,

*Plaintiff,*

*vs.*

ERNEST WEYL,

*Defendant.*

*Action  
at Law.*

*Complaint.*

20

Plaintiff, Ida Jackson, residing at No. 861 Main avenue, in the City of Passaic, in the County of Passaic and State of New Jersey, complains of the defendant and says:

30

(1) On the 20th day of June, 1925, the defendant was the owner of a certain Dodge Sedan automobile. On the said date, the plaintiff was lawfully crossing Bloomfield avenue, a public highway, in the City of Passaic, County of Passaic and State of New Jersey, from the south side of said street to the north side thereof, at or near the point where Main avenue, another public highway of said City of Passaic, intersects Bloomfield avenue.

40

(2) On the aforesaid date, the defendant did operate and drive the said automobile along Bloomfield avenue in a westerly direction and the said defendant at said time, did drive and operate the said automobile negligently and at a high and excessive rate of speed and without warning did carelessly and negligently strike and violently throw to the ground and did run over

*Complaint.*

the plaintiff, who was lawfully crossing said Bloomfield avenue as aforesaid.

10

(3) Because of the negligence of the said defendant, the said plaintiff sustained severe and painful injuries, to wit, the plaintiff sustained a fractured elbow, bruises about the legs and body and received other bodily and internal injuries, underwent severe and excruciating pain and suffering, and has been permanently injured; she has suffered great shock to her nervous system, and has been from thence hitherto, prevented from transacting her ordinary business and affairs, and has been forced to pay out sums money for medical attendance and other expenses incident upon her injuries.

20

(4) Plaintiff demands the sum of \$25,000 damages.

JOSEPH B. STADTMAUER,  
Attorney for Plaintiff.

30

40

*Answer.*

**ANSWER.**

Filed July 28, 1925.

NEW JERSEY SUPREME COURT.

10

PASSAIC COUNTY.

IDA JACKSON,	} <i>Plaintiff,</i>	} <i>Action</i>	
<i>vs.</i>			} <i>at Law.</i>
ERNEST WEYL,			
	} <i>Defendant.</i>		

20

Defendant, answering complaint of the plaintiff herein, says that:

1. Admits the ownership of the automobile mentioned in paragraph No. 1, but denies each and every allegation therein.
2. Denies paragraph No. 2.
3. Denies paragraph No. 3.

**FIRST DEFENSE.**

30

1. The defendant was not guilty of negligence.

**SECOND DEFENSE.**

1. The plaintiff was guilty of contributory negligence in that at the time and place mentioned in the complaint she was conducting herself in a reckless, careless and negligent manner, without looking where she was going and whatever injuries she sustained were as a result of her own negligence.

40

*Reply.*

Wherefore defendant demands that complaint herein be dismissed with costs.

JOSEPH C. PAUL,  
Attorney for Defendant.

A true copy.

EDWARD J. KELLEHER,  
Clerk.

10

**REPLY.**

Filed August 28, 1925.

NEW JERSEY SUPREME COURT.

PASSAIC COUNTY.

20

IDA JACKSON,	} <i>Plaintiff,</i>	} <i>Action</i>	
<i>vs.</i>			} <i>at Law.</i>
ERNEST WEYL,			
	} <i>Defendant.</i>		

Plaintiff replying to the answer of the defendant herein, says that: 30

1. Plaintiff denies generally every allegation in the answer.

JOSEPH B. STADTMAUER,  
Attorney for Plaintiff.

A true copy.

EDWARD J. KELLEHER,  
Clerk.

40

*Postea.*

**POSTEA.**

Filed June 10, 1927.

NEW JERSEY SUPREME COURT.

PASSAIC COUNTY.

10

IDA JACKSON,

*Plaintiff,*

*vs.*

ERNEST WEYL,

*Defendant.*

*Postea.*

20

The above action was tried before Judge Newton H. Porter, with a jury at the Passaic County Circuit, on June 7th and 8th. The jury brought in a verdict of two thousand (\$2,000) dollars, in favor of the plaintiff and against the defenadnt.

NEWTON H. PORTER,  
Circuit Court Judge.

A true copy.

EDWARD J. KELLEHER,  
Clerk.

30

40

*Order for Judgment.*

**ORDER FOR JUDGMENT.**

NEW JERSEY SUPREME COURT.

IDA JACKSON,

*Plaintiff,*

*vs.*

ERNEST WEYL,

*Defendant.*

*Action  
at Law.*

10

*On Postea.*

\$2,000.00

90.83

\$2,090.83

20

It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant for the sum of two thousand dollars, besides costs to be taxed *nisi*.

Entered, June 10, 1927.

On motion of

JOSEPH B. STADTMAUER,  
Attorney.

30

A true copy.

EDWARD J. KELLEHER,  
Clerk.

40

*Judgment.*

**JUDGMENT.**

NEW JERSEY SUPREME COURT.

10	IDA JACKSON,  <i>vs.</i>  ERNEST WEYL,	} <i>Plaintiff,</i>  } <i>Defendant.</i>	} <i>Judgment</i> <i>Record.</i>  } <i>Action</i> <i>at Law.</i>  } <i>On Postea.</i>
----	--	--	---

Joseph Stadtmauer, attorney.

Whereupon it is adjudged that the plaintiff, Ida Jackson, do recover of the said defendant, Ernest Weyl, the sum of two thousand dollars damages together with her costs which have been taxed at the sum of ninety dollars and eighty-three cents, making in the whole the sum of two thousand and ninety dollars and eighty-three cents.

20  
 \$2,000.00  
 90.83  
 -----  
 \$2,090.83

Judgment entered June 10, 1927.

WM. S. GUMMERE,  
*C. J.*

30  
A true copy.

EDWARD J. KELLEHER,  
Clerk.

*Notice of Appeal.*

**NOTICE OF APPEAL.**

Filed June 16, 1927.

NEW JERSEY SUPREME COURT.

10	IDA JACKSON,  <i>vs.</i>  ERNEST WEYL,	} <i>Plaintiff,</i>  } <i>Defendant.</i>	} <i>Action</i> <i>at Law.</i>  } <i>Notice</i> <i>of Appeal.</i>	10
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To Joseph B. Stadtmauer, Esq., attorney for plaintiff:

TAKE NOTICE, that the defendant in the above-entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this court in the above-entitled case.

JOSEPH C. PAUL,  
Attorney of Defendant.

JACOB SCHNEIDER,  
Of Counsel.

Due service of a copy of the within notice of appeal is hereby acknowledged this day of June, 1927.

JOSEPH B. STADTMAUER,  
Attorney of Plaintiff.

*Grounds of Appeal.*

**GROUNDS OF APPEAL.**

Filed August 29, 1927.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10

IDA JACKSON, <i>Plaintiff-Appellee,</i>  <i>vs.</i>  ERNEST WEYL, <i>Defendant-Appellant.</i>	}	<i>Action at Law.</i>  <i>On Appeal.</i>  <i>Grounds of Appeal.</i>
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The defendant-appellant hereby sets up the following as grounds of appeal:

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1. The trial judge erred in the following; in his charge to the jury at the conclusion of the case he made the following remarks concerning the right of way as between a pedestrian at a street crossing and a vehicle at the same:

30

“Now, the law of this State is that a pedestrian has the right of way over a vehicle at street crossings where the houses on the average are less than a hundred feet apart, as it is agreed in this case they are at that location, and therefore, where a pedestrian and an automobile, moving in different directions, approach such a crossing at the same time or in such a manner that if both continue their respective course there is danger of a collision, then the pedestrian is entitled to the first use of the crossing; and it is the duty of the driver of the automobile to stop or to so reduce his speed as to avoid and give such pedestrian reasonable opportunity to pass in safety, and to that end to have such automobile under such control as to enable him to do so, and a disregard of

40

*Grounds of Appeal.*

the pedestrian’s right of way, due to excessive speed, while not conclusive as to the driver’s negligence, is a factor in the situation, which, considered as a whole, presents a jury question as to the negligence of the driver in case of an injury to the pedestrian by an automobile so driven.

10

“In other words, keeping in mind that the pedestrian had the right of way for the automobile at that intersection under the conditions that were present in the case from which I have just read, and while it is not conclusive as that decision holds, it is a factor for you to take into consideration when deciding this question of whether or not there was negligence.”

The Court thereby assumed and lead the jury to believe that it was an undisputed fact in this case that the plaintiff was crossing the street in question at a point which was a regular crossing or crosswalk, whereas the evidence on this point was very materially in dispute, some witnesses having testified that the said plaintiff was crossing at a point which was not a regular crossing or crosswalk. The Court, therefore, assumed and lead the jury to believe that the said plaintiff had the right of way over the defendant’s vehicle at the time and place involved in this case. Exception was taken by the defendant to this portion of the charge.

20

30

2. The trial court in charging the jury at the conclusion of the case, removed from their consideration the question whether the plaintiff was crossing the public highway at a crosswalk or not, whereas this was a seriously disputed and important point in the case.

3. The Court, in effect, charged the jury that the plaintiff was crossing the public highway at the time of the collision on a crosswalk and had

40

*Grounds of Appeal.*

the right of way over the defendant's vehicle, whereas, this fact was gravely disputed; the the testimony being contradictory, so that the Court should have submitted the same to the jury as a question of fact to be passed upon and decided by them.

10

JOSEPH C. PAUL,  
Attorney of Defendant-Appellant.  
JACOB SCHNEIDER,  
Of Counsel.

Service of the within grounds of appeal is hereby acknowledged this 25th day of August, 1927; it may be filed as of due time.

20

JOS. B. STADAMAUER,  
Attorney of Plaintiff-Appellee.

30

40

*Opening.*

NEW JERSEY SUPREME COURT.  
PASSAIC CIRCUIT.

IDA JACKSON,	}	<i>Plaintiff,</i>	}	<i>Action at Law.</i>	10
<i>vs.</i>					
ERNEST WEYL,		<i>Defendant.</i>			

Paterson, N. J., June 7, 1927.

Before Hon. Newton H. Porter, J., and a jury.

Appearances:

Jos. B. Staudtmauer, Esq. (Meyer Lobsenz of counsel), for the plaintiff. 20

Jos. C. Paul, Esq (Jacob Schneider, Esq., of counsel), for the defendant.

A jury of twelve was duly empanelled and sworn.

Mr. Lobsenz opened the case to the jury on behalf of the plaintiff.

Mr. Schneider opened the case to the jury on behalf of the defendant.

30

Mr. Lobsenz: If your Honor please, because of the opening of counsel, we may stipulate that there is no dispute about it, that the defendant was driving and was the owner of the car in question, at the time of the accident. 30

Mr. Schneider: Oh, yes; there is no dispute about that.

The Court: Very well, let it be so noted.

We will take a recess now until tomorrow morning at ten o'clock. 40

EVENING RECESS.

*Mrs. Ida Jackson, direct.*

June 8, 1927, 10 A. M.

PLAINTIFF'S CASE.

MRS. IDA JACKSON, the plaintiff, sworn.

10 *Direct examination* by Mr. Stadtmauer.

Q Now, Mrs. Jackson, I want you to talk real loud so the jury can hear you, the Court can hear you, and I can hear you. Where do you live? A 87 Main avenue.

Q Where is that? A Passaic.

Q Now, on the 20th of June, 1925, do you recall being in an accident? A Yes.

Q You do. Now, where did this accident happen? A On Bloomfield avenue, at Main avenue, Passaic.

Q Now, prior to the accident, where had you been? A To the theatre.

Q What theatre? A Play House.

Q Now, how far is the Play House from the scene of the accident? A It was two blocks.

Q About two blocks away. Now, did you ride in an automobile from the scene of the accident, or did you walk? A We walked.

30 Q You walked? A Yes.

Q Now, as you approached the corner of Main avenue and Bloomfield avenue, were you walking alone? A No.

Q Who were you with? A Mr. Simmons.

Q Were there any other people there with you? A Yes.

Q A few people or a great many of them? A A great many of them.

Q Where were you coming from? A From the theatre.

40

*Mrs. Ida Jackson, direct.*

Q Now, as you approached—as you came to the corner—withdraw that question. As you came to the corner, did you just continue right on or did you stop? A I stopped.

Q What did you do then? A I looked left and I looked to the right.

Q You looked to the left and to the right? 10 A Yes.

Q Then what did you do? A Then I walked along slowly.

Q You walked along slowly? A Yes.

Q Where did you walk? A Off the curbstone, I was going across the street; about four feet from crossing the street I looked to the left and I looked to the right; that is the time the car struck me.

Q Were there any people in front of you at the time you were walking? A Yes. 20

Q Anybody in back of you at the time you were walking? A I didn't look back.

Q Was there anyone else with you at the time besides yourself? A Yes.

Q Who was with you? A Mr. Simmons.

Q Did you see Mr. Weyl's automobile before you were struck? A I seen the automobile, but all I could remember, automobile struck me; I don't know anything else because I was unconscious. 30

Q You were what?

The Court: No, before you were struck, he asked you whether you saw the automobile before you were struck?

The Witness: Yes, I saw the automobile.

Q How far from you? A About four feet. That is what I want to explain, I can judge from me about four feet. 40

*Mrs. Ida Jackson, direct.*

Q Was the automobile going fast or slow?  
A Going fast.

Q Now, where were you taken to? A To  
across the street. After the automobile struck  
me, I cannot remember what they done with me  
then, but they told me I was taken across the  
10 street.

The Court: Don't tell us what they told  
you.

Q Where were you at the time you awoke?  
A Where I was?

Q Yes. A At the hospital.

Q How long did you remain there? A Un-  
til the next day.

20 Q Why did you leave? A Because I wanted  
to go home.

Q You wanted to go home? A Yes.

Q Now, when you returned home, did you  
immediately go out and do your work? A No.

Q What did you do? A I laid in bed.

Q Were you attended by a physician? A  
Yes.

Q Who was the physician? A Mrs. Robert  
Green brought—

30 Q Who was the physician—the doctor? A  
Dr. Lipton.

Q Where is he from? A Passaic.

Q Now, how long were you in bed? A Four  
weeks.

Q Were you able to leave your bed? A  
No.

Q How long was it before you were able to  
leave the bed? A First of December.

Q First of December? A Yes.

40 Q Leave the house? A Yes.

*Mrs. Ida Jackson, direct.*

Q Were you able to go about without being  
assisted by anyone? A No.

Q Now, during the time that you were ill,  
who attended you? A Mrs. Burden and Mrs.  
Roberts, my sister.

Q Who are they? A Mrs. Burden, Mrs.  
Roberts. 10

Q Where did they live? A They lived in  
the same apartment house I lived in, building.

Q Now, before the accident, what was your  
occupation? A Laundress.

Q Laundress? A Yes.

Q How much did you earn a week? A Six-  
teen dollars a week.

Q Sixteen dollars a week? A Yes.

Q Are you able to work now as a laundress?  
A No, I work only about a couple of days in  
the week. 20

Q Why don't you work more than a couple  
of days in the week? A I ain't able to.

Q Aren't able to? A No.

Q Why not? A Because since the accident I  
have not been able to work.

Q Have not been able to work since the acci-  
dent; is that right? A Yes.

Q Now, who lived with you? A My son.

Q Anyone else? A No. 30

Q Anyone else a member of your household?  
A I had boarders before I got hurt, but after I  
got hurt all of my boarders left me.

Q Why did they leave you? A Why, I  
weren't able to take care of them.

Q How much did the boarders pay you? A  
I had four boarders.

Q How much? A Two of the boarders paid  
me eight dollars a week; the other two paid me  
five. 40

*Mrs. Ida Jackson, direct.*

Q Why the difference? A Because, two of them sleep, and the other two sleep and lodge.

The Court: What is the difference between sleep and sleep and lodge?

10 The Witness: I board them, too; I feed them.

The Court: You fed the lodgers?

The Witness: Yes.

The Court: That is why they paid you eight dollars a week?

The Witness: Yes.

The Court: I guess you made more profit out of the five dollar ones than you did the eight, didn't you?

20 The Witness: (No audible response).

Q Now, Mrs. Jackson, the five dollars and the eight dollars, is that every week or every month?

A Every week.

Q Per week? A Yes.

Q Now, are those boarders with you now?

A No.

30 Q When did they leave you? A When I got—after I got hurt, about a week after I got hurt they left me.

Q They left you? A Yes.

Q You have lost that revenue ever since? A Yes.

Q Now, how old are you? A I am thirty-six—I will be thirty-six next month.

Q Are you married? A No, not now; I have been married.

Q Widow or divorcee? A Yes, I am married.

Q You are? A Yes, but my husband is dead.

40 Q Oh, your husband is dead? A Yes.

*Mrs. Ida Jackson, direct.*

Q How long is he dead? A He has been dead about eight years now.

Q Now, let's go back to the accident. What part of the road were you on at the time you were hit by Mr. Weyl's car? A Left side.

Q Left side of the road? A Yes.

10 Q Now, you are referring to his left or your left? A Mine.

The Court: "My left"; keep your voice up, Mrs. Jackson.

Q Now, were you on the crosswalk at that time? A Yes.

Q What crosswalk are you referring to? A The corner of Bloomfield avenue and Main avenue.

The Court: Which street were you crossing—Main avenue or Bloomfield avenue?

The Witness: I was crossing Bloomfield avenue.

The Court: At Main?

The Witness: Yes.

30 Q Now, what was your condition while you were in bed after the accident? A My stomach and side and shoulders worried me.

Q They worried you, you say? A Yes, and my side and shoulder.

Q What do you mean by "worried you?" A They hurt me because—

Q Hurt? A Yes.

Q Pained you? A Yes.

Q Do they still pain you? A Yes.

Q When? A All bad weather, I have trouble with my shoulders and sides.

40

*Mrs. Ida Jackson, direct.*

Q Now, after you got out of bed, were you able to do your work as well as you did before the accident? A No.

Q Why couldn't you do it? A I wasn't able.

Q You were not able? A I wasn't able.

10 Q Now, why weren't you able to? A Well, I was sick with this thing hurting and paining all of the time; I just wasn't able.

Q Now, Mrs. Jackson, after you got out of bed, were you able to go about unattended? A No.

Q Who assisted you? A Mrs. Roberts.

Q Who else? A Mrs. Burden.

Q Now, did they visit you very often? A Yes.

20 Q While you were in bed? A Yes.

Q And after you got out of bed? A Yes.

Q Do they know how long you were in bed? A Yes.

Q When was the first time you left the house, Mrs. Jackson, after your illness? A About—about the 1st of December.

Q Around the first of December? A Yes.

Q Were you well at that time? A No, I was assisted.

30 Q You had to be assisted about? A Yes.

Q Why were you assisted about? A I wasn't able to go alone.

Q You were not able to go alone? A No.

Q Why not? A Because I felt dizzy in the head and I was ascaered to cross the street alone.

Q Ascaered to cross the street alone? A Yes.

Q Can you give me the names of some of the people you worked for before the accident? A Yes.

40 Q Who are they? A Mrs. Greenbaum, Mrs. Marsh.

*Mrs. Ida Jackson, direct.*

Q Where are they from? A Paterson.

Q From Paterson; are they here in court today? A Yes.

Q Do they know you well? A Yes.

Q You did work for them just before the accident? A I worked for them on Friday, last day I worked for them was on Friday, and I got hurt on Saturday. 10

Q The following Saturday? A Yes.

Q By the way, what time of the day or night was this accident? A About—about eleven o'clock.

Q Eleven o'clock at night? A Yes.

Q That was the last show? A Yes.

Q Now, at the time of the accident, was it a clear night or had it been raining or was it a dry night? A It had been raining. 20

Q Was it raining heavy at the time of the accident? A No, it was raining slowly.

Q Slowly? A Yes.

Q Light? A Yes.

Q When did you first go back to work, Mrs. Jackson? A It was the first of February.

Q Of what year? A 1926.

Q Have you worked every day in the week since? A No.

Q How many days a week have you worked? A Two. 30

Q That is after this, since February 1, 1926? A Yes.

Q Do you keep boarders now? A No.

Q You do not? A No.

Q You have lost all of your revenue from them? A Yes.

Q Now, how much do you earn per week now? A About seven dollars, when I work two days. 40

*Mrs. Ida Jackson, direct.*

Q Are you able to live on seven dollars a week? A No.

Mr. Schneider: I object to that, your Honor.

The Court: What relevancy has that?

10 Mr. Stadtmauer: I will consent to have it stricken out.

The Court: Strike it out.

Q How do you feel today, Mrs. Jackson? A Well, I don't feel good.

Q Well, why not? A My shoulders and sides is paining me.

Q They pain you? A Yes.

Q In what way? When do they pain you?

20 A They are paining me now, if I tell you the truth; right now, they are paining all of the time, but some times they hurt me better than others.

Q Point to the part of the body where it is hurting you now? A Right here (indicating).

Q Indicating the left side? A Yes.

Q And left shoulder? A Yes.

Q While you work, are you free from pain?

A I have pain right along until I get through.

30 Q Why do you work? A Because I have to do some work—

Mr. Schneider: I object.

A (continuing)—to earn my living.

The Court: For the same reason that we all work.

Mr. Schneider: I ask that it be stricken out.

40 The Court: Strike it out, immaterial and irrelevant.

*Mrs. Ida Jackson, direct.*

Q Have you had shortness of breath since—

Mr. Schneider: I object—

The Court: Objection sustained. Don't lead.

Mr. Schneider: I move that the answer be stricken out. 10

The Court: Strike it out.

Q Is there anything else the matter with you beside the pain in your shoulder and the side at the present time? A And my stomach.

Q Your stomach? A Yes.

Q What is the matter with your stomach?

A The accident, when I had the car hit me, just bruised me all over the whole side.

Q Bruised you all over? A Yes. 20

Q How do you know how that affected your stomach? A What?

Q Do you know how the accident affected your stomach? A In me.

Q How is that? A I was hurt inside.

Q You were hurt inside? A Yes.

Q Now, are you able to eat well? A No.

Q What is the matter with you? A Because when I eat anything, I just hurt; it don't stay 30 on my stomach.

Q You vomit it? A Yes.

Q Are you able to eat now? A Not much.

Q Not much? A No.

Q Do you feel as healthy today as you did before the accident? A No, sir.

The Court: Could you eat before the accident?

The Witness: No. 40

*Mrs. Ida Jackson, direct.*

The Court: Were you troubled with vomiting before the accident?

The Witness: No.

Q Now, Mrs. Jackson, at the time you were treated by Dr. Lipton, do you know what he treated you for? A Lockjaw.

Q Lockjaw? A Yes, I have lockjaw a short time after I got hurt.

Q I see; how did that affect you? A Well, I couldn't talk.

Q Couldn't talk? A Yes.

Q What happened to you? A Taken with lockjaw.

Q How did you feel throughout your body? A I didn't feel good.

Q In what way? A These gnawing pains, I feel, all inside my stomach.

Q Were you able to talk? A No, I couldn't talk.

Q How did they feed you? A After the doctor treated me for the lockjaw, then they fed me with a spoon.

Q Had to feed you with a spoon? A Yes.

Q Now referring to your shoulder and side, at the time the doctor was treating you for lockjaw, how did they feel? A Sore.

Q Very sore? A Yes.

Q Were you able to lift your arm? A No, I could not lift my arm up.

Q Why couldn't you? A Sore.

Q Where? A Up in here, shoulder and elbow.

The Court: Indicating the shoulder and elbow.

Q Do you remember how much you paid the doctor? A No, I couldn't tell.

*Mrs. Ida Jackson, direct.*

Q Do you know? A I had a receipt at home, but I lost it.

Q What is that? A He gave me a receipt for me to keep, but I lost the receipt, what I paid the doctor, but I know the doctor got the records, you know.

Q How long did the doctor treat you? A About eight weeks.

Q Eight weeks all told? A Yes.

Q Did you have any other doctor besides Dr. Lipton? A No.

Q Did you have any X-rays taken? A Yes, I had X-rays.

Q Who had them taken? A I had Dr. McGuffy, the insurance doctor, take them X-rays; I think that is the name.

Mr. Schneider: If your Honor please, I do not like to object, but it is very aggravating. She said that Dr. McGuffy, the insurance doctor, took the X-rays, which is very prejudicial to our case with the jury. I do not like very much to go on with this objecting all of the time, but counsel is continually leading the witness.

The Court: Mr. Schneider is objecting because of her answer to this last question.

Mr. Stradtmauer: None of the jury heard.

The Court: I did not hear it because I was talking here with someone else. I did not hear it at all. If it was heard by them, it would be apt to be prejudicial, and I would be inclined to grant a mistrial.

Mr. Stadtmauer: I did not hear it myself even.

*Mrs. Ida Jackson, cross.*

Mr. Schneider: (After discussion). I am perfectly willing to admit this bill without proof by Dr. Terhune for taking the X-ray.

The Court: Very well, it is admitted that Dr. Terhune's bill was ten dollars for an X-ray. Offer it in evidence.

10 Mr. Stadtmauer: I offer that in evidence.

The Court: Let it be marked.

(Marked Plaintiff's Exhibit P. 1).

Mr. Stadtmauer: That is all.

*Cross examination by Mr. Schneider.*

Q Now, Mrs. Jackson, you were taken to the hospital—General Hospital of Passaic? A Yes.

20 Q There was an officer took you there, police officer? A I don't know.

Q You do not know? A No, because I was unconscious.

Q Took you there in an automobile, didn't he? A I don't know how he took me; when I come to my right sense I was in the hospital.

Q Don't you know, you were in the flower shop first? A No.

30 Q On that corner where you started across the street is a bank, Mrs. Jackson? A Yes.

Q And across the street, where you were going to was a big flower shop, isn't there? A Yes.

Q That is Ceres' Floral Shop there, isn't it? Florist shop, isn't it? A Yes.

Q That is in the direction of Paterson, isn't it? A Yes.

40 Q That is in a northerly direction, on that northwest corner is a flower shop; is that right? A Yes.

*Mrs. Ida Jackson, cross.*

Q And the corner where you started from, the southeast corner, there is a bank, isn't there? A Yes.

Q You were going from the corner where the bank is to the corner where the florist shop is? A Yes.

Q Across Bloomfield? A No. 10

Q To your right-hand side was Main avenue? A Yes.

Q Right on the other side of Main avenue, the railroad tracks run, don't they? A Yes.

Q Now, who was with you? A Mr. Simmons.

Q Mr. Simmons had been to the show with you? A Yes.

Q Now, were you walking side by side? A Yes.

Q Did he have hold of your arm or you of his arm? A No. 20

Q You were walking entirely separate? A Yes.

Q And he was right alongside of you all of the time, as you were walking out? A Yes.

Q On which side of you was he, right or left? A Left.

Q Pardon me? A Left.

Q He was on your left-hand side? 30

The Court: That would be the inside, away from Main street, wouldn't it, Mrs. Jackson?

The Witness: Yes.

Q Now, there was quite a crowd of people coming from that movie? A Yes.

Q You stopped on the bank corner? A Yes.

Q Now, there was a lot of cars coming from the direction of Paterson down Main avenue, weren't there? A Yes. 40

*Mrs. Ida Jackson, cross.*

Q And there were other cars coming up Main avenue, going to Paterson? A Yes.

Q There was one car coming down Bloomfield avenue— A Yes.

Q On your side of the street, wasn't he? A Yes.

10 Q It stopped at that corner— A It didn't stop at the corner; it stopped up the street.

Q About how far from the corner did that car stop? A I recall him about sixteen feet.

Q That was on the bank side of the street, where you were starting from? A Yes.

Q You passed in back of that car? A I don't understand.

20 The Court: Did you pass in back of that car?

The Witness: No.

Q Well, when you were passing, Mrs. Jackson, had that car come to a stop already? A Yes, it had come to a stop.

Q Just as you were about to pass or before you started to pass? A As we were standing on the curb, the car stopped up the street.

30 Q The car stopped up the street, you say, about sixteen feet from the corner? A Yes.

Q Did you pass in front of this car or back of the car? A I passed in front of the one up the street, Bloomfield avenue.

Q And are you sure of that Mrs. Jackson? A Yes.

Q Sure you passed in front of it, not in back of it? A Yes.

Q Did you pass in back of any car? A No.

40 Q You are sure of that, too? A Yes.

*Mrs. Ida Jackson, cross.*

Q Now, as you looked to your left, I suppose you saw that car that you refer to? Now, you saw that one car that afterwards stopped, didn't you? A Yes, this car, sure.

Q Well, was that in motion, Mrs. Jackson, when you first saw it? Was that moving or had it come to a stop? A It had come to a stop up the street. 10

Q You did not see that car at all when it was moving, did you? A Up the street?

Q Yes. A When I seen it, it was coming down the street slowly and come to a stop.

Q You saw it coming down the street slowly? A Yes, to about sixteen feet.

