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Summons.

STATE OF NEW JERSEY to CATHERINE BALD, 10
LOUIS BALD, ANNA A. HAUNSTEIN and
TILLIE A. DE WITT.

You are summoned to answer the annexed complaint of CHARLES TIMANNUS, administrator *ad prosequendum* of Emma Timannus, deceased, 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. 20

WITNESS, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this 11th day of October, 1929.

FRED L. BLOODGOOD, 30
Clerk.

RICHARD DOHERTY,
Attorney.

Complaint.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

10

CHARLES TIMANNUS, administrator
ad prosequendum of Emma
Timannus, deceased,

*Plaintiff,**v.*

CATHERINE BALD, LOUIS BALD,
ANNA A. HAUNSTEIN and TILLIE
A. DE WITT,

Defendants.

Action at Law.

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The complaint of Charles Timannus, residing in Jersey City, Hudson County, N. J., administrator *ad prosequendum* of Emma Timannus, deceased, shows:

FIRST COUNT.

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1. August 13th, 1929, the defendant, Tillie A. De Witt, was the owner and operator of an automobile in which, at the special invitation and request of the said Tillie A. De Witt, the said Emma Timannus then and there rode as a passenger in a westerly direction upon and along Pine Brook Road in the Township of Denville, in the County of Morris, and State of New Jersey, at a point thereon between Mountain Lakes and Arrowhead Lake in said township.

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2. The defendant, Catherine Bald, was then and there the owner, and by the defendant, Charles Bald, as her servant and agent, was the operator of a certain automobile which was then and there driven on and along said Pine Brook Road in an easterly direction.

Complaint.

3. The defendant, Anna A. Haunstein, was then and there the owner and operator of a certain other automobile which, on and along said Pine Brook Road, she drove in an easterly direction.

4. The defendants, Tillie A. De Witt, Anna A. Haunstein, Catherine Bald, by her said servant and agent, and the said Louis Bald, then and there so negligently, carelessly and unlawfully drove and operated their said respective automobiles, and the said Louis Bald, as the servant and agent of said Catherine Bald, so carelessly, negligently and unlawfully drove the said automobile of the defendant, Catherine Bald, that the said three mentioned automobiles collided with one another with such force and violence that the said Emma Timannus was thrown and ejected from the automobile in which she was riding, as aforesaid, to and upon the roadway, and thereby received and suffered such injuries upon and about the head and other portions of her body that she then and there died.

5. The negligence of the said defendants consisted in this: The said Tillie A. De Witt and Anna A. Haunstein and the said Catherine Bald, by her servant and agent, and the said Louis Bald, failed to so drive and operate the automobiles so respectively owned and driven by them as to avoid colliding one with the others; operated and directed same at an excessive rate of speed; failed to have and maintain over their said automobiles suitable and safe control so as to avoid collision with one another; failed to keep and maintain sufficient vigilance and lookout to ascertain the presence of one another upon the highway aforesaid; failed to give one another suitable and safe warning of the approach to one another of their

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Complaint.

said automobiles, and failed to have and maintain the same equipped with proper and sufficient brakes to check the progress thereof.

10 6. The plaintiff on September 3rd, 1929, was duly appointed administrator *ad prosequendum* of the Estate of Emma Timannus, and brings here into court the letters of administration issued to him by James F. Norton, Surrogate of the County of Hudson.

20 7. This action is brought by the said plaintiff, as administrator aforesaid, for the recovery of damages with reference to the pecuniary injuries resulting from the death of said Emma Timannus to the surviving husband and next of kin of such deceased person, and is brought within two years after such death.

The plaintiff demands of the defendants, Catherine Bald, Louis Bald, Anna A. Haunstein and Tillie A. De Witt the sum of \$25,000.00.

For a separate cause of action against the defendant, Tillie A. De Witt, the plaintiff says:

30 1. He repeats paragraph 1 of the First Count of this complaint.

2. He repeats paragraph 2 of the First Count of this complaint.

3. He repeats paragraph 3 of the First Count of this complaint.

40 4. The defendant, Tillie A. De Witt, so negligently, carelessly and unlawfully drove and operated her said automobile, and so suffered the same to collide with, strike, and be struck by, the automobiles of the defendants, Anna A. Haunstein and Catherine Bald, that the said Emma Timannus

Complaint.

by, and through, the force and violance of the said collision was thrown and ejected from the automobile of the defendant, Tillie A. De Witt, in which she was so riding, to and upon the roadway, and thereby received and suffered such injuries upon and about the head and other portions of her body that she then and there died. 10

5. The negligence of the defendant, Tillie A. De Witt, consisted in this: the defendant operated and drove her said automobile so as to place the same in the path of the automobiles so operated by the defendants, Catherine Bald and Anna A. Haunstein, whereby the said several automobiles collided; drove and operated the said automobile at a high and excessive rate of speed; failed to have the same in proper and safe control so as to avoid the collision aforesaid; failed to keep and maintain suitable vigilance and lookout to discover the approach of the automobiles of the said Catherine Bald and Anna A. Haunstein, in time to avoid collision with the same; failed to give suitable and timely warning to the said Anna A. Haunstein and the said defendants, Catherine Bald and Louis Bald, of the approach of her said automobile to the automobiles so owned and operated by them. 20 30

6. The plaintiff repeats paragraph 6 of the First Count of this complaint.

7. The plaintiff repeats paragraph 7 of the First Count of this complaint.

The plaintiff demands as damages of the defendant, Tillie A. De Witt, the sum of \$25,000.00.

RICHARD DOHERTY, 40
Attorney of Plaintiff.

**Answer of Tillie A. DeWitt and Counterclaim
Against the Defendants Catherine Bald
and Louis Bald.**

(Filed October 28, 1929.)

NEW JERSEY SUPREME COURT,

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HUDSON COUNTY.

CHARLES TIMANNUS, Administrator
Ad Prosequendum of Emma
Timannus, deceased,
Plaintiff,

v.

20

CATHERINE BALD, LOUIS BALD,
ANNA A. HAUNSTEIN and TILLIE
A. DEWITT,
Defendants.

Action at Law.

The answer of the defendant Tillie A. DeWitt, residing at 941 Summit Avenue, Hudson County, New Jersey, to the complaint filed herein respectfully shows:

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ANSWER TO FIRST COUNT.

1. This defendant denies the allegations contained in paragraph 1 of the first count.

2. This defendant admits the allegations contained in paragraphs 2 and 3 of the first count.

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3. This defendant denies the allegations contained in paragraphs 4 and 5 of the first count in so far as they relate to the defendant Tillie A. DeWitt.

4. This defendant has no knowledge sufficient

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Answer of Tillie A. DeWitt and Counterclaim.

to form a belief as to the allegations contained in paragraph 6 of the first count and leaves plaintiff to make proof thereof.

5. This defendant denies the allegations contained in paragraph 7 of the first count.

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ANSWER TO FIFTH COUNT.

1. This defendant repeats the answers to paragraph 1 of the first count as the answers to paragraph 1 of the fifth count.

2. This defendant repeats the answers to paragraph 2 of the first count as the answers to paragraph 2 of the fifth count.

3. This defendant repeats the answers to paragraph 3 of the first count as the answers to paragraph 3 of the fifth count.

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4. This defendant denies the allegations contained in paragraphs 4 and 5 of the fifth count.

5. This defendant repeats the answers to paragraph 6 of the first count as the answer to paragraph 6 of the fifth count.

6. This defendant repeats the answers to paragraph 7 of the first count as the answer to paragraph 7 of the fifth count.

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DEFENSES TO FIRST, SECOND, THIRD, FOURTH AND FIFTH COUNTS.

This defendant will urge at the trial of said cause the following defenses:

1. That said alleged injury and damage to the plaintiff was caused through the negligence of the plaintiff's intestate, Emma Timannus, in that she

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Answer of Tillie A. DeWitt and Counterclaim.

10 failed to keep a proper and effectual lookout for her own care and safety and in that she failed to exercise that degree of care which a reasonable and prudent person would and should have exercised under the circumstances of the case, all of which negligence contributed to and was the cause of the injury and damage complained of.

2. That said plaintiff's intestate, Emma Timannus, was engaged in a common or joint enterprise with the defendant Tillie A. DeWitt.

3. The plaintiff's decedent Emma Timannus was merely a licensee in the automobile belonging to the defendant Tillie A. DeWitt.

20 4. Said alleged injury and damage to the plaintiff was caused through the negligence of the defendant Catherine Bald, Louis Bald and Anna A. Haunstein.

5. That at the time of the occurrence alleged in the complaint the defendant Tillie A. DeWitt was the agent of the plaintiff's decedent Emma Timannus and acting within the scope of such employment with the said Emma Timannus.

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WILLIAM E. HOLMWOOD,
Attorney for Defendant
Tillie A. DeWitt.

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Reply to Answer of Tillie A. De Witt.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

CHARLES TIMANNUS, administrator
ad prosequendum of Emma
Timannus, deceased,

Plaintiff,

v.

CATHERINE BALD, LOUIS BALD,
ANNA A. HAUNSTEIN and TILLIE
A. DE WITT,

Defendants.

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Action at Law.

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The plaintiff for reply to the answer of Tillie A. De Witt says:

1. He denies the allegations of paragraph 1 of defenses to first, second, third, fourth and fifth counts.

2. He denies the allegations of paragraph 2 of the same.

3. He denies the allegations of paragraph 3 of the same.

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4. He denies the allegations of paragraph 4 of the same.

5. He denies the allegations of paragraph 5 of the same.

RICHARD DOHERTY,
Attorney of Plaintiff.

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Postea.

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

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CHARLES TIMANNUS, administrator
ad prosequendum of Emma
Timannus, deceased,
Plaintiff,

v.

CATHERINE BALD, LOUIS BALD,
ANNA A. HAUNSTEIN and TILLIE
A. DE WITT,
Defendants.

Action at Law.

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This action was tried before Henry E. Ackerson, Jr., Circuit Court Judge and a jury, at Jersey City, June 23rd and June 24th, 1931. Judgment of nonsuit was ordered in favor of the defendant, Catherine Bald, and against the plaintiff, Charles Timannus; judgment of nonsuit was ordered in favor of the defendant, Anna A. Haunstein, and against the plaintiff, Charles Timannus; the jury rendered a verdict in favor of the plaintiff, Charles Timannus, and against the defendant, Tillie A. De Witt, and assessed the damages of the plaintiff at the sum of Four Thousand Dollars (\$4,000.00); the jury rendered a verdict of no cause of action in favor of the defendant, Louis Bald, and against the plaintiff, Charles Timannus; the jury rendered a verdict of no cause of action in favor of the defendants, Catherine Bald and Louis Bald, and against the defendant, Tillie A. De Witt, on the counterclaim of the said Tillie A. De Witt.

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HENRY E. ACKERSON, JR.,
Judge.

Notice of Appeal.

(Filed July 1, 1931.)

NEW JERSEY SUPREME COURT.

CHARLES TIMANNUS, administrator
ad prosequendum of Emma
Timannus, deceased,

*Plaintiff,**v.*

CATHERINE BALD, LOUIS BALD,
ANNA A. HAUNSTEIN and TILLIE
A. DE WITT,

Defendants.

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Action at Law.