Q When it came to about sixteen feet from the corner, it came to a dead stop; is that right? A Yes. 20

Q Now, did you see any other car coming down Bloomfield avenue, that is, to say, toward you, beside this one car? A Coming down Bloomfield avenue?

Q Yes, coming down Bloomfield avenue? A No.

Q No other cars at all? A No.

The Court: Is that a trolley car you are talking about? 30

Mr. Schneider: About an automobile.

Q That is an automobile we are talking about? A Yes.

Q When you say "car," that means automobile? Don't you, Mrs. Jackson?

The Court: Is that right, Mrs. Jackson?

A Yes, it was an automobile. 40

*Mrs. Ida Jackson, cross.*

The Court: The automobile you are talking about stopped about sixteen feet from that corner?

The Witness: Yes.

10 The Court: I do not know whether there is a trolley line on that street or not, and I thought, if I did not know, perhaps the jury did not know. That is why I interrupted

Mr. Schneider: I will use the word "automobile."

Q Did you see any automobiles coming on Main avenue, from the direction of Paterson, that is, in a southerly direction? A Yes.

20 Q How many automobiles were coming? A There were a great many automobiles coming.

Q There was a line of them? A Yes.

Q Didn't you see any automobiles going the opposite direction, toward Paterson, in a northerly direction? A The northerly—

Q On Main avenue, did you see any automobiles—I will try to make it plainer—going up Main avenue in the direction of Paterson? A (No answer).

30 Q Let's try it again. You saw automobiles coming down Main avenue? A Yes.

Q From the direction of Paterson? A Yes.

Q Did you see any automobiles going in the opposite direction, on Main avenue? Do you understand me, Mrs. Jackson? A (No answer).

Q Do you understand me? A No.

Q I will try to be plainer. You say you saw automobiles going on Main avenue, from the direction of Paterson? A Yes.

40 Q Did you see any automobiles going on Main avenue the other direction? A Going towards Paterson?

*Mrs. Ida Jackson, cross.*

Q Going on Main avenue, up towards Paterson, in a northerly direction? A (No answer).

The Court: Don't you understand that question, Mrs. Jackson?

The Witness: No.

The Court: Well, you saw cars coming 10 from Paterson on Main avenue?

The Witness: Yes, because they was in the front of me, that is why I seen the cars coming from toward Paterson, in front of me.

The Court: Did you see any going the other way?

The Witness: No.

The Court: Didn't see any?

The Witness: No, because the cars— 20

The Court: All right.

The Witness: —was coming behind me.

Q Did you hear any horns blown of any cars at all? A No, I didn't hear any horns blown.

Q Not a single horn? A No.

Q Did you or Mr. Simmons have an umbrella? A Yes.

Q Who had the umbrella? A Mr. Simmons. 30

Q Now, as a matter of fact, Mrs. Jackson, is it not a fact that Mr. Simmons walked into the side of this car and that you did not touch the car at all? A No.

Q Is it not a fact that Mr. Simmons walked into the car and was thrown back against you and you fell that way? A Fall back against me?

Q Yes. A I don't know because when the car struck me I was unconscious; I don't know nothing else. 40

*Mrs. Ida Jackson, cross.*

Q How far was this car from you when you first saw it? A I guess, about three or four feet.

Q Where had you gotten to at that time? Where were you, from the intersection? A About four feet, I guess, from the curbstone.

10 Q Pardon me. A About four feet, I guess, from the curbstone.

Q You were four feet from the curbstone? A Yes.

Q This car was four feet from you? A Yes.

Q It was turning from Main avenue into Bloomfield, wasn't it? A Yes.

Q It was coming very fast? A Yes.

Q Very fast? A Yes.

20 Q Did you see it at all before you stepped off the curb? A No.

Q Not at all? A No.

Q Now, Mrs. Jackson, how old is your boy?

A How old is my boy?

Q Yes. A He will be twenty years old in August; he is nineteen now.

Q Nineteen now? A Yes.

Q Who took you home from the hospital? A My son.

30 Q Your son took you home? A Yes, sir; and my nephew.

Q Pardon me. A My son got a taxi and took me home.

Q What time did you go home from the hospital? A After two o'clock.

Q After two o'clock the next day? A Yes.

Q Do you know what doctor treated you at the hospital. A No.

Q Did you ever try to find out? A No.

40 Q When did you call Dr. Lipton? A Immediately after I got home.

*Mrs. Ida Jackson, cross.*

Q What time did he call to see you? A After I got home, the next day; after I got home, the same day I got home the doctor came.

Q Same day you got home? A Yes.

Q Now, these boarders for eight dollars, they got lodging, meals, everything? A Yes. I gave 10 them two meals a day and the sleeping.

Q Breakfast—? A And supper.

Q And sleep, all of that for eight dollars? A Yes.

Q You didn't charge enough, Mrs. Jackson. A Well, that is what I charge.

The Court: What did you say?

The Witness: I said, that was what I was charging them. 20

Q Very cheap; for five dollars, you would give them sleeping accommodations? A Yes.

Q I suppose they are pretty good eaters, aren't they; good feeders? A You want to know the reason I had the two men or the four men?

Q I don't hold that against you at all, that is perfectly all right. I simply think you are charging them too cheaply. Now, how often did Dr. Lipton call to see you, Mrs. Jackson? A The 30 first week I was in the house, he come every day.

Q Yes. A For a week.

Q After that— A He came every other day.

Q And the third week— A Why, he come about every two days, about twice a week, something like that after that.

Q Twice a week after that? A Yes.

Q For how long? A For eight weeks.

Q For eight weeks? A Yes.

Q Then he stopped coming? A Yes. 40

*Mrs. Ida Jackson, re-direct.*

Q He has not been to see you since? A No.

Q You haven't been to see him? A No.

Q At the end of eight weeks— A Yes.

Q —he stopped treating you? A Yes.

Q Where is his office, Mrs. Jackson? A On Passaic avenue, in Passaic.

10 Q Near what street in Passaic avenue? A No, I don't know what street.

Q All right, it is not important. Just what did he do for you the first time he came, Mrs. Jackson? A What did he do for me?

Q Yes, give you medicine? A Yes, he gave me medicine first time he come.

Q Medicine to drink? A Yes, medicine to drink.

Q Medicine to rub? A Yes.

20 Q Your friends rubbed you? A Yes.

Q What else did he do for you besides that?

A He bandaged me up.

Q Bandaged you up, what part of your body?

A Put bandage on my stomach, around my stomach, my arm.

Q I see; how long did you have this bandage on your stomach? A I wore the bandage a long time, he let them on for about four weeks.

30 Q Beg pardon? A About four weeks, I recall, before I took that bandage off, what he put on.

Mr. Schneider: That is all.

*Re-direct examination by Mr. Stadtmauer.*

Q Just a minute, Mrs. Jackson. How much rent did you pay? A Thirty-eight dollars a month.

Q Thirty-eight dollars a month? A Yes.

40 Q How many rooms did you have? A Five.

*John Simmons, direct.*

Q Those boarders that you referred to, did they sleep—each one have a single room? A Now, they sleep—I had two rooms rented and the boys sleep in one, two of my nephews sleep with my boys, they was my nephews living with me—my boy and the nephews live in one, the other roomers have the other room; I had two rooms 10 rented out.

Q Two rooms rented out? A Yes.

Q To boarders? A Yes.

Q Now, when you crossed the street, Bloomfield avenue, from the south side to the north side, now on what side of you did Mr. Simmons walk—on your left hand side or your right hand side? A On my right hand side.

Q Referring to your right hand? A Yes.

Mr. Stadtmauer: That is all. 20

Mr. Schneider: That is all, Mrs. Jackson.

JOHN SIMMONS, sworn for plaintiff.

*Direct examination by Mr. Stadtmauer.*

Q Mr. Simmons, were you walking with Mrs. Jackson at the time of the accident? A Yes, 30 sir.

Q Where were you coming from? A From the Play House.

The Court: You will have to talk louder, Mr. Simmons.

The Witness: From the Play House.

The Court: From the Play House.

Q From the Play House? A Yes, sir. 40

*John Simmons, direct.*

Q Now, when you came to the corner of Bloomfield avenue and Main avenue, did you stop? A Yes, sir.

Q What did you do then? A Looked to the left, looked to the right.

10 Q Then, what did you do then? A We walked off across the street.

Q What happened after you walked off? A Automobile struck me.

Q Struck you? A Yes.

Q Now, the time you were struck by the automobile, how far were you from the southerly curb of Bloomfield avenue? A Just about four feet.

Q How is that? A About four feet.

20 Q About four feet; now, was the automobile going fast or slow? A Going fast.

Q Did you lose consciousness? A No, sir.

Q What happened to Mrs. Jackson? A It struck her and knocked her about four feet or five feet from me.

30 Q Yes. A And the automobile struck me, I got hold of the fenders, that is what stalled the motor. The motor went right on going, it pushed me about two feet on the ground, and I held the fender until the motor come dead.

Q You held what? A I held the fender of the automobile until the automobile went dead; then two men come and picked me up, took me across the Hobert Trust Company to the florist.

Q And who was it picked Mrs. Jackson up? A I do not know who it was; it was some fireman.

40 Q What did they do with her? A Took her to the florist.

*John Simmons, direct.*

Q All right, then, what did they do? A Took her in the—

Q Where was she taken to? A Taken to the hospital.

10 Q Now, at the time you were walking across the street, with reference to Bloomfield avenue, did you see the line up of cars traveling south on Main avenue? A Yes, sir.

Q Were there many cars then? A Quite many.

Q Where did Mr. Weyl's car come from? A It came from Main avenue side, from my right side.

20 Q Was that before or after the line of cars on Main avenue approached the corner? A That was after the cars approached the corner.

Q Was it a long time after they had passed? A No, sir; no, sir.

Q Were you crossing the street alone, or were you and Mrs. Jackson crossing the street alone at the time? A No, sir; there was quite a few people crossing.

Q Yes. A (Continuing) From the corner, from that place.

Q Was there anyone in the back of you? A Yes, sir.

30 Q Was there anyone in the front of you? A Yes, sir.

Q There was many or a few people? A Great many; a lot of people.

Q In other words, you were right in line? A Right in line.

Q Were you on the cross-walk at the time you were hit? A Yes, sir.

40 Q You know what I mean by the cross-walk, don't you? A Yes, meaning with the walk in between.

*John Simmons, direct.*

Q Yes. A Yes, I was walking in between those from this crossing.

Q Right in between the lines? A Yes, sir.

Q Of the cross-walk? A Yes, sir.

Q Did you see the car coming east on Bloomfield avenue? A Yes, sir.

10 Q Did you pass in front of or in back of that car? A In front of the car.

Q In front of the car? A Yes, sir.

Q Was it in motion at the time you passed in front of it? A Was the car in motion?

Q Yes. A No, sir; it was not.

Q How far had it stopped from the corner? A About sixteen feet from the corner.

Q Did you hear Mr. Weyl blow his horn? A  
20 No, sir.

Q Were his lights lit? A Yes, sir.

Q Was it raining heavily? A No, sir.

Q Or was it raining lightly? A No, sir; it was not; it was raining a little.

Q What part of Mr. Weyl's car hit you? A His left hand fender.

Q Front or rear? A Front.

Q Now, what part of Mr. Weyl's car hit Mrs. Jackson? A I don't know; I cannot recall.

30 Q You say you grabbed his fender? A Yes, sir.

Q What part of the fender did you grab, the front part or the rear part? A Front part.

Q How far were you dragged? A About two feet.

Q How far was Mrs. Jackson thrown? A About five or six feet, coming up Bloomfield avenue.

40 Q Did you accompany Mrs. Jackson to the hospital? A Yes, sir.

*John Simmons, direct.*

Q How long did she stay in the hospital? A Until Sunday evening, about two o'clock, when she got home.

Q Was the doctor called then? A Yes, sir.

Q Who was the doctor? A Dr. Lipton, of Passaic.

Q Now, were you one of the men living with Mrs. Jackson at that time? A Yes, sir. 10

Q Were you one of the five dollar or eight dollar boarders? A I was one of the five dollar boarders.

Q Do you know how long Mrs. Jackson was in bed? A She was in bed four weeks.

Q Period of four weeks? A Period of four weeks.

Q Was she attended by Dr. Lipton all of that time? A Yes, sir. 20

Q The same doctor? A Yes, sir.

Q Now, after she left her bed, was she able to go out? A No, sir.

Q What did she do? A She just stood around the house.

Q During that time, did she wear her street clothes? A No, sir.

Q Did anyone assist her there? A Yes, sir.

Q Now, Mrs. Jackson lived with Mrs. Roberts and Mrs. Burden? A yes, sir. 30

Q Who were they? A They were ladies that lived in the same house that she was living in, the same apartment house.

Q Now, what did they do for her? A They come here the Sunday afternoon after she was hurt, the first time they come; they was across the hall when she come in. I come that night from the hospital, the following morning, and told them that Mrs. Jackson had had an accident by a car, and the next evening, when she come 40

*John Simmons, direct.*

home, they paid her the first visit, and come in to see her, what they could do for her.

Q Did they visit her every evening thereafter? A Two or three times a day, practically, every night they was there.

10 Q Who assisted Mrs. Jackson while she was in bed? A Mrs. Burden and Mrs. Roberts.

Q How long was it before Mrs. Jackson was able to leave the house? A It was about eight months.

Q Who assisted her about when she left the house? A Mrs. Roberts and Mrs. Burden.

Q I see; did you ever accompany her at any time? A When she was leaving the house?

20 Q When she was out on the street? A Yes, sir.

Q Was she able to cross the streets or walk along the street without assistance? A Well, no, sir; she was not.

Q Now, do you know when she was first able to go back to work? A First day of work she did was on the second day of February.

Q What year? A 1925—or '26.

30 Q Now, do you know whether Mrs. Jackson suffered very much while she was in bed?

Mr. Schneider: I object—

A Yes, sir.

Mr. Schneider: (Continuing)—to that, Your Honor.

The Court: How can he know that?

Mr. Stadtmauer: I will consent to have it stricken out.

40 The Court: Strike it out.

*John Simmons, cross.*

Q Do you know what Mrs. Jackson's doctor bill was? A No, sir; I do not.

Mr. Schneider: The doctor will be here?

The Court: The doctor will be here, I understand.

10

Q That is all, Mr. Simmons.

The Court: Cross examine.

*Cross examination by Mr. Schneider.*

Q Mr. Simmons, Mrs. Jackson started to leave the house around December, didn't she; December, 1925? A Leave the house around in the summer?

20 Q Yes, you are sure of that? A Sure of that.

Q You heard her testify? A Yes, sir.

Q You say she did not leave the house for eight months? A Yes, sir.

Q You did not follow all her movements, did you? You moved, didn't you? A Yes, sir; right across the hall, with Mrs. Roberts.

Q You are sure it was eight months before she left the house? A Yes, sir.

30

Q How do you know it was February 7, 1926, before she went back to work? A Because I was right across the hall from her, living right across the hall from her.

Q How did you remember that date? A Why, because I took time to remember.

The Court: Keep your voice up.

A (Continuing) I can remember the time when I had been there.

40

*John Simmons, cross.*

Q Did you make a note of it? A No, sir; I did not.

Q How do you remember February 7th was the first day she went back to work? A February 7th? I didn't say the 7th.

Q What did you say? A I said the 2nd.

10 Q How do you remember that day? How do you come to remember that exact date when she went back to work? A Just like I remember this day that the accident was; it stayed in my brain.

Q Never made a note of it or anything, did you? A No, sir; I did not.

Q You are sure it was February 2nd? A Yes, sir.

Q (Continuing) When she went back to work? A Yes, sir.

20 Q What was the date when she first left the house, the first time? A The first time?

Q Yes. A Along in December sometime, I don't know exactly the first day she left the house, because I was not right there at the house when she went out that day.

Q You do not remember the date of that, do you? A No, sir; I do not.

Q Were you carrying the umbrella, Mr. Simmons? A Yes, sir.

30 Q On what side were you? A I was on the right hand side.

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

Q When you came to the corner, you stopped and looked? A Yes, sir.

Q Did you see anything coming down Bloomfield? A I saw a car.

Q From your left? A I saw a car coming.

40 The Court: A little louder.

*John Simmons, cross.*

A I saw a car coming.

Q How was that coming, fast or slow? A It was slowly moving.

Q About how far from the corner did it stop? A About sixteen feet.

Q Sure of that distance? A Just about as I can judge about sixteen feet. 10

Q You did not measure it, did you? A No, sir; I did not measure.

Q Didn't go back later to measure it, did you? A No, sir; I did not.

Q You just said— A It was about sixteen feet.

Q What? A It was just about sixteen feet.

Q Might have been fifteen? A Sure, it might have been fifteen, as near as I can remember just now. 20

Q Beg pardon? A About fifteen feet, as near as I can recall.

Q And that car came to a stop? A That car come to a stop.

Q You didn't go around the back of that car, did you? A No, sir; I did not.

Q As a matter of fact, you and Mrs. Jackson went around the back of that car, didn't you? A No, sir; we did not. 30

Q There is a bank building right there. One of the men from the bank building, did you see him at all?

Mr. Schneider: Mr. Thomas, stand up.

Q Mr. Thomas there, did you see him at the scene of the accident at all? A No, sir; I did not.

Q The gentleman in the back? A No, sir; I did not. 40

*John Simmons, cross.*

Mr. Schneider: Sit down, Mr. Thomas.  
Mr. and Mrs. Smith, stand up.

Q Did you see Mr. and Mrs. Smith there at the scene of the accident? A No, sir; I did not see them.

10 Q Weren't they helping about Mrs. Jackson when she was taken to the florist shop? A What do you mean, "helping take her over"?

Q She was taken to the florist shop, wasn't she? A Yes, sir; by the firemen.

Q Weren't these people helping too? A By the firemen, she was taken over there.

The Court: What is that? Firemen?

The Witness: Yes.

20 Q Didn't Mr. Thomas get her a glass of water? A I couldn't remember.

Q You went right over to where Mrs. Jackson was taken, didn't you? A I was taken over there.

Q With her? A Yes, sir.

Q You were perfectly conscious? A I was perfectly conscious?

30 Q Weren't you? A No, sir.

Q You were not unconscious, too? A No, sir; I was not unconscious. Yes, sir; I was perfectly conscious.

Q You saw the glass of water brought to Mrs. Jackson? A I saw the glass of water brought to Mrs. Jackson, but I couldn't recall who brought the glass of water.

Q You cannot recognize this gentleman at all, Mr. Thomas? A No, sir.

40 Q Didn't you see that lady, Mrs. Smith, right at Mrs. Jackson's side? A No, sir; I did not.

*John Simmons, cross.*

Q Isn't she the lady that told Mr. Thomas to bring the glass of water? A No, sir; I don't know; I couldn't say, I don't know—

Q You didn't see her? A No, sir! I did not, I did not notice her at all.

10 Q As a matter of fact, Mr. Simmons, didn't you and Mrs. Jackson come out from behind that parked car that was standing on the—just a minute—was standing on the southeasterly side of Bloomfield avenue, and walk into Mr. Weyl's car? A No, sir; we did not.

Q As a matter of fact, wasn't Mr. Weyl's car going very slowly, about five miles an hour? A No, sir; it was not going very slowly.

Q Didn't you hear his horn? A No, sir; I did not hear his horn.

20 Q Didn't you fall back against Mrs. Jackson? A Fall back?

Q Yes. A No, sir.

Q Didn't you walk right into the side of that car? A No, sir.

Q What part of the car hit you? A The left fender.

Q What part of the fender is that? A I couldn't state, but I know it was the left fender.

30 Q Was it near the wheel? A Sure.

Q Right by the hub of the wheel, wasn't it? A Over the wheel.

Q Right by the hub of the wheel? You know what the hub of a wheel it? A Sure, I do.

Q You know what a hub is, of course? A Yes, sure; I do.

40 Q You were struck by the part of the car that was right near the hub of the wheel, weren't you? A I couldn't say by the hub of the wheel, or not; I know it was the fender.

*John Simmons, cross.*

Q But it was that part of the fender that is right above the center, or the hub of the wheel; isn't it? A It was the front part of the wheel.

Q Front of the wheel, near the wheel? A All fenders are right over the wheel; it was near the wheel.

10 Q I don't want to confuse you, Mr. Simmons. You see, Mr. Simmons, if you do not understand, tell me, because I do not want to take any advantage of you. You say, Mr. Simmons, that you were struck by the left front fender of Mr. Weyl's car? A Yes, sir.

Q Now, will you tell the court and jury what part of the fender struck you? A Front part of the whole fender.

20 Q Was it that part you caught hold of? A The part that comes over the wheel, over the front wheel, that is what I caught hold of.

Q When the accident was over, you were lying on the ground right near the wheel, weren't you? A Wheel right up against me.

Q Wheel right up against you? A Near, yes, sir.

Q In other words, your body was right by the hub of the wheel, wasn't it? A Wheel was right in my side, laying right here.

30 Q Wheel didn't go over you, did it? A No, sir; I guess she would, if the motor hadn't stalled to a standstill.

Q As a matter of fact, when the accident was all over, you were there right by the left front wheel, weren't you? A Yes.

Q Right by the hub of the wheel? A Right by the front wheel, on the fender, right up against the fender, front part of the fender.

40 Q I see; that was the part of the car that struck you. A The fender.

*John Simmons, cross.*

Q Yes. A Yes.

Q Did you have your umbrella up when you were crossing? A Yes, sir.

Q You did have it up? A Yes, sir.

Q It was raining at the time? A Slow rain.

Q Quite nasty weather, wasn't it? A Well, 10 slow rain.

Q When you looked up Bloomfield avenue, did you see any other cars beside that car that came to a standstill? A No, sir; I did not.

Q Now, then, did you see any cars on Main avenue? A Yes, sir.

Q Did you see any coming in the southerly direction, that is, from the direction of Paterson? A Yes, sir.

Q There was a line of them, wasn't there? A 20 Yes, sir.

Q There was a line of cars going the other way of Main avenue? A I cannot remember.

Q Pardon me. A I don't remember whether they was going back towards Paterson, or not.

Q You don't remember that? A No, sir; I don't.

Q Did you hear any horn blown at all? A No, sir.

Q Not a single horn? A No, sir. 30

Q There were about a dozen cars around that intersection, weren't there? A I guess there was.

Q Easily a dozen, isn't that right? A I guess.

Q And you did not hear a single horn blown? A No, sir; I did not hear a single horn blown.

Q Sure of that? A Yes, sir; sure of that.

Q When did you first see Mr. Weyl's car? A It was about two or three feet of me when I first saw it. 40

*John Simmons, cross.*

Q Two or three feet away? A Yes, sir.

Q Did you see it when you first looked off the curb? A No, sir; I did not.

Q You got off the curb immediately you looked? A Yes, sir.

10 Q As a matter of fact, there was nobody crossing in front of you? A Yes, sir; there was.

Q How many? A I couldn't tell.

Q Were there more than a dozen, or more? A Yes.

Q Were there more than two dozen crossing in the front of you? A I couldn't say more than two dozen; there was more than a dozen.

20 Q Were there any people right in front of you? A Right in front of me, sure.

Q Was there anybody two feet in front of you? A About two feet? Yes, good walking distance.

Q How many were there abreast? A They are four abreast.

Q Now, you were going over with a little crowd? A Yes.

Q Of at least twelve; is that right? A More than twelve.

30 Q You were right behind those that were in front of you? Right? A Yes.

Q Were there people behind you? A I think there were people behind us.

Q You were all close together? A Yes, sir.

Q People walking in front of you a couple of feet— A Yes.

Q People in behind you walking, that is right? A Yes.

40 Q They were walking all abreast? A They were walking about the same, altogether.

*John Simmons, re-direct.*

Q Did they have umbrellas? A Some did; some did not.

Q Were they men and women? A Yes, sir.

Q None of them were struck, were they? A No, sir.

Q No one else but you two were struck? A 10 That is all.

Q Still those dozen people, or more, were all right close together? A They could get out of the way; we couldn't.

Q (Continuing.) That is right, isn't it? A That is right.

Q You were struck by the left hand side of Mr. Weyl's car? A Yes, sir.

Q Did the front of Mr. Weyl's car strike anybody? A I don't think it did, nobody but me. 20

Q Pardon me? A No one but me.

Q I mean to say, you know what the front of a car is? That is where the bumper is, radiator? A Yes, is.

Q Nobody was struck by that was there? A No, sir.

Q Nobody was struck by the right hand side of the car? A No, sir.

Q You two were the only ones who came in contact with the car out of that whole crowd of fourteen people; is that right? A That is right. 30

Q As they were walking altogether slowly across the street A That is right.

Q That is right, isn't it? A That is right.

Q That is all, Mr. Simmons.

*Re-direct examination by Mr. Stadtmauer.*

Q Now, Mr. Simmons, in what hand did you hold the umbrella? A Left hand. 40

*John Simmons, re-direct.*

Q After you got off the curb, did you look in either direction? A Yes, sir.

Q What part of Mr. Weyl's car did you say hit you? A The left fender.

Q Left fender? A Yes, sir.

Q Front or rear? A Front.

10 Q What part of his left front fender, front or side? A The front.

Q Now, where, in reference to the lights of the car?

Mr. Schneider: I object to that, your Honor. That is rather a crucial point, and I think it is leading.

20 The Court: I will allow it; he has said the front of the fender repeatedly. Now, he is asking where with reference to the lamp.

Mr. Schneider: I will withdraw it.

The Court: I think that is all right.

Q Where, with reference to the front lights?  
A What do you mean by that? Where we were?

30 The Court: No, no; where you say you were struck by the left front fender, where were you struck, by what part of the fender? Where, with reference to the position of the front lamp?

The Witness: I cannot remember.

40 Q Now, with reference to this part of the bench imagine this is the front of a car, you have a fender on the left side, fender on the right side. Now, will you just point to what part of the car struck you? A (Referring to illustration.) This, right here, this one here (indicating). This here is the fender—

*John Simmons, re-direct.*

Q The fender? A Yes.

Q Now, what part of that fender? A Right here, struck me right here (illustrating).

Q I see; what part of the fender, front part of the fender or the side? A The front part.

Q Where would be the lights on that car? A 10 Right here (indicating).

Q Using that as the automobile, this sheet of paper for your fender, here, the left front fender, that your right front fender. A Yes.

Q Here you have your two lights. Now, point to what part of that car—now, point to that sheet of paper where the lights of the car would be?

The Court: If he knows. 20

Q Do you know? A I couldn't recall where the lights was.

Q What part of the car hit you? A The fender.

The Court: Show on that paper.

A This is going up Bloomfield.

Q Yes, toward you now. A This part hit 30 me right here (indicating).

Mr. Lobsenz: All right, now indicate it with something.

Mr. Stadtmauer: Is that right, Mr. Schneider?

Mr. Schneider: I don't know.

Q Is that the part of the car that hit you? A 40 That part of the car hit me (indicating).

*Mrs. Katherine DeL. Morris, direct.*

Mr. Stadtmauer: Now, I offer this in evidence.

Mr. Schneider: I don't know—

The Court: Show the jury where he has indicated, if you wish.

10 (Counsel exhibits to jury).

The Court: Anything more?

Mr. Stadtmauer: That is all.

MRS. KATHERINE DeL. MORRIS, sworn for plaintiff.

*Direct examination by Mr. Stadtmauer.*

20 Q Mrs. Morris, where do you live? A 732 14th avenue.

Q I understand you are married? A Yes, sir.

Q Living with your husband? A Yes, sir.

Q What is your husband's name? A Dr. Edward R. Morris.

Q What is he a doctor of? A Dentistry.

Q How long have you lived in the City of Paterson? A All of my life.

30 Q Do you know Mrs. Ida Jackson, the plaintiff in this case? A I do.

Q How long have you known her, during what period of time? A I would think, about five years.

Q Altogether? A Altogether.

Q During that time, how is it that you have become acquainted with her in what way is it? A She came to me as a laundress some five years ago when she first came from the South; she worked for me three years.

40

*Mrs. Katherine DeL. Morris, direct.*

Q During that time, about how regularly did she come to your house? A Every week.

Q Every week? A Every week.

Q How much of the week did you employ her? A Some weeks, one day; some weeks, two days.

Q Until when did she work for you? A 10 Until the day of her accident.

Q Until the day of her accident? A Two years ago.

Q Two? A Two years ago this month, I believe, around the middle of the month.

Q About the middle of the month, two years ago? A So I was told.

Q During the time, before she was hurt, when you were told she had been injured, how was she? A Well, she was a splendid laundress.

20

Q In what way? A Her work was very satisfactory, her washing and ironing; she was always very prompt, if she couldn't come, she would telephone me.

Q How many hours a day did she work for you when she would come there? A She would work all day, come probably at half-past eight in the morning, working until half-past five, or a quarter to six.