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To:

RICHARD DOHERTY, Esq.,

Atty. for Charles Timannus, administrator *ad*
prosequendum of Emma Timannus, de-
ceased,

921 Bergen Avenue,
Jersey City, N. J.

SIR:

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PLEASE TAKE NOTICE that the defendant, Tillie
A. De Witt, hereby appeals from the whole of the
judgment entered in the above entitled cause in
favor of the plaintiff, Charles Timannus, admin-
istrator *ad prosequendum* of Emma Timannus, de-
ceased, against the defendant, Tillie A. De Witt,
to the New Jersey Court of Errors and Appeals.

MARK TOWNSEND, JR.,

Attorney for and of counsel with the
defendant, Tillie A. De Witt.

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Dated June 30th, 1931.

Grounds of Appeal.

(Filed July 7, 1931.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

CHARLES TIMANNUS, administrator
ad prosequendum of Emma
TIMANNUS, deceased,
Plaintiff-Respondent,

v.

TILLIE A. DE WITT,
Defendant-Appellant.

On Appeal from
the New Jersey
Supreme Court.

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Now comes the defendant-appellant, Tillie A. De Witt, by her attorney, Mark Townsend, Jr., and sets down the following grounds of appeal why the judgment heretofore rendered against herein the above entitled case should be reversed, set aside and for nothing holden.

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1. The court at the close of the whole case, although moved so to do by the attorney of the defendant, Tillie A. De Witt, on the ground that the evidence showed that the plaintiff's intestate was not an invitee as alleged in the complaint but was a mere licensee to whom the defendant owed no duty except to refrain from acts wilfully injurious, refused to direct a verdict in favor of the defendant, Tillie A. De Witt.

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2. The Court at the close of the whole case, although moved so to do by the attorney of the defendant, Tillie A. De Witt, refused to direct a verdict in favor of the defendant, Tillie A. De Witt.

Grounds of Appeal.

3. The Court, despite the objections of the defendant, Tillie A. De Witt, charged the jury as follows:

“Now then from the outset there is one question that I think you will have to determine before you proceed with the rest of this case, because it pertains to the question of whether or not the defendant, Tillie A. De Witt, in whose car Emma Timannus was riding, is to be retained in this case for the ascertainment of the question of whether or not there was negligence. And that question turns upon whether or not Emma Timannus, this deceased woman, was an invitee or licensee in Miss De Witt’s car; and the duty rests upon the plaintiff of proving that she was an invitee therein, by a fair preponderance of the evidence in this case. Of course that does not mean the greater number of witnesses produced on one side than on the other; but it does mean the greater weight of the testimony. Whenever that phrase is used, it has reference to the weight of the testimony, rather than to the quantity or number of witnesses that may be produced. * * * And therefore, gentlemen, if the position of Mrs. Timannus in the De Witt car was that of a licensee only, and not the position of an invitee, it would be your duty to find a verdict upon that situation in favor of Tillie A. De Witt, and against the plaintiff, a verdict of no cause of action. But if you do find that Mrs. Timannus was an invitee in her sister’s car, then you will have to take up the other questions that will have to be considered

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Grounds of Appeal.

when you determine the case as against the other defendant, Louis Bald.”

4. The Court, despite the objections of the defendant, Tillie A. De Witt, charged the jury as follows:

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“Now gentlemen, if you do find that Mrs. Timannus was an invitee in the De Witt car, and you further find that Miss De Witt, or Mr. Bald, or both of them, was or were negligent, and you further find that such negligence was the proximate cause of the accident, and you are, further, satisfied from the evidence in this case that Mrs. Timannus was free from contributory negligence, then this plaintiff should have a verdict against these defendants, or one of the defendants, who have been found negligent, and whose negligence may have been found to have been the proximate cause of this accident, if, as I have said, Mrs. Timannus was free from contributory negligence.”

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MARK TOWNSEND, JR.,

Attorney for and of counsel with the defendant-appellant, Tillie A. De Witt.

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Dated July 7th, 1931.

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Stipulation.NEW JERSEY COURT OF ERRORS AND
APPEALS.

CHARLES TIMANNUS, administrator
ad prosequendum of EMMA
TIMANNUS, deceased,
Plaintiff-Respondent,

v.

TILLIE A. DE WITT,
Defendant-Appellant.

On Appeal.

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It is hereby stipulated and agreed by and between Mark Townsend, Jr., attorney for the defendant-appellant, Tillie A. DeWitt, and Richard Doherty, attorney for the plaintiff-respondent, Charles Timannus, administrator *ad prosequendum* of Emma Timannus, deceased, that the State of the Case be abridged to contain only the records herein printed.

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RICHARD DOHERTY,
Attorney for Plaintiff-Respondent.

MARK TOWNSEND, JR.,
Attorney for Defendant-Appellant.

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Dated January 25th, 1932.

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Case.

SUPREME COURT,

HUDSON COUNTY.

Present—Hon. HENRY E. ACKERSON,
Judge, and a Jury.

10

CHARLES TIMMANUS, etc.,	}
<i>Plaintiff,</i>	
<i>v.</i>	
CATHERINE BALD, LOUIS BALD,	}
TILLY A. DE WITT and ANNA	
HAUNSTEIN,	
	<i>Defendants.</i>

20

Jersey City, June 23, 1931.

APPEARANCES:

RICHARD DOHERTY, Esq., Attorney for the Plaintiff.

MICHAEL BREITKOFF, Esq., by MR. IRVING SIEGLER, Attorney for Defendant Bald.

MARK TOWNSEND, Esq., Attorney for Defendant DeWitt.

Messrs. HARLEY, COX & WOLBURG, by MR. WOLBURG, Attorneys for Defendant Haunstein.

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LOUIS BALD, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Doherty:

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Q. Where do you live, Mr. Bald? A. At present I live at 14 Davis Avenue, Kearny.

Q. Are you married? A. Yes, sir.

Louis Bald, direct.

Q. What is your wife's name? A. Catherine Bald.

Q. Are you and Mrs. Bald defendants in this suit? A. Yes, sir.

Q. On the 13th of August, in 1929, were you engaged in driving an automobile? A. Yes, sir. I was. 10

Q. Whose automobile? A. It was my wife's automobile.

Q. Were you the owner of it? A. No. I was just the driver.

Q. She was the owner of it? A. Yes, sir.

Q. At what time on that date did you start to drive it? A. It was 4:30 when I quit work and I reached Lake Arrowhead at five o'clock. 20

The Court: Were you driving it for her on this occasion?

The Witness: No, your Honor. I was coming from work.

The Court: She was with you, was she?

The Witness: No, your Honor.

The Court: You were alone?

The Witness: Yes.

Q. Where were you employed, Mr. Bald, at that time? A. Sir? 30

Q. Where were you employed on that day? A. At Pickadiddy Arsenal.

Q. And you were living where? A. In Harrison at the time.

Q. And the car had been turned over to you for your convenience in following your work? A. Yes, sir.

Q. You were living with Mrs. Bald at that time, were you? A. Yes, sir.

Q. Did you have any family? A. No, sir. 40

Louis Bald, direct.

Q. Was your car involved in any collision on that day? A. Yes, sir. It was.

Q. Where? A. At the entrance of Lake Arrowhead on Pine Brook Road.

10 Q. In what direction were you proceeding? A. Easterly direction.

Q. Easterly? A. Yes, sir.

Q. Will you tell us what the nature of the collision was, Mr. Bald? A. Yes, sir. I was coming, traveling east on the Pine Brook Road, and I was just beyond the curve. I had passed the curve already, and I was going up the grade. And for no reason this DeWitt car—I had seen it about six hundred feet ahead of me, coming towards me—
20 —and she was slightly in the middle of the road, and she sideswiped me and pulled my car around and it fell over. And when I got out, I had seen Mrs. Haustein's car turn over against the telegraph pole, and Mrs. DeWitt's car a little, about a hundred feet, down further. That is all.

Q. You say you saw her coming along in the middle of the road? A. Yes, sir.

Q. And how wide is that road? A. It is about, I should say, about forty feet wide, sir.

30 Q. And in that position in which she was driving, did you or not have room to pass her on the left?

A. Well, sir, it happened so quick, why I could not go away nohow. It was a steep ditch on the right side of me—a gutter, in other words—

Q. I would like to have you tell, Mr. Bald, why you could not get away? A. Well, it happened so sudden. I thought I was over far enough, and she sideswiped me, and the first thing I know I was pulled over.

40 The Court: What do you mean by side-

Louis Bald, direct.

swiped? Did she skid before she came to you?

The Witness: No, sir. No, your Honor.

The Court: Well, how near were you to the center line of the road? How near was the left side of your car to the center line of the road? 10

The Witness: The left side to the center line of the road?

The Court: Yes.

The Witness: Why, your Honor, I was on the right-hand side of the road.

The Court: Yes,—how near to the center line?

The Witness: How near? About, I should say, about six feet. 20

The Court: And you say that Mrs. DeWitt's car was in the center of the road?

The Witness: Yes, your Honor.

The Court: What do you mean by that? Where was the center of the road with reference to her car?

The Witness: Well, the road itself was about forty feet wide, and she was coming right down in the center. 30

The Court: You mean she was straddling the center line? In other words, her left wheels were on one side and her right wheels on the other? Is that what you mean by the center of the road?

The Witness: Yes.

The Court: Now, you are sure about that?

The Witness: Yes, your Honor.

The Court: She was not entirely over on the left side of the road, but—? 40

Louis Bald, direct.

The Witness: On my side, your Honor?

The Court: Yes.

The Witness: No. She was not entirely over.

10 Q. What was the contact between her car and your car? What hit you? A. Why she tore my left mudguard completely off and travelled along the side of the car and something or other, either her wheel or her rear bumper must have got caught in one of my wheels and pulled the car around and turned over.

Q. Your car was turned over? A. Yes, sir.

Q. Who was driving Miss DeWitt's car? A. Miss DeWitt herself.

20 Q. Miss Tilly DeWitt? A. Yes, sir.

Q. Did you see another lady passenger in the car? A. I did, sir.

Q. You saw her at the time when the DeWitt car approached you or was it later that you saw the lady passenger? A. It was later that I saw the lady passenger.

Q. Where was she then when you saw her? A. Why, they had her laying out on the road, sir.

30 Q. What was her physical condition? A. Why, I seen a bump on her head, on top of her eye here (indicating), and they were holding a rag over it. That is all I could see.

Q. Can you tell us how serious the condition was, about? A. That is the best of my knowledge, I can tell it.

Q. Do you know whether she lived or died after that? A. Well, she died an hour later, sir.

Q. You stayed there the hour, did you? A. Yes, sir. I did.

40 Q. And she died on the spot? A. Yes, sir.

Q. Of the accident. Did you see the car op-

Louis Bald, direct.

erated by Mrs. Haustein? A. In what condition, sir?

Q. Did you see it at all? A. Yes, sir. I did.

Q. What did you see in respect to that car? A. Why, when I got out of my car I seen Mrs. Haustein's car turned over, and she was also on the right side of our road, and it was over against a telegraph pole, and the DeWitt car was down a little further. 10

Q. Do you know how her car got over against the telegraph pole? A. No, sir. I did not see that collision.

Q. Why didn't you see it? A. Well, I was busy being thrown over at the time when that happened.

Q. Was your car turned over on you or was it reclined against the pole? A. Yes, sir. No, no; it was turned over. 20

Q. Turned over and you underneath? A. No. I was inside the car.

Q. It was knocked over on its side? A. Yes, sir.

Q. On or off the road? A. On the road.

Q. What kind of car were you driving? A. A Ford coupe.

Q. What was its width? A. Well, it was a T model, sir. 30

Q. What was it, the width of your car? A. I could not tell you exactly the width of this car.

Q. No. Very well, from mudguard to mudguard? A. Seven or eight feet.

Q. Was there that distance of free roadway ahead of you when you were passing the DeWitt car? Did you have that much room? A. What do you mean, sir?

Q. Did you have seven or eight feet of free roadway ahead of you to pass when the collision took 40

Louis Bald, direct.

place between your car and the DeWitt car? A. Ahead of me? There was no one ahead of me.

Q. Sir? A. There was no one ahead of me.

10 The Court: No. He is asking you if there was a space ahead of you, on the road, on your side of the right, seven or eight feet wide?

The Witness: Between the two cars, your Honor?

The Court: Yes.

The Witness: Why, for any cars to pass, yes; there was plenty of room for cars to pass; that distance of seven or eight feet.

20 Q. Did either you or Mrs. DeWitt change your direction before, immediately before, the collision?

A. Change the direction?

Q. Yes.

The Court: Did you pull over to one side or the other, alter your line of travel?

The Witness: No, sir.

The Court: Neither one?

The Witness: No.

The Court: Neither one?

30 The Witness: I don't know. I don't know about Mrs. DeWitt.

The Court: Well, just a minute. Now how far away was Mrs. DeWitt's car when you first saw it?

The Witness: When I first saw it, your Honor, she was coming, she was just getting to the top of the hill.

40 The Court: All right. But how far away from your car was her car when you first saw it?

Louis Bald, direct.

The Witness: It was about five hundred or six hundred feet.

The Court: And she was then straddling the center line of the road with her car?

The Witness: Yes, sir.

Mr. Doherty: That is all, Mr. Bald.

10

The Court: And there was twenty feet on each side of the center line of the road, of the improved highway, is that right?

The Witness: Yes, your Honor.

The Court: The question naturally, perforce, must be asked: Why did you not then utilize the remaining portion of that highway if you saw that she was in the center of the road, to pass in safety? What was there that prevented that event?

20

The Witness: Well your Honor, there was a deep ditch.

The Court: No. I do not want you to go as far as in the ditch. If there was twenty feet between the center line of the road and the center edge of the improved highway before you come to the ditch, was there anything there to have prevented you, in that five hundred feet before you reached her car, or she reached yours, or you came together, that would have prevented you from turning to your right and have gone on unmolested?

30

The Witness: Yes, your Honor. I tried to stop, but she came so sudden, she was coming down pretty fast.

The Court: Well, how fast, if you know?

The Witness: Well I think about forty miles an hour, I guess.

40

The Court: How fast were you going?

Louis Bald, cross.

The Witness: Well, I was going up the grade. I was travelling between about twenty-five and thirty miles an hour.

By Mr. Doherty:

10 Q. How old was your Ford? A. It was a 1924, sir.

The Court: And this accident happened on August 13, 1929?

The Witness: Yes, sir, your Honor.

Q. Did you see Miss DeWitt's car after the collision? A. Yes. I did, sir.

20 Q. What was the injury to her car? A. Well, sir, I was not very much interested in the injury of the cars. I went over to Mrs. Haustein's car, after I got out of my car, and I helped her nephew and herself out of her car, and after I got them out, why, I went to Mrs. DeWitt's car, and she was accusing me of the accident. I told her I did not come over there to argue about that, "I came over to her to see was anybody hurt," I said. I stayed with her looking at the car, and then I seen her sister. Somebody had taken her out of the car, or she fell out. I did not see them.

30 Q. How long after the collision did Mrs. Timmanus die? A. It was just about three-quarters of an hour. The ambulance came an hour later, and they would not take her.

Q. She was not taken away, was she? A. No, sir.

Mr. Doherty: I think that is all, Mr. Bald.

Cross examination by Mr. Siegler:

40 Q. How close was the edge of the right-hand side of your car to the right edge of the road as

Louis Bald, cross.

you were proceeding up this grade? A. How close?

Q. Yes. A. To the edge of the right-hand side of my car?

Q. Yes. A. Well, it must have been about five feet. 10

Q. It was five feet from the edge of that road to the right-hand side of your car? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And your car took up about seven or eight feet? A. Yes, sir.

Q. That made about twelve or thirteen feet. So that there was seven seven feet from the left side of your car to the center of the road? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, did you continue in that course up until the time Miss DeWitt approached you? A. Yes, sir. I was on the right-hand side all the way down. 20

Q. Driving at about that particular relation to the center of the road? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. When you saw her coming down this hill, some five or six hundred feet away, I believe you said, she was straddling the center of that road? A. Yes, sir. 30

Q. In other words, the center line of the road was between the wheels of her car? A. Yes, sir.

Q. Now, try to recall the time immediately before the collision, where was her car then if you saw her? A. Well, I thought she was going to turn out of the way, out towards her right.

Q. What did she do? A. Well, she ran right into the side of my car. I tried to pull to the right as much as I could.

Q. You tried to pull to the right as much as you could? A. Yes, sir. I did, sir. 40

Louis Bald, cross.

Q. And immediately before the accident, then, how close would you say the right side of your car was to the edge of the road? I mean about the time of the impact? A. Of the collision?

10 Q. Yes. A. Why it was right on the edge of the ditch.

Q. At that time you were right on the edge of the ditch? A. Yes, sir.

Q. Were you observing Miss DeWitt at that time? Did you see her immediately before she struck you? A. No. I did not. I was trying to get out of her way.

Q. Why? A. Well, I did not want no collision to be caused.

20 Q. What was she doing that made you try to get out of her way? A. That I could not tell you.

Q. Well, wasn't there anything that she was doing that made you move over?

Mr. Townsend: I object to that on the ground the question is leading. I realize that this is cross examination, but here the client's own counsel is cross examining him. I submit he should not lead this witness.

The Court: I hardly think it is leading.

30 (Last question read by the stenographer.)

The Court: Change the form of it. Was there anything.

Q. Was there anything that she did that caused you to move over to the edge of the road? A. She was still in the center of the road, coming towards me. That caused me to pull my car over to the right as far as I could.

40 Q. Now, when she was in the center of the road was she coming towards you? A. Well, as I pulled over to the right she sideswiped me.

Louis Bald, cross.

Q. What do you mean by sideswiped you? What part of your car did she hit? A. She took the mudguard, the running-board and the rear mudguard off, and then her bumper caught in my car and pulled the car around and turned it over.

Q. Let us see: She took the mudguard, you mean the front mudguard? A. Yes. 10

Q. The left front mudguard? A. Yes.

Q. The running-board? A. The running-board.

Q. And then the rear mudguard? A. Yes.

Q. Then what part of her car caught into your bumper? A. That is what I did not see. I could not tell you that.

Q. Well— A. I know I was pulled over. That is all.

Q. You were pulled over with her? A. I was pulled over on the right-hand side. The car fell on the right-hand side of the road, in the center of the road. 20

The Court: What make is her car?

The Witness: A Franklin sedan, your Honor.

Q. On which side were you turned over, your right? A. On the right. Yes, sir.

Q. The car went over on its right side? A. Yes. 30

Q. Now which way was the front of your car pointing after you went over? A. It was pointed north.

Q. The front of your car was pointed north? A. Yes, sir.

Q. That would be to your right? A. Yes, sir—

Q. Or left? A. It would be to—what do you mean?

Q. Which way is north, then? A. Well, the road runs east and west. 40

Louis Bald, cross.

Q. Yes. A. Then the car was just pointed in the opposite—

The Court: North and south.

The Witness: North and south. The rear of it was south and the front of it was north.

10 Mr. Townsend: Is he speaking of his car?

The Court: Yes.

Mr. Townsend: That would be his left-hand side.

Mr. Siegler: Yes.

Mr. Townsend: This general direction that I now suggest (indicating at map).

Mr. Siegler: Yes, sure.

20 Mr. Townsend: This is south and this is north, approximately. This is east going this way, and west going this way. He was going west.

Mr. Siegler: Your car was facing north.

The Court: You mean the reverse. West going that way and east this way. That is south, that is north.

Mr. Townsend: That is west.

Mr. Siegler: That is west, your Honor.

30 The Court: Yes. But he was going towards east.

Mr. Townsend: That is correct.

Mr. Siegler: Yes.

Mr. Townsend: So this would be north and that is east, here (indicating).

Q. It is correct that the front of your car was facing north and the rear south? A. Yes.

Q. And she was turned over on her right side? A. Correct.

40 Q. Was any part of your car off the road in the gutter? A. No.

Louis Bald, cross.

Q. Well, where was the rear of your car? How near the gutter? A. It was right in the center of the road.

Q. The rear facing south?

Mr. Townsend: The rear of the car was right in the center. 10

A. The front, rather.

Mr. Townsend: Let him answer that.

Mr. Siegler: You interrupted his answer. (Last question read by the stenographer.)

Q. With relation to the gutter, on the south side of the road, how near was the rear end of your car? A. On the right-hand side?

Q. After the accident. A. The gutter on the right-hand side of the road? 20

The Court: Yes. The way you were going.

Q. Yes. A. Why, the car was about six feet away from the gutter, the rear of it.

Q. Six feet away from the gutter? A. Yes.

Q. You got out of the car and proceeded down to the rear? You went out and walked up? A. Yes, sir. 30

Q. In a westerly direction? A. Yes, sir.

Q. And what did you find? A. Well, I seen Miss Haustein and her nephew still in the car.

Q. What is that? A. I saw Miss Haustein and her nephew still in the car, and I helped them out.

Q. Was that turned over? A. Yes, sir.

Q. On what side was that? A. That was also turned over on its right-hand side.

Q. Was it in a similar direction, facing in a 40

Louis Bald, cross.

similar direction as your car, north and south?

A. No. That was facing east.

Q. It was facing east? A. Yes, sir.

Q. How far from your car was it laying, the Hausteine car? A. About 250 feet.

10 Q. West of your automobile? A. Yes.

The Court: In back of it? In back from where you came?

The Witness: In the rear of my car, your Honor.

Q. In back of it? A. Yes. In back of it, about 250 feet.

20 Q. Where was the car of Miss DeWitt at that time? A. Well, it was about twenty feet away from Miss Hausteine's car.

Q. Miss Hausteine's car? A. Yes.

Q. In the back of it or in front of it? A. It was right on the right-hand side of her right, in the rear of it, of Miss Hausteine's car.

Q. It was in the rear of Miss Hausteine's car? A. Yes.

Q. But on her right side or left? A. On ours, sir.

30 Q. What is that? A. On her left. On Miss DeWitt's left. On our right.

Q. Oh. A. She was over on our side.

Q. In other words, she was on the wrong side of the road at that time?

The Court: No. He does not say so. On the same side as his car was, and his car was tot he right.

40 A. We were travelling east, your Honor, and she was over on our side of the road.

Louis Bald, cross.

The Court: The south side. Which car now are you speaking of? The DeWitt?

Mr. Siegler: The DeWitt.

The Court: Oh, the DeWitt car?

The Witness: Yes. DeWitt.