Q What have you to say as to whether or not 30 laundry, doing that type of work, requires a lot of energy, or not? A Yes; she was very faithful, she did it beautifully, always very cheerful.

Q Have you seen her since the accident? A Yes, I have.

Q When did you first see her, after she was hurt, where did you see her? A Not until a year later, she came to see me.

Q That was a year after that? A A year after, in the summer of 1926.

40

*Mrs. Katherine DeL. Morris, direct.*

Q What was the occasion of her coming down to see you then? A She came just to see me, let me know how she was. I knew that she had not been well, but I did not know she had been hurt, that is, as I recall. I had no means of getting into touch with her; I had a little family—small children, at that time, so I couldn't go down to see her, you know how it is.

10 Q When she came to you, did she speak to you about work? A When she first came to see me, I said, "Hello! How are you?"

Q You need not tell the whole conversation. Did she finally speak about work? A Yes, I did.

Q Did she take work from you? A Not at that time; shortly after she did.

20 Q When did she first start to do work for you after that? A After that?

Q Yes. A Well, I should judge, not until that following February. When I asked her then, if she could do work for me, she said no. Well, I said, well, I thought you were coming back to me. She said, no, I cannot, and then she told me of the accident.

Q Well, did she finally start to do your work for you? A No, she did not, she had it taken home, because she had other people to help her.

30 Q I see; then who brought the washing back? A Mr. Simmons came and got the washing, and brought it back.

Q Before the accident, I understand she did the work at your house? A Yes, always.

Q How long did Mrs. Jackson continue to do your work after that, after she came back? A Well, she took my work for probably, well, I should say, about four months, the laundry was taken from my home, to this little laundry that  
40 they had started in Passaic.

*Mrs. Katherine DeL. Morris, direct.*

Q What happened then, do you know? A Why, Mr. Simmons brought the laundry and told me they was not able to continue, for the reason—

Mr. Schneider: Don't tell the reason why.

A (Continuing.) They stopped taking my laundry then.

Q Did Mr. Simmons tell you the reason why the laundry dissolved business? A Yes.

Q Can you tell us, if you will, what is the difference—or, is there any difference in the appearance of Mrs. Jackson—

Mr. Stadtmauer: Withdraw the question.

Q Is there any difference between her, when you saw her after the accident, in February—was that February of 1926? A Yes.

Q—in February, 1926, and her appearance before the accident, June of 1925? A Well, she is very much thinner, and really in a very nervous frame of mind, and her mental condition was troubled.

Q In what way? A Well, she could scarcely talk, her eyes filled up with tears, kept closing her eyes all of the time; she said she was really too miserable to do anything for me. I wanted her to come back because I realized what a faithful helper I had lost, and I felt so sorry for her that I thought she should go ahead with her case. I thought—

Mr. Schneider: If your Honor please, I don't want to interrupt, but that is immaterial.

The Witness: I am sorry.

*Mrs. Katherine DeL. Morris, direct.*

Mr. Schneider: Nothing against you, madam.

Mr. Stadtmauer: Move that part be stricken out.

The Court: Strike it out as not responsive.

10

Q Mrs. Morris, if you will, the objection is this; you are not allowed to tell us what you told her or what she told you. A I see, only what I saw.

Q You were only asked to tell us what you observed about her, just what you saw of her physical condition, as you were able to observe. Do you understand what I mean? A I see, just tell that part.

20

Mr. Schneider: She has told us that.

Q Is there anything else that you have observed about her difference in appearance in February than you observed in June?

The Court: Other than what you have already told us.

A No, I think not, only she doesn't look the same at all.

30

Q In what way? A Well, she always looks thinner, tired, haggard, and she is just sort of dilly-dally in her work; didn't have any pep, that is the way I should put it.

Q What have you to say as to her appearance and condition is today in comparison with what it was in June of 1925? A Well, she looks haggard to me—

40

Q Just tell us the difference? A She was so much stouter and carried herself so much better then than it is today.

*Miss Lillian R. Greenbaum, direct.*

The Court: Has she improved in her physical appearance in the year that has elapsed from the time you first saw her after the accident, when she came to see you, about a year ago?

The Witness: Yes, I think she looked better than she did. 10

The Court: Not yet the same appearance as before the accident?

The Witness: No.

Q By the way, just tell us the difference again. A Well, she looks so much thinner, haggard, worn, tired; she doesn't talk or joke at all as she used to; when she first came to me, she was always smiling, cheerful, happy, and when she has come to me on several occasions since the accident, I notice that she was not like she used to be. 20

Q Noticed any difference in her eyes? A Well, they look tired, worn, I should say; I just was impressed with her miserable condition.

Q That is all.

The Court: What wages did you give her?

The Witness: Three dollars and a half a day and carfare. 30

Mr. Schneider: No cross examination.

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MISS LILLIAN R. GREENBAUM, sworn for plaintiff.

*Direct examination by Mr. Lobsenz.*

Q Miss Greenbaum, can you tell us where you live? A 666 East 29th street, Paterson. 40

*Miss Lillian R. Greenbaum, direct.*

Q How long have you lived in Paterson? A Ever since—about twenty-five years.

Q Do you know Mrs. Jackson? A Yes.

Q Since when? A About five years.

10 Q What was the occasion of your becoming acquainted with her? A Why, she had been doing the laundry work for us and house cleaning, two days a week, for three years.

Q What type of work was that laundry and the house work? A What do you mean?

Q Give us some idea generally. A Type?

Q What did she do around the house? A She would wash and iron the clothes on Mondays; on Friday, she would go through the entire house, sweeping, dusting and cleaning.

20 Q Is that heavy work, or not? A Well, not in our house, no, because—well, not exceptionally heavy—only four of us.

Q Four people in the family? A Four in the family.

Q When you employed her during that time what was the amount of money that you paid her? A We paid her three and a half a day and carfare.

30 Q What were her hours a day? A Well, she would get in about eight-thirty, be through at five-thirty.

Q Until when did she work for you? A Until June, 1925, I think.

Q Were you the lady for whom she worked the day before the accident? A Yes, Friday, she worked Friday.

Q When did you see her again after the accident? A I saw her a few days after. Her son called up Monday morning—

40 Q You are not allowed to tell what the son said.

*Miss Lillian R. Greenbaum, direct.*

Mr. Schneider: Your Honor, I don't want to interrupt, but I think the witness should not repeat conversations.

The Court: Don't tell us the conversation, Miss Greenbaum. You were notified on Monday morning by her son; is that right?

10 The Witness: That she couldn't come to work.

Q Did you go down to her home? A I went down to see her.

Q How long after the accident was it you went down to see her? A Probably a day or two later.

20 Q Just tell us what condition she was in at that time. A When I saw her, I could see she was in bad condition; she couldn't talk, couldn't move her arms she was in bed and several people were taking care of her, and her son was home.

Q What do you mean, she couldn't talk? A She couldn't open her mouth.

Q Did you see her again after that? A Yes, I saw her probably a week or so later again; she was still in bed.

30 Q How often did you see her at her house? A Well, I saw her about three times, until about the middle of July, when we went away for the summer.

Q About, in the middle of July, that last time when you say you went away for the summer, at that time, what was her condition? A She was still in bed.

40 Q What was her general physical condition as far as you were able to observe? A Just what do you mean?

*Miss Lillian R. Greenbaum, direct.*

Q What were you able to see about her any different from what she was before the accident?  
A Well, she hadn't improved much since the accident.

Q What was the condition, as you observed, the middle of July? A She was pretty weak, couldn't sit up.

10 Q Did she come back to work? A No, she has not worked for us since.

Q Wouldn't you tell us the difference, if any, in Mrs. Jackson, from what she was in June, 1925, before this accident, and today? A She was a very pleasant person, very good worker, very pleasant to have about; since then we went to see her again later in the fall, when we came back, and she could hardly move about yet, she wasn't out of the house.

20 Q That was in the fall of 1925? A Yes, in the fall.

Q What was her condition at that time? A Well, she was just about able to sit around in the house, move about a little, but she hadn't been out doors yet. We went to see her, if she was able to come to work, because we did not want to get anybody else in her place.

The Court: The question is; what is her physical appearance now as compared to what it was before the accident.

30 The Witness: Well, she is considerably thinner, looks haggard, tired, not as cheerful as she was; her eyes also seem to have more of a hardened look.

Q Notice any other difference about her? A Not well enough to work—

40 Mr. Schneider: I object to that, and ask to have it stricken out.

*Clarence Jackson, direct.*

The Court: Strike it out.

Mr. Stadtmauer: We will consent to that.

Q Just what have you been able to observe that causes that conclusion? A She does not seem to have much energy or vim about her.

Q In what way? A Well, when she comes to see us occasionally, she is rather sad, frightened looking, worried, nervous.

Q Was she that way before the accident? A No, she was not.

Mr. Stadtmauer: That is all.

The Court: Cross examine.

Mr. Schneider: No cross examination.

20

CLARENCE JACKSON, sworn for plaintiff.

*Direct examination by Mr. Stadtmauer:*

Q Where do you live? A 877 Main avenue, Passaic.

Q Where did you live on June 20th? A 861 Main avenue.

Q Whom did you live with? A My mother.

Q With your mother? A Yes.

Q Who else lived with you at that time? A Two boarders, my two uncles.

Q They also boarded with your mother? A Yes, sir; that is right.

Q Now, do you know what happened to your mother, if anything, on June 20— A Well, she was hit by an automobile—

Mr. Schneider: I object—

40

*Clarence Jackson, direct.*

The Court: He wasn't there, was he?  
Strike it out.

Q What condition was your mother in on  
January 20, 1925?

10 The Court: June 20, 1925.

Mr. Stadtmauer: Didn't I say "June?"

The Court: You said "January."

Q June 20, 1925? A Why, I was not home  
at the time, but I was out with a party.

Q What was her condition? A Why, I  
found her in a hospital the next day, I am telling  
you.

20 Q What was her physical condition before  
her accident? A Why, she was, you know,  
much better; she was able to do her work, and  
she cannot do it now.

Q Cannot do it? A No.

The Court: Was she in good health?

The Witness: She was in perfect health.

The Court: All right.

30 Q How long altogether was your mother in  
bed after the accident? A I should judge  
around four weeks or more.

Q Four weeks, or more, you say? A Four  
weeks or more.

Q Did she appear to be seriously ill? A  
She did.

Mr. Schneider: I object to that—

The Court: Objection sustained; strike  
it out.

40 Mr. Stadtmauer: Strike it out.

*Clarence Jackson, direct.*

Q Who attended her while she was in bed?  
A Dr. Lipton.

Q Did anybody else help her? A Why, Mrs.  
Burden and Mrs. Roberts, various friends  
around, neighbors.

The Court: Didn't you help? 10

The Witness: And I did, of course.

Q Did you help her? A I did, certainly.

Q What did you do? A Why, I did all I  
could, as a mother.

Q Was your mother able to do any of her  
house work? A No, she was not.

Q After she left her bed, was she able to  
leave the house? A No, she was not.

20 Q For how long a period of—withdraw that.  
Do you recall whether she was able to leave the  
house within the year? A Well, I should judge,  
around December.

Q She was able to leave the house? A Yes,  
with assistance.

Q Was she able to go out alone? A No,  
she was not.

Q Who assisted her? A I and the friends  
around the neighborhood.

30 Q Did your mother go back to work right  
away? A No, she did not.

Q When did she first return to work, if you  
know? A Well, around the spring of the year,  
I judge, of the following year.

Q 1926? A Yes.

Q Do you know whether the boarders re-  
mained with her after the accident? A Why,  
they did not.

Q They left her? A Yes.

40 Q Now, in the spring of 1926 you say she  
went back to work. A Yes.

*Clarence Jackson, direct.*

Q How many days a week did she work? A Why, she tried to but she was unable—

Mr. Schneider: Your Honor please, I ask that be stricken out.

The Court: Strike it out. How many  
10 days did she work? Not what she tried to.

Q If you know? A Two days, I guess, two days, sometimes practically three, sometimes not even a whole day.

Q Do you know why she couldn't work?

Mr. Schneider: I object.

The Court: Objection sustained.

20 A (Interrupting.) Why, she wasn't able, she said.

The Court: No, no; objection sustained. Strike that out. You cannot state what she told you; you cannot tell anything of what she told you.

Q What was the average number of days that she worked from the spring of 1926 to date?

30 A Why, two days, sometimes three, and sometimes a part of days—not less than three.

Q Now, does your mother look to be as well today as she was on June 20, 1926? A Why, she don't.

The Court: '25?

Q '25? A She don't.

The Court: She does not. What is your mother's first name?

40 The Witness: Ada.

*Clarence Jackson, direct.*

The Court: Ada?

The Witness: Yes.

The Court: How do you spell it?

The Witness: A-d-a.

The Court: The papers in this case are  
"Ida." 10

Mr. Stadtmauer: Sometimes she pronounces it "Ada," sometimes "Ida."

The Court: Mrs. Morris called her "Ada"—

Mr. Stadtmauer: Yes.

The Court: And Mrs. Jackson gave her name as Ida. Her boy now says her name is Ada.

Mr. Schneider: Suppose we make it both,  
your Honor. 20

The Court: I just called counsel's attention to it, so that he could make a motion to amend the name, if he wished.

Mr. Lobsenz: I suppose we could stipulate her name is—I think you had better ask her.

Mr. Schneider: Suppose we make it Ada  
Ida?

Mr. Lobsenz: Also known as "Ada Jack-  
son." 30

The Court: Ask her what her right name is.

Mrs. Jackson: Ida.

The Court: Leave it as it is then. Your mother's name is "Ida," not "Ada."

The Witness: Well, I call her "Ada."

The Court: You may call her anything, as far as I am concerned, as long as it is respectful. 40

*Mrs. Julia Roberts, direct.*

Q That is all, Mr. Jackson.

The Court: Cross examine.

Mr. Schneider: No questions.

10 MRS. JULIA ROBERTS, sworn for plaintiff.

*Direct examination by Mr. Stadtmauer.*

Q Do you know Mrs. Jackson, Mrs. Roberts?

A Yes.

Q How long have you known her? A About seven years.

Q Where do you now reside? A 250 Oak street, Passaic.

20 Q Do you recall the time Mrs. Jackson was injured in 1925? A Yes.

Q Where were you living then? A On 863 Main avenue.

Q Where was Mrs. Jackson living then? A 861 Main avenue.

Q I see. Now, did you see Mrs. Jackson after her accident. A Yes.

Q When did you first see her after her accident? A On Sunday evening.

30 Q Sunday evening? A Yes, she was—

Q How many days after the accident? A Well, she was hurt on Saturday night; I saw her Sunday evening.

Q How often did you go to see her? A I went to see her each day.

Q For how long? A Oh, gee, I went down to see her during the whole time she was sick, about the whole year.

40 Q For how long a period of time was Mrs. Jackson in bed? A She was in bed four weeks.

*Mrs. Julia Roberts, direct.*

Q Now, for how long a period, how long was it before Mrs. Jackson was able to leave the house? A She left the house around in December sometime.

Q Now, when you visited her, did you do anything for her? A Yes, I fixed her food for her and I did washing for her, cleaning. 10

Q Do anything else for her? A Yes, I waited on her, if that is anything.

Q Anyone else visit her while you were there? A Yes.

Q Who were they? A Several of the other neighbors around, also Mrs. Harry.

Q Is any of them here? A Yes, Mrs. Harry.

Q Do you recall when she was first able to leave the house? A Well, it was around December when she left the house. 20

Q I see. Was she able to go out alone? A No, she was not able to go out alone.

Q How did she go out? Anyone attend her? A Well, it was about assisting her.

Q Did you ever assist her? A Yes.

Q What did you do when you went out of the house? A What did I do?

Q What did you do when you went out of the house? A I just took her by the arm and gave her help for to walk. 30

Q I see. Now, prior to the accident did you visit Mrs. Jackson often? A Huh?

Q Did you visit Mrs. Jackson often before the accident? A Well, occasionally, I did.

Q What was her general condition before the accident? A She was in good condition.

Q Now, is there any difference between her condition before the accident and her condition today? A Oh, well, she was real fat and strong before the accident, but now she is thin and weak. 40

*Mrs. Gussie Burden, direct.*

Q Thin and weak? A Yes.

Q Is she just as fat as before the accident?

A She was a whole lot stouter than she is now.

Q In other words, she is thinner today? A Yes, she is awfully thinner than she was.

10

Mr. Stadtmauer: That is all.

The Court: Cross examine.

Mr. Schneider: No questions.

MRS. GUSSIE BURDEN, sworn for plaintiff.

*Direct examination by Mr. Stadtmauer.*

20 Q Mrs. Burden, you know Mrs. Jackson? A Yes.

Q How long a time have you known Mrs. Jackson? A Well, I have been knowing her for a good while, but I have not lived right near her for three years.

Q Speak a little louder. A I haven't been living right near her for three years, but I have been knowing her for a good while, a good

30

The Court: You knew her before that accident?

The Witness: Sure.

The Court: All right, keep your voice up so that we can all hear you.

Q Did you see Mrs. Jackson before June, 1925? A Yes.

Q Did you see her after her accident? A I did.

40

*Mrs. Gussie Burden, direct.*

Q How soon after her accident? A The next day, Sunday afternoon.

Q Was she in bed or about the house at that time? A She was in bed.

Q In bed? A Yes.

Q Did you visit her after the accident? A Yes, sometimes twice a day or more, just whenever I felt.

10

Q For how long a period did you visit her? A How long?

Q Yes. A Well, to get a little medicine the doctor gave her, milk or food to eat.

The Court: No, for how long a period of time? How many days, weeks or months?

The Witness: Four weeks.

The Court: Four weeks?

20

The Witness: Four weeks she was in bed, and then I visited her right along for eight months or more.

Q Do you recall when she was first able to leave the house? A Yes.

Q Who went with her the first day she left the house? A She knows my mother, and I went to take her to my mother.

Q Do you recall what month and what year that was? A It was in December.

30

Q What year? A 1926.

Q Same year of her accident? A Next year.

Q What is that? I don't hear you. A The next.

The Court: She said, "the next year."

The Witness: '26, in December.

Q Was that the same year in which Mrs. Jackson was injured? A Yes.

40

*Mrs. Gussie Burden, direct.*

Q Sure? A Huh-huh.

Q Where did she go? A She went to my mother's.

Q She went to your mother's? A On Oak street.

10 Q Was she able to walk on the street unassisted? A No.

Q Who assisted her? A Myself and my mother.

Q You both assisted; what did you do—hold her arms? A Yes.

Q How far is your mother's home from the place where Mrs. Jackson lived? A Two blocks and a half.

Q I see; was Mrs. Jackson able to walk that far— A No.

20 Q —without any support? A No, she was not; she was almost out of breath when she got to the house, but we just took her up and sat down, and she rested a long while.

Q You attended her during that period while she was seriously ill? A Yes.

Q Now, do you see any difference in Mrs. Jackson's appearance today different from that before the accident? A Much different.

30 Q Yes; now will you tell us what difference you see? A She is much thinner; she has got a sad look, she has, and then she is weak; she is not able to do her work yet at times.

Q Is she as cheerful? A No.

Mr. Stadtmauer: That is all.

The Court: Cross examine.

Mr. Schneider: No questions.

*Dr. Louis Lipton, direct.*

LOUIS LIPTON, M. D., sworn for plaintiff.

*Direct examination by Mr. Lobsenz.*

Q Doctor, you are a physician and surgeon of the State of New Jersey? A Yes, sir.

Q Have been since when? A 1916. 10

Q Graduate of any college? A New York University.

Q When did you graduate? A 1916.

Q Where have you been practicing since that time? A In Passaic.

Q What kind of practice? A General practice.

Q Are you connected with any institutions, doctor? A Yes.

Q Which? A General Hospital at Passaic and the Beth Israel Hospital in Passaic. 20

Q Both of them, of Passaic? A Yes, sir.

Q Do you know Mrs. Jackson? A Yes, sir; I do.

Q Directing your attention to June 20, 1925, did you know Mrs. Jackson before that time? A Yes, I did.

Q In what way? A Well, I was their family physician.

Q Over what period of time? A Well, I believe, for about a year or two prior to that time. 30

Q I understand you treated her for the injuries she sustained in this accident? A Yes, I did.

Q When was the first time you saw her? A On June 21, 1925.

Q What was her condition at that time? A On that day she had bruises and contusions on her head, her shoulder, elbow, and various other parts of the body. 40

*Dr. Louis Lipton, direct.*

Q Where, particularly? A Particularly the head and shoulder and—it was the left shoulder and the left elbow and the head.

Q Was there anything the matter with her side? A Well, she was bruised up practically all over.

10 Q I see. What did you do for her when you first saw her? A I bandaged her up and fixed her up, but it was not until the next morning when I was called out of bed early, and I went out to see her, and her face was drawn; she couldn't open her mouth, and her muscles in her whole body was stiff and tense. I made a diagnosis of tetanus, or lockjaw, and I injected 20,000 units of tetanus anti-toxin immediately, and the next day I gave her 20,000 units more.

20 Q What caused this condition of tetanus or lockjaw? A It was probably caused by a germ entering her body through one of the cuts, picked up on the street.

Q At the time she was hurt? A At the time she was hurt, yes.

Q What is tetanus caused by? A Tetanus is caused by the tetanus germ, that usually breeds in manure and is found in the street.

30 Q Found in the street? A Yes.

Q How found in the street? A Well, generally in the manure that is on the street.

Q Within the dirt picked up in the wound? A Yes.

Q What have you to say as to whether or not this tetanus or lockjaw she was suffering from was a result of the accident she had suffered? A Yes, it was as a result of the accident.

40 Q You say you gave her 20,000? A 20,000 units of tetanus anti-toxin.

*Dr. Louis Lipton, direct.*

Q What would that show in itself as to how far gone she was in this disease? A Tetanus or lockjaw is a very serious disease and in most cases death results from it, but if it is used immediately, and as in this case it was used, while she did not have tetanus, as far as I could see the night before, but the next morning I diagnosed it and gave it immediately and I followed it up by another big dose of anti-toxin, because her life was at stake and I was not sure that she would recover. 10

Q What was her condition when you first noticed that? A Her face was all set, her muscles were taut, rigid; also she couldn't open her mouth, couldn't take any food, swallow or anything like that.

Q Was she near death, or not; that is what we want to know? A Yes, she was, sir. 20

Q How near death was she at that time?

Mr. Schneider: If your Honor please, I think that is extremely leading.

The Court: Yes, it is. It is pretty difficult for the doctor to answer that question anyway, it appears to me.

Mr. Lobsenz: I would like to know what are the chances of recovery. 30

Q What were the chances of recovery at the time you first treated her, at the time you saw her condition that following morning?

Mr. Schneider: I object to that.

The Court: I think that is too speculative.

Mr. Lobsenz: Wait a minute, please. 40

*Dr. Louis Lipton, direct.*

Mr. Schneider: (Continuing.) Immaterial, leading, too, your Honor; I object to it on that ground.

The Court: I will sustain the objection.

Mr. Lobsenz: Your Honor, allow me an exception.

10 The Court: You may have it.

Q How does tetanus, or lockjaw, affect the body, doctor?

Mr. Schneider: I object to that, as being too general a question.

The Court: How did it in this case, is proper.

Mr. Lobsenz: Yes.

20 Mr. Schneider: Certainly.

A Well, in this case, I believe the tetanus ran her down; she, at the present time, has a myocarditis, which I believe has been caused—

The Court: Talk to the jury.

A (Continuing). I believe, in this case, myocarditis has been caused by the tetanus poison, by the disease which has left its impress on the 30 body. This woman, at the present time, looks entirely different from the way she did before the accident; in my opinion, she lost about twenty of thirty pounds, she is very anaemic and is not certainly anywhere near where she was before the accident.

Q This long name, whatever— A Myocarditis?

40 Q What is that, doctor? A That is degeneration of the heart muscle.

*Dr. Louis Lipton, direct.*

Q What? A Degeneration of the heart muscle.

Q How has that affected her in her case? A Well, it has weakened her and she probably with that condition would not be able to do the same amount of work that a person with a normal heart would be able to do. 10

Q How much work would you say she would be able to do, now, with the condition in which she is in? A Well, I do not believe she will be able to put it—do the same kind of work that she did, and she would not be able to do any heavy work, but light work she may be able to do.

Q Would you say she would be able to do washing or laundry, with this condition, to any great extent? A No, I do not believe so. 20

Q Have you examined her recently? A Yes, yesterday.

Q What have you to say as to what the condition is today, or was yesterday, when you examined her? A She certainly is not able to do any hard work at the present time.

Q To what extent is she disabled? Can you give us an idea? A Well, it is about a third; I do not believe she will be able to put in 30 four days a week. I do not believe she would be able to put in four days a week washing.

Q Well, do you say she is disabled a third? A About one-third.

Q What have you to say as to whether or not that condition is a permanent condition? A That condition is permanent, incurable.

Q Over what period of time have you treated her? A I did not quite understand your question. 40

*Dr. Louis Lipton, direct.*

Q How long did you take care of her, doctor?

A I took care of her for about a month right after the accident.

Q What was her condition when you left her about a month after the accident? A Her condition, as far as lockjaw was concerned, she was cured, and the bruises, most of them had disappeared, but she still complained of pain in the left shoulder, and this pain in the left shoulder joints, of course, that is her statement, but there is crepitus on that shoulder on movement.

Q What is crepitus, doctor? A Roughening of the surface of the bone, of the opposing faces of the bones in a joint, of a moving joint.

Q How does that manifest itself? How can you tell it? A By putting your hand over the shoulder, you can get the grating of the bony surfaces.

Q Is that what they call the "creaking of the bone" in the shoulder? A It is not "creaking"; it is crepitus.

Q I mean, that is what they call it? You can hear the noise there or feel it? A Yes.

Q Which is it in this case, hear or feel it? A Feel it.

Q By putting your hand on the place? A Yes.

Q What have you to say as to whether or not the condition as far as the stomach is concerned—has she complained to you about the stomach, doctor? A Yes, she has complained steadily.

Q In what way? How has that been affected in this accident? A She has complained of a great deal of pain, but I really cannot say much about that.

*Dr. Louis Lipton, direct.*

Q When you left her, you started to tell us about what her condition was, but you did not say about the rest. You said, you finished with your tetanus treatment— A Yes.

Q Just tell us what her condition was at that time, whether she was cured, or not. A No, she was not cured, but I had done for her at that time all that I could, with the medical treatment, no need of running up a big bill, knowing they were poor, so I just let them go.

Q What was her condition at that time? A She was weak.

Q Was she able to go out to work, or not? A No.

Q How long was she confined to her bed, do you know? A I believe she was confined to bed for most of the time that I treated her, or for a month; perhaps the last few days she may have gotten out of bed.

Q What was your bill, doctor? A I think it was forty-eight dollars.

Mr. Schneider: How much was that?

Mr. Lobsenz: Forty-eight dollars.

Q Did she have any other expense outside of the forty-eight dollars? A The anti-toxin amounted to twenty dollars apiece, which was forty dollars, which they paid.

Q Then, that is eighty-eight dollars altogether? A Eighty-eight.

Q Did they pay that? A They paid that, yes.

Q What have you to say as to whether or not that is a reasonable fee for the work you did? A Yes, that is reasonable.

*Dr. Louis Lipton, cross.*

*Cross examination by Mr. Schneider.*

Q Now, doctor, you say she had bruises and contusions? A Yes, sir.

Q On the head, elbow and shoulder? A Yes, sir.

10 Q And the contusion is a black and blue mark? A Yes.

Q And a bruise is about the same? A Bruise is about the same, it is hard to draw a line.

Q Hard to differentiate between a bruise and a contusion? A Yes.

Q Black and blue mark, generally call it? A Yes.

Q Now, the contusions on her head, how long did they take to clear up? A I don't remember exactly.

Q Well, they were all cleared up by the time you stopped treating her? A Yes, I believe so.

Q You stopped treating her in about four weeks? A Yes.

Q At that time the bruises on the head were all cleared up? A I believe so.

Q Likewise the contusions? A Yes.

Q They were superficial, weren't they? A Yes.

30 Q Just on the outside? A Well, not all of them; that elbow gave her a great deal of trouble.

Q I am just asking you particularly about the head, doctor. A Pardon me.

Q They were superficial, cleared up, no holes, was there? A Yes.

Q Generally takes about two weeks or ten days to clear up? A Yes.

Q They did in this case? A I believe so.

Q The bruises on the shoulder, that had  
40 about the same history? A Yes.

*Dr. Louis Lipton, cross.*

Q Cleared up all right? A Well, the bruises on the shoulder cleared up, but the pains in the shoulder and the crepitus in it has not cleared up to date.