The Court: With reference to the Haustein car, how far was that away from the DeWitt car, taking it in along the road? I do not mean across the road, but along the road. Was it west of the DeWitt car? 10

The Witness: Our car, we were travelling, your Honor?

The Court: No. After they were all turned over, the Haustein car, was that to the west?

The Witness: No. That was to the east, your Honor. 20

The Court: And the DeWitt car went beyond?

The Witness: Beyond.

The Court: Beyond the Haustein car?

The Witness: Yes.

The Court: How far?

The Witness: About twenty feet, your Honor.

The Court: We will recess until two o'clock. 30

(AFTER RECESS, as follows:)

LOUIS BALD, resumed the stand.

Cross examination (continued) by Mr. Siegler:

Q. Mr. Bald, on this day in August, 1929, I think it was August 13th, you say you were coming from work? A. Yes, sir. 40

Louis Bald, cross.

Q. Where were you working? A. Up in the Pickadinny Arsenal.

Q. Where is that, in Pickadinny city? A. Yes. Pickadinny, they call it.

10 Q. How far had you travelled up to the time the accident occurred? How many miles had you gone? A. About ten miles.

Q. Did you observe this lady, Miss Haustein, in back of you during any of that time? A. I passed her between Dover and Denville, and then she was in back of me all the way.

Q. Between Dover and Denville? A. Yes.

Q. For how long a period was that? For how many miles was she in back of you? A. About six miles.

20 Q. For about six miles? A. Yes.

Q. Was there a lot of traffic on that road on that day? A. There was no one, only the three cars.

30 Q. Can you recall this road and tell me about how many cars can pass abreast on that road at one time? A. Well in the paved part of it about two cars can pass, but standing on the dirt it will take about three cars. That is, including—I mentioned forty feet—that is including the gutters on both sides of the road.

Q. Did you measure that road? A. No, sir. That is about what I figure.

Q. You figured it was that? A. Yes.

Q. Then how wide do you think the paved part of the road is, that part that you think three cars could stand on? A. About thirty feet or less, sir.

Q. About thirty feet or less? A. Yes, sir.

40 Q. So that when you testified this morning that you were driving about five feet from the edge of the road, that is, the right side of your car was

Louis Bald, cross.

about five feet from the edge of the road, how many feet do you think there was between the left side of your car and the center of the road? A. Well, I figure that five feet from the edge of the gutter itself.

Q. Well, now I am asking you this: How many feet do you think there was at that time between the left side of your car and the center line of the road? A. It must have been about four feet. 10

Q. About four feet? A. Yes.

Mr. Siegler: That is all.

Cross examination by Mr. Wolburg:

Q. What kind of pavement is on this road? A. It is a tarred road, sir. 20

Q. Did you pass the Haustein car, as I understand, five or six miles before the accident happened? A. Yes, sir.

Q. And up to that time of the accident she had never passed you? A. Miss Haustein?

Q. Yes. She was always behind your car? A. Yes.

Q. Did you observe her car when she was near you? A. Yes.

Q. Did you have a mirror on your car? A. Yes, sir. 30

Q. When you passed her five or six miles before the accident, how far ahead of her car did you get?

A. Well, she was in the rear of me about two hundred feet all the time.

Q. Did you keep that distance about all the time? A. Yes, sir.

Q. How fast were you driving up to the time of the accident? A. Well, it was an old car and it cannot go very fast, and I think it was between twenty-five and thirty miles an hour at least. 40

Louis Bald, cross.

Q. And Mrs. Haustein's car was being driven behind your car in the same direction as you were going? A. Yes, sir.

Q. After the accident you said her car was turned over on its right-hand side against the pole?

10 A. Yes, sir.

Q. Was it off the paved portion of the road? A. No. It was on the road.

Q. The pole is off the road, isn't it? A. Well, it was not right up against the pole. It was about two or three feet away from it.

Q. Well, was the car laying on the gutter? A. Yes. It was knocked off the paved part of the road onto the gutter.

20 Q. So that after the accident, Mrs. Haustein's car was on the right-hand edge of the road in the direction in which she was travelling? A. Yes, sir.

Q. So that after the accident her car was on the right side of the road? A. Yes, sir.

Q. And was facing the same direction as which she had been going before the accident? A. Yes, sir. She was facing the same direction as she was travelling. That was east.

30 Q. And how far behind or in front of your car was the other car the first you saw? A. About 250 feet.

Q. Will you tell me again just where the DeWitt car was after the accident in relation to the Haustein car? A. The DeWitt car was facing the right side of Mrs. Haustein's car, but it was twenty, about I should say twenty feet or less in back of the Haustein car.

Q. So that it was in back of the Haustein car, you say? A. Yes, sir.

40 Q. Facing across the road? A. Yes, sir, on the right-hand side.

Louis Bald, cross.

Q. How close was the front of the Haustein car or the DeWitt car to the Haustein car? A. The front of it?

Q. Yes, about? A. Why, the front of it was facing, let us see now—east— The front of it was facing south. 10

Q. Well where was the front of the DeWitt car in relation to the southerly edge of the roadway?

A. The front of it was right on the right-hand side of the road, the edge of the road, on our side.

Q. Did you see what part of the Haustein car was damaged? A. The whole right side of it was smashed in.

Q. That is the side it had been turned over on? A. Sir? 20

Q. Was it turned over on its right side? A. Beg your pardon. Its left side.

Q. Whereabouts on the left side, do you know? A. Well, the door could not be opened.

Q. The door could not be opened? A. No. I tried to open the door, and it was so mangled it could not be opened. They had to get her out through the window.

Q. Was the door on the left side? A. Yes, sir.

Mr. Wolburg: That is all. 30

Cross examination by Mr. Townsend:

Q. Mr. Bald, I do not mean to mislead you. Maybe you do not understand what I mean by conference. Judge Doherty has asked you questions about what you knew about this case, and you told him, didn't you? A. No, sir. I did not.

Q. Did you ever tell him what you knew about the case? A. No, sir. 40

Louis Bald, cross.

Q. Did you ever discuss the case with him? A. No, sir.

Q. How often have you talked with him? A. Once, sir. That was the first day I came here.

10 Q. What did you talk about? A. Why, I was here until twelve o'clock and I did not know whether my case was coming up or not, and I asked the gentleman at the door whether Mr. Doherty was here and if I could ask him when the case was coming up, whether it was coming up that day or not, and he recommended me to Mr. Doherty, who was standing outside, and I asked him and he said, "No."

Q. That is all you said to him? A. Yes, sir.

20 Q. You never talked with Judge Doherty—

Mr. Townsend: This is no reflection on the Judge, at least—

Q. —You never talked with Judge Doherty or told him anything that you knew about this case until you went on the witness stand this morning, is that what you mean? A. Yes, sir.

30 Q. Let me ask you: Isn't it a fact that the first day this case was in the call here, you were here in the court room and you conferred with your counsel of Newark, and didn't he advise you to go and see Judge Doherty? A. No, sir. He did not.

Q. Why didn't you tell us this morning—why didn't you tell Judge Doherty, your counsel, on cross examination, that this forty-foot width included the gutters? A. Sir?

40 Q. (Question read by the stenographer.) A. Well I was not asked whether it included the paved part of the road or whether it included the whole thing or not.

Q. You were asked by Judge Ackerson, were

Louis Bald, cross.

you not, how wide this roadway was when you were driving on it, and you said forty feet, didn't you? A. No. That includes the whole thing, the gutters and all.

Q. Why didn't you tell the Judge that that included the gutters? A. I did not know which way to answer. 10

Q. You work at Kittatinny, is that the name? A. Sir?

Q. Kittatinny, is that where you worked? A. Pickadinny Arsenal.

Q. Where is the Pickadinny Arsenal in relation to Dover? A. Why it is about three miles on the outskirts of Dover.

Q. Towards Phillipsburg region? A. I do not know that, where it leads to. 20

Q. Well, is it towards Hackettstown or towards Lake Hopatcong? A. No. It is the opposite direction. Lake Hopatcong is to the left.

Q. Where is this, to the right or east? A. No. It is travelling in a westerly, straight westerly direction.

Q. Well, for instance, possibly I can simplify this thing by asking this: In order to get from Pickadinny to Harrison were you going or did you have to go through Dover? A. Yes, sir. 30

Q. You had first to go to Dover? A. On the outskirts of Dover. Yes, sir.

Q. Come through Dover and then come down through Dover down to Denville? A. Yes.

Q. Was this road where the accident happened? A. Yes.

Q. What time did you quit work that day? A. At four thirty.

Q. What time did you leave the factory? A. At four thirty I quit and I left there. 40

Louis Bald, cross.

Q. You left generally when you quit? A. Yes.

Q. You say that is about ten miles? A. Yes.

Q. And it took you an hour? A. No.

Q. I understand this accident happened about five o'clock? A. Five o'clock it happened.

10 Q. I am sorry? A. The accident happened at five o'clock.

Q. At five o'clock? A. Yes.

Q. How long had you had this Ford car? A. Oh, about five years.

Q. When had you any repair work done on it last? A. Why it was repaired the week previous to the accident.

Q. Where? A. Right in the garage in the back of my home.

20 Q. What repairs did you have done to it? A. I had the brakes relined.

Q. Yes. A. And the steering gear fixed up.

Q. What had been wrong with the steering gear?

A. Well, it was loose a little bit. It was just tightened up. That is all.

Q. What had been the effect of the steering gear being loose in driving it? A. It was just because the vibration of the bolts and nuts loosened. That is all.

30 Q. You mean the wheel went from side to side? A. No, sir.

Q. Shimmied? A. No.

Q. You know what shimmi is in an automobile?

A. Yes. I know.

Q. How had that manifested itself if the steering gear was loose? What effect did it have in driving the car? A. It was not loose at all. I just had it tightened up for safety sake.

40 Q. Why did you have it tightened up if there was not anything wrong with it? A. For safety sake.

Louis Bald, cross.

Q. You had not had any other accident the week before, had you? A. No, sir. I have never been in any.

Q. How did you find out the steering gear was loose? A. It was not loose.

Q. How did you find out the steering gear needed tightening? A. Well, I made it my business to go over my car before I go on trips like that. 10

Q. You had gone over it, had you, just a week before? A. Yes, sir.

Q. What did you discover when you went over it? A. Nothing, only that it needed new brakes and I put them in.

Q. This is the only thing you found out about it? A. Yes, sir. That is right.

Q. If that is the only thing you found out about it, why did you have the steering knuckle or steering gear tightened up? A. I had it tightened up for safety sake. That is all. 20

Q. When was the last time you had it tightened up before that? A. When?

Q. Yes. A. About six months before that.

Q. Why had it been, apparently as far as your observation went, you did not discover anything wrong with it? Why was it just a week before this accident for safety sake you had it tightened up when you had not done it for six months before? A. Why, I always have my car overhauled within six months of time. 30

Q. Why was it, Mr. Bald, that you had not had anything done to the steering gear for six months, why did you examine it a week before, find nothing wrong except the brakes, why was it that you had this steering gear tightened up? A. Well, I repainted it. I answered before, I said I tightened it 40

Louis Bald, cross.

up for safety sake. There was really nothing wrong with it.

Q. You just had it done for safety sake? A. Yes, sir.

10 Q. And you say your car was sideswiped? A. Yes, sir. It was.

Q. What do you mean by that? A. What do I mean by that?

Q. Yes. A. The mudguards, the running board was taken right off.

Q. Well, this looks something like an automobile. Will you just explain to the jury what was taken off? (Handing to the witness.) A. Yes, sir. My mudguard here, the running board, and this mudguard (indicating).

20 Q. On your left-hand side? A. Yes, sir.

Q. That is all the damage? A. In fact, the whole axle and wheel was broken. The whole axle was torn from underneath the front of the car, as I was being pulled over.

Q. You were, then, more than sideswiped, weren't you? I show you a picture and ask you if that is a photograph of your car after the accident? A. What about that, sir?

30 Q. I beg your pardon? Is that a photograph of your car after this accident? A. I would not say. I do not remember the license number I had on it any more.

Q. You do not remember whether this is your car or not? A. It was not my car.

Q. I mean Mrs. Bald's. The car you were driving. Pardon me. Can you tell the gentlemen of the jury whether that is a photograph of the car you were driving the day of the accident? A. It looks like it.

40

Louis Bald, cross.

Q. Does it look like the condition it was in after the accident? A. Yes, sir.

The Court: What?

The Witness: Yes, sir. Yes, your Honor.

Mr. Townsend: I ask that this be marked for identification. 10

The Court: It may be so marked.

(Photograph marked D-1 for Identification.)

Q. The left front wheel was taken off? A. Yes, sir.

Q. The left front wheel was smashed and the axle was smashed, wasn't it? A. Yes, sir.

Q. Is that what you mean by sideswiping? A. Yes, sir. 20

Q. As a matter of fact, the point of contact between your car and the Franklin car was your left front wheel and the left front wheel of the Franklin, is that not a fact? A. I do not know whether the wheel hit it or not.

Q. I beg your pardon? A. I say, I do not know whether her wheel collided with my front wheel, her left wheel.

Q. You don't know that, but you do know that as far as your car was concerned your point of contact was your left front wheel? Isn't that the fact? A. No, sir. I did not say that. 30

Q. Well, I ask you whether that is the fact or not? A. No, sir.

Q. It is not? A. No.

Q. Where was your first point of contact? A. I felt her car scrape along the left side of my car.

Q. Oh. A. And then I was turned over.

Q. And your left front axle was bent and your wheel was broken off, isn't that the fact? A. Yes. 40

Louis Bald, cross.

Q. Now you said that you had travelled that road many a time, hadn't you? A. About a week, sir.

Q. Beg pardon? A. A week.

Q. About a week? A. Yes, sir.

10 Q. How long had you been employed at Pickadinnny? A. About a week.

Q. Where was your place of employment before that? A. I was out of work, sir, about seven months. I cannot recall.

Q. And what was your particular employment at the Pickadinnny? A. I was a bricklayer up there.

Q. And you had only been working there for a week? A. Yes, sir.

20 Q. Had you been familiar before that week with this country there? A. Yes, sir.

Q. With the roads? A. Yes, sir.

Q. What time did you report for work in the morning? A. Eight o'clock.

Q. You lived in Harrison? A. Yes, sir.

Q. How did you get home in time for dinner—you had your dinner home, I assume? A. No, sir. How could I?

30 Q. I mean your supper? A. Yes, sir.

Q. So that when you got home that evening you were through for the day as far as work was concerned? A. Yes, sir.

Q. You said on direct examination that you had just turned the curve, when the accident happened, as I understand it? A. I was on the curve. I was past the curve.

Q. How far beyond the curve? A. I was going up grade already.

40 Q. How far do you think you were beyond the curve, Mr. Bald? A. Just about six hundred feet.

Louis Bald, cross.

Q. You think you were about six hundred feet beyond the curve when the accident happened?

A. Yes, sir.

Q. I show you a photograph looking easterly. I ask you if that correctly depicts the condition of the road and the country at the time of this accident other than the automobile that is there? A. What was that, sir?

10

Q. (Question read by the stenographer.)

The Court: Does that correctly show the conditions?

The Witness: No, sir. No, your Honor.

Q. I say, other than the car that is there? A. I cannot quite understand that question, sir.

20

The Court: Well, look at that picture now.

The Witness: Yes, sir.

The Court: Are you looking?

The Witness: Yes, your Honor.

The Court: Does that show the roadway and the physical, or the objects on the roadway as they existed there at the time of this accident, except that automobile?

The Witness: That is the road, yes, sir.

30

The Court: Well, is that just the way the conditions were there except the automobile?

The Witness: That is the way the conditions were.

The Court: All right.

Mr. Townsend: I ask this be marked for identification.

The Court: Let it be so marked.

(Photograph marked D-2 for Identification.)

40

Louis Bald, cross.

10 Q. I show you another photograph looking west-
erly and ask you if that does not correctly depict
the condition of the roadway there at the time of
the accident except that the bank shown in the
southerly side or left-hand side of the photo-
graph has been moved back? A. I do not know
about that road being moved back.

Q. I am sorry. I do not mean the road itself,
but I mean the embankment? A. Sure.

Q. But I mean as far as the roadway is con-
cerned, isn't the roadway there the same as it was
at the time of the accident? A. It looks the same
to me, sir.

Q. Including that curve? A. Yes, sir.

20 Mr. Townsend: I ask that this be marked
for identification.

The Court: Let it be so marked.

(Photograph marked D-3 for Identifica-
tion.)

Q. Do you know where Howland's restaurant is
there? A. Sir?

Q. Howland's store?

30 The Court: Do you know where that
store is?

The Witness: No, sir. I do not know,
your Honor.

Q. Where were you when you first saw this auto-
mobile, Franklin automobile? A. Where was I?

Q. Yes, sir? A. I was past the curve already,
and I was going up the grade.

Q. How far beyond the curve were you? A.
About six hundred feet.

40 The Court: Beyond it, beyond the curve?

The Witness: Past the curve. I was al-
ready past the curve.

Louis Bald, cross.

Q. You were six hundred feet beyond the curve?

A. Yes, sir.

The Court: The road was straight, then, straight on ahead of you?

The Witness: Yes, your Honor.

10

Q. How far was this other car away from you then? When you were six hundred feet beyond the curb, that is east of the curve, toward Newark?

A. Which curve?

Q. You were going in a general easterly direction, weren't you? A. Yes.

Q. You now say you were six hundred feet beyond the curve when you saw this Franklin automobile. How far was the Franklin automobile away from you then? A. Before I seen it?

20

The Court: When you saw it.

Q. When you saw it? A. When I saw it?

Q. When you saw it, how far was it away from you? A. Coming towards me, it was about five hundred feet.

Q. How far? A. Coming towards me.

Q. How far? A. It was about five hundred feet. It was then coming up over the hill.

30

Q. In other words, it was then about eleven hundred feet from the curve, in your judgment? You had passed six hundred feet beyond the curve and this other car was five hundred feet away from you towards the east? A. Yes, sir.

Q. Did you continue to watch the car? A. Yes, sir.

Q. All the time? A. Yes, sir.

Q. You saw it coming towards you all the time? A. Yes, sir.

40

Q. I understood you to say on your direct ex-

Louis Bald, cross.

amination that you were going about twenty-five or thirty miles an hour? A. Well, sir, I am no judge of distance.

Q. No. I say, I understood you to say you were going about twenty-five or thirty miles an hour?

10 A. Probably less.

Q. Isn't that what you said on your direct examination? A. Yes. I am no judge of distance. I figure that is about what it was.

Q. I am talking about speed, Mr. Bald, of your car? A. Yes, sir. I realize that.

Q. How long had you driven an automobile at that time? A. How long?

Q. Yes. A. About a year.

20 Q. You had had this car for four years and driven it about a year? A. I did not have the car.

Q. I mean that your wife had the car for about four years and you had driven it for about a year?

A. Yes.

Q. And your estimate of the speed at which you were going was twenty-five to thirty miles an hour?

A. Yes, sir.

Q. And where was this Franklin automobile when you saw it? A. In the center of the road.

30 Q. You continued to watch it, you say? A. Yes, sir.

Q. All the time? A. Yes, sir.

Q. Why? A. Why? Because it was in the center of the road.

Q. You kept on going? A. Yes, sir.

Q. And kept on watching the car? A. Yes, sir.

Q. You saw it right up to the moment it collided with you? A. Yes, sir.

40 Q. What did you do? A. What did I do? I pulled to the right, and she kept on coming towards me.

Louis Bald, cross.

Q. When? A. About fifteen feet from her.

Q. Now, when this car was fifteen feet from you, you still going as you have described to us, watching this car all the time, you then pulled to your right? A. Yes, sir.

Q. How far over to your right did you get before the collision happened? A. Not very far, sir. 10

Q. Well, about how far? A. About two feet.

Q. Going twenty-five to thirty miles an hour, seeing this car fifteen feet away from you, and you pulled to your right and had gone two feet when the collision happened, is that right? A. Well, it is about what I figure. I am not sure.

Q. I know that you did not measure it. A. I am not sure.

Q. You had turned about two feet to your right when the accident happened, that is correct? A. Yes. 20

Q. Now, when you saw this car fifteen feet away, did you do anything else besides turn to your right? A. I put my foot on the brake.

Q. Yes. A. Yes, sir.

Q. Did you turn to your right? A. Yes, sir.

Q. Did you stop? A. Yes, sir.

Q. Were you at a standstill when the car hit you? A. No. I was dragged around. 30

Q. Were you at a standstill when the car hit you? A. No, sir.

Q. Still going? A. I could not stop within two feet.

Q. So, then, as I understand it, Mr. Bald, you continued to see this car coming down in the center of the road— A. Yes, sir.

Q. You kept on going, at your same rate of speed, and you did nothing until this car was fifteen feet away from you, notwithstanding the fact that you 40

Louis Bald, cross.

saw it all the time when you put on your brakes and turned to your right about two feet—is that right? A. No, sir.

Q. What else did you do? A. I shut the gas off.

10 Q. When? A. When? When I seen her coming towards me.

Q. Fifteen feet away from you? A. No, sir. More than that.

Q. How far away from you? A. About thirty feet away from me.

Q. But when you were thirty feet you shut the gas off. How did you shut the gas off? A. The throttle is right up at the steering wheel.

Q. You mean the hand accelerator? A. Yes, sir.

20 Q. So then when you were thirty feet you shut the gas off, when you were fifteen feet you put the brakes on and turned to your right? Is that right? A. Yes, sir.

Q. Why didn't you put the brakes on first? A. Why? What business did she have out on the middle of the road?

Q. Why didn't you put on the brakes first? A. Why, because I was on the right-hand side of the road.

30 Q. Oh. So you determined you were on your right-hand side of the road. So you would keep the gas on and did not put on your brakes until you got fifteen feet away, and then turned to the right, is that right? A. Well, I did not think she was going to come right towards me. That is why I did not put it on.

Q. As I understand it, you saw her all the time coming and you told the Court and jury you were watching her from the beginning? A. Yes, sir. I did.

40 Q. Why didn't you turn over, turn to your right?

Louis Bald, cross.

A. Why, I turned to my right. I was on my right, and I could not go no further.

Q. Well, you did go further, you went two feet further, you told us? A. Yes, sir. I could not go any further than that.

Q. You told Judge Doherty on your direct examination that after the accident you went over to Miss DeWitt and she was accusing you of the accident. What did she say to you? A. I do not recall.