Q I am asking you about the bruises or the contusions; we will get to the pain later. A All right. 10

Q That cleared up in about two weeks? A Yes, the external evidence.

Q The external evidence of the bruises and contusions cleared up in two weeks— A Yes.

Q —that is right; isn't it? A Yes.

Q The bruises and the contusions on the elbow, how long did they take to clear up? A About the same time.

Q About the same time, so that at the end of about ten days or two weeks the bruises and contusions cleared up? A Most of them. 20

Q Well, certainly, before you stopped treating her, they all cleared up, didn't they? A Yes.

Q Because you would not have stopped treating her, if they had been plainly manifest, would you doctor? A No, no.

Q You would have still called on her? A No. I would not, not if my treatment would not have done her any good. 30

Q Now, as a matter of fact, however, those bruises and contusions did clear up before you left her, didn't they? A Yes.

Q You are positive of that? A Yes.

Q She still complained of pain later, after that? A Yes.

Q Of course, that is subjective, isn't it? A Yes.

Q That you take the patient's word for that? A Yes. 40

*Dr. Louis Lipton, cross.*

Q Pain at the present time is subjective, isn't it? A All except the crepitus in the shoulder, which is objective, which I can illustrate.

Q Which shoulder? A Crepitus in the left shoulder.

10 The Court: How about the myocarditis? Is that objective?

The Witness: Objective, yes.

Q Now, after you left her four weeks, after, you did not see her again until yesterday, did you? A Well, she was in my office several times.

Q When was she in your office? A I couldn't tell you the exact date.

20 Q Got a record of her visits here? A I have.

Q Got them with you? A Not all of them.

Q When was the last time she was to see you before yesterday? A I should think about six months ago.

Q Six months ago; you only treated her about four weeks, is that right? A I only treated her four weeks; yes, sir.

30 Q That was the end of your treatment? A Yes, sir.

Q How long did this lockjaw last, doctor? A Well, most of the symptoms cleared up, I believe, in about a week.

Q That is about the usual time, isn't it? A Yes.

Q You gave her two doses of the anti-toxin? A Yes, sir.

40 Q 20,000 units? A At each dose, 20,000 units.

*Dr. Louis Lipton, cross.*

Q For typhoid, you give 1,500,000,000 units, don't you? A No, no, it is a billion and a half single germs, that is; a unit is entirely different.

Q I am just curious; I mean, when they give them for typhoid, they tell you you have a billion and a half in you? A I know, but those 10 are single germs; these are the units.

Q Now, the lockjaw was substantially cleared in about a week? A A week, yes.

Q That is the usual time normally to recover from lockjaw? A Yes.

Q Due to your very fortunate catching it at the time and efficiency in treating her? A Yes.

Q With the rigidity of the muscles and everything else about it? A Yes.

Q Did you ever treat her for any sickness of any kind before the accident? A Well, I believe some time before that I treated her for the grippe, I believe, the previous winter. 20

Q Grippe? A Yes.

Q Grippe or influenza? A Well, it is all the same thing.

Q You gentlemen do not know what influenza is, do you? No doctors know that, do they? A I believe doctors do know.

Q Well, they have told me they did not. What did she have, grippe or influenza? A She had grippe or influenza, which is the same thing; they are exactly the same thing. 30

Q You contend it is the same thing? A Yes.

Q But the authorities do differ on it, don't they? A They do not differ.

Q No? A No.

Q Aren't there volumes written on the difference between la grippe and influenza? A Influenza and grippe is the same thing. One 40 is the scientific name; one is the common name.

*Dr. Louis Lipton, cross.*

Q I see; doctor, you stick to that? A (No audible response).

Mr. Schneider: That is all.

*Re-direct examination by Mr. Lobsenz.*

10 Q I understand the condition of her left elbow was serious. Did you order an X-ray to be taken to be sure that there was not a fracture there, doctor? A No, I did not order an X-ray but I believe someone else did.

Q Some other doctor? A Some other doctor that was on the same case at the same time.

Q The X-ray does not disclose fracture, that is true, is it not? A Yes.

20 Mr. Lobsenz: I think that is admitted.

Q Doctor, I forgot to ask you about the condition of the heart, or as to whether or not the condition of the degenerated condition of the heart is present today? A It is present today.

Q I ask you whether or not that is permanent? A It is permanent.

30 Q Might I ask you whether or not that crepitus is a permanent condition in the left shoulder? A The fact that it has remained for two years is a sign that it will not recover.

Q You say that is a permanent condition? A I believe so.

Q To what extent does it impair the use of the left arm? A About ten or fifteen per cent.

Q I see, thank you very much.

40 Mr. Schneider: That is all.

*Mrs. Christine Smith, direct.*

Mr. Lobsenz: That is our case, your Honor. We rest.

(The plaintiff rests.)

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THE DEFENDANT'S CASE.

10

MRS. CHRISTINE SMITH, sworn for defendant.

*Direct examination by Mr. Schneider.*

Q Mrs. Smith, where do you reside? A 51 Myron street.

Q Just a little louder. A 51 Myron street, Delawanna.

20

Q Where did you reside in June, 1925? A No. 5 South High street, Delawanna.

Q How long have you been living in Delawanna? A Going on seven years.

Q Were you out on the evening of June 20, 1925? A Well, I don't just remember the date, but I know it was on a Saturday night in June.

Q On that night when Mrs. Jackson got her injury, were you out that night? A Yes.

30

Q Who was with you? A My husband.

Q Is he in court here today? A Yes.

Q Where had you been? A I had been in the Montauk Theatre.

Q Where were you going after you came out of the theatre? A There was no bus come along, so we walked up on the corner to Ceres. It was raining so we got in out of the rain, and we stood there at the corner, at Ceres, the florist.

40

*Mrs. Christine Smith, direct.*

Q Do you know where Bloomfield avenue is there? A Yes, sir I do.

Q Do you know where Bloomfield avenue intersects Main avenue? A Yes.

Q Where is the Montauk Theatre? Is it to the north, towards Paterson? A Yes.

10 Q How far away from the Bloomfield avenue intersection is it, about? A I should say about, it is cater-cornered there, two streets run into one.

Q Raise your voice, please. A I should judge about two or three blocks.

Q Now, at the corner of Bloomfield avenue and Main avenue, what is there? What kind of a store? A A florist.

20 Q Will you describe it, just how it is located there? A Well, there is a doorway runs cater-corner across.

Q Doorway runs cater-cornered? A Yes, in place of the side of the store it runs straight across the corner like.

Q Now, before this accident happened, were you near this store corner? A Yes, I was standing in the doorway.

Q Your husband with you? A Yes.

30 Q Did you have an umbrella? A No, we didn't have any umbrella; that was the reason we got in out of the rain.

Q Now, will you tell the Court and jury, but raise your voice up, so that we can hear every word, imagine that you are talking in your own home—tell us what you saw of this accident? A Well, I saw the corner of Main avenue and Bloomfield avenue, by the bank, First National Bank, I saw a car—

40 Q What car was that? A (Continuing.)—that come down—well, you see, the one side is

*Mrs. Christine Smith, direct.*

Main street, the other is Bloomfield avenue—on the Bloomfield avenue the car come down and stopped.

Q Was that on the other side of the street where you were from? A Yes.

Q Opposite the bank, you say? A Opposite. 10

Q On the south side of Bloomfield, you say? A Yes.

Q To the side of Delawanna? A Yes.

Q That car come down? A Yes.

Q Where did it stop? A Right near the curb.

Q Where did it stop with reference to the intersection of Main and Bloomfield avenue? A On the side of the bank. 20

Q Pardon me. A On the side of the bank.

Q How near the corner did it stop? A A short distance from the curb.

Q A short distance from the curb; all right, go on. A We stood on the opposite side, at the florist.

Q Yes. A So there is some automobiles coming the other direction on Main avenue.

Q I see; were there any other people standing there with you? A Well, there was two or three standing there. 30

Q Were there any other people standing on the other side, where the bank is? A Yes, there was quite a crowd there.

Q About how many? Can you tell us? A I don't know.

Q Quite a crowd there? A You see, when the other shows leave out, there is quite a number there.

Q There were shows on the other side, too? A Yes. 40

*Mrs. Christine Smith, direct.*

Q Quite a crowd standing there? A Yes, quite a crowd.

Q On the other corner that was where the car was parked? A Yes, on the bank side.

10 Q I see; go on. A There was some automobiles coming both directions on Main avenue, and the coast was clear, and there was a man, I didn't know who he was, come across the track, and when he was crossing, out of the crowd there was a colored man and a colored woman started to run across from in back of this other machine that was standing at the bank—

Q Yes, what else? A (Continuing.)—and the man had hold of this woman's arm, and this automobile bumped up against the man, and as he fell he threw her down.

20 Q On what side of this street was this automobile that was turning around? A On Ceres' side.

Q On your side, he was? A Yes.

Q When you say Ceres' side, is that the name of the florist? A Yes.

Q That was his right side? A Yes.

Q That was the corner you were standing? A Yes.

30 Q You say these two people were running? A Yes, they ran across the street; they just got half way when this car struck the man and he fell over and threw the woman down.

Q Did the car stop? A Oh, yes, stopped right there. Then I asked my husband, would he mind calling—

Mr. Lobsenz: Just a moment.

40 The Court: Don't tell any conversation with your husband.

*Mrs. Christine Smith, direct.*

Q It is all right to talk to your husband, but you cannot tell it here. What did you do? A I didn't do anything.

Q Well, where did you go? A I ran to that sidewalk and my husband picked her up.

Q Your husband picked up the lady? A Yes. 10

Q Did he take her anywhere? A Well, as he was crossing to our side, half-way, from the center of the street, why there was a fireman came along, and he assisted my husband, and they took her in the Hobart Trust Company.

Q Took her into the Hobart Trust Company? A Yes.

Q Did you go over there? A Yes.

Q What did you do there? Did you try to help any? A I did; I asked the janitor there—I asked her, first, if she wanted a drink of water— 20

Q Did you ask the lady herself? A Yes.

Q Did she hear you? A Yes; she answered me. She said, yes; I asked the janitor, would he please get her a drink of water; so as he brought it I handed it to her, and as I handed it to her, she took half of the glass, and she spit it out again.

Q Did you talk to her any other way? A I asked her if she was hurt; she didn't answer me. 30

Q What finally happened to her? A Well, there was an officer come and they took her in the patrol wagon; I don't know the rest part of it, I don't know where they put her.

Q Did you see the gentleman friend there, the gentleman who was with her. A Yes.

Q Was he there? A Yes.

Q I see, and who else was there that you can remember? A I don't know. 40

*Mrs. Christine Smith, cross.*

Q Who got the glass of water? A The janitor of the Hobart Trust Company.

Q Is he here? A That stout man there (indicating).

Q Stout man there, Mr. Thomas over there?

10 Mr. Schneider: Stand up, Mr. Thomas.

Q (Continuing.) That fellow? A Yes.

Q I see; he got the water. What part of the automobile did this gentleman come in contact with? A It was the front part of the machine, I don't know just what you call—

Q You don't know what we call it; you do not drive an automobile? A Front part of the automobile.

20 Q Did you hear a horn blow? A Yes, I did, but I don't know which machine blew it.

Q I see, lot of machines around there? A No, they were going opposite, on the side street.

Mr. Schneider: Cross examine.

*Cross examination by Mr. Lobsenz.*

30 Q You say you walked up Main avenue from the Montauk to Bloomfield avenue? A Yes.

Q (Continuing.) With your husband? Of course, it wasn't raining much, was it, light rain? A It was an awfully hard storm at first and then it slackened up; we were waiting there for a bus to go home.

Q Had it slackened up while you were waiting? A A little.

40 Q Main avenue runs north and south like this, doesn't it? A Yes.

*Mrs. Christine Smith, cross.*

Q That is right; and Bloomfield avenue runs this way, east and west? A Yes.

Q You were on this corner, by Ceres', weren't you? A Yes.

Q Faced in any particular direction? A Well, you see the door runs across this way.

Q What direction were you facing in? A 10 I was facing Bloomfield avenue.

Q You were facing Bloomfield avenue, toward the bank? A Yes.

Q These people were hurt as they were walking across the street; is that right? A They were running right across the street.

Q I am asking you now, as they were running across the street, from the sidewalk, on the one curb sidewalk on the other curb, is that right? A No, they did not get to the other 20 curb.

Q No, of course, they did not, but they were walking in that direction? A Yes.

Q From the one sidewalk to the other sidewalk? A From the sidewalk over toward Ceres'.

Q But I say, they were going from the one sidewalk by the bank to the sidewalk by the Hobart Trust? A I don't know just where they were going, but they crossed the street, they went 30 in back of the machine.

Q Didn't they walk straight across? A Straight across, but there was a machine at the bank.

Q All right, but without the machine, they must have left the sidewalk, didn't they, before they got into the road? A Of course, they did.

Q I am asking you whether they did. They left the place where there was a sidewalk there 40 on Main avenue; is that right? A Sure.

*Mrs. Christine Smith, cross.*

Q Then they went straight across the street; is that right? A No, they come from back of the machine.

Q When they left the curb, then, did they walk to the left and then around? A No, this machine was right close to the corner.

10 Q You say they did not do that?

Mr. Schneider: Pardon me, I think she ought to be permitted to answer.

Mr. Lobsenz: I asked her; she said, no.

The Court: She said, no, the machine was quite close to the corner. I will let that stand.

20 Q How far from the right-hand curb were they when they started across the street? A They were right at the corner of the bank, there is quite a sidewalk extends quite out.

Q How wide is that sidewalk? A I don't know just exactly.

Q Well, it isn't any more than ten or fifteen feet, is it, about? A I couldn't tell you how wide that part is there.

30 Q Well, were they about half way between the curb and the building? A No, they were right standing by the—on the corner of the bank in fact, there was a big crowd there, one man was standing there, I don't know who he was, went to pull him back, had the man by the arm.

Q Did you see that? A I certainly did.

Q Who were they? A The man, I don't know who he was.

40 Q Didn't you ask who this man was? A Why should I?

*Mrs. Christine Smith, cross.*

Q Where were they in reference to the building and the curb when they started to cross the street? A They were standing with the crowd.

Q All right, now, where were those people with reference to the curb and the building?

A I don't quite understand.

10

The Court: Where were they in reference to the curb and the building? Were they midway between the curb to the building? Were they standing on the curb? Were they two-thirds of the way toward the building or toward the curb? Or, just where were they?

The Witness: Well, the machine was close to the curb, and the people were standing there.

20

Q Why talk about the people? A There was quite a mob there.

Q I am going to talk about Mrs. Jackson, if you will, the woman who was hurt. A

Q Where was she standing? A She was standing on the inside of the street.

The Court: Nearer to the bank or nearer to the curb? 30

The Witness: Right near the sidewalk.

The Court: On the sidewalk, was she?

The Witness: Yes, right on the edge of the sidewalk.

The Court: There is a wide sidewalk there that extends from the building to the curb?

The Witness: Yes.

40

*Mrs. Christine Smith, cross.*

The Court: The question is, on what part of the sidewalk with reference to the curb and the building was she standing on? Was she nearer the bank building or was she nearer the curb?

10 The Witness: She was nearer the curb.

The Court: All right.

Q How close to the curb, how close to that?

A Well, just a short distance, you know how they stand, right near the gutter.

Q About this distance (indicating)? A Yes.

Mr. Lobsenz: Witness indicating about a foot?

Mr. Schneider: I guess that is all right.

20 Q So that then this automobile which you are speaking about came to a stop on Bloomfield avenue? A Yes, as he hit the man.

Q I am not talking about the car that hit him; I am talking about the car that was at her left? A That car stood there.

Q Yes, the car that was standing still, the car that was going east on Bloomfield avenue? A Oh.

30 Q That had not as yet got into Main avenue, had it, when it came to a stop? A No, it was close to the curb.

Q Close to its right-hand curb? A Close to the Main avenue curb.

Q That is, close to the right-hand curb as it was going east on Main avenue. A No, it was on this side of Bloomfield avenue; it hadn't turned the corner.

40 Q No, it hadn't turned the corner, and it hadn't, as yet, come up to the corner when it came to a stop; is that right? A Not quite.

*Mrs. Christine Smith, cross.*

Q And it came to a stop because these people were on the corner, on its right-hand side? A There was a car coming opposite way across Main avenue.

Q Oh, going down Main avenue? A That was the reason he stopped, yes. 10

Q About how far before its nearer corner of Bloomfield avenue and Main avenue had that car come to a stop? A Right near the curb, just a short distance.

Q How far from the curb, about? Can you give us any idea two, three, four, five feet?

A No, I should judge about one or two foot.

Mr. Schneider: What is that?

Mr. Lobsenz: No, I should judge about 20 one or two foot.

The Witness: I should judge about one or two foot.

The Court: Louder, Mrs. Smith.

Mr. Schneider: Mrs. Smith, will you kindly raise your voice, please?

The Witness: I am speaking as loud as I can.

30 The Court: Oh, no; you are not. You speak loud one minute, next minute you whisper.

Mr. Schneider: What was that last answer?

(Answer repeated by stenographer.)

Q Now, might I ask you whether or not these two people, Mrs. Jackson and this gentleman, walked straight across the street when they left that curb? A They run straight across. 40

*Mrs. Christine Smith, cross.*

Q I didn't ask you that. I am asking you if they ran straight across, irrespective of anything. They went straight across the street from the one side to the other, didn't they—weren't they—going in that direction? A Yes, straight across, going.

10 Q That is what I mean. So that there can be no question, they were going at right angles from the south side of Bloomfield avenue to the northerly side from where they left; is that right? A (No audible response.)

Q This automobile that struck her, where was it when you saw it the first time? A It was right—well, I should judge, about fifteen feet from the corner.

Q Coming from across the Erie Railroad tracks, wasn't it? A Yes.

20 Q Crossing the street? A Crossing from the side of Main avenue to Bloomfield avenue.

Q Crossing the railroad tracks, then crossing the trolley tracks; is that right? A Yes.

Q Then going up Bloomfield avenue west? A (No audible response.)

Q Had the automobile yet come up the railroad track when you first saw it? A I didn't see it until it got to about, you know, where that traffic sign is there.

30 Q That traffic sign is right by the railroad track, isn't it? A Yes.

Q How far did the automobile go from the time it first struck one or two of these people until the time it came to a stop? A About ten or fifteen feet, not very far.

Q Ten or fifteen feet? A Yes, it wasn't very far; I cannot just judge, you know.

40 Q I see. You say the front part of the machine hit the man? A It hit the man and as he fell he threw her down.

*Mrs. Christine Smith, cross.*

Q You say the front part of the machine hit the man? A Yes.

Q Can you tell us where in reference to the middle of the front it hit the man? You see, what I mean? This is an automobile where, in reference to the middle of the car? A I should judge it would be the fender; of course, I don't know much about automobiles. 10

The Court: And which part of the front of the car hit him?

The Witness: (Makes unintelligible response.)

The Court: No, no, what part of the front part?

The Witness: (Makes unintelligible response.) 20

Mr. Schneider: I don't want to annoy you, Mrs. Smith, but it would please me very greatly if you would raise your voice.

Q You said now there was something that ran along the front of the car— A Yes.

Q —which struck the man— A Yes.

Q —a bar; is that true? A Yes.

Q And the bar that runs across, that is the bumper, isn't it? A (No answer.) 30

Mr. Lobsenz: Suppose we call that a bumper for the time being?

Mr. Schneider: I object to that.

The Court: Yes, objection sustained. She said, she didn't say what it was, she said the bumper or the fender. They are very different.

Mr. Lobsenz: Withdraw the question. 40

*Mrs. Christine Smith, cross.*

Q You say there was something that struck the man, that something being a bar which runs across the front of the car? A Yes, hit him in the leg.

Q (Continuing.) From the left to the right; is that right? A And hit him in the leg.

10 Q And hit him? A Struck him on the leg.

Mr. Lobsenz: Can't we assume now it is the bumper?

The Court: There is a lot of things might strike him in the leg, the bumper or the front of the spring or the handle of the crank, if there was one, or the fender that is between the two wheels, and the radiator.

20 Q Did you see what struck him? A No, I didn't just see, the machine hit him and he fell over and he threw the woman down.

Q Were you in such position that you could see the front of the car? A Yes.

Q Were you in such position that you could see what part of the front struck the man? A No, I couldn't say; I seen that he fell over.

Q You seen that he fell over? A Yes.

30 Q You were standing by the building, weren't you? A Yes; no, I was standing in the doorway.

Q In the doorway, that is by the north side of Bloomfield avenue? A Yes.

Q Had the automobile yet come up to a point opposite the edge of the buildings on Main avenue when the accident happened? A No, he was up a ways, about ten or fifteen feet up from Main avenue.

40 Q I see; had the automobile that struck this man yet come up to the curb, that is the west

*Mrs. Christine Smith, cross.*

curb of Main avenue, when the accident happened? A Oh, yes, it was apast the curb.

Q How far apast? Can you give us an idea? A I don't know, see that proper—the sidewalks—he would go along about ten or fifteen feet, I should judge.

Mr. Schneider: What is that?

The Court: "Ten or fifteen feet, I suppose."

Q In that case, Mrs. Smith, the car struck these people, or this man, ten or fifteen feet apast the curb, it would be about even with the building where you were standing, wouldn't it? A It was right by the starting of the building, because on the other side the sidewalk extends a further distance than it does on the west side.

Q Oh, you were speaking of that side; is that right? A Yes.

Q Where, in reference to that side of Main avenue—where in reference to the curb, southwest curb of Main avenue? A He got to just about where the corner of the bank starts when he hit him.

Q Just where the corner— A Yes.

Q There were other people standing over there by the southerly side; is that right? A Yes, by the bank, quite a mob there.

Q All faced to go north? A I don't know about that; they all stood near the curb there.

Q Don't you know in what direction they were facing? A Facing toward Ceres'.

Q No automobiles passing up and down Bloomfield avenue at that time, was there? A No, just that one that stopped there.

Q That didn't pass; that stopped? A They come down, so there was a corner, and it stopped.

*Mrs. Christine Smith, cross.*

Q But that car stopped before the corner?  
A Yes.

Q Yes? A Very short distance from the corner.

Q So that people could have gone in front of that automobile, couldn't they? A No, it  
10 was too close to the corner.

Q How much space to the edge of the walk in front of that automobile? You said it was about? A Very short distance from the corner, about one or two foot, not any further.

Q But that one or two feet is sufficient for anyone to walk in front of that automobile, isn't it? A I know, but they come running from the back.

Q These people came from the back? A Yes,  
20 these people did, yes; they started to run across from the back.

Q So that they had started from where they were originally? You say they were a foot away from the right-hand side curb, that is true, isn't it? A Yes, on the other side.

Q They started to walk across the street?  
A No, they ran.

Q They ran across the street? A Forward.

Q But they ran straight across? A Yes.

Q This automobile was going how fast at  
30 the time the accident happened? A Well, it didn't go very fast, because he stopped very short.

Q Was it going twenty miles an hour? A No.

Q Didn't you tell me yesterday it was going twenty miles an hour? A No, I didn't tell you anything about him going twenty miles an hour.

Q Didn't you mention anything about speed  
40 yesterday to me? A No, I did not; I didn't speak to you yesterday.

*Mrs. Christine Smith, cross.*

Q Did your husband speak to me? A No, I don't know; you had better ask him that.

Q Weren't you there when the three of us were talking?

Mr. Schneider: Where was that, your Honor? 10

Mr. Lobsenz: Right outside, in the front of the court room.

Mr. Schneider: Fix the time, please, and the place, so that we can know where it was.

Mr. Lobsenz: Yesterday morning, right in front of this court room door.

Q Do you remember the three of us talking?  
A (No audible response.)

Q Well, let's see. Do you remember seeing  
20 me yesterday? A No. I told you when I was speaking to you—you were in the other court room and you were in the side room, and I asked if I had to come back—

Q Just a minute.

Mr. Schneider: Just a minute; why not let it all in?

Mr. Lobsenz: I am directing her attention to one particular thing.

The Witness: I said I saw the colored  
30 man and woman come inside of the sidewalk.

The Court: Just a moment, Mrs. Smith.

The Witness: I didn't want him telling you I was speaking to him.

Mr. Schneider: Just a minute; you see you can talk loud, if you want to.

Q I just wanted to find out whether you and  
40 your husband saw me yesterday; did you, yes or no? A I asked you if you were her lawyer.

*Mrs. Christine Smith, cross.*

The Court: Yes or no, please.

A Yes.

The Court: Yes.

10 A (Continuing.) It was yesterday morning.

The Court: Don't let's waste time.

Q We did talk outside, weren't we? A Yes.

Q Talking about the accident, weren't we? A  
It wasn't yesterday morning; it was the day  
before.

Q What you say? It was Monday, you mean?  
A Monday.

20 Q All right, I beg pardon; Monday we were  
speaking about the accident, weren't we? A  
You asked me if I knew about it.

The Court: No, no; the answer is "yes"?

The Witness: Yes, sure.

Q Do you remember discussing about the  
speed of the automobile, at which time you said  
it was going twenty miles an hour? A I do  
not.

30 Q Did your husband say that? A I don't  
know.

Q Weren't you there with him at the time?  
A I didn't hear him say it.

Q Did you hear him say anything about the  
accident? A I believe he told you that it was  
really their own fault.

40 Mr. Lobsenz: Just a minute. I move  
that be stricken out.

*Mrs. Christine Smith, cross.*

Mr. Schneider: Just a minute. I object  
to that, as to the conversation with her  
husband.

The Court: Objection sustained.

Mr. Lobsenz: I am asking her only as to  
whether or not she did hear any of the  
conversation, in which her husband said that.

The Court: And she said, "No."

Q About how wide is Bloomfield avenue, that  
is— A Well, I do not know.

Q —from curb to curb?

The Court: Yes or no.

A I haven't any idea.

Q How near to the right-hand curb was this  
automobile that had stopped before the accident?

A Near the curb, right near the sidewalk.

Q Can you give us any idea? A It was  
very close to the sidewalk.

Q Well, how close? A Just a short dis-  
tance.

Q Hold your hand before you, and indicate  
how close? A I don't want to say because I  
don't want to lie.

Q I don't want you to lie, Mrs. Smith. A  
I could not, because I am in a nervous condi-  
tion, you know; I am under Dr. Warren's care.  
I cannot stand it.

Q I want to treat you with the utmost cour-  
tesy, Mrs. Smith. A Yes; I guess you know  
my reputation.

Q Yes, and you know mine, too, Mrs. Smith.

Mr. Schneider: Now, if your Honor  
please, I object to counsel and the witness  
shaking hands so much.

*Mrs. Christine Smith, cross.*

The Court: Well, it doesn't do any harm.

Mr. Schneider: Takes time, though.

The Court: Yes, but it is all over.

Mr. Schneider: All right.

10 Q Now, Mrs. Smith, won't you just try to fix as to about how close this automobile was to the right-hand curb, this automobile that was standing there? A When it stopped?

Q Yes. A When he stopped, he just stopped a short distance to the curb.

Q How close to the curb? A Well, just a short distance (illustrating).

Mr. Lobsenz: Indicating about half a foot?

20 Mr. Schneider: Indicating six inches.

Q That automobile was a touring car or a pleasure car, wasn't it? A I really don't know, I don't remember.

Q It was a pleasure car—it wasn't a truck? A No.

30 Q How much space was there between the left-hand side of that car and the right-hand side of the car which struck the woman? Can you tell us? A Well, quite a distance between.

Q Can you give us any idea, about how much space there was between those two automobiles at the time of the accident? A You see, he came, it was about that far away from the Ceres' corner.

Mr. Schneider: Pardon, a moment; what is this distance?

40 Mr. Lobsenz: The Weyl car was that far—

*Mrs. Christine Smith, cross.*

Q Put it up again. A (Witness indicates.)

Mr. Lobsenz: Indicating about two and a half feet.

Mr. Schneider: Two and a half feet; put that in the record.

Mr. Lobsenz: About two and a half feet from Ceres' side. 10

The Witness: Yes.

Q Then, there was all of that distance then between these two automobiles, because one was six inches from one side, the other was two and a half feet from the other side; is that right? A (No answer.)

Q Can you give us any idea about how many feet that is? 20

Mr. Lobsenz: Do you want to stipulate it? Do you know?

Mr. Schneider: She said Mr. Weyl's car was two and a half feet from his right; the other car was six inches from the other curb.

Mr. Lobsenz: Now, if we can agree on the width of the street.

Mr. Schneider: That is simply a matter of proof. Car, say, about six feet wide— 30 six and six is twelve, then two and a half and six inches—it would be about thirty-five, wouldn't it?

Mr. Lobsenz: We can stipulate that. It is hereby stipulated that there were thirty-five feet between the two automobiles at that time.