10

Q. She accused you of something, you said? A. I do not recall what it was. It is two years since the accident happened, and I do not recall it.

Q. You recall every other detail here apparently? A. Well, the accident had me so upset I do not recall what she said.

Q. You recalled that she accused you of something, don't you? A. Yes, sir.

20

Q. And she accused you of cutting the curve here, and being over on your left-hand side of the road, isn't that a fact? A. I accused her of this?

Q. No. She accused you. Isn't that the fact? A. I cannot understand that question.

Q. (Last question read by the stenographer.) A. At what time, sir?

Q. When you were talking to her after the accident happened? A. I told you I do not know. I do not remember what she accused me of.

30

Q. You do not even remember what she accused you of, but you remember she accused you of something? Is that correct? A. Yes, sir.

Q. There was no reason, whatever, was there, from what you saw, for Miss DeWitt being over on the left side of the road, her left-hand side, southerly side of that road, was there? A. There was no reason for it. She did not have no obstruction in any way.

40

Louis Bald, cross.

Q. Plenty of room on her right-hand side, plenty of room on her right-hand side on that roadway, wasn't there? A. Yes, sir.

Q. No reason that caused you to see why she could not be on her right-hand side, was there?

10 A. No, sir.

Q. And how far do you say now—you were six hundred feet from the curve, she was five hundred feet away—how far were you from the curve when the accident happened? A. How far?

Q. Yes, sir? A. I must have been about 620 feet anyway.

Q. I see. You think you were 620 feet from the curve. So then from the time you first saw her until the accident happened, you had gone twenty

20 feet? A. Yes, sir.

Q. That is your best judgment, is it? A. Yes, sir.

Q. Anything the matter with your eye-sight, Mr. Bald? A. Not at all.

Q. Anybody in the car with you? A. No, sir. I was all alone.

Q. I show you another photograph and ask you if that does not correctly depict the roadway in the direction in which you were going at the time the accident happened? A. No.

30 Q. Pardon me? It does not? A. No.

Q. I mean possibly you do not understand the word depict. Does that correctly show the roadway? A. That is the roadway all right, but that does not show the direction, does not show it right.

Q. Isn't that north? A. No, sir. I was travelling east.

Q. This would be east? A. Yes.

Q. That is the road that you took? A. Yes, sir.

40 Q. Now let me ask you: This is the Lake Arrowhead right in here, is it not? A. Yes, sir.

Louis Bald, cross.

Q. Isn't that north? Isn't that the northerly direction? A. I think that is northeasterly direction.

Q. Well, as far as the road itself is concerned that correctly shows the roadway? A. That is the roadway, yes.

10

Mr. Townsend: I ask that be marked for identification.

The Court: It may be so marked.

(Photograph marked D-4 for Identification.)

Q. I show you another photograph and ask you if that does not show the roadway and does not show the curve in the road? A. That shows the curve in the road.

20

Mr. Townsend: I ask your Honor to mark that for identification.

The Court: Mark it.

(Photograph marked D-5 for Identification.)

Q. Can you indicate on Exhibit D-5 for Identification about where this accident happened? A. No.

30

The Court: Why?

The Witness: The curve is in the way, your Honor.

The Court: It does not show the place where the accident happened? Is that what you mean? The picture does not show the place where the accident happened?

The Witness: No. It does not, your Honor.

Q. I show you a photograph marked Exhibit

40

Louis Bald, cross.

D-3 for Identification and ask you if that shows where the accident happened? A. No. It does not.

Q. I show you Exhibit D-2 for Identification and ask you if that shows where the accident happened? A. That does not either.

10 Q. Can you point out, is there any place in there where it happened? Look at it closely, please?

A. This, up beyond this pole (indicating).

Q. It is east of this pole? A. Correct.

Q. Suppose we mark that pole with your name, so that there won't be any misunderstanding.

The Court: That is Exhibit D-3 for Identification?

20 Q. We will just mark this with— A. It is not that pole.

Q. I understand. We will mark this with a B. And it is the pole next east of that, is it? A. Yes, sir.

Q. How far east of this pole do you think it was? A. Sir?

Q. About how far east of this pole, marked B, on Exhibit D-3 for Identification? A. That I could not say.

30 Q. Well, approximately? A. If I could see the exact picture of the road—it was a level piece of road.

Q. Where this accident happened, it was not on a hill? A. It was going up the grade. Yes.

Q. You were going up the grade? A. Yes.

Q. I show you a photograph and ask you if that does not show, correctly show, the picture of Miss DeWitt's car, after the accident? A. I do not know. I am not a judge of the car.

40 Q. Did you see Miss DeWitt's car after the accident? A. I saw it, but I just took a sudden glance.

Louis Bald, redirect.

The Court: Well, if you cannot tell us, say so.

The Witness: I took a sudden glance. Yes.

Mr. Townsend: That lady—Miss DeWitt, will you be good enough to stand up? Just come out this way a little, please. 10

Q. That is the lady that accused you of something that you did not remember what she accused you of, isn't she? A. Yes, sir.

Mr. Townsend: That is all.

Redirect examination by Mr. Doherty:

Q. Mr. Bald, did you not tell us, when I was questioning you, that at no time before this collision did you or Miss DeWitt change your direction? 20
A. We were going—

The Court: No.

Q. Did you give that particular testimony?

The Court: No. Just listen.

The Witness: Change our direction?

The Court: Yes.

The Witness: I cannot quite understand that. 30

(Question read by the stenographer.)

The Witness: Was that before or after the collision?

Q. Before the collision? A. Why, no. We were going in opposite directions.

The Court: No, but before lunch didn't you say that neither car deviated from the straight line up until the time that they came 40

Louis Bald, redirect.

together? Didn't you say that or words to that effect?

The Witness: Well, I says it, your Honor, but by that I meant that we were travelling in opposite directions.

10 Q. That is the idea. But did you continue on the same general course? Is that what you mean?

A. Yes.

Q. And is your testimony now, that just before the accident that you turned to the right a couple of feet? A. Sir? When I seen she was—

Q. Is that your testimony now? A. Yes, sir.

Q. And you made that turn when she was fifteen feet away from you? A. Well, I pulled my wheel around.

20 Q. That is the time you pulled the wheel around?
A. Yes, sir.

Q. You told us that when you first saw her car she was five hundred feet away from you and coming over the summit of a hill. Is that right?
A. Yes, sir.

Q. Then you say that you, from the time of that observation up to the time of the collision, proceeded only twenty feet. Is that correct? A. Yes, sir.

30 Q. Is it a fact or not that while you were travelling twenty feet that she travelled 480 feet? A. Well, sir, I says before I am no judge of distance. I probably might have travelled a little more than twenty feet.

Q. Yes. Well, can you give us, you have been driving a car, you say, four years? A. No, sir. A year before the accident happened.

Q. A year before the accident? A. Yes, sir.

40 Q. Will you or are you able to give us any opinion as to how fast Miss DeWitt was driving before

Louis Bald, recross.

the accident? A. Well, I cannot give you an exact figure. But it seems to me she was going pretty fast. About forty miles, anyway.

Q. Well, in comparison with your rate of speed, she was going still slower or faster? A. Faster than I was. 10

Q. Faster than you were going? A. Yes, sir. I was going up a hill.

Q. You say you were going twenty-five or thirty miles an hour? A. Probably less than that.

Q. Were you an automobile mechanic at this time yourself? A. Me?

Q. Yes. A. No.

Q. That is, were you competent to fix an automobile? A. Well, I am no automobile mechanic. 20

Q. Did you tell us that you were reinstalling the brake bands yourself? A. No. I said it was fixed in the garage in the rear of my home.

Mr. Doherty: I think that is all.

Recross examination by Mr. Townsend:

Q. How many miles had you driven an automobile before this accident happened? About how many miles? A. I could not answer that.

Q. About how many miles had you driven an automobile before this accident happened? A. I could not say. 30

Q. Well, had you driven a thousand or less than that or more than that? A. How do you mean? Ever since I have been driving?

Q. Yes. You say you have been driving a year before this accident. How many miles had you driven? A. Oh, about five thousand miles.

Q. You have driven this car about five thousand miles? A. I did not say that car. 40

Q. Had you driven other cars? A. Yes, sir.

Anna Haunstein, direct.

Q. When had you first gotten a license to drive an automobile? A. A year before that, I said.

Q. A year before this accident happened? A. Yes.

10 Q. Had you learned on this Ford or some other car? A. On another Ford.

Q. On another Ford? A. Yes.

ANNA HAUNSTEIN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Doherty:

20 Q. You are one of the defendants in this action, are you not? A. Yes, sir.

Q. Where do you live? A. In Paterson.

Q. On the 13th of August, in 1929, you were driving an automobile on the Pine Brook Road? A. Yes, sir.

Q. About five o'clock in the afternoon, were you not? A. Yes, sir.

Q. And your automobile was, around that time, implicated in a collision? A. Yes, sir.

30 Q. You were proceeding in an easterly direction? A. Yes, sir.

Q. And you were traveling behind the car operated by Mr. Bald? A. Yes, sir.

Q. You were alone? A. Yes, sir.

Q. Did you witness any collision between the car driven by Mr. Bald and another car? A. Yes, sir.

Q. That occurred in your view? A. Yes.

40 Q. How far from you, at the time of the collision between those two cars, how far away were you? A. From behind the collision?

The Court: Yes.

Anna Haunstein, direct.

A. About 150 feet I guess. 150 or 200. Something like that.

Q. Will you please state what you observed as to the first collision? A. Why, the woman in the Franklin car was driving in the center of the road, and it was a bumpy road, and I thought perhaps she struck a bump and lost control, and she went right over on the side of the road and upset the Ford. She pushed away from the Ford and came on down the road and upset my car.

10

The Court: What side of the road were you on at the time?

The Witness: On the right side.

Q. When you first observed her, she was in the center of the road? A. Yes, sir.

20

Q. And then you say she pushed right over. You mean she pulled right over? A. Yes.

Mr. Townsend: I object.

The Court: Sustain the objection. Yes, leading.

Q. When she pulled over, to which side of her road did she go? A. To the left side of her.

Q. To the left side of her road? A. Yes, sir.

Q. You saw the impact between her car and against the Bald car? A. Yes, sir.

30

Q. And on which side of the road do you say again that took place? A. You mean on my side of the road?

Q. Yes. A. I was on the right-hand side.

Q. No. On which side of the road was it that the DeWitt car hit the Bald car? A. If there was a dividing line, she would have been straddling the dividing line.

Q. At the time of the collision? A. Yes, sir.

40

Anna Haunstein, direct.

Q. Where was she immediately before the collision when she was going this way east? A. She was coming towards us.

10 Q. What was your observation as to whether she changed the direction of her car before the collision, or did she keep on the same straight line? A. She was coming straight on, and in that direction she struck a bump, because it was a bumpy road.

The Court: What do we infer from that? That while she was coming straight on she did change her position, before the accident, to the right or left of the straight road?

20 The Witness: She was coming straight on, and I suppose if she hit a bump, perhaps she—

The Court: No, not what you suppose. What you saw. What Judge Doherty is trying to ascertain from you is as to whether she came right straight on up to the very time she hit the car, in a straight line, or did she turn left or turn right?

The Witness: Yes. She turned left.

30 The Court: How far away from the Bald car did she turn left?

The Witness: How far away? Well, I don't know, I guess she was a distance from here to here when she turned and rode toward him when I saw it.

40 Q. You mean a distance of about 18 feet? A. It must have been about that, yes, and then she pulled away from him. Her bumper or something must have caught in his wheel or mudguard or whatever it was, and upset his car, and then she

Anna Haunstein, direct.

pulled away from him and came on down the road and ran into me and upset me on the bank.

Q. Were you near the edge of the bank? A. Yes, sir.

Q. You kept on going? A. No. I stopped and she hit Bald. 10

The Court: You stopped your car?

The Witness: Yes. When I saw her hit the other man.

The Court: How far away were you from the collision at the time that you stopped your car?

The Witness: Almost as far as from here to the back of the room, almost.

The Court: That is 50 feet exactly by measurement. 20

Q. And then you say she came along the road to where you were? A. Yes, sir.

Q. Did you notice anything unusual about her method of travel as she was closing that intervening distance between you? A. She went on straight down the road and she hit the car in front of me. She just turned and ran into me.

Q. Was her car running on four wheels and four tires at that time? A. I don't know about the tires and wheels coming straight down the road. 30

Q. You say advisedly she came straight down? A. After she hit Bald. She hit Bald and pulled away from him and went out there and came on down and ran into me.

The Court: On which side of the road?

The Witness: On my road, on my right.

The Court: That would be on her left?

The Witness: Yes, your Honor. 40

Anna Haunstein, direct.

Q. Was the course of her travel toward you straight or was it curved or zigzag or what did you observe? A. It was straight until she almost got opposite me, and then she ran into me.

10 Q. And she, after hitting Bald, pulled out and came straight along the road up to a point where you were, and then turned in and struck you? A. Yes.

The Court: That is leading. She went straight ahead, then what did she do?

The Witness: She upset me, and then her car had to stop.

Q. What happened to the Bald car when she struck it? A. Why, it turned over on the left side.

20 Q. What happened to your car? A. Turned over on the right side.

Q. What did she do to you? A. She upset me on the right side.

Q. Knocking your car on your right side? A. Yes, I was upset on that right side. They pulled us out from the ditch.

The Court: What make of car was yours?

The Witness: A Chrysler.

30 Q. Was your car damaged? A. Yes, sir.

Q. What side? A. The left side.

Q. The side that was struck? A. Yes, sir.

Q. You were assisted out of your plight by Mr. Bald? A. Somebody pulled me out and pulled my nephew out.

Q. Then what did you observe as to between the position of Miss DeWitt's car, where was it? A. Her car was directly in the middle of the road facing mine. It was to my side of the road.

40 Q. Did you see the late Mrs. Timmanus? A.

Anna Haunstein, direct.

Yes, sir. When they took me out of the car, she was lying in the gutter, and I think she died there a little while after.

Q. She was lying near her sister's car? A. Down the road a little ways from her car, in back of ours.

Q. Did you notice her physical state? A. She was bleeding in the mouth and in the ear. 10

Q. You say she passed off right there, did she? A. What is it?

Q. You say she passed away there? A. Yes, sir.

Q. How fast were you driving? A. Oh, about 25 or 30, I guess.

Q. How long had you pursued the Bald car? A. Oh, for a long way. Around Dover, I think it was.

The Court: Well, now, may it be agreed right here that the scene of this accident was in the open country and not in a business or residential district? Is that the fact? Does everybody agree? 20

Mr. Townsend: That is the fact.

The Court: Let it so appear on the record, as it was agreed.

Q. Can you give us any light as to how near the curve that has been spoken of here in the testimony, this accident happened? A. We had passed the curve. The curve was down around the Arrowhead entrance, and we had passed that. 30

The Court: Both your car and the Bald car, both had passed the curve?

The Witness: Yes, your Honor.

The Court: And it was a straight-away then, straight ahead, a straight lane?

The Witness: Yes. It was quite straight then. Of course, it was on a little incline. 40

Anna Haunstein, direct.

Q. How far past the curve, do you suppose, do you judge you had gone? A. I don't know. I could not tell you that.

10 Q. Can you tell us how far away Miss DeWitt's car was when you first saw it? A. How far away it was?

Q. Yes. I mean, naturally, how far away from you was it when you first saw Miss DeWitt's car? A. I guess it was a couple of hundred feet.

Q. At the time when the DeWitt car struck you, was Mrs. Timmanus in the car, or was she thrown out? A. I don't remember that, because she came down at such a terrific rate of speed, I thought perhaps she stepped on the gas instead of the brake.

20 Mr. Townsend: I object and ask it be stricken out.

The Court: Yes.

The Witness: I don't know anything about it, whether she was in it or not.

Q. You say that her rate of speed was terrific as she was coming towards you? A. Yes, sir.

Q. Can you translate that into terms of speed, how fast she was coming? A. Oh, that I don't know. It seemed like 60 or 70 to me.

30 Q. Was there any change in her rate of speed from the time she approached the Bald car until the time she hit you? A. She was coming at a pretty rate when she struck Bald.

Q. How about when she was going toward you, was she faster or slower yet still? A. Well, I don't know. I guess it was faster than that.

Q. Your car was knocked over on its side? A. Yes, sir.

40 Q. And the Bald car, it was on his right or on his

Anna Haunstein, cross.

left side when he was hit? A. He was turned over on the left side.

Q. So, but was he travelling on his right side or— A. Yes, sir, yes, sir.

Q. What did you observe as to whether or not Miss DeWitt, when she struck the Bald car, was over on the left side or the right side of her road, which way? A. She was on the left side, her left side. 10

Q. And when she struck you, which side was she on? A. She was on my side of the road, on her left side.

Q. And she was standing still? A. Yes, sir. When she struck Bald I stopped.

Q. You had a passenger with you, had you not? A. Yes, sir. 20

Q. Who was it? A. My nephew. My brother's boy.

Q. A child, is it? A. Yes, sir.

Q. Is he here? A. Yes, sir.

Q. Is that the boy (pointing)? A. Yes.

Q. All right. Can you tell us how old he is? A. He will be thirteen in November. He is only twelve and a half, I guess. Yes, twelve and a half.

Q. He lives in Pittsburg? A. In Harrisburg. 30

Cross examination by Mr. Wolburg:

Q. Mrs. Haunstein, did I understand you to say that the Bald car passed you outside of Dover?

A. Yes, sir. It passed me up the road a ways.

Q. That was out on the open country, too? A. Yes, sir.

Q. How fast were you going at that time? A. About thirty miles an hour. I guess twenty-five or thirty, something like that.

Q. And the Bald car passed your car when you 40

Anna Haunstein, cross.

were going twenty-five or thirty? A. About that, yes.

Q. From that time up to the time of the accident, you never got up with the Bald car? A. No. We were just about the same distance behind each other all the way.

Q. During this drive up to the time of the accident, you were going all the time about twenty-five or thirty? A. Around that.

Q. And the Bald car managed to keep about the same distance ahead of you? A. Yes, sir.

Q. When you first saw the Franklin car, driven by Miss DeWitt, how close was it to the Bald car? A. How close? I don't know. Perhaps the distance of this room about.

Q. Pardon? A. Maybe the distance of this room. I am no judge of how many feet or anything like that. I don't know anything about it.

Q. Well, did you see the Franklin at considerable distance before the collision occurred? A. Yes. I saw her before she hit him.

Q. Pardon me? A. I saw her before she hit him. Yes, sir. I saw her car before she hit Bald's.

Q. Was it right before that she hit him? A. Oh, no. Quite a little way.

Q. How close were you driving to the right-hand side of your road? A. A couple of feet, I guess, away from the gutter.

Q. And the Bald car was about a hundred feet in front of you? A. About that.

Q. Was the Bald car directly in front of you or towards the left? A. I was a little to the right.

Q. You were more to the right of the Bald car? A. Yes.

Q. So that the Bald car would be more to the center of the road? A. Yes, sir.

Anna Haunstein, cross.

Q. How close was the left side of your car to the center of the road? A. I have no idea of how wide the road is or anything like that. I did not try to keep to the center. I tried not to keep to the center.

Q. After the accident, how close was your car to the DeWitt car? A. After the accident, her car was behind mine. She had torn my mudguards. 10

Q. Was it close to your car? A. Not very far. A little ways back.

Q. How far was it? A. I guess as far as from here to that table from me.

Q. To that table? A. It seemed that far to me. It may have been a little farther. I don't know. It was not such a long ways, anyway.

Q. Did you see where the Bald car was? Did you pay any attention to that after the accident? A. Yes, sir. That was way up on top. It was quite a distance away from us, from here to the back of the court room. 20

Q. About the length of the court room? A. About that distance.

Cross examination by Mr. Townsend:

Q. You are one of the defendants in this case, are you not? A. Yes, sir. 30

Q. You are being sued by Judge Doherty? A. I don't know who is suing me, but somebody is.

Q. You know this: you have known that Judge Doherty represents the other side here in this case in suing you? A. I guess he does. I assume so.

Q. You have been in conversation with him in this court house, haven't you, before today? A. No, sir. The other day I was handed a subpoena to be here. 40

Q. Didn't you talk to him and tell him what you

Anna Haunstein, cross.

knew about this case? A. Well, they asked me how the accident happened and I just told the truth.

10 Q. You say, in the court room, you told him, the attorney for the plaintiff who is suing you, what you knew about the accident? A. I did not know who he was.

Q. Did he tell you? A. No. He did not.

Q. Did you ask? A. No, sir.

Q. Well, you know Mr. Timmanus, don't you?
A. Yes, sir.

Q. The husband? A. Yes, sir.

20 Q. The plaintiff in this case, Mr. Timmanus, was there when you told him, wasn't he? A. He was out there, but I did not know who he was until after. I asked who he was.

Q. Now, isn't it a fact, Mrs. Haunstein, that your memory was much fresher right after the accident than it is at the present time? A. I do not think so. I do not think I will ever forget it.

30 Q. As you were going along this road, assuming that the blue car, that I have here, this is the roadway, you are going in that direction (illustrating), the blue car is the Bald car, the yellow car is yours, were you traveling in back of the blue car or were you to the right of that or to the left? A. Bald was about here (indicating).

The Court: Indicating to the right.

The Witness: I was more to the south.

Q. You were more to the south of the Bald car?
A. I don't know whether it was to the south or not.

Q. It was more to your right? A. Yes.

40 Q. And that is south. You think, according to the way you put these automobiles here (illustrating with toy automobiles), that your left side

Anna Haunstein, cross.

of your car was about even with the right-hand side of the Bald car, is that correct? A. Well, I don't know about that.

Q. As far as your observation went? A. About like that (indicating).

Q. Now, isn't it a fact, Mrs. Haunstein, that your attention was attracted to the DeWitt car by the noise of the collision? A. No, sir. I saw it before the crash. 10

Q. This accident happened on August 13th, 1929, did it not? A. Yes, sir.

Q. And on August 17th, 1929, didn't Mr. Steinmetz interview you, and didn't you tell him what you knew about the accident? A. No. He wanted a statement and I would not give it to him.

Q. Did you tell him anything that you knew about the accident at all? A. I just told him how the accident happened. 20

Q. This was only four days after the accident happened? That is when you told him what you knew about the accident, isn't it? A. No, no. He was pretty sassy. I don't know how many days it was after.