Q Now, Mrs. Smith, just one other matter. You say these people were half way across the 40

*Mrs. Christine Smith, re-direct.*

street when they were struck. A The man, and he fell and he threw her down.

Q Then, did they fall down? A Yes.

Q And they were taken across the street?

A Yes.

10 Q Isn't it a fact, Mrs. Smith, that this automobile that struck her never came from the tracks at all, but came on Main avenue and then swung to the right hand? A No, come across the street.

Q You are sure of that? A Yes, sir.

Mr. Lobsenz: That is all.

*Re-direct examination by Mr. Schneider.*

20 Q Now, were there any other people crossing from that side of the street at the time these two people were crossing? A Not at that time.

Q At the time they were the only two crossing? A Yes.

Q What were the other people doing at that time? A They were standing there.

Q Standing where? A Standing on the bank side.

30 Q I believe you said something about the sidewalk in front of the bank, being extensive. A Yes, it is very broad.

Q It extends how far up Bloomfield avenue? A It extends further up than Ceres'.

Q In other words, the sidewalk where you were, at Ceres, is wider than the sidewalk—strike that out—is not as wide as the sidewalk where the bank is? A The bank sidewalk extends out more than on Ceres' side.

40 Q So that people walking straight across from some parts of that sidewalk would land above Ceres?

*Benjamin Morris, direct.*

Mr. Lobsenz: I object to that, positively leading.

The Court: Don't lead, please.

Mr. Schneider: That is all.

10

BENJAMIN THOMAS, sworn for defendant.

*Direct examination by Mr. Schneider.*

Q Mr. Thomas, where do you live at the present time? A Hobart Trust Building, Passaic.

Q You live right in the bank where all of that money is? A Yes, sir; in the building.

Q You are the gentleman that watches the 20 money? A No, sir.

Q What is your position there? A Janitor.

Q You are the janitor of the bank building? A Of the building itself, not the bank.

Q Oh, not the bank; I see. How long have you been janitor of that bank building? A Six years.

Q And you live there? A Yes, sir.

Q You mean, you have rooms actually in that 30 bank? A Yes, sir.

Q What part of the bank? A Third floor.

Q Pardon me? A Third floor.

Q Third floor of the bank? A Main avenue side.

Q What? A Main avenue side.

Q On the Main avenue side. Family live there with you? A Yes, sir.

Q Now, do you remember the night when this colored lady, the plaintiff in this case, was injured? A Yes, sir. 40

*Benjamin Morris, direct.*

Q Where were you that night? A I was sitting at the door.

Q At the door of what? A Of the Hobart Trust Building.

Q Now, what corner is that on? A That is on Bloomfield avenue.

10 Q That is on Bloomfield avenue? A Yes, sir.

Q And what other street? A Bloomfield and Main.

Q Bloomfield and Main? A Yes, sir.

Q How wide is the sidewalk in front of that bank there? A It is kind of wide, about, I imagine, ten or twelve foot, fifteen feet, I couldn't tell exactly.

20 Q It is wider than the sidewalk, then, across the street, is it? A Yes, sir.

Q And the doorway, you say, where you sat, was on Bloomfield avenue? A Bloomfield avenue.

Q Were you there alone? A Yes, sir.

Q Sitting on a chair? A Yes, sir.

Q What were you doing? Anything particular or just watching the world go by? A Yes.

30 Q Just watching the world go by? A (No answer.)

Q Were there people out on the street? A Yes, sir.

Q Movies had gone out at that time? A Well, coming out of the Play House at the time.

Q Where is the Play House located? A About two blocks below, on Main avenue.

Q Well, in what direction? A Down towards Newark.

40 Q That is a southerly direction? A Yes, sir.

*Benjamin Morris, direct.*

Q Now, across the street, on Bloomfield and Main, what is there located? A National Bank.

Q The what? A The National Bank of Passaic.

Q Is there some kind of a shop? A Passaic National Bank.

Q I see, the Passaic National Bank. A Yes, sir. 10

Q Passaic is full of banks? A Yes, sir.

Q What is there on the ground floor there? Any kind of a store? A No, sir; it is a bank; across the way from the Hobart Bank Building is Ceres' flower store.

Q Is that the Passaic Bank Building? A No, that is the Hobart Bank.

Q Where is Ceres' flower shop? A In the Hobart Bank Building. 20

Q In the Hobart Bank Building? A Yes, corner of Main and Bloomfield.

Q Oh, I see; that is right close to where you sat? A Yes, sir.

Q Oh, I see. You heard Mrs. Smith testify? A Yes, sir.

Q As to being in Ceres' door? A Yes, sir.

Q You were a little ways up? A Yes, sir.

Q In the doorway of the bank building? A Yes, sir. 30

Q I see. Now, will you tell the Court and jury just what you saw regarding this accident, using your own words? A Well, as I was sitting there, I seen the car standing on the corner of Passaic National Bank.

Q On the corner? A On the other side.

Q On the other side? A Yes, sir.

Q Did you see that come to a stop, or how? A I seen it there stopping; I didn't see it come there but I seen it standing there. 40

*Benjamin Morris, direct.*

Q How near Main avenue was that? A Oh, I imagine it was ten, twelve, fifteen feet or sixteen, something like that, I couldn't tell you exactly.

Q It was standing there? A It was standing there when I seen it.

10 Q What did you see happen? A I seen the colored folks pass through at the rear of that car.

Q At the rear of the car? A I seen the colored folks pass through at the rear of that car.

Q Just what were they doing? A They were going across the street—

Q In what way? A Well, they was going across the street on the right side, which was on the left of the car.

20 Q Well, were they walking sedately or leisurely walking or how? A No, sir; they go, they had the umbrella open.

Q Pardon me. A They had the umbrella open; it was raining little at the time.

Q Then what happened? A Well, I didn't see the car coming; the first thing, I heard hollering and I looked around and I seen the both on the ground.

30 Q Yes. A They was close to the front end of the automobile.

Q Yes, where was the automobile? A It was standing there then.

Q Was it close to you? A Well, it was about fifteen feet away or twenty feet away from me.

Q Going in what direction? A Down towards Main avenue.

Q Down towards Main avenue? A Yes, sir.

40 Q How far from Main avenue is your doorway? A Oh, well, I couldn't tell exactly what

*Benjamin Morris, direct.*

it is; here is the store and the Postal Telegraph and myself.

Q Was this Postal Telegraph anywheres near Ceres'? A It was between the both, between Ceres' and our door.

Q Did you see the colored gentleman? A 10 Yes, sir.

Q Where was he? A He was—he got up and walked towards Ceres'.

Q Before he got up, where was he? A He was on the ground.

Q Near what part of the automobile? A Well, I couldn't tell you exactly that, because I only seen him on the ground.

Q Pardon me. A I only seen him on the ground. 20

Q When he was on the ground, what part of the automobile was he? A Automobile was a few feet away from him.

Q On the side or front? A Around the center.

Q On the side? A Well, it is around the center of the street.

Q Pardon me. A It was around the center of the street; I couldn't tell one side more than the other. 30

Q Did you hear any horn blown there? A Yes, sir; but I didn't know what car it was.

Q I see; you were not expecting any accident. Did you notice this car come to a stop? A No, sir; I didn't really notice on the car.

Q You didn't notice the car at all until after the accident was over? A No, sir.

Q Did you do anything with reference to the people? A I ran towards her, but the fireman picked her up before I got there— 40

*Benjamin Morris, cross.*

Q I see. A —and I told the fireman to bring her in our hallway there.

Q She was brought in there? A Yes, sir.

Q You are the gentleman that got her a glass of water? A Yes, sir.

Q Did you talk to her at all? A No, sir.

10 Q Did she talk to anybody else? A I didn't hear her.

Q Pardon me. A I didn't stay alongside of her after that. I—

Q You went back to where you had been? A Yes.

Q Did you see her taken away? A Yes, sir.

Q I see; all right.

Mr. Schneider: Cross examine.

20 *Cross examination by Mr. Lobsenz.*

Q You didn't see the accident at all, did you?

A I just saw them on the ground.

Q That was the first time you saw it? A Yes, sir.

Q That was the first time you saw these colored people? A Yes, sir.

Q They were there on the ground, the two of them? A Yes, sir.

30 Q This automobile when it came to a stop, it stopped close to where you were? A No, it was down hill.

Q I know, but pretty close to you, ten or fifteen feet away? A Yes, about that.

Q You were near the hallway of the Hobart Bank— A Yes, sir.

Q —where you were? A That is, on Bloomfield avenue.

40 Q You were near the hallway of the Hobart Bank where you were sitting? A Yes, sir.

*Benjamin Morris, cross.*

Q That is about half way between Prospect street and Main avenue, is it, that hallway? A Just about, yes.

Q That hall is about a hundred feet from Main avenue, isn't it? A No, no; not that.

Q There is the length of Ceres' store there, isn't there? A Yes, but Ceres store runs toward the Hobart Bank. 10

Q But Ceres' store occupies some space on Bloomfield avenue? A Yes, sir.

Q Then, after Ceres' store, there is— A Postal Telegraph.

Q —the Postal Telegraph, after that a little more space, then the hall? A That is the Postal Telegraph next to the hall.

Q Then comes the hall? A Yes, it is only a thin partition between the Postal Telegraph and the hall. 20

Q This partition? A Yes, sir.

Q Can't you tell us how far that is? A No, sir.

Q Isn't it around fifty feet? A No, say sixty feet.

Q Say sixty feet? A (No answer.)

Q Sixty feet up here, that is where you were? A Yes, sir.

Q You were sitting in a chair or standing? A Sitting. 30

Q Sitting? A Yes, sir.

Q Faced any direction? A Sir?

Q Faced in any direction? A Faced to the Passaic National Bank.

Q Passaic National Bank? A Yes, on Main avenue.

Q You saw this automobile come to a stop on the Passaic National Bank side? A Oh, no, he was there; I didn't notice that. 40

*Benjamin Morris, cross.*

Q You saw him there, standing there? A I saw him there.

Q He wasn't yet up to the corner of Main avenue and Bloomfield avenue? A No, sir.

Q (Continuing) by the bank? A No, sir.

10 Q About how many feet below that curb, would you say it was, up the block, when he came to a standstill? A You mean the car that was standing by the National Bank?

Q Yes. A About ten or fifteen, something like that.

Q Ten or fifteen feet, eh? A (No answer.)

Q Where this colored woman lay on the ground you say was in the center of the street? A Yes, around the center, yes.

20 Q How far from the opposite curb of Main avenue and Bloomfield? A Oh, that was about twenty feet, I should imagine.

Q That is twenty feet— A Up towards Bloomfield avenue.

Q —up towards Bloomfield avenue? A Yes.

Q Towards you? A Yes.

Q They were laying there? A Well, they didn't lay there; the man got up quick.

Q But they were laying there when you first saw them? A Yes.

30 Q Both of them? A Yes.

Q They were twenty feet up the road, you say? A Well, I imagine that.

Q About that? A Yes.

Q You were sixty feet up the road? A Well, I will say that.

Q Or sixty-five feet? A Yes.

Q Or about sixty? A About sixty, I guess.

40 Q This automobile, then, it come to a stop ten or fifteen feet from you? A No, from the corner.

*Benjamin Morris, cross.*

Q From you? A No, from the corner.

Q These people were laying, you say, twenty feet up Bloomfield avenue— A Yes, sir.

Q —is that right? A Yes, sir.

Q This automobile that struck them? A Oh, I beg pardon; I meant the other one. 10

Q You say I am right; you mean ten or fifteen feet from you? A Yes.

Q When the automobile came to a stop? A Yes, sir.

Q The people were there twenty feet from that corner? A Well, I imagine that; I cannot tell for sure.

Q Bloomfield avenue is up hill there, isn't it, from Main avenue? You go up a hill? A Yes, sir. 20

Q You can't tell us which horn was blown? A No, sir.

Q You can't tell us anything about how many horns were blown, or anything like that? A No, sir.

Q Can you tell us anything at all about the cars which were going on Main avenue? A No, sir.

Q Can you tell us anything at all about the cars that were crossing Bloomfield? A At the time of the accident? 30

Q No, before the accident? A No.

Q Did you see people crossing the street? A No, sir.

Q Don't you know anything about that? A No, sir.

Mr. Lobsenz: That is all.

*Benjamin Morris, re-direct—re-cross.*

*Re-direct examination by Mr. Schneider.*

Q How close to the automobile were these two people lying right after the accident when you saw them? A I beg pardon?

10 Mr. Lobsenz: I object, been all over that.  
The Court: I will allow him to answer.

Q How close to the automobile were these two people lying, or the colored gentleman and the colored lady, when you saw them? A Oh, I imagine about five or six foot.

Q Five or six feet? A Yes, I imagine that.

Q To the side of it or to the front of it?  
A To the front; you see, they went down hill,  
20 the car went down hill.

*Re-cross examination by Mr. Lobsenz.*

Q You say the car was below them? A Yes, sir; below the man and the woman.

Q So the man and woman were lying five or six feet ahead of the car when it come to a stop? A No, it stopped; it stopped then.

Q Were the people lying on the street five or six feet in front of the automobile? A Yes,  
30 sir.

Q (Continuing.) When the automobile came to a stop? A When I seen them.

Q When you first saw them? A Yes.

Q That is all.

The Court: We will take a recess until five minutes past two.

NOON RECESS.

40

*Ernest Weyl, direct.*

June 8, 1927; 2 P. M.

Mr. Lobsenz: If your Honor please, we have stipulated that the houses at the place where the accident happened, they were built one right next to the other.

(Followed by discussion.)

10

ERNEST WEYL, sworn for defendant.

*Direct examination by Mr. Schneider.*

Q Mr. Weyl, on the night of this accident, June 20, 1925, were you driving this car? A Yes, sir.

Q What kind of a car was it? A Dodge sedan.

20

Q Dodge Sedan? A Yes, sir.

Q And how many seated car was it? A Five seats—five-seated car.

Q Was that your car? A Yes, sir.

Q You were driving it? A Yes, sir.

Q Where had you started that evening? A I started from my home at 99 Elliott street, Passaic.

Q Passaic Park? A Yes, sir.

Q Just where is that? Is that part of Passaic? A Yes, sir; it is alongside of Passaic, a couple of miles down from Passaic proper.

30

Q It is in Passaic proper? A No, it is down about a mile and a half or two.

Q I say; part of the City of Passaic? A Yes, sir.

Q You say it is about how far down from the scene of the accident? A From where I started from home?

Q Yes. A Oh, about two miles.

40

*Ernest Weyl, direct.*

Q I see; where were you going to? A I was going to get my son in Bloomfield avenue.

Q Bloomfield avenue, near what? A Well, Bloomfield avenue, by the store, in the drug store there, he was employed there.

10 Q Employed there? A Yes sir.

Q How many blocks up from Main avenue, one or more? A Oh, a little better than one; oh, just across the street and one above.

Q Little more than one block? A Yes.

Q You were going to get him and take him home with you? A Yes, sir; I was going to take him home.

Q What is he? A drug clerk? A Yes, sir; he works for Mr. McLelland.

20 Q What course did you follow? Up what street did you go? A From the home?

Q Yes A I went up along Main avenue until I got to Bloomfield avenue.

Q I see; when you got to Bloomfield avenue, was there any traffic in Main avenue? A There was traffic going to the south.

Q Going south? A Yes, sir.

Q About how much traffic? A Oh, quite some traffic.

30 Q What did you do? A Well, when I got along to Bloomfield avenue, at the north corner—northeast corner—I swung out—

Q Northeast corner— A —so I would be on the right side, as I would want to go over Bloomfield avenue.

Q What did you do when you got to the northeast corner? A I seen the cars coming through and I stopped.

40 Q You stopped; did you come to a complete stop? A Yes, sir.

*Ernest Weyl, direct.*

Q Did the cars go along? A The cars went by, but I couldn't go through because I stood there.

Q How many cars were there, if you can tell us? A Well, I should say six or seven at least.

Q Did all of the cars go by? A The cars 10 went by.

Q What did you do then? A Then I put my car in first gear—

Q Is that the starting gear? A Yes, sir; that is the pulling power of the car to start.

Q How many gears has it? A It has four gears.

Q Including reverse? A With the reverse; yes, sir.

Q You started the car by putting it in first 20 gear— A Yes, sir.

Q —then, what did you do then? A Then I started to go up Bloomfield avenue, keeping to the right of the road.

Q Did you do anything as you went up? A I started to blow the horn as I went over. Of course, I went very slowly. I had to go slowly; I was in first gear.

Q From the time you started up to the time 30 that the accident happened, what gear were you? A First gear, sir.

Q First gear? A Yes, sir.

Q Is that the lowest gear? A That is the lowest pulling power, lowest gear.

Q At what rate of speed were you going? A Well, I would say about seven—six or seven miles an hour, something like that, very slow, just pulling.

Q You say you blew your horn? A Yes, 40 sir.

*Ernest Weyl, direct.*

Q Once or more? A Several times, I sounded right there by the store, well, you know, right by that.

Q What side of Bloomfield avenue were you proceeding? A To go up?

10 Q Yes. A I was on the side where the florist is; I kept to the right of the road.

Q What side is that of Bloomfield? A That is on the north side, to go up.

Q That is where the Hobart Trust Company Building is? A Yes, sir.

Q I see; you were on the right side of the street, you say? A Yes, sir; absolutely so.

20 Q Did you see any people on the curbs anywhere? A I saw people on the curb there by the Passaic Bank Trust Company there, on the other side.

Q Was there any people by Ceres' store? A That I won't say; I couldn't say so sure of them.

Q Were there many people at that bank building? Yes, there were quite some people.

Q You had been at that corner before, I suppose? A Yes, sir.

30 Q What kind of a sidewalk in front of that bank, that Passaic bank? A You mean the material?

Q Is it large or small? A Large, oh, yes, big sidewalk.

Q Is it larger or smaller than the one in front of Ceres'? A Oh, larger, sir.

Q Was there another car on Bloomfield avenue, as you started to turn in? A There was one car parked there, on the side where the bank is.

40 Q What side is that? A That is like the south side, I would say.

*Ernest Weyl, direct.*

Q That is the south side? A South, it is, yes.

Q Was that parked there? A It was stopped.

10 Q Stopped. Now, will you tell the court and jury just what happened? Use your own language. A Well, the cars went by, and I gave it a good full turn of my car to the left, to come up, to go up, to Bloomfield avenue, and as I got up to Bloomfield avenue—that would be with the back of the car, you know, right over the street line there, all of a sudden I saw a colored gentleman and lady coming down and walked right into my car.

Q On what side? A On the left side, sir.

20 Q Near what? A Near the hub.

Q Of what wheel? A On the left side wheel.

The Court: Front or back?

The Witness: Oh, front, sir; front, sir.

30 Q What happened? A Well, then, I saw the gentleman fall down and the lady. I immediately put on the brakes. I was only on first speed, and there is an up-climb of a hill there, couldn't go fast on first speed, and I got down.

Q I mean, did you stop? A Stopped immediately yes, sir.

Q How soon did you stop? A Immediately, sir, as I put my brakes on I got down and I picked the gentleman up.

40 Q Where was he lying? A He was lying alongside of the hub of the wheel there, so I picked him up and walked him over to the florist there, and he—

*Ernest Weyl, direct.*

Q Now, on what side of the street, of Bloomfield avenue, was your car when that happened?

A My—on the right hand side of the road, so that I would be within the law, on the right side of the road, towards the florist.

10 Q What kind of a turn did you make when you turned into Bloomfield avenue? A I made a long turn, because I was out where the car tracks are, and I made a big turn that way.

The Court: Left turn, as you described by the sign?

The Witness: Left turn, from the car tracks.

The Court: You came from a point south on Main avenue?

20 The Witness: Yes, sir.

The Court: You came to Bloomfield avenue, then you turned to your left?

The Court: All right.

Q You say you took the gentleman to Ceres' store? A Yes, sir.

Q You took him to Ceres'? A Yes, sir.

30 Q Did you attend to the lady, too, or did someone else? A Yes, I went over to the lady and the lady was getting up, you know, and I just put my hand just under her arms to assist her a bit, and she got up; no more than she got on her feet, she went off like in a faint.

Q Did you help take her somewhere? A Right to the other side, I kept walking on the other side, of her.

40 Q Or did someone else take her somewhere? A I wouldn't say positively I still had hold of her; I might have been walking alongside of her.

*Ernest Weyl, cross.*

Q Were there other people there, too? A There were other people helping there: I noticed the fireman there.

Mr. Schneider: Cross examine.

*Cross examination by Mr. Lobsenz.*

10

Q Where in reference to the right-hand side of Bloomfield avenue was your car when the accident happened? A What is that?

Q How close to the right hand side of Bloomfield avenue was your car when the accident happened? A Well, I was from the curb to the sidewalk line, you mean?

Q Yes. A Well, I should judge I was about five feet or so.

Q That is, five feet from your right? A 20 From the—

Q (Interrupting.) From your right hand curb? A From the side of the car, that is nearest to the curb.

Mr. Schneider: That is five feet?

The Witness: To the curb.

Q Is that right? A Yes, sir.

30 Q This other car you spoke about, how close was that to the curb on the other side? A That was down almost to the corner, it was, you know, away down.

The Court: How far was it from the Bloomfield avenue curb, the south curb of Bloomfield avenue? How much distance was there between the curb and the car? That is the question.

Mr. Lobsenz: Yes, sir.

40

*Ernest Weyl, cross.*

The Witness: The one on the bank side?

Mr. Lobsenz: Yes.

The Witness: Oh, it was almost there, it was—

The Court: Close?

10 The Witness: Oh, very close to it; yes, sir.

Q How close? A Maybe a foot, a foot and a half.

Q A foot or a foot and half? A You know, that is a rough guess, I cannot tell exactly.

Q Very rough, isn't it? A Huh?

Q Wasn't it ten or fifteen feet before that corner, this automobile?

20 Mr. Schneider: Now, your Honor—

The Court: No, you are asking how far the side of the car was from the side curb. You didn't ask him how far it was from the corner.

Mr. Lobsenz: Oh, I beg pardon.

Q So that there can be no question about it, this car was a foot to a foot and a half from its right hand curb; is that right? A Yes.

30 Q I beg pardon. How far did it have to go yet before it got up to the corner of Bloomfield avenue and Main avenue? A Well, about, I should say, eight or nine feet.

Q Eight or nine feet; that is, the front part of the car was eight or nine feet before that? A Figuring the front of the car.

40 Q Yes, there was eight or nine feet space between the front of that car to the curb line of Bloomfield avenue and Main avenue; is that right? A Well, just figuring roughly, yes.

*Ernest Weyl, cross.*

Q Yes. You say you came to a stop on Main avenue? A Yes, sir.

Q You didn't cross the tracks, did you, the Erie Railroad tracks? A No, sir.

Q You didn't come from the other side of that street, did you? A No, sir; I was on the car tracks, but I didn't come across from the other side. 10

Q You had to make a turn? A Yes, sir.

Q In other words, you were going north on Main avenue, and swung to your west to go up Bloomfield? A Yes, sir.

Q Had you yet come up to the nearer right hand corner when you come to a stop? A To the nearer corner of Bloomfield avenue and Main?

Q Yes. A No, sir. 20

Q How far before the corner was your automobile when you came to a stop? A Before the corner?

Q Yes. A I guess, about fifteen feet.

Q Fifteen feet? A Yes, sir.

Q On the car tracks at that time? A Yes, sir.

Q You say you came to a stop there long enough to permit you to come between some automobiles? A No, sir. 30

Q (Continuing.) Which were going south on Main avenue? A I was there long enough until I could find that the automobiles had passed down that I could go up Bloomfield avenue.

Q Yes, and you went between two automobiles which were going south; isn't that true? A No, sir.

Q Didn't you go between two automobiles which were going south, in order to make your turn into Bloomfield avenue? Don't look at your lawyer; just look at me, if you will. 40

*Ernest Weyl, cross.*

Mr. Schneider: I didn't ask him to look at me at all; I started to say something.

The Court: I don't mind him looking at you, if he wants to.

Mr. Schneider: If he finds it pleasant, I have no objection.

10 Mr. Lobsenz: I find it pleasant.

A I didn't go through no two cars there.

Q Were there any cars coming down Main avenue. A The road—

Q Just a minute.

Mr. Schneider: Let him answer.

Mr. Lobsenz: I haven't finished my question.

20 The Court: Finish your question.

Q Were there any cars coming down Main avenue which you passed in front of you when you made your turn? A No.

Q Sure of that? A Yes, sir.

Q How close to the last car which had passed south did you pass when you crossed? A Well, plenty of room there I would say about three feet—

30 Q Three feet? A —or four feet.

Q When you stood on Main avenue, waiting to cross, you saw the people there by the bank side, the National Bank side, didn't you? A Yes, sir.

Q No trouble seeing them? A No, sir.

Q Plenty of light there? A Yes, sir.

Q Are light right there on the corner? A I believe there was one there, because that is quite a busy street.

40

*Ernest Weyl, cross.*

Q And burning, too, wasn't it? A Well, I didn't see it, but no doubt it was burning because it is a busy street there, plenty of light.

Q Plenty of light to see all of those people?

A Yes.

Q No other automobiles going across Bloomfield avenue, was there? A Going east on— 10

Q East or west? A Mine was going west and the only one that I seen was the one that was parked there.

Q But those were the only automobiles on Bloomfield avenue at or before the accident?

A That I saw.

Q As an afterthought, do you say that?

Mr. Schneider: He said that he saw. I think that is an answer. I object to that last, "as an afterthought." 20

The Court: Immaterial.

Q Were you looking to see whether or not there were other automobiles? A Yes, sir.

Q And didn't see any? A No, sir.

Q So that those people then were walking north, weren't they? A Yes, sir.

Q A light rain that night, wasn't it? A It was heavy to begin and then it lightened down afterwards. 30

Q Well, it was light at the time of the accident? A Yes, that is right.

Q These people were walking north at the time of the accident, weren't they? A Yes, sir.

Q And the people, all of them, were going north, these people? A All that I seen were going north; yes, sir. 40

*Ernest Weyl, cross.*

Q Nothing there to stop them from continuing to walk across Bloomfield avenue, was there, but your automobile? A And that car there.

Q Well, the car had come to a stop on the other side, hadn't it? A Well, it was standing there.

10 Q The car come to a stop, didn't it? A Yes.

Q The car come to a stop before it made the corner? A It was stopped there.

Q It stopped before it come to the corner, didn't it? A Yes.

Q So there was nothing then to interfere with those people continuing to walk across that street, was there, outside of your automobile? A No.

20 Q That is true? A Yes.

Q And those people did continue to walk across the street, didn't they? A Yes.

Q Yes, and among them was this man and woman? A You mean the colored gentleman and lady?

Q Yes, the colored gentleman and the colored lady? A Yes, sir.

30 Q You saw them before the accident, didn't you? A No—well, I would hardly say that, before the accident, because it come so sudden.

Q Well, let's see; did you see them at all before the accident? A Yes? Before the accident?

Q Yes. A It was almost instantaneously, or so suddenly, they were the first ones that I seen, and the other ones stayed in back of them; they were the first ones, I guess, I seen.

40 Q They were the first ones you saw? A Yes, sir.

*Ernest Weyl, cross.*

Q You saw them at the time of the accident, or instantaneous with the accident? A Instantaneous, yes; right at the same time.

Q In other words, they were up against your car, is that right, at the time you saw them? A They walked up into the hub of my car.

Q They walked into your car, at the first 10 time you saw them; is that right? A Yes, they struck the car.

Q At the time you first saw them; is that right? A No, no, no—

Q Let's see— A No, no, no I won't say exactly.

Mr. Schneider: Let him finish he was answering the question.

The Court: You won't say exactly what? 20

A (Continuing.) I won't say exactly, it was just immediately, I said. I might have seen them step right toward me, or coming right to me.

The Court: How many steps did you see them take before they stepped into your car? Do you know?

The Witness: Well, I wouldn't want to 30 say wrongly, you know, in guessing, or anything like that.

The Court: Don't guess; we want your recollection.

The Witness: I would say about two steps.

The Court: Is that the first you saw them, when they were two steps from your car?

The Witness: On the side. 40

*Ernest Weyl, cross.*

The Court: Did you see them anywhere else?

The Witness: When they were down—

The Court: No, no; I mean before.

The Witness: No, sir; they come from the curb.

10

The Court: You didn't see them leave the curb?

The Witness: I don't know whether they were there; they were talking together, going arm in arm; the lady and gentleman were talking together.

The Court: You didn't watch that corner all of the way across, did you?

The Witness: What do you mean?

20

The Court: You were not watching them all of the way across?

The Witness: Not all of the way across, but I saw them coming.

The Court: Saw them coming, then you didn't watch them any more, and the next when you saw them they were two steps away from the front of your car; is that correct?

30

The Witness: To my car?

The Court: To your car, yes; is that correct? Don't shake your head.

Q Is that correct?

The Court: He said, "yes."

A That is the way I figure.

Q All right. So, now, there can be no mistake, the first time you saw them was on the sidewalk; is that right? A On the sidewalk?

40

*Ernest Weyl, cross.*

Q Was that the first time you saw them? A I didn't see them on the sidewalk; I seen them in the people passing along there; they were ahead of the crowd passing along.

Q They were ahead of the crowd passing along? A Yes.

Q There were other people behind them on the street; is that right? A On the curb.

Q On the curb and crossing the street behind them, weren't they, at the time of the accident? A They were going, yes, they were going, passing up with the crowd in the front.

Q And those people were on the street at the time of the accident, crossing behind them; is that right? Say yes, will you, or say no? A Yes.

Q Because the stenographer cannot see you shake your head.

Mr. Schneider: If the witness understands what he means by "those people."

The Court: If he doesn't understand—or if you cannot understand, please state that you do not understand. Do not answer unless you understand.

Q There were other people walking behind this colored gentleman and colored lady across this crossing, weren't there, at the time of the accident? A Yes, sir.

Q And the colored people, the first time you saw them was two steps away before the collision actually occurred? A When they ran into the car; yes, sir.

Q How many feet is that? A Oh, you know (indicating).

40

*Ernest Weyl, cross.*

Mr. Lobsenz: Two and a half feet, Mr. Schneider?

Mr. Schneider: Yes, that is about right.

Mr. Lobsenz: Whatever you say.

Mr. Schneider: That is about right.

10 Mr. Lobsenz: About two and a half.

Q At that time when they were two and a half feet from you, how fast were you going?

A Me? You mean me?

Q Yes. A I was on first gear there.

Q You were going about how fast? A Oh, about four or five miles an hour, it is only to start to pull the car.

20 Q Four or five miles an hour? A To pull the car, it starts the car to go; there is an upgrade hill there on Bloomfield avenue, so she wasn't going fast.

Q Well, whatever you say; if you say four or five miles on hour. A If you want it that way.

The Court: No, no; that is what you say, not what he wants.

30 A I would roughly guess about that.

Q I see; when you saw them two feet and a half to your left, you say at that time they were walking? A Yes.

Q They were walking; you saw them walking straight ahead across that street, didn't you?

A Yes.

Q Walking across on this crosswalk? A Yes.

Q Between the south and the north side?

40 A Yes.

*Ernest Weyl, cross.*

Q How far from the right-hand curb of Main avenue were they? A The curb on Main avenue were they?

Q Yes; in other words, were they walking straight across the street? A No.

10 Q Do you know? A No, they were running; it seemed as though they got frightened all of a sudden for some reason or other, I don't know what it is, and they started to speed up like, and the first thing I knew the man was right alongside of the car—there at the center of the road—I didn't see her so closely as the man, but I know she was passing along with him, talking to him.

Q All right, at the first time you saw them they were walking, weren't they? A Yes.

20 Q Then you say next they got frightened? A They must have; they were talking and they heard the horn blow, which might have frightened them, I don't know.

Q Don't you know? A Well, if you hear a horn blow, and you were talking and you were passing walking, why you are liable to look up, you know.

30 Q Well, he got frightened, you could see that? A They acted that way to me, as though they were frightened.

Q Frightened by seeing your automobile coming on them so close, weren't they? A No, sir; I don't think so.

Q You don't think so. Well, when you saw them two feet away from you, to your left, did you do anything about stopping your car? A Sure, I did.

40 Q What did you do? A Put on the foot brakes.

*Ernest Weyl, cross.*

Q How quickly did you come to a stop? A Instantly, because I was going up hill there, first gear; I wasn't going no speed at all, the car stopped at once.

Q Didn't even go a foot after you first saw them? A No, sir; instantaneously.

10 Q So that at the time of the collision then, your car was standing still? A Just touched them, just touched them and instantaneously stopped, because you put on the gas slowly.

Q Was your car at a standstill at the time you touched them, at the time of the accident? A Yes.

Q There can be no question about your standing still? A (No audible response.)

20 The Court: Please don't shake your head.

Q Sure about that? A Well, standstill, it was just rolling, you know, what I would call standstill.

The Court: Well, if it was rolling, it was not standing still, and if it was standing still, it was not rolling.

30 The Witness: Well, I put on the brakes, and the brakes were in good condition, and it stopped the car.

Q And it stopped your car before the accident happened? It stopped your car at the time the accident happened? A Yes.

40 Q So, now, I just want to repeat again, so that there will be no question about this. The car was at a standstill at the time the accident happened? That is true, isn't it? A (No audible response.)

*Ernest Weyl, cross.*

Q Have you any difficulty about that? A Well, the car was at a standstill.

Q Your car was at a standstill at the time of the accident; is that right? A It must have been; it stood still; as soon as I saw the people strike the side of the car, I stopped.

10 Q All right; I want to know, was your car at a standstill at the time they came in contact with your car? That is a simple question, isn't it? A I was moving slowly, and I put on the brakes; that is all that I know.

Q All right; you were moving slowly and you put on the brake; is that right? A Yes, sir.

Q Then when you put on the brake, you came to a stop? A I come to a stop, and I got out of my car.

20 Q Wait a moment; you came to a stop? A Yes, sir.

Q Was it after you came to a stop that the accident happened? A No.

Q Was it before you came to a stop the accident happened? A Yes, sir.

Q All right. Now, how far did you go from the time the accident happened until the time you stopped? A I stopped immediately.

30 Q You said you stopped immediately when you applied your brakes. A As soon as I seen the people touch my car, I stopped.

Q Why didn't you stop when you saw them two feet away walking into you? A Because I was by the street line already; I was on the way past them; they were on the side of my car, and the left front fender caught the man.

40 Q So you didn't do anything toward stopping your car when you first saw them two feet away, did you? A Sure, I was blowing my horn and I was slowing down, naturally.

*Ernest Weyl, cross.*

Q Well, you were not to practically nothing when you first saw them, weren't you? A Yes.

Q All right, and you went less than a foot when you first saw them? A Well, all I know, that they struck the side of my car, and I short stopped right away.

10 Q Where were those two people when you first saw them before they were two feet away from you? A Where were they?

Q Yes. A They were coming from the sidewalk.

Q All right; were they on the sidewalk when you first saw them? A I didn't see them on the sidewalk.

Q Where were they at all, if you saw them at all, when you—before that—before they were two feet away from your automobile? A Let me—  
20 I don't understand that. Say that again.

Q You say you saw them before they were two feet before your automobile; is that right? A Yes.

Q Where were they then? A In the course of crossing the street.

Q What part of the roadway were they on then when you saw them? A They were off the sidewalk, into the thoroughfare, you know.

30 Q All right; how far beyond the curb—the southerly curb—were they then? A Oh, about three feet, I guess.

Q Three feet? A Well, you know—

Q Why do you say about three feet? A  
(Interrupted by counsel.)

Mr. Schneider: Let him finish.

The Court: What is your answer?

40 Mr. Lobsenz: He said, "I am not so sure."

*Ernest Weyl, cross.*

The Court: Is that your answer?

The Witness: Three feet about, roughly guessing; I couldn't say exactly, I am not sure.

The Court: All right.

Q They were three feet past the curb when  
10 you first saw them then, you saw them start at that point. When did you last see them after the period of three feet away from the curb? A When I last saw them at—I do not understand what you mean.

Q When you next saw them, where were they? A That was the last time I saw them from that time right until they struck my automobile.

Q So there can be no question, Mr. Weyl, you  
20 saw them two before this collision when they were three feet off the southerly curb, and the second time when they were two feet before your automobile, and then struck; is that right? A I guess—I ain't supposed to say "guess"; I am a little uncertain about that, too, you know.

Q Well, did you see them at all before the  
accident, before this time they were two feet before you? A I did see them.

Q Then we want to know where. Nothing  
30 uncertain about that. A It come so suddenly that as soon as I seen them I stopped, and I don't know whether—really could not say that this way or that way, but I know that as soon as they was alongside of the fender, of my left front wheel, I stopped; and I know I was going slow.

Q Before that, there was nothing sudden and  
nothing to worry you about, was there? A (No  
40 answer.)

*Ernest Weyl, cross.*

Q Now, I want to know where they were at that time?

Mr. Schneider: Your Honor, I think I ought to object at this time, on the ground this has all been gone over repeatedly.

10 The Court: I think he has answered it the best he can.

Mr. Schneider: I think he has. I am getting afraid for the health of the witness.

The Witness: Oh, gee whiz. I have got a cold sweat running up and down by back.

Q Must have had a cold sweat when you saw them that night?

20 Mr. Schneider: I object—

The Court: Objection sustained.

A I—

The Court: There is no question before you.

The Witness: I never was in a courtroom.

The Court: I hope you do not get here again.

30 The Witness: I never was inside of a courtroom before in all my life—

Mr. Schneider: Just a minute—

The Witness: —you know what that means to a man like me.

Mr. Lobsenz: We will be glad to have you out of here as soon as we can find out the facts. That is all I want on that line.

40 Q You say you saw these people first time— where were they in reference to the curb?

*Ernest Weyl, cross.*

Mr. Schneider: I object to that.

Q On the right?

Mr. Schneider: That has been repeatedly asked and answered.

Mr. Lobsenz: That has not been.

10

The Court: On their right?

Q On the right, how far from their right-hand side of the curb were they?

The Court: I cannot understand the question, and I do not want the witness to answer it if I cannot understand it.

Q Well, I want to know how far from the curb on Main avenue, on the westerly side of Main avenue, were they, when you first saw them?

20

Mr. Schneider: I object to that on the ground it has been answered several times, your Honor; simply taking needless time.

The Court: In other words, he said they were about three feet from the southerly curb of Bloomfield avenue—

Mr. Lobsenz: Yes, sir.

30

The Court: Now, you want to know how far that point was from the westerly side of Main avenue?

Mr. Lobsenz: Yes.

The Court: I do not think he has asked that. In other words, how far up Bloomfield avenue from the curb on Main avenue were they when you first saw them? That is your question?

Mr. Lobsenz: Yes, sir.

40

*Ernest Weyl, cross.*

A The length of my car.

The Court: The length of your car.

The Witness: Almost up to the hood of my car.

The Court: All right.

10

Q How many feet was that? A Well, a car, I would judge, would be about ten feet. Would you—

The Court: Don't ask me.

A (Continuing.) What is the length of a car? About ten feet, I would say.

20

The Court: All right, about ten feet.

Q That is, they were nearer to that westerly curb than this automobile that was standing still? A Repeat that question.

Q In that case, these people were walking across the street, were ahead of this automobile that was standing still? A Parked there?

Q Yes. A They come—yes—the car was parked there; they was outside of it, towards me.

30

Q Towards you? Right? A Yes.

Q That is, ahead of that car? A In the head of it? I don't understand what you mean.

Mr. Schneider: Take it easy. You are not a lawyer. I don't think the witness understands that.

The Court: I think the question is simple enough.

40

Mr. Lobsenz: Of course it is.

*Ernest Weyl, cross.*

Q They were nearer that automobile on the side toward you when they were walking across that street—

Mr. Schneider: I object to that; it doesn't say what.

10

Q (Continuing). When you first saw—

Mr. Schneider: Just pardon me. If he was on both sides of that automobile, he come out, then he passed it; so that the question is very ambiguous.

The Court: I think the question is clear, with reference to where he first saw them, when they left the curb, that is what the question is about, and that is what he must answer. The question is: Where they were with reference to Main street on Bloomfield avenue when you first saw them when they were, you say, about three feet from the curb. Was it in front of the parked automobile or was it behind the parked automobile, that spot?

20

The Witness: Well, according to the position of my car, I would say in the back of the automobile that was parked there.

The Court: In other words, between the automobile and Main avenue?

30

Mr. Schneider: He said in back of it.

The Witness: In back of the automobile that was parked there.

The Court: Then the automobile was between the people and Main avenue, is that correct?

The Witness: Between the people and Main avenue? Yes, sir.

40

*Ernest Weyl, cross.*

The Court: All right.

Mr. Schneider: Now, if your Honor please, that parked car, if I may explain, was facing east.

The Witness: Yes, sir.

10 The Court: The parked car was facing Main avenue, eastward.

Mr. Schneider: Exactly.

The Court: So he says now they were the other side of that car, so that the car was between the plaintiff in this case and Main avenue, what he says.

Mr. Schneider: Oh, yes, the car was between the plaintiff and Main avenue.

The Court: Is that right?

20 The Witness: Yes, sir.

Mr. Schneider: That is what he says.

Q If that is so, now, then, these people were directly behind the car, weren't they, when you first saw them; isn't that true? A I seen them coming forward toward me, and I know my car had pulled in—

30 Q Just a moment. When you first saw these people they were three feet off the curb, weren't they? Weren't they? A Three feet off the curb.

Q Yes, from the south curb? A They were coming along, yes.

Q Three feet off the curb when you first saw them, and this automobile was standing a foot or a foot and a half away from that same curb, wasn't it? Wasn't it? A Yes.

40 Q And they were standing then directly behind that automobile, weren't they? A (No answer.)

*Ernest Weyl, cross.*

Q If what you now say is true.

Mr. Schneider: If your Honor please, I do not think the witness understands anything of that at all.

The Court: You can re-examine him, Mr. Schneider. 10

Mr. Schneider: Well, I do not think he understands a word of that.

The Court: What is the answer?

Mr. Schneider: Neither do I.

The Court: What is the answer, Mr. Weyl?

20 A I saw the people coming along there, and this colored gentleman and lady was talking, and the first thing I know, I seen them strike my car there, and I know there was an automobile parked on the Passaic Bank side.

The Court: That is all. That is what you have said, but you also said that you first saw them when they were a few feet—you think about three feet—from the curb on the southerly side of Bloomfield avenue; that is correct, isn't it? 30

The Witness: I did say that.

The Court: And is that true?

The Witness: As nearly as I can remember.

The Court: And the question is: Just where were they, at that time and point, how far were they from Main avenue?

The Witness: Up Bloomfield?

40 The Court: Yes, if it was up Bloomfield that they were, wherever it was.

*Ernest Weyl, cross.*

The Witness: I don't know—about ten feet, I guess.

The Court: About ten feet. You have also said that the automobile that was parked on the south side of Bloomfield avenue, headed towards Main avenue, was between them and Main avenue. It that correct? 10

The Witness: Yes sir.

The Court: And you were over on the right-hand side of Bloomfield avenue—

The Witness: Yes, sir.

The Court: —headed up the hill?

The Witness: Yes, sir.

The Court: Having left Main avenue?

The Witness: Yes, sir.

The Court: That is correct, isn't it? 20

The Witness: Yes, sir.

The Court: Now, counsel asked you whether, if that is true, how you could have seen these people that were behind the parked car, when you were across the street and the car was between you and the people? Do you understand that?

The Witness: Yes.

The Court: Now, what is your answer? 30

The Witness: I seen the people strike the car.

The Court: No, you haven't gotten them across the street yet. They are just leaving the curb, and there is still the width of the street between you and them, they are three feet from the curb from which they left, on the south side of Bloomfield avenue—three feet from the curb—behind the parked car, that is where you have placed them. Now, 40

*Ernest Weyl, cross.*

the question is, if that be correct, how you could have seen them at that point, with the parked car obstructing your vision, if it did? That is the question. What is the answer?

The Witness: I cannot—

10

The Court: Cannot answer?

The Witness: I cannot understand.

The Court: Cannot understand it?

The Witness: I cannot make that out squarely.

The Court: I cannot either, but that is where you put them. Do you understand the question, Mr. Weyl?

The Witness: Yes, I understand it.

The Court: You say that the first time you saw them was when they—just before they struck your car? 20

The Witness: Yes, sir.

The Court: Then you also said the first time you saw them was when they had just left the curb. Now, which is correct?

The Witness: When they struck the car.

The Court: Then you did not see them across the street at all, did you? 30

The Witness: I seen a lot of people there.

The Court: Don't tell us you saw a lot of people there. We didn't ask you that. We asked you whether you saw this man and woman that ran into your car.

The Witness: I saw them when they struck my car.

The Court: Did you see them before they struck your car? 40

*Ernest Weyl, cross.*

The Witness: I imagine I did.

The Court: Don't imagine anything.

The Witness: I am not so sure.

The Court: If you are not so sure, don't tell us you saw them.

10 The Witness: I couldn't say, there was so many people coming along there, you know.

The Court: We don't want you to tell us anything that you are guessing at, because you see when you make guesses, you make some "bum" guesses, don't you see? You have them three feet from the curb, and so many feet from Main avenue. Now, that is not true, is it?

20 The Witness: He gets me all mixed up.

The Court: Well, I am trying to straighten you out. When did you first see them?

The Witness: When they struck the car.

The Court: Don't tell us you saw them any place else, because we do not want you to tell us anything that you do not remember. If you did not see them before they struck your car, tell us so. If you saw them at some other place, tell us where it was. Now, what is the fact?

30 The Witness: They come and struck the car, that is when I seen them.

The Court: You did not say that before.

The Witness: I do not think I did.

The Court: When you tell us you saw them three feet from the other curb, you are imagining that they must have been there; you didn't see them on the curb?

40

*Ernest Weyl, cross.*

The Witness: The way I am now, I am all excited now.

The Court: There is no reason to be excited. Proceed.

The Witness: I want to tell the truth, you know.

10

Q I want just a direct answer to the last question of the court. You did not see them before they struck your car; that is true, isn't it? A I didn't see them until they struck the car.

Q That was the first time? A Yes.

Q You say you saw those other people? A I seen other people there on the curb.

Q You saw them crossing the street? A They were going across the street.

Q You saw them going across the street in front of this automobile, those other people, didn't you? A They were going through, yes.

20

Q Yes, in front of this automobile this automobile was standing ten or fifteen feet before the curb, wasn't it? Right? A Yes.

Q Those people were walking across in front of that automobile? Isn't that true? A (No audible answer).

Q All right; now, I am asking you this: Your vision was clear that night for a distance of half a block or a block, wasn't it? A A block from that place—

30

Q A block— A —because—

Q Never mind the "because." Plenty of light there all of the way around? A Yes, sir.

Q So that you have plenty of opportunity to see these people crossing from where you came to a stop, didn't you? A Yes.

Q You had plenty of opportunity to see these people crossing while you were making this

40

*Ernest Weyl, cross.*

turn, didn't you? A Turn from the railroad tracks or from the trolley tracks?

Q While you were making your turn? A I had to wait until the cars went down; after the cars went down—

10 Q (Interrupting.) You could see the people crossing after the cars went down? A Well, there was nobody crossing, or I would never attempt to go through, if I would see anybody crossing, people.

Q There were people crossing at some time? That you saw? Isn't that true?

20 Mr. Schneider: I object to that, because counsel is trying to put words in his mouth. He just said definitely there were no people crossing when he started across.

Mr. Lobsenz: I am not asking him that. I am asking him while he was crossing other people were crossing over as well.

The Court: You may answer that.

A No.

30 Q You did not? A I had the glance when the cars were going through; I had the right of way there to go through.

Q So while you had the right of way, your vision was clear both sides of Bloomfield avenue, wasn't it? A Yes—well, to the this left hand, toward the crowd, yes.

Q Your vision was clear to the left, wasn't it? A Yes.

Q Your vision was clear to the right? A Yes.

40 Q Your vision was clear ahead of you? A Yes.

*Ernest Weyl, cross.*

Q Your vision was clear those three directions while you were making that turn into Bloomfield avenue, wasn't it? A Yes.

Q Yet you never saw this plaintiff until the accident actually happened; isn't that the truth?

A They come all of a sudden and struck me.

Q You never saw them before that time? 10

Mr. Schneider: I object to counsel arguing with the witness.

The Court: Objection sustained.

Mr. Lobsenz: Your Honor, allow me an exception.

The Court: You may have it. He has already testified to that. That is argumentative now. As I understand his testimony, his vision was clear to the right, left 20 and in front; he did not see them until just before they ran into his car.

Mr. Lobsenz: I wanted to find out why he didn't see them, probably argumentative.

The Court: That is argumentative.

Q How wide is Bloomfield avenue, that is, from curb to curb? A Well, I would say it is 30 more than fifty feet.

The Court: Don't guess.

Q That is a fact, isn't it?

The Court: What is the fact? If you do not know, don't guess, don't imagine.

A Well, I think it is around that.

The Court: Around fifty feet. 40

*Ernest Weyl, cross.*

Q It is about fifty feet, isn't it? A Yes.

Q It is a wide street, isn't it, there? A Quite a wide street.

Q You were away over to the right hand side? A I was on the right hand side of the road; yes, sir.

10 Q About five feet from the right, on your own side, close to the curb? A From the right hand side of the car the curb was about five feet, that is, talking about the inside of the curb to curb.

Q Your car is about six feet wide. A I don't think it is as wide as that.

Q Five feet? A About that, I guess.

20 Q So that outside of those ten feet there was fully forty feet to your left, wasn't there?

The Court: That is a matter of calculation.

Mr. Lobenz: Yes, but I kind of want this witness to realize that as well.

A Yes.

30 Q There was forty feet then of open space between the left hand curb of Bloomfield avenue and the left hand side of your car that is true, isn't it? A Left hand side?

Q Yes.

The Court: The answer is "yes"?

A Yes.

Q Just one question. Do you remember testifying in an examination before trial? Don't you? A Yes, sir.

40 Q Do you remember saying at that time you were looking for —— to go through?

*Ernest Weyl, re-direct—re-cross.*

The Court: Yes or no.

A Yes.

Q Didn't you say that when the —— he was away in, just going ahead? A I didn't mean such a word as "——".

Q I didn't ask you what you meant; I am asking— A I am sorry. 10

Q I am asking you if that is what you said. Did you say that? A In that statement there?

Q Yes. At that time I did say that.

Q All right, that is all I wanted know. That is all.

*Re-direct examination by Mr. Schneider.*

Q Just one question, please. Did you know Mr. and Mrs. Smith before this accident happened? A No, sir. 20

Q Or the gentleman from the bank? A No, sir.

Q I understand you to say when this accident happened you were apast the street line? A Going up Bloomfield avenue.

Q How far apast the street line? A Well, the length of the car.

Q The length of the car past the street; that is all. 30

*Re-cross examination by Mr. Lobenz.*

Q Didn't you say on this examination before trial, you were right on the corner when the accident happened? A On the northeast corner I started from the northeast corner, and I made a turn to come in.

Q Didn't you say on this examination before trial, the accident happened on the corner and not ten feet past the corner? A The rear end— 40

*Ernest Weyl, re-cross.*

Q Wait a minute, if you will.

The Court: Yes or no.

Q Didn't you say that on your examination before trial? Did you or did you not?

10

The Court: Say that the accident happened on the corner, yes or no?

A It happened on the corner then.

The Court: That is not the question, where it happened. The question is: Did you say, when you were examined before trial, that the accident had happened on the corner? Is that what you said at that time?

20

The Witness: It was at the corner of Bloom—

The Court: No, I am not asking you where it happened. I am asking you what you said at the time of the examination before trial, with respect to where the accident happened. Did you say that?

The Witness: I said at the corner.

30

The Court: All right.

The Witness: At that time I did say that.

The Court: All right, then, the answer is yes.

Q Just let me refresh your recollection. Weren't you asked this question, and didn't you make this answer: Where did your automobile stop just between the time you and the people came in contact? You answered: Well, it was

40

*Ernest Weyl, re-cross.*

on Bloomfield avenue, not very far from where the accident happened. You answered that way?

A Say that again.

Q "Q. Where did your automobile stop between the time you and the people came in contact?" You answered: "Well, it was on Bloomfield avenue, not very far from where the accident happened". A Yes.

10

Q You answered that? A Yes.

Q Then you were asked the next question: Near the corner? You answered, Right on the corner? A I stopped.

The Court: No, no did you say that?

Q Weren't you asked that? A If it is there I must have said it.

20

The Court: All right.

Q Wasn't that the truth? A Well, I may be off, it is guesswork, on measurements; I don't know, it may be by measurement that length, might be at my—

Q There is no measurement— A —along the rear end.

Q Just a minute; there is no measurement in that question or in that answer, is there? A The front part of the car can be up the street and the rear end can be on the corner.

30

Q You didn't say that, did you? A That is what I mean. You are not talking always about the front of the car I can just as well be talking about the rear of the car.

Q Did you tell them you were talking about the rear of the car? A You didn't ask me.

Q But you said the accident happened on the corner, didn't you? A Right on the corner? The rear was on the corner.

40

*Toefle Smith, direct.*

Q Wait a minute. You said the accident happened on the corner, didn't you? A Yes, sir.

Q And the accident happened with the front part of your car, didn't it? A Front part of my car?

10 Q Yes. A I did, yes, but not right on the corner.

Q That is all. A But not up—

The Court: That is all.

TOEFLE SMITH, sworn for defendant.

*Direct examination by Mr. Schneider.*

20 Q Mr. Smith, you are the husband of Mrs. Smith, who was on the witness stand here? A I am.

Q Where do you live? A Me?

Q Yes. A 51 Myron street, Delawanna.

Q Were you out with her the evening of this accident? A I was.

Q Where had you been? A I was at the Montauk Theater.

30 Q Right before this accident, where were you?  
A Why, I had come out of the Montauk and walked down toward Main avenue, because it was raining at the time; it kind of slackened off, and I said to the wife, "Let's walk down to as far as Bloomfield avenue, and if it doesn't slacken up by that time, why, we will stop in front of Ceres'."

40 Q Did you stop there in front of that place?  
A I said, "We will stop in front of Ceres' place, with the store front with an awning on."

*Toefle Smith, direct.*

Q When this accident happened, were you standing there? A Yes, sir.

Q Will you tell the Court and the jury just what you saw of this accident? A Well, in the meantime, I was standing on the corner, waiting for the rain to slacken up, so I could get the car or the bus. 10

Q Keep your voice up. A In the meantime, I was standing on the corner of Bloomfield avenue and Main avenue, in front of the doorway of Ceres' flower store, waiting for the bus or the car, whichever should come along first off and is going toward the home, which is going toward Newark, Delawanna is, and while we were standing facing towards Bloomfield avenue, facing the bank, that is, the Passaic National Bank, there was a crowd standing on the same side of the bank— 20

Q Same side as what? A Same side as the National Bank is, standing in the gutter, near the sidewalk.

Q On the other side from you? A On the other side from me.

Q Yes. A There was a car coming along and just slackened down when he got about three or four feet from the crossing. I don't mean the crossing where the people cross by. They have got a white line across for where they are crossing, as you come, is a line for people to cross by. 30

Q Yes. Well, he must have been about three or four feet from that, because he couldn't go ahead—there were cars coming down Main avenue and going towards Paterson, and the other cars going down towards Newark.

Q What did this car do that you spoke of?  
A She parked there at the time. 40

*Toefle Smith, direct.*

Q She was parked— A I don't know if she is about to make a turn up Main avenue, towards Paterson, or down Main avenue towards Newark, or to go straight across, or not, but she was not going then; she was parked there at that corner.

10 Q She didn't go down Bloomfield avenue? A She didn't go down Bloomfield avenue.

Q I see; go ahead. A Then, while these cars passed by, why, of course, that cleared the traffic; then I heard or I saw a car coming up, making a long turn, coming up from Newark towards Paterson, and when she got to Bloom she made the turn.

Q Was that the car that was in the accident?

A That is the car that was in the accident.

20 Q She was making a turn into— A She was making a turn on the right.

Q Into what avenue? A Into Bloomfield.

The Court: So that it was a left-hand turn, not right-hand, wasn't it?

The Witness: Why, on the left-hand turn, yes, sir.

30 Q Did he make a wide or a short turn? A Short or wide turn? She had to make a wide turn.

Mr. Lobsenz: Just a minute. I object to the conclusion of the witness, that it had to make a wide turn.

The Court: No, no; she did make a wide turn; that is all we are interested in. Why, we do not care.

The Witness: I though you wanted to know.

40 The Court: No, we do not.

*Toefle Smith, direct.*

Q What circumstances were there connected with this wide turn? A What you say?

Q What circumstances were there connected with this wide turn?

Mr. Lobsenz: I object, too general.

10

A Why, the railroad—

The Court: Just a minute.

A (Continuing.) Why, the Public Service—

The Court: No, I was talking to you. The objection is that the question is too general?

Mr. Lobsenz: Yes, sir, because I do not know what it is directed to, and I do not know whether I can direct an objection to it or not.

20

Mr. Schneider: I am making it general, because I do not know.

The Court: I will allow it. What were the circumstances that required a wide turn?

A Why, the Public Service Railroad; there is a double track right there, and in order to make the turn, why, he has got to be on his right-hand side of Main, coming up towards Paterson, to turn on the left-hand side.

30

Mr. Lobsenz: If your Honor please, I object to all of this, and ask that it be stricken out, calling for a conclusion.

The Court: Strike out the answer.

Q Proceed with your answer.

Mr. Lobsenz: If your Honor will, I think this question is stricken out.

40

*Toefle Smith, direct.*

The Court: The last answer is just stricken out, not the question.

Mr. Schneider: I will withdraw the question.

10 The Court: It doesn't make any difference whether the question is withdrawn. I will strike out the answer because it has no evidential value at all. It is clearly his conclusion why he made a wide turn.

Mr. Schneider: I will withdraw the question.

20 The Court: If there was a silent policeman there or an obstruction in the road and that was the circumstance, why, of course, when this man observed it, that is all right; but, apparently, just because the car tracks are there, of course, is no circumstance that required a wide turn as far as he knows.

Q Is there a silent policeman there? A Yes, there is one there, but that is standing over—

Q Where is that located? A Why, that is located about the center—

Q Center? A —of the crossing.

30 Q Center of the crossing? A Yes, sir, center of the crossing, going both ways. Say here is going up Main avenue, here comes Bloomfield avenue, that is just in the center of both of the crossings.

Q That makes them turn to the right of it? A They have got to make that turn to the right of that.

Q Did he make his turn to the right of that dummy? A I couldn't say if he did or not.

40 Q Did you see it? A I couldn't say; no, I didn't see that.

*Toefle Smith, direct.*

Q All right. Go on; he came to what— A When he come around to Bloomfield avenue, why, he was about the length of the car to this hind end of the car—I guess it must have been five feet past the crossing.

Q The hind end of the car was five feet past the crossing? A The hind end of the car. 10

Q Yes. A There was a crowd standing on the opposite side, and this car being parked on the National Passaic Bank side, so at the time when he just about crossed, this colored party happened to come from behind—

Q Behind what? A Behind this parked car—

Q Yes. A —and got about half way; they got about half way across.

Q Yes; what happened? A Well, at that time, just about when they about got half way across this car happened to hit them. 20

Q What part of the car did they come in contact with? A The left.

Q What part of the car? A Why, it was the fender that hit them.

Q Pardon me? A The fender.

Q Near what? A Near the left wheel of the car.

Q Near the left wheel of the car? A The left wheel of the car. 30

Q The front wheel? A The front wheel.

Q How was this car going as to rate of speed when this thing happened? A Well, he couldn't go over five miles an hour, because he just made the turn; it was—

Q Was he going over five miles an hour? A Why, I don't think he was.

Q Did you hear any horns blown? A I did.

Q How soon did this car stop? A Stopped immediately after it struck them. 40

*Toefle Smith, cross.*

Q Did you go out into the street? A Yes, sir.

Q Did you help these people? A Yes, sir; I and the fireman picked them up.

Q Helped whom, the gentleman or the lady?

A I and the fireman picked the lady up.

10 Q Where were these people lying in reference to the car then? A They were lying in front of the fender, in front of the car.

Q How close to the car? A Well, I should judge about three feet.

Q You helped take them into the bank building there? A I helped take them to the hallway.

Q You were there when the water was given to the lady and so on? A Yes, sir.

20 Mr. Schneider: Cross examine.

*Cross examination by Mr. Lobsenz.*

Q Now, Mr. Smith, you remember talking to me about this accident Monday? A About what?

Q About the accident Monday? A I did not.

30 Q Your wife was present at the time? A Present at the time?

Q Well, that is, yourself, you, your wife, and myself, were present, is that right? A That is right.

Q Do you remember telling me about how the accident happened? A Well, if you wish—

Q Do you remember telling me about how the accident happened? A I do.

40 Q Do you remember telling me as well that this car had gone five yards after the accident happened? A No, sir.

*Toefle Smith, cross.*

Q Was there any mention of five yards? A No, sir.

Q Was there any statement made of five yards? A No, sir.

Q Do you remember Mr. Black, who was with me at the time stating that was about fifteen feet, and you said, yes, about that? A No sir. 10

Q Do you remember any mention made about the car going twenty miles an hour? A No, sir.

Q Do you remember saying at the time that the car came from across the railroad tracks? A No, sir; I never said anything of the kind.

Q Was Mrs. Smith there at the time? A I wasn't paying any attention to Mrs. Smith; Mrs. Smith was standing away from me.

Q How far away? A How far away? I 20 didn't measure the distance.

Q Well, it was close, wasn't it? A I didn't measure the distance, I tell you.

Q About where were these people when they were struck? What part of the road? A What part of the road? Half way, center of the road.

Q Middle of the road; is that right? A Of course, if that is the center. Where else would they be?

Q Do you remember telling me that? A No, 30 sir; I don't remember telling you anything.

Q Don't you remember telling me anything about this accident? A I said, no.

Q How long were you there talking to me? A If you wish—

Q Just a minute; you are going— A I said, no.

Q —to tell me what I want to know. A No.

Q Were you talking to me about the accident? A I was not talking about no accident. 40

*Toefle Smith, cross.*

Q Didn't I ask you about this accident? A You did.

Q Did you tell me anything about the accident? A I gave you no information, one way or the other.

Q No information? A No information.

10 Q How long were you there with me? A I wasn't there no more than ten minutes with you.

Q During that ten minutes, you didn't tell me one word about it? A No, I did not.

Q Did I ask you about the accident? A Yes, you did.

Q What did you say? A I said nothing.

Q You say you told me nothing? A I certainly did.

20 Q Was there any reason for not telling me anything at that time? A I knew you were the lawyer in the case, looking for information.

Q Yes, and what objection could you have to talking to me as her lawyer? A Because I knew you were looking for information.

Q What objection did you have to giving me information? A Just what I said, because I knew you were her lawyer.

Q Why did you have to refuse to give her information because you knew I was her lawyer?

30 A That was my business.

Q You had advice to that effect, to keep information from me? A Because I knew you were her lawyer, you looking for information.

Q Yes, and why didn't you give it to me? A I didn't give it to you.

Q Why not? A Because I didn't want to.

Q Why not? A Because I didn't want to.

Q Why didn't you want to? A Because I didn't want to give it to you.

40 Mr. Schneider: I object to this wrangling.

*Toefle Smith, cross.*

The Court: He said, because you were her lawyer, he knew you were her lawyer, looking for information, and he didn't want to.

Mr. Schneider: Needless repetition.

Q I want to know whether you had any reason for keeping any information from me Monday. 10

The Court: Other than the reason you have already given.

Q Yes. A Only reason is I knew he was a lawyer, he was looking for information; that was my reason.

Q I wanted to find out what you knew about the accident, that was all; you knew that? A I certainly did. 20

Q You mentioned something at the time about the woman being struck half way across the street? A I did nothing of the kind.

Q Nothing of that? A Nothing of the kind.

Q Have you talked to anyone else after you talked to me? A No, sir; I have talked to the wife, after.

Q To your wife? A Yes. 30

Q No one else? A No one.

Q You have talked to this man sitting to the left of Mr. Schneider, the lawyer? A Yes, of course, I did. I talked to him yesterday.

Q About the accident? A No, sir; not one way or the other.

Q Didn't he ask you what you knew about the accident? A Of course.

Q Didn't you tell him? A I didn't tell him; I said, when I come up here on the stand, I said, I will tell my story, when I am on the stand. 40

*Toefle Smith, cross.*

Q When he asked you what you knew about the accident, why didn't you tell him? A Well, I don't have to tell anybody unless I get on the stand to tell what I want to tell them. It is my pleasure to tell what I know when I go on the stand before the jury.

10 Q Why didn't you tell him at that time?

Mr. Schneider: I object to that; he has answered that.

The Court: No, he has not told why he did not tell him. He has told why he did not tell Mr. Lobsenz.

A Because I didn't want to tell him. I said, I will tell my story when I get on the stand.

20 Q Did you sign any statement about this case? A No, sir.

Q Didn't you ever sign any statement? A No, sir; I did not.

Q Did you give them any statement? A No, sir.

Q How did Mr. Schneider know then what you knew about the accident? A Why, because my name was given there, to Officer Van Houten.

30 Mr. Lobsenz: I ask to strike that out as not responsive, your Honor.

The Court: The question is, how did he know that he knew anything about the accident; the answer is, because I gave my name to the officer. I think that is responsive. I will let it stand.

Q Did he take you out to lunch on Monday?

40 A No, he didn't have to—

*Toefle Smith, cross.*

Q I didn't ask you—

The Court: The answer is, "No, he did not?"

The Witness: "No."

Q Did he take you out to lunch on Tuesday? 10  
A No, sir.

Q Where was it that he asked you on Tuesday what you knew about the accident? A He never asked me.

Q Which is it, that he never asked you what you knew about the accident, or that he asked you, and you wouldn't tell him? A No, he never asked me. What do you mean? Did he ask me anything referring to the accident or after? 20

Q You know what I mean, don't you? A Explain the question again.

Q I am asking you now as to whether this agent of (or) Mr. Schneider ever asked you anything about the accident at any time? A Yes, he did.

Q Now, when? A He asked me Monday about it.

Q He asked you Monday? A Yes.

Q When you said then, he did not ask you on Monday, that is not true? A Maybe I understood you differently. 30

Q Do you understand me right now? A I do.

Q Did you tell him on Monday what you knew about the accident? A No, sir I did not.

Q Where were you when he asked what you knew about the accident? A In the court building, outside.

Q Did you tell him then what you knew? A 40  
No, sir—

*Toefle Smith, cross.*

Q He asked you questions, you say? A (Continuing.)—I did not.

Q He asked you questions what you knew about the accident later? A No, he did not; he never asked me that way.

Q Didn't he ask you right outside what you knew about the accident? A No, sir; he did not.

Q Didn't you say a minute ago— A (Interrupting.) No, sir;—

Q (Continuing.) That he did? A I don't nothing of the kind; I say, no.

Q Have you talked to Mr. Thomas what he knew about the accident? A I did not; I do not know Mr. Thomas.

Q Did he talk to you? A I didn't know who he is until I met him yesterday here.

Q You met him yesterday? A After the court was over.

Q You knew he was a witness in this case? A I didn't know whether he was a witness or what he was.

Q You did not? A No, sir.

Q Did you talk to Mr. Schneider about this accident? A No, sir.

Q So that up to today you never talked to anyone what you knew about this accident? A No, sir.

Q You didn't give one word to me? A Not a word to you about the accident.

Q All right. You say you saw these people then crossing the road? A I saw them coming from behind the parked automobile.

Q You say you saw the Jackson people crossing the street, didn't you? A I did.

Q Did you see them when they started to cross? A No, sir; I couldn't look through the automobile.

*Toefle Smith, cross.*

Q Where were they when they started to cross? A They must have been standing on the other half of the automobile that was parked there.

Q You say they must have been standing— A They must have been standing on the other half of the automobile that was parked there.

Q You didn't see them there, did you? A I did not.

Q How far before this corner was this automobile? A The one that was parked there?

Q Yes. A Why, I should judge it was about three feet from the corner; she parked there.

Q That is towards— A (Interrupting.) I imagine some three feet from the crossing.

Q Yes, before that building, you mean? A Before the building?

Q Yes, before the front of the Passaic National Bank Building? A Here is Main avenue; there is Bloomfield avenue; on Bloomfield avenue the car was parking; she was about reaching the crossing, the Main avenue crossing of Bloom, here; she was about three or four feet away (illustrating).

Q That is, it had not, as yet,—the front of the automobile had not, as yet, come up to the building? A No, it had not.

Q To that bank. Where were these colored people when you first saw them? A When they started across, the first time I saw them, coming from behind that auto machine.

Q Did you see when they left the curb? A No, sir; I did not.

Q How far beyond the curb were they when you first saw them? A Why, just past the back of the car.

Q How far past? A Well, say, four feet past the car.

*Toefle Smith, cross.*

Q How far did they go before they were struck? A Why, they went catercornered—

Q How far did they go before they were struck? A Well, about the center of the road.

Q How far did they go before they were struck? A Well, they went catercornered, way  
10 the car was parked, they went catercornered of the street; they come up—we figure the street is about fifty feet wide—

Q Yes. A —so twenty-five feet of that would be half way.

Q Did they go twenty-five feet before they were struck? A They had to go twenty-five feet to be struck at the center of the road.

Q Did you see them walk the whole twenty-five feet? A After they got past the back of  
20 the car, I could; yes.

The Court: Well, the point is: What was the distance in feet, if you could tell, from the point where you first saw them, when they were three or four feet from behind the automobile until they were struck?

The Witness: Well, fifteen feet, after they left the automobile.

30 The Court: So then you say they traveled about fifteen feet catercornered?

The Witness: Catercorned; yes, sir.

The Court: And up in the direction toward Main avenue?

The Witness: Towards Main avenue, crossing from Bloomfield.

The Court: All right.

Q What were they doing when they were crossing the crossing? A They were going  
40 pretty fast.

*Toefle Smith, cross.*

Q Going pretty fast? A Going pretty fast.

The Court: You couldn't say it was a walk, and you couldn't say it was a run; is that the idea?

The Witness: Yes, sir.

Q You mean something in between? A In  
10 between.

Q You had no trouble seeing them from Ceres' store crossing the street, while facing them, had you? A No, no trouble; there was nothing there to block me from seeing them.

Q Nothing there to prevent anybody from seeing? A Nothing at all.

Q They were in clear view? A Clear view.

Q Were there any other people crossing  
20 there behind them? A No, sir; there weren't.

Q Why, weren't there people crossing in front of this automobile? A No, sir; there weren't.

Q No people crossing in front of this automobile? A No, sir; not at all.

Q No reason why they shouldn't cross? A I didn't ask them.

Q No, but as far as you could see, there was no reason why they shouldn't cross? A No, as  
30 far as I could see, there was no reason, no.

Q No; those people were facing toward Ceres' store, weren't they? A Yes.

Q You saw them come to a stop? A They stopped there.

Q You could see them there, all lighted up, in front of this automobile? A Yes, I could see.

Q That is right, isn't it, plenty of light even to see down to where these colored people were?  
40 A There is a light there.

*Toefle Smith, cross.*

Q None of the other people walked across the street? A No, sir; neither walked nor run; they stood still.

Q Well, these colored people went all of the way up to behind the other automobile, or you don't know that? A I don't know how they  
10 ever got there; I don't know.

Q Did you see them standing there with an umbrella? A No, I didn't see them standing there; I seen them crossing over with the umbrella, when I seen them.

Q They had no trouble with their umbrella?  
A Not as far as I could see.

Q Plenty of light there? A Plenty of light there.

Q You heard a horn, you say? A I heard  
20 a horn.

Q Which horn? A I couldn't say whether it was the man's machine that hit him; it might be the car that was standing there.

Q Do you remember telling me that Monday you couldn't tell which horn it was? A No, sir.

Q Where was this automobile when you first saw it? A What automobile?

Q The automobile that struck them? A  
30 When I first saw, it was making the turn into Bloomfield.

Q What part of the road was it? A On the right hand side.

Q How far before the accident happened?  
A How far before the accident happened? Well, say, twenty-five yards.

Q Twenty-five yards? A Yes, sir.

Q That is seventy-five feet; at that time, where were these colored people? A Well, they  
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*Toefle Smith, cross.*

must have been on the other side, back of the car parked there.

Q Where was the automobile when you first saw the colored people? A Where was the automobile?

Q Yes. A It was parked there.

Q No, the automobile which struck them. A  
10 I don't know where it was, when I seen him make the turn, I don't know where it was.

Q How far away from them was this automobile when you first saw them? A How far was the automobile?

Q Yes. A Why, it was almost on to them.

Q This automobile that struck these colored people was almost on them the first time you saw the colored people? A First time I seen  
20 the colored people it was about five yards away.

Q Which is it, that it was five yards away or almost on them? A Five yards away.

Q So when you said before this automobile that struck them was almost on them when you saw the colored people, that is not true, is it?  
A What?

Q When you told us before that the automobile that struck them was almost on the colored people the first time you saw them, that is not  
30 true, is it? A Was almost on them?

Q Yes. A Why, it was almost on them after— what do you mean?

Q When you first saw the colored people. A When I first saw the colored people, it was almost on them; I said it was about ten yards away from them.

Q Which is it now, five yards, ten yards, or almost on them? A Five yards—ten yards.

Q Ten yards? A Yes.

Q Sure of that? A Yes, I am sure.

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*Toefle Smith, cross.*

Q Ten yards makes how many feet? A Three feet to a yard, figure it out.

Q You figure it out. A I am not a good scholar.

Q Can't you? A No.

10 Q Can't you tell us how many feet ten yard is? A No.

Q Can you tell us how many feet in a yard? A Three feet.

Q How much is ten yards? A Well, it is ten times three; I don't know how much that is.

Q Can't you tell us at all? A No.

Q You want this court and jury to believe that you saw these colored people ten yards before the accident, ten yards away, before the  
20 accident? A Yes.

Q You want the jury to believe that?

Mr. Schneider: I object to that, your Honor.

The Court: Objection sustained.

Q Now, when these people were ten yards before the accident, where were they? A They were coming across.

30 Q On the street? A On the street.

Q How much of the street had they crossed at that time? A Well, half the length of the street when they got struck.

Q How much of the street had they crossed when you first saw them? A Well, when I first saw them, about fifteen yards.

Q Fifteen yards, so they had crossed fifteen yards of the street when you first saw them?

A When I first saw them,—I mean feet.

40 Q I see; that is all.

*Charge to Jury.*

Mr. Schneider: That is all.

Mr. Schneider: Defendant rests, your Honor.

(Defendant rests).

Mr. Lobsenz: We rest.

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(Both sides rest).

The Court: Sum up.

Thereupon, counsel for the respective parties summed the case to the jury.

#### COURT'S CHARGE TO JURY.

Thereupon the Court charged the jury as follows:

20

Ladies and Gentlemen of the Jury:

On June 30, 1925, Ida Jackson, accompanied by John Simmons, was a pedestrian on the streets of Passaic at night, in a rainstorm, and while crossing Bloomfield avenue at the place where it intersects with Main avenue, met with an automobile accident, by coming into contact with a part of a machine being driven by Ernest Weyl, and by reason of injuries that Mrs. Jackson received as a consequence of that collision,  
30 she brings her suit, and you have been impanelled to try the issues of fact which are raised in that suit.

She contends, and the basis of her action is that the injuries that she is suffering from and which have been described to you, were received by her in this accident and are the natural and proximate result of the negligence of the defendant, Mr. Weyl, in that he operated his automobile on the night in question and under the cir-  
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*Charge to Jury.*

circumstances that then and there existed in a negligent manner.

10 It is for you to say what the facts are, because that is the function of the jury, to find the facts. That is the sole function of the jury. It is the duty and the function of the Court to pass on all questions of law, but it is your sole duty to find questions of fact.

The issue or question of fact which is raised in this case is one of negligence, and you must keep that in mind—the negligence that is alleged by the plaintiff to have been committed by the defendant, Ernest Weyl.

20 Now, negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent, reasonable man would not do. The test is not that of a particular man, but of the average prudent man. That is what negligence is. That is, negligence is defined in that way by the law. The standard that is required of a person in a given circumstance, to act as a reasonably prudent person would act, under the circumstances that exist at that time, so as not to infringe the rights of another. If a person does act as a reasonably prudent person should act, he is blameless.

30 In other words, just because there is an accident does not necessarily mean that there has been negligence. There are unavoidable accidents.

40 Negligence must never be presumed, but must always be proven. And so, in this case, the burden of proof is on the plaintiff to satisfy you by the clear weight of the testimony that what she contends for has been proven by the clear

*Charge to Jury.*

weight of the testimony, viz.; that there has been negligence on the part of the defendant.

The facts have been presented to you as to the occurrence on the night in question. They have been testified to by people who were there, by people who saw either all of the circumstances of the accident to these people or part of it; and it is from that testimony that you will find the true facts. 10

I am asking you to stay past the usual hour of adjournment in order to complete this case today, and I shall, therefore, be as brief as I can and will not take the time to review, therefore, the testimony. The case has not taken very long to try. Counsel have very ably summed up the testimony. But the situation in a nutshell, as I understand it, is that the contention of the plaintiff is that she was crossing this road at a cross-walk provided for pedestrians and was at a place where she had a right to be, and she was run into by the defendant's automobile, which was negligently being operated, was carelessly being operated, that, in other words, it was being operated as a reasonably prudent person, under the circumstances that existed at that time and place, would not have operated it, and therefore she asks to be compensated for the resultant damage. 20 30

Now, the defendant denies that there was any negligence, and he says that the accident did not happen that way, and his theory of the accident is that this plaintiff, accompanied by Mr. Simmons, was crossing the street, in the rain, with an umbrella—some witnesses say running and some say walking very fast—and darted directly into the path of the automobile, and that it was therefore not his fault that she received these injuries, but rather negligence on her part, not 40

*Charge to Jury.*

his; that he had made a proper turn in turning the corner, that he was where he had a right to be, that he was on the right-hand side of the road, that he signalled the fact that he was coming by sounding his horn, and that she suddenly came in contact with his automobile, by running or stepping directly in the path while he was going at a slow rate of speed, in first gear, up hill, and that there was nothing that he could do or that any reasonably prudent careful driver of an automobile could have done under those circumstances to have avoided the accident. Therefore, he said, that under the circumstances, there was no negligence at all on his part, but, on the contrary, there was negligence on her part.

Now, if there was negligence on the part of the plaintiff, Mrs. Jackson, and that negligence contributed in any manner to the accident, there can be no recovery, and that is so, even though you may find, as a fact, that there was negligence on the part of the defendant. There can be no recovery, if there was negligence on the part of Mrs. Jackson, irrespective of the question of whether or not there was negligence on the part of Mr. Weyl.

Putting it in another way, in order to find for the plaintiff, you must find that there was negligence on the part of Mr. Weyl and no negligence on the part of Mrs. Jackson.

If you should find that there was negligence on the part of Mr. Weyl, then the next question of fact for you to determine is whether or not there was negligence also on the part of Mrs. Jackson, and if you find there was, there must, of course, be a judgment for the defendant of no cause of action.

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*Charge to Jury.*

If you find there was negligence on the part of Mr. Weyl and no negligence on the part of Mrs. Jackson, then, of course, your verdict will be for the plaintiff, Mrs. Jackson.

Now, the burden is likewise on the defendant to prove by the clear weight of the testimony that what he contends for is true, viz., that there was contributory negligence on the part of Mrs. Jackson. The burden, as I have said before, is on the plaintiff to prove that there was negligence on the part of the defendant, Mr. Weyl; but when Mr. Weyl contends that there was contributory negligence on the part of the plaintiff, Mrs. Jackson, he must satisfy you that there was such negligence on the part of Mrs. Jackson by the same rule of law, by the clear weight of the testimony to that effect.

When I say the "clear weight of the testimony," I do not, of course, mean the number of witnesses, but rather the quality of the testimony. You are the sole judges of the credibility of the witnesses. You are the sole judges of the weight that you are to give to the testimony that has been adduced before you. In doing that, it is your duty to weigh carefully the testimony that has been given, to analyze it and consider it, consider the manner of the witnesses on the stand, their powers of observation at the time as to what they say they saw, the interest that they have in the outcome of the suit, the likelihood of their story being true with respect to your own knowledge of the laws of physics, your own common sense. You are to find, in other words, by weighing and considering the testimony just where the truth lies.

You are to reconstruct this scene of this accident from the testimony that has been given, and as you weigh it, you will separate the wheat from

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*Charge to Jury.*

the chaff. Just because there is not an exactness of the testimony, just because they do not all coincide in every particular, of course, does not necessarily mean that anyone is telling an untruth. What one will register and remember, another may not. It is not probable, as the human mind is constituted, for every one to see and remember the exact thing that everyone else sees and remembers. What one may see of an occurrence, that has really occurred, the rest may not have seen at all, because their attention was concentrated on some other detail of the scene, and so, just because there is a variance in the stories of the various witnesses, does not necessarily mean that anyone is deceiving you or purposely testifying to something that is not so. But if you should find that any witness has deliberately misstated a material matter, has sworn falsely to a material matter in this case for the purpose of deceiving you, you have a right to disregard all testimony that such witness may have given.

Now, the law of this state is that a pedestrian has the right of way over a vehicle at street crossings where the houses on the average are less than a hundred feet apart, as it is agreed in this case they are at that location, and therefore where a pedestrian and an automobile, moving in different directions, approach such a crossing at the same time or in such a manner that if both continue their respective course there is danger of a collision, then the pedestrian is entitled to the first use of the crossing; and it is the duty of the driver of the automobile to stop or to so reduce his speed as to avoid and give such pedestrian reasonable opportunity to pass in safety, and to that end to have such automo-

*Charge to Jury.*

bile under such control as to enable him to do so, and a disregard of the pedestrian's right of way, due to excessive speed, while not conclusive, as to the driver's negligence, is a factor in the situation, which, considered as a whole, presents a jury question as to the negligence of the driver in case of an injury to the pedestrian by an automobile so driven.

In other words, keeping in mind that the pedestrian had the right of way for the automobile at that intersection under the conditions that were present in the case from which I have just read, and while it is not conclusive as that decision holds, it is a factor for you to take into consideration when deciding this question of whether or not there was negligence.

In other words, in the case that I have just quoted from, there was testimony of an excessive speed. In this case that we are trying, there was some testimony of excessive speed. I think some witness said the car was going fast. But, on the other hand, there was some testimony to the contrary, that the car had been at a standstill and then had proceeded to turn the corner, and was in low speed, going at a low rate of speed, and sounded a signal. Therefore, it is a question of fact for you to determine from all of the facts that have been testified to as to the question of negligence which is the real question of fact for you to determine, and you must determine that from the testimony, as you recall it.

If the Court in referring to the testimony has misstated it in any particular, you will disregard anything that the Court has said with respect to the testimony, if it does not coincide with your own recollection. Your recollection must be your sole guide as to what the testimony was in this case.

*Charge to Jury.*

Now, if you find there was negligence on the part of the defendant and no contributory negligence on the part of the plaintiff, which was the proximate cause of this accident, then, of course, you will consider the question, and not until then, of damages. In that connection, you will recall  
 10 what the testimony was with respect to the nature and extent of the injuries that this plaintiff has complained of, which she says are the result of this accident.

You will take into consideration her condition prior to the accident and her condition since the accident. You will take into consideration the amount of outlay that she has had, the amount of expense that she has been put to to effect a cure, and the amount of money that she has lost by  
 20 reason of her being incapacitated since the accident—loss of wages, loss of ability to keep boarders and lodgers—and in addition to those the items of actual damage that may have been testified to, and you will recall just what they were.

She is entitled to such sum as you may decide proper, under the evidence, to compensate her for such permanent disabilities as you may find that she has suffered, and for such pain and suffering as she may have undergone and may in the  
 30 future undergo.

Of course, if you decide there was no negligence on the part of the defendant, that the version of the accident as given by the defendant's witnesses, to the effect that she ran into the car or walked into the car, and he gave a signal, and it was going slowly, and all of the other things that the defendant contends as bearing out or bearing witnesses to the effect that his contention is correct, that he was, first, not guilty of negligence, and, secondly, that she was herself  
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*Exceptions to Charge.*

guilty of contributory negligence, then, of course, irrespective of the damage that she may have sustained, no matter how much sympathy you may have with her, because of the suffering which she has undergone and the condition which she may now be in, it will be your duty nevertheless to find a judgment for the defendant, if you  
 10 so find the facts to be.

You may now retire.

(The jury retires.)

The Court: (To counsel for the plaintiff.) I tried to cover your requests to charge, in my own way, and those that I did not, you may have an exception to.

Mr. Lobsenz: All right.

The Court: I will give you an exception to  
 20 those parts I did not cover.

Mr. Schneider: Your Honor, may I have an exception to what your Honor said about the right of way at the crossing, because it seemed to assume that there was no contrary evidence. Our evidence is that she was crossing at a point not a crosswalk.

The Court: Yes, that is true.

Mr. Schneider: May I have an exception to  
 30 that?

The Court: Yes.

Mr. Schneider: I take exception to that part of your Honor's charge where you charged about the knowledge of the witnesses being taken into consideration, because the quality should be taken into consideration also as well as the quantity.

The Court: That was an explanation of what I meant by the weight. You may have that.  
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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

IDA JACKSON, <i>Plaintiff-Appellee,</i> <i>vs.</i> ERNEST WEYL, <i>Defendant-Appellant.</i>	}	<i>Action at Law. On Appeal from Supreme Court, Passaic Circuit.</i>
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### BRIEF OF THE DEFENDANT IN FAVOR OF THE APPEAL.

#### I.

##### Statement of the Case.

The appeal was taken to review a judgment in favor of the plaintiff-appellee and against the defendant-appellant in the sum of two thousand dollars for personal injury sustained by the plaintiff through a collision with the automobile of the defendant. The plaintiff alleges that "The plaintiff was lawfully crossing Bloomfield Avenue, a public highway in the City of Passaic, County of Passaic and State of New Jersey, from the south side of said street to the north side thereof, at or near the point where Main Avenue, another public highway of said City of Passaic, intersects Bloomfield Avenue" (see Complaint, p. 2). The defendant was driving his automobile in a northerly direction along Main Avenue and made a left-hand turn to drive in a westerly direction on Bloomfield Avenue. The versions of the plaintiff and the defendant differ as to whether the former came into collision with the latter's car at the crossing, the former maintaining that she was on the crossing

when struck and the latter maintaining that the plaintiff walked into the left side of his car at a point beyond the crossing. It can readily be understood that the point whether the plaintiff was crossing at a regular crosswalk or not would be very important. The defendant charges error on this point in the Trial Court's charge, to which exception was duly taken (p. 179, ll. 22-32).

"Mr. Schneider: Your Honor, may I have an exception to what your Honor said about the right of way at the crossing, because it seemed to assume that there was no contrary evidence. Our evidence is that she was crossing at a point not a crosswalk.

The Court: Yes, that is true.

Mr. Schneider: May I have an exception to that?

The Court: Yes."

The defendant sets up three grounds of appeal (pp. 10, 11 and 12), which all really deal with this point and which will, therefore, be combined in one point. *Crystalizing the matter, the defendant charges specifically that the Court erroneously charged the jury that the collision took place at a crosswalk and took away from their consideration and deliberation the settling of the question whether the accident really took place at the crosswalk or not. We contend that the evidence produced by the defendant showed that it did not take place at a crosswalk. Moreover, the Court also stated that a pedestrian had the right of way over a vehicle at a street crossing where the houses on the average are less than one hundred feet apart, which was the case here, and, therefore, the Court really charged the jury that the plaintiff had the right of way over the defendant as a matter of fact, whereas, in our estimation, the point was contradicted seri-*

*ously; in fact, we contend that the evidence that the accident occurred at a place not a crosswalk preponderated very much. The error, therefore, in our estimation, was very prejudicial.*

## II.

### BRIEF OF THE ARGUMENT.

The Court erroneously charged the jury that the collision between the plaintiff and the automobile of the defendant occurred at a crosswalk instead of directing them to pass on this point as a question of fact. Likewise, the Court erroneously charged the jury that the plaintiff had the right of way over the defendant's automobile because of said fact, whereas this should have been left to the jury to pass upon as a question of fact. It is contended that this constituted prejudicial error.

It is conceded that the evidence produced by the plaintiff is to the effect that she was crossing Bloomfield Avenue where it intersects Main Street from the southerly side to the northerly side of said street at a regular crosswalk, that the defendant drove his car in a northerly direction on Main Avenue, made a left-hand turn westerly on Bloomfield Avenue and struck her, the said plaintiff, while she was on said crosswalk (see testimony of plaintiff on p. 15). On page 19, lines 15-20, she testified as follows:

"Q Now, were you on the crosswalk at that time? A Yes.

Q What crosswalk are you referring to?  
A The corner of Bloomfield avenue and Main avenue.

The Court: Which street were you crossing—Main avenue or Bloomfield avenue?

The Witness: I was crossing Bloomfield avenue.

The Court: At Main?

The Witness: Yes."

The only witness produced by the plaintiff on the occurrence of the accident was John Simmons, who was walking with her at the time. On page 37, line 22, to page 38, line 40, he testified as follows:

"Q Were you crossing the street alone, or were you and Mrs. Jackson crossing the street alone at the time? A No, sir; there was quite a few people crossing.

Q Yes. A (continuing) From the corner, from that place.

Q Was there anyone in the back of you? A Yes, sir.

Q Was there anyone in the front of you? A Yes, sir.

Q There was many or a few people? A Great many; a lot of people.

Q In other words, you were right in line? A Right in line.

Q Were you on the crosswalk at the time you were hit? A Yes, sir.

Q You know what I mean by the crosswalk, don't you? A Yes, meaning with the walk in between.

Q Yes. A Yes, I was walking in between those from this crossing.

Q Right in between the lines? A Yes, sir.

Q Of the crosswalk? A Yes, sir.

Q Did you see the car coming east on Bloomfield avenue? A Yes, sir.

Q Did you pass in front of or in back of that car? A In front of the car.

Q In front of the car? A Yes, sir.

Q Was it in motion at the time you passed in front of it? A Was the car in motion?

Q Yes. A No, sir; it was not.

Q How far had it stopped from the corner? A About sixteen feet from the corner.

Q Did you hear Mr. Weyl blow his horn? A No, sir.

Q Were his lights lit? A Yes, sir.

Q Was it raining heavily? A No, sir.

Q Or was it raining lightly? A No, sir; it was not; it was raining a little.

Q What part of Mr. Weyl's car hit you? A His left hand fender.

Q Front or rear? A Front.

Q Now, what part of Mr. Weyl's car hit Mrs. Jackson? A I don't know; I cannot recall.

Q You say you grabbed his fender? A Yes, sir.

Q What part of the fender did you grab, the front part or the rear part? A Front part.

Q How far were you dragged? A About two feet.

Q How far was Mrs. Jackson thrown? A About five or six feet, coming up Bloomfield avenue."

It should be noted explicitly that he says that they passed in front of an automobile that had been going east on Bloomfield Avenue and had stopped about sixteen feet from the corner. As will be seen later, the witnesses for the defendant testified absolutely that the Plaintiff and John Simmons crossed the street in back of this automobile, but as Mr. Simmons puts the car sixteen feet from the corner, and as an automobile is at least ten feet long, there would be evidence before the jury that the plaintiff had crossed at a point twenty-six feet from the intersection and therefore not at a crosswalk. This might be taken in connection with the allegation in paragraph 2 of the complaint in this case, in which the statement is made that the plaintiff crossed Bloomfield Avenue at or near the point where Main Avenue intersects the same (see p. 2).

*The testimony adduced by the plaintiff, therefore, as above set forth, is that she was crossing Bloomfield Avenue in company with Mr. Sim-*

*mons from the south to the north side at a crosswalk sixteen feet from an automobile which was parked on the southerly side of Bloomfield Avenue, pointing in an easterly direction.*

We shall now see that the testimony adduced by the defendant on this point is absolutely contradictory, especially with reference to this parked car as an inanimate physical object concerning whose presence both sides agree and concerning the distance thereof from the corner they differ, the witnesses for the defendant placing it from eight to fifteen feet from the corner and Mr. Simmons, for the plaintiff, placing it at sixteen feet, the plaintiff alleging that she walked in front of said car, and the defendant's witnesses alleging that she and Mr. Simmons crossed the street in the rear thereof.

The witness produced by the defendant was Mrs. Christine Smith, who testified on this point as follows (p. 86, ll. 1-40): (She was standing with her husband on the northwest corner when she made her observation).

“Q Quite a crowd standing there? A Yes, quite a crowd.

Q On the other corner that was where the car was parked? A Yes, on the bank side.

Q I see; go on. A There was some automobiles coming both directions on Main avenue, and the coast was clear, and there was a man, I didn't know who he was, come across the track, and when he was crossing, out of the crowd there was a colored man and a colored woman started to run across from in back of this other machine that was standing at the bank.

Q Yes, what else? A (continuing) —and the man had hold of this woman's arm, and this automobile bumped up against the man, and as he fell he threw her down.

Q On what side of this street was this automobile that was turning around? A On Ceres' side.

Q On your side, he was? A Yes.

Q When you say Ceres' side, is that the name of the florist? A Yes.

Q That was his right side? A Yes.

Q That was the corner you were standing? A Yes.

Q You say these two people were running? A Yes, they ran across the street; they just got half way when this car struck the man and he fell over and threw the woman down.

Q Did the car stop? A Oh, yes, stopped right there.”

It should be noted that this witness shows clearly that the plaintiff and her companion ran across in back of the parked machine and not in front, thus contradicting the assertion of the plaintiff that she was crossing at a crosswalk.

The second witness produced was Benjamin Thomas. He testified as follows on this point (see p. 107, l. 31, to p. 108, l. 19): This witness was in the doorway of the Hobart Trust Company on the northerly side of Bloomfield Avenue on the same side as the previous witness.

“Q I see. Now, will you tell the Court and jury just what you saw regarding this accident, using your own words? A Well, as I was sitting there, I seen the car standing on the corner of Passaic National Bank.

Q On the corner? A On the other side.

Q On the other side? A Yes, sir.

Q Did you see that come to a stop, or how? A I seen it there stopping; I didn't see it come there but I seen it standing there.

Q How near Main avenue was that? A Oh, I imagine it was ten, twelve, fifteen feet or sixteen, something like that, I couldn't tell you exactly.

Q It was standing there? A It was standing there when I seen it.

Q What did you see happen? A I seen the colored folks pass through at the rear of that car.

Q At the rear of the car? A I seen the colored folks pass through at the rear of that car.

Q Just what were they doing? A They were going across the street—

Q In what way? A Well, they was going across the street on the right side, which was on the left of the car.”

It should be noted that this witness also says that the plaintiff and her companion passed to the rear of the parked car, thus agreeing with Mrs. Smith and contradicting the plaintiff and her witness, Mr. Simmons, on the fact that they were crossing at the crosswalk.

The defendant, Ernest Weyl then testified as follows (p. 122, ll. 25-35):

“Q So that there can be no question about it, this car was a foot to a foot and a half from its right hand curb; is that right? A Yes.

Q I beg pardon. How far did it have to go yet before it got up to the corner of Bloomfield avenue and Main avenue? A Well, about, I should say, eight or nine feet.”

The parked car referred to was about eight or nine feet from the intersection. A colloquy between counsel, the Court and the defendant on the witness stand is very pertinent as to the position of the parked car on the southerly side of Bloomfield Avenue, and whether the plaintiff crossed in front or in the rear thereof (see p. 139, l. 10, to p. 140, l. 21).

“Q (continuing) When you first saw—

Mr. Schneider: Just pardon me. If he was on both sides of that automobile, he come out, then he passed it; so that the question is very ambiguous.

The Court: I think the question is clear, with reference to where he first saw them, when they left the curb, that is what the question is about, and that is what he must answer. The question is: Where they were with reference to Main street on Bloomfield avenue when you first saw them when they were, you say, about three feet from the curb. Was it in front of the parked automobile or was it behind the parked automobile, that spot?

The Witness: Well, according to the position of my car, I would say in the back of the automobile that was parked there.

The Court: In other words, between the automobile and Main avenue?

Mr. Schneider: He said in back of it.

The Witness: In back of the automobile that was parked there.

The Court: Then the automobile was between the people and Main avenue, is that correct?

The Witness: Between the people and Main avenue? Yes, sir.

The Court: All right.

Mr. Schneider: Now, if your Honor please, that parked car, if I may explain, was facing east?

The Witness: Yes, sir.

The Court: The parked car was facing Main avenue, eastward?

Mr. Schneider: Exactly.

The Court: So he says now they were the other side of that car, so that the car was between the plaintiff in this case and Main avenue, what he says?

Mr. Schneider: Oh, yes, the car was between the plaintiff and Main avenue.

The Court: Is that right?

The Witness: Yes, sir.

Mr. Schneider: That is what he says.”

The defendant therefore testifies clearly that the plaintiff and her companion were crossing not at a crosswalk but at a point at least twenty feet or more from the crosswalk.

Toefle Smith was produced by the defendant (he was the husband of the former witness, Christine Smith, and stood with her while making the observation). He testified as follows on page 157, lines 10 to 40:

“Q Yes. A There was a crowd standing on the opposite side, and this car being parked on the National Passaic Bank side, so at the time when he just about crossed, this colored party happened to come from behind—

Q Behind what? A Behind this parked car—

Q Yes. A —and got about half way; they got about half way across.

Q Yes; what happened? A Well, at that time, just about when they about got half way across this car happened to hit them.

Q What part of the car did they come in contact with? A The left.

Q What part of the car? A Why, it was the fender that hit them.

Q Pardon me? A The fender.

Q Near what? A Near the left wheel of the car.

Q Near the left wheel of the car? A The left wheel of the car.

Q The front wheel? A The front wheel.

Q How was this car going as to rate of speed when this thing happened? A Well, he couldn't go over five miles an hour, because he just made the turn; it was—

Q Was he going over five miles an hour? A Why, I don't think he was.

Q Did you hear any horns blown? A I did.

Q How soon did this car stop? A Stopped immediately after it struck them.”

Again on page 165, lines 30-40, and on page 166, lines 1-20, he testified as follows:

“Q To that Bank. Where were these colored people when you first saw them? A When they started across, the first time I saw them, coming from behind that auto machine.

Q Did you see when they left the curb?

A No, sir; I did not.

Q How far beyond the curb were they when you first saw them? A Why, just past the back of the car.

Q How far past? A Well, say, four feet past the car.

Q How far did they go before they were struck? A Why, they went catercornered—

Q How far did they go before they were struck? A Well, about the center of the road.

Q How far did they go before they were struck? A Well, they went catercornered, way the car was parked, they went catercornered of the street; they come up—we figure the street is about fifty feet wide—

Q Yes. A —so twenty-five feet of that would be half way.

Q Did they go twenty-five feet before they were struck? A They had to go twenty-five feet to be struck at the center of the road.

Q Did you see them walk the whole twenty-five feet? A After they got past the back of the car, I could; yes.”

He also testified on page 166, line 38, to page 167, line 12:

“Q What were they doing when they were crossing the crossing? A They were going pretty fast.

Q Going pretty fast? A Going pretty fast.

The Court: You couldn't say it was a walk, and you couldn't say it was a run; is that the idea?

The Witness: Yes, sir.

Q You mean something in between? A in between."

Three witnesses, therefore, produced by the defendant, namely, Mr. Smith, Mrs. Smith and Benjamin Morris, as well as the defendant himself, diametrically and clearly contradict the assertion of the plaintiff and one witness, Simmons, that she was crossing at a crosswalk. The weight of the defendant's testimony on this point is almost overwhelming as compared to that of the plaintiff. The jury would, therefore, had had a perfect right to decide that the plaintiff was crossing the street at a point which was not a crosswalk and that she did not have the right of way over the defendant's automobile. They were not allowed, however, to pass on this point as the Court took it away from their consideration and charged them that it was a fact of the case that the plaintiff was crossing at a crosswalk and had the right of way. Surely, this influenced the jury in finding a verdict for the plaintiff and against the defendant and was, therefore, error of a very prejudicial nature against the defendant on a point that was not only material to the case but, indeed, a high spot.

The Court deals with this point in its charge as follows, firstly, on page 171, lines 21-34:

"Ladies and Gentlemen of the Jury:

On June 30, 1925, Ida Jackson, accompanied by John Simmons, was a pedestrian on the streets of Passaic at night, in a rain-storm, and while crossing Bloomfield avenue at the place where it intersects with Main avenue, met with an automobile accident, by coming in contact with part of the machine being driven by Ernest Weyl, and by reason of injuries that Mrs. Jackson received as a consequence of that collision, she brings her suit, and you have been impanelled to

try the issues of fact which are raised in that suit."

*The Court, therefore, specifically charges here that the accident happened at the intersection or crossing.*

Secondly, page 173, line 12, to page 174, line 18:

"I am asking you to stay past the usual hour of adjournment in order to complete this case today, and I shall, therefore, be as brief as I can, and will not take the time to review, therefore, the testimony. The case has not taken very long to try. Counsel have very ably summed up the testimony. But the situation in a nutshell, as I understand it, is that the contention of the plaintiff is that she was crossing this road at a crosswalk provided for pedestrians and was at a place where she had a right to be, and she was run into by the defendant's automobile, which was negligently being operated, was carelessly being operated, that, in other words, it was being operated as a reasonably prudent person, under the circumstances that existed at that time and place, would not have operated it, and therefore she asks to be compensated for the resultant damage.

Now, the defendant denies that there was any negligence, and he says that the accident did not happen that way, and his theory of the accident is that this plaintiff, accompanied by Mr. Simmons, was crossing the street, in the rain, with an umbrella—some witnesses say running and some say walking very fast—and darted directly into the path of the automobile, and that it was therefore not his fault that she received these injuries, but rather negligence on her part, not his; that he had made a proper turn in turning the corner, that he was where he had a right to be, that he was on the right-hand side of the road, that he signalled the fact that he was coming by sounding his horn, and that she suddenly came in contact with his automobile, by running or stepping directly

in the path while he was going at a slow rate of speed, in first gear, up hill, and that there was nothing that he could do or that any reasonably prudent careful driver of an automobile could have done under those circumstances to have avoided the accident. Therefore, he said, that under the circumstances, there was no negligence at all on his part, but, on the contrary, there was negligence on her part."

The Court, in crystalizing the main points in the case, substantially states that the plaintiff contends that she was crossing at a crosswalk where she had a right to be, and in summing up the contention of the defendant, does not say that the defendant contradicts this, but simply says that the defendant contradicts the allegation of negligence and the Court emphasizes the contention that the defendant alleged that she was guilty of contributory negligence. In other words, the inference from the Court's language is that the allegation of the plaintiff that she was crossing at a crosswalk is not contradicted by the defendant.

On page 176, line 25, to page 177, line 19, the Court used the following language:

"Now, the law of this state is that a pedestrian has the right of way over a vehicle at street crossings where the houses on the average are less than a hundred feet apart, as it is agreed in this case they are at that location, and therefore where a pedestrian and an automobile, moving in different directions, approach such a crossing at the same time or in such a manner that if both continue their respective course there is danger of a collision, then the pedestrian is entitled to the first use of the crossing; and it is the duty of the driver of the automobile to stop or to so reduce his speed as to avoid and give such pedestrian reasonable opportunity to pass in safety, and to that

end to have such automobile under such control as to enable him to do so, and a disregard of the pedestrian's right of way, due to excessive speed, while not conclusive, as to the driver's negligence, is a factor in the situation, which, considered as a whole, presents a jury question as to the negligence of the driver in case of an injury to the pedestrian by an automobile so driven.

In other words, keeping in mind that the pedestrian had the right of way for the automobile at that intersection under the conditions that were present in the case from which I have just read, and while it is not conclusive as that decision holds, it is a factor for you to take into consideration when deciding this question of whether or not there was negligence."

Exception was taken by the defendant to this language (p. 179, ll. 22-32).

*The authorities in this State hold that a charge should be read in its entirety and that it does not constitute prejudicial error should an extract standing by itself be wrong provided the entire charge is substantially correct.*

*Veader v. Veader*, 89 N. J. L. 727;

*Republic v. Lehigh Valley R. Co.*, 96 N. J. L. 25;

*Rubin v. Blau*, 2 N. J. Misc. R. 615;

*Shotwell v. Public Service Gas Co.*, 2 N. J. Misc. R. 435 at 437;

*Richmond v. Bates*, 2 N. J. Misc. R. 438 at 440;

*Cohen v. Ah Kee*, 1 N. J. Misc. R. 34;

*State v. Siegendorf*, 1 N. J. Misc. R. 30;

*Vitucci v. Public Service Ry. Co.*, 2 N. J. Misc. R. 465.

It is held in *Lenz v. Public Service Ry. Co.*, 98 N. J. L. 849, that in determining the soundness of an instruction, the inquiry should be whether

the jury would have been misled to the injury of complaining party by the language of the charge as an entirety.

We have set forth completely everything that the Trial Court stated in his charge on the point in question, namely, the question as to whether the plaintiff was crossing at a crosswalk as well as on the question of her having the right of way over the defendant. *We have not taken any part of the Court's charge piecemeal but have considered the charge as an entirety.*

Considering it thusly, as an entirety, it plainly appears that the Court charged the jury that the plaintiff had the right of way over the defendant at the time of the collision because she was crossing at the intersection of the streets at a crosswalk. The Court, therefore, took away from the jury the very important question as to whether she was actually crossing at a crosswalk or not and thereby expressly gave the plaintiff the right of way over the defendant. It can readily be seen that this not only was prejudicial to the defendant but amounted almost to a direction to the jury to find in favor of the plaintiff, in the absence of contributory negligence. In other words, under the charge of the Court, it was the duty of the defendant to bring his automobile to a stop and allow the plaintiff to cross, since she had the right of way.

*That the question of fact was seriously contradicted, a reading of the excerpts of testimony, as set forth above, will clearly show. In fact, as stated above, the evidence of the defendant on this point greatly outweighed that of the plaintiff. If the Court, therefore, had charged correctly under the facts and had allowed the jury to pass upon the question as to whether the*

*plaintiff was crossing at a crossing or not, the verdict might have been in favor of the defendant, as the jury might have believed his witnesses and might have decided that the plaintiff did not have the right of way and that, therefore, there was no negligence on the part of the defendant.*

It is, therefore, respectfully submitted that the charge of the Court, as set forth above, contained prejudicial error and that the judgment of the New Jersey Supreme Court entered in this case in favor of the plaintiff and against the defendant should be vacated and set aside.

JOSEPH C. PAUL,  
Attorney of Defendant.

JACOB SCHNEIDER,  
Of Counsel.

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## New Jersey Court of Errors and Appeals

Ida Jackson, Plaintiff-Respondent,  vs.  Ernest Weyl, Defendant-Appellant.	}	On Appeal from Supreme Court Passaic Circuit.
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### BRIEF OF PLAINTIFF-RESPONDENT

#### FACTS

The above action arises out of injuries sustained by the plaintiff on June 20, 1925, while crossing over Bloomfield Avenue at the intersection of Main Avenue and Bloomfield Avenue, in the city of Passaic, New Jersey. The accident happened in the evening while the plaintiff was walking along Main Avenue, and crossing Bloomfield Avenue, toward her home. The automobile of the defendant struck her while it was proceeding from her right on Main Avenue and threw her to the ground. The jury found a verdict for the plaintiff. The Appellant assigns as error that the court charged the jury on matters of law not applicable to the facts of the case.

#### POINT 1.

**THE TRIAL JUDGE HAS THE RIGHT TO COMMENT ON THE EVIDENCE IN HIS CHARGE, SO LONG AS HE PERMITS THE JURY TO DECIDE DISPUTED FACT QUESTIONS.**

We respectfully submit that the charge of the court is consistent with the facts submitted to the

jury and is without error. The court may comment upon such of the evidence as he deems necessary or proper for the direction of the jury. He may even intimate an opinion as to the weight of evidence, whenever he may deem it necessary for the promotion of justice, so long as he leaves the jury to determine for themselves the facts and all inferences to be drawn therefrom. *Bruch v. Carter* 32 L 554; *Castner v Sliker* 33 L 507; *Engle v State* 50 L 272; *Foley v Loughran* 60 L 464; *Manda v D L & W Railroad* 89 L 327; *State v Hummer* 73 L 714; *Fiorentino v Farr & Bailey* 100 L 143.

In the case of *Foley v Loughran* 60 L 464, Lippincott, J. speaking for the Court of Errors and Appeals said.

"The rule is that a trial judge has the undoubted right to make such comments upon the testimony as he thinks necessary or proper for the direction of the jury. He may intimate an opinion as to the weight of evidence, or call the attention of the jury to any matter in the cause affecting the credibility of a witness, whenever he may think it is required or necessary for the promotion of justice, so long as he leaves the jury to determine the facts and draw their own conclusions."

The reason for such comment is to enable the jury to receive the benefit of the Judge's greater experience. *State v Hummer* 73 L 714. It is not only the right but in certain cases it is the duty of the trial judge to comment on the evidence. *State v Hummer* 73 L 714.

The court in the case sub judice throughout the charge repeatedly informed the jury that they were the sole judges of the facts and all inferences to be drawn. A few excerpts from the charge will show that the court permitted the jury to decide all questions of fact, and that he never attempted to compel them to accept one version of the accident in preference to another.

"It is for you to say what the facts are, because that is the function of the jury, to find the facts. 172-3."

"The facts have been presented to you as to the occurrence on the night in question. They have been testified to by people who were there, by people who saw either all of the circumstances of the accident to these people or part of it; and it is from that testimony that you will find the true facts. 173-3 to 12."

The court then presented the contention of the plaintiff and also the contention of the defendant, including the denial of liability by the defendant, as well as the denial that the accident happened at the crossing as alleged. 173-20 to 40.

The court then referred to the weight of the evidence and the credibility of the witnesses, and again informed the jury that they were the sole judges of all the facts. 175-25 to 40.

The court then proceeded to charge the jury that the entire accident was a question of fact to be

settled by them, and concluded with the following statement.

"If the court in referring to the testimony, has misstated it in any particular, you will disregard anything that the court has said with respect to the testimony, if it does not coincide with your own recollection. Your recollection must be your sole guide as to what the testimony was in this case." 177-34 to 40.

The particular part of the judge's charge to which the Appellant has taken exception does not in any manner, show an attempt by the court to assume that the accident happened at the crossing. There was a preponderance of evidence to the effect that the accident did happen at the crossing while the plaintiff was lawfully crossing the street at that point. During the conduct of the trial counsel for both parties stipulated that the accident happened at a place where the houses were less than 100 feet apart. The court then correctly stated the law as to the rights of parties at a crosswalk. *Venghis v Nathanson* 101 L 110. The court undoubtedly had the right to read the law governing the circumstances to which most of the evidence pointed. We cannot see how the statement of this law by the trial judge, deprived the jury of the right to determine, whether those facts governed or existed in this case. The very reading of that portion of the charge, shows that the court was referring to the case of *Venghis v Nathanson*, without making mention as to whether the circumstances in that case governed the facts in the case sub judice. But even so, the jury would have been justified in applying the law as stated if

they decided the facts warranted such application. The court repeatedly informed the jury that their recollection of the facts was the only guide to govern their determination.

The appellant cannot satisfy this court that the charge intimated the accident happened at the crosswalk, nor can appellant satisfactorily show wherein the court instructed the jury that such a fact was undisputed and assumed. A fair reading of the entire charge leaves the jury entirely uninfluenced and unprejudiced as to what opinion the court entertained on the matter now in controversy.

In the cases of *State v. Hommer*, 73 L. 714; *Corkran & Meloney v. Taylor*, 77 L. 195; *Manda v. D. L. & W. Railroad*, 89 L. 327; *Finance Corporation of New Jersey v. Jones*, 97 L. 106; *Reinfield v. Laden*, 98 L. 701; the court in each case commented on the testimony and expressed an opinion as to the weight of the evidence. But in this case the court did not even go that far, because there is no evidence in the charge of any expression of opinion. All that the charge imported was that after the jury had settled the facts in accordance with the manner in which the testimony appealed to them they could apply the law as charged. The charge in its most liberal construction was purely directory and in no sense mandatory.

## POINT 2

**THE EVIDENCE CLEARLY SHOWS THAT THE ACCIDENT HAPPENED AT THE CROSSWALK.**

The evidence throughout the case was to the effect that the plaintiff was crossing at a point from one sidewalk to another and that she was struck while doing so. The defendant admits these facts and there was very little dispute about it at the trial.

The plaintiff's testimony upon this point is contained in the following pages: 19-18; 27-8.

John Simmons a witness for the plaintiff testified that the accident happened at the crosswalk. 37-38; 38-2. Mrs. Christine Smith, a witness for the defendant, also testified that the accident happened at the crosswalk. 89-14; 23-40; 91-38; 92-8; 93-38; 94-9; 97-28; 98-12; 98-22 to 30.

Benjamin Thomas, a witness for the defendant, did not see the accident at all, and admits it. 110-21. His evidence therefore as to where the automobile was after the accident, was therefore of very little weight.

The defendant personally, testified that the accident happened at the crosswalk. There was an attempt by him to show that the plaintiff walked behind another automobile and was struck while doing, so but he later testified that the plaintiff

walked in front of this same automobile. His testimony showing that the accident happened at the crosswalk appears in the state of the case, pages 129-31; 130-37.

Mr. Toefle was the only witness who claimed that the accident happened past the crossing, and he measures the accident as happening 5 feet past the crossing. 157-8.

The evidence submitted appears towards the one conclusion and that is that the accident happened at the crosswalk, and consequently the trial court instructed the jury on the law applicable to this situation, but at the same time left for them the determination as to whether this law should be applied to the facts in this particular case.

**CONCLUSION**

It is respectfully submitted that the action of the trial Judge did not violate or impair the substantial rights of this Appellant in such a manner where-  
his interests have been injuriously affected, so that this court can come to no other conclusion but that the judgment of the court below should be affirmed.

Respectfully,

JOSEPH B. STADTMAUER,

Atty. of Plaintiff-Respondent.

MEYER LOBSENZ,

Of Counsel with Plaintiff-Respondent.