Q. It was right after the accident. It was within a week after the accident, wasn't it? A. I guess it must have been. 30

Q. That is when you told him what you knew about the accident, isn't it? A. I told him how the accident happened.

Q. At the time that this accident happened, you were on your way home to Stroudsburg, Pennsylvania? A. From Stroudsburg, I was coming.

Q. You were on your way home from Pittsburg? A. Yes, sir.

Q. You had been up there on a visit, that is correct, isn't it? A. Yes. 40

Anna Haunstein, cross.

Q. You had your nephew, Douglas Tobin, with you? A. Yes, sir.

Q. You have a '25 Chrysler car? A. Yes, sir.

Q. You live at 42 Knickerbocker Avenue, Paterson? A. Yes, sir.

10 Q. You were driving on the Pine Brook Road?
A. Yes, sir.

Q. Is that correct? A. I guess that is the name of it.

Q. Douglas had been spending the summer with you at Paterson, hadn't he? A. He was on his vacation, yes, sir.

20 Q. And had been spending the summer with you. Now, didn't you tell Mr. Steinmetz, on August 17th, this: "that on August 13th, 1929, at about five P. M. I was driving my '25 Chrysler Sedan east on the Pine Brook Road at Lake Arrowhead, New Jersey,"—did you tell him that? A. I told everybody that. That is true. Yes, sir.

Q. Did you tell Mr. Steinmetz that? A. I guess I did.

Q. "In the car with me and riding on the front seat was my nephew, Douglas Tobin, ten years old, of Scranton, Pennsylvania"? A. Yes, sir.

30 Q. Was he from Scranton? A. He was at that time. Yes, sir. They lived in Scranton.

Q. "This boy was spending the summer with me at Paterson, New Jersey"? A. Yes, sir.

Q. "I was on my way home from a visit to Stroudsburg, Pennsylvania"? A. Yes, sir.

Q. "And at the time was travelling along a straight stretch of road and going up a little grade." You told him that, did you not? A. I guess so, yes, sir.

40 Q. "I was following about 100 feet behind a Ford and had been following this Ford for some

Anna Haunstein, cross.

time and was travelling at a speed between twenty-five and thirty miles an hour"? A. Yes, sir.

Q. "And was on my right side of the road"? A. Yes, sir.

Q. "Suddenly I heard a crash ahead—" A. No, 10
sir. I did not say that.

Q. Wait. "Suddenly I heard a crash ahead and saw the Ford car ahead of me turning over on its right side. I then noticed a Franklin coming in the opposite direction. This car had been in collision with the Ford and was on my left. I did not see this car strike the Ford and know nothing about that accident. The Franklin suddenly turned directly into us, and we were hit about in the middle of the car, turning it over on the right side and off the road. The Franklin was stopped, headed in towards my car, across the road, and on my side of the road." Didn't you tell him that? A. No, sir. The lot of it is not true, and I would not sign any statement. No, sir. 20

Q. And you never told him that? A. I never told him I heard the crash.

Q. And you are positive of that? A. Positive of it. 30

Q. And at the time he interviewed you, you did not even know Judge Doherty, did you? A. Did not know them. I did not know any of these people around here.

Q. And at the time he interviewed you, you had not been sued, had you? A. Who interviewed me?

Q. This Mr. Steinmetz? A. No, sir. Not then. It was after that.

Q. And then you continued on: "I was brought into Paterson with my nephew by a Passaic man." A. Yes, sir. 40

Anna Haunstein, cross.

Q. "I received bruises and contusions and a cut on the knee." Did you tell him that? A. I guess I did.

Q. Was that the fact? A. I don't remember. There was a lot of stuff I do not remember.

10 Q. Isn't it a fact that you did receive bruises and contusions and a cut on your knee? A. Yes, sir.

Q. Was it a fact that you were brought to Paterson by a Passaic man? A. Somebody stopped his car and asked him to take me home. I did not know where he was from.

Q. Did you not know he was from Passaic? A. Well, he told me he was when he left me, off the car.

20 Q. And that is what you told Mr. Steinmetz, wasn't it? A. I guess I did. That was the truth. Yes, sir.

Q. "My nephew received a laceration of the neck and bruises"? A. Yes, sir.

Q. And you now deny that you first heard, your attention was first attracted to this car, by the noise of the collision ahead of you? A. Yes, sir, because Mr. Harris told me some salesman heard the crash.

30

Mr. Townsend: I ask that that be stricken out.

The Witness: I never said that, Mr. Townsend. I never said that I heard a crash. I saw the sedan before the crash.

Q. Now, notwithstanding the fact that this car, the Bald car, was ahead of you, and you were riding about fifty to a hundred feet in back of it, you saw this other car coming down the road in the

40

Anna Haunstein, redirect.

middle of the highway all the time, is that what you want the Court and jury to believe?

Q. (Read by the stenographer.) Now, notwithstanding the fact that this car, the Bald car, was ahead of you, and you were riding about fifty to a hundred feet in back of it, you saw this other car coming down the road in the middle of the highway all the time, is that what you want the Court and jury to believe? A. Yes, sir.

10

The Court: What was it you wanted to explain?

The Witness: Well, the way these cars were: Miss DeWitt's car was in like this and the Ford was this way, and she turned in this way and hit him. She hit him like that, and upset him this way (illustrating).

20

The Court: Anyway, her car turned to the left?

The Witness: Yes. The Ford turned on the left.

The Court: The left of the Bald car?

Mr. Townsend: One question.

By Mr. Townsend:

Q. You have now indicated, as I understood you to say on your direct examination, that the Bald car was turned over on its left-hand side, is that correct? A. Yes, sir.

30

Q. You are sure of that? A. Yes, sir. Positive.

Q. Just as sure of that as you are of the rest of your story here? A. Yes, sir.

Mr. Townsend: That is all.

Redirect examination by Mr. Doherty:

Q. The statement that Mr. Townsend read to you

40

Anna Haunstein, redirect.

is a correct version of what transpired with the one exception— A. Yes, sir.

Q. Of the statement contained therein that you heard the crash? A. Yes, sir.

10 Q. And that thereby your attention was attracted? A. Yes, sir.

Q. And that part is not true? A. No, sir. It is not true.

Q. Your attention had been attracted to the accident between those people before you heard the crash at all? A. Yes, sir.

Mr. Townsend: I object on the ground that this question is manifestly leading.

20 The Court: It is leading, but the witness manifestly said it. So we won't deny it. Now, Madam, on the interrogated record of the statement alleged to have been made to Mr. Steinmetz, did you sign any paper?

The Witness: No, sir, I did not.

The Court: All right.

Q. Were you asked to sign any paper? A. Yes, and he told me he would make me sign it.

30 The Court: Did you read the statement or not?

The Witness: No, sir.

Q. Who wrote that statement? A. He did, I guess.

Q. And he wanted you to sign it? A. He said he would make me sign it.

Q. He would make you sign it? A. Yes, sir.

Q. Who is he? A. Where is he?

40 Q. Who is he? A. Well, I don't know. He is some agent.

The Court: Just a minute.

Anna Haunstein, cross.

Mr. Doherty: All right then, I will withdraw it.

Q. You are here under subpoena, are you? A. Yes, sir.

Q. I served you with a subpoena? A. Yes.

Q. And you told me the other day how this accident happened? A. Yes, sir.

Q. And is there any difference between what you told me the other day and your testimony here now? A. No, sir. I told the truth all the way through to everybody that asked me, regardless of who it was.

Q. And at the same time that you were served with a subpoena, was Mr. Bald served with a subpoena? A. I don't know.

Mr. Doherty: All right.

Cross examination by Mr. Townsend:

Q. You say that you did not see this? A. No, sir, I did not, and there was Mr. Harris up there too.

Q. Please, please. Just answer my question. If you did not read it you did not know whether it was correct or not, did you? A. No, sir. I did not know what he wrote down.

Q. Why did you refuse to sign it? A. Because I was told to sign no papers of any kind.

Q. Who told you that? A. Do I have to answer that question?

Q. I am not your counsel.

Mr. Wolburg: I object to it.

The Court: That is sustained. This is too devious a method to follow.

Q. So you don't know, not having read it, whether it was true or not? A. I don't know what he wrote down there.

Tilly A. DeWitt, direct.

Mr. Townsend: That is all.

The Court: All right. Set down. Call your next.

(Witness Excused.)

10

Mr. Doherty: Is Miss DeWitt here?

TILLY A. DEWITT, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. Doherty:

Q. Mrs. DeWitt, are you also a defendant in this action? A. I am not a defendant at all.

20

Q. Well, you are named as a defendant in the list. You are a party to the suit, are you? A. I am a party to the suit.

Q. And on the 13th of August, 1929, you owned a Franklin car? A. I did.

Q. And around five o'clock in the afternoon you were operating that car? A. I was.

Q. And at that time you were accompanied by your sister, the late Mrs. Timmanus? A. I was.

30

Q. Now, without reference to any other circumstances of this accident, which I do not want to elicit from you, Miss DeWitt, will you just tell us under what circumstances your sister became a passenger in the car with you? Why was she riding with you? A. I said I was going down to Jersey City.

Q. That was earlier in the day? A. That was on Monday morning.

40

Q. Yes. A. And I said I would like to go into the city, at the breakfast table, and she said I will go with you, Till. And I said very well. That is all right.

Charles Timmanus, direct.

Q. And that was why she was in the car? A. That was why she was in the car.

Mr. Doherty: That is all. Nothing further.

Mr. Townsend: No cross examination.

Mr. Wolburg: No questions.

10

(Witness Excused.)

CHARLES TIMMANUS, the plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. Doherty:

Q. You are the plaintiff in this action, Mr. Timmanus? A. I am. 20

Q. And you are suing, as administrator of your deceased wife? A. I am.

Q. Emma Timmanus? A. Yes.

Q. When were you and Mrs. Timmanus married? A. December 14, 1892.

Q. What then was about your age, and how old was she? A. Of course, I, like many, I did not ask her age. I was not sure about it. You know how women are, kind of touchy. 30

Q. Tell us how far advanced in life she was. Was she a young woman in her twenties, or thirties? A. She certainly was a young woman.

Q. How old was she at the time of her death? A. That is the very thing, I am not sure, because I was never informed.

Q. Can you convey some idea to us, Mr. Timmanus, as to how old a lady your wife was, either when you married her or when she died? A. About in the twenties. 40

Charles Timmanus, direct.

Q. In her twenties when you married her? A. Yes.

Q. How old a young fellow were you? A. Well, about 28 at the time.

10 Q. Was she younger than you? A. She was. Yes.

Q. At that time she had a profession, didn't she? A. She was an elementary teacher.

Q. In the public school system of Jersey City? A. Yes.

Q. What was your job when you got married? A. Lithographer, known as a lithographic transferer.

20 Q. How long after you married did you continue to work at lithography? A. Well, about nine months after,—the depression in Cleveland's time and I was out of work.

Q. And you were out of work? A. Yes. I had an aged father and mother and a house with a mortgage, I was married and had no job.

Q. Yes. You owned the house at that time, did you? A. At that time.

30 Q. Go ahead. When did you get employment next? A. Oh, it was quite some time afterwards. I only had temporary employment at that time, and my wife saw that, and she jumped into the breach and went back at teaching and saved me from ruin.

Q. While you were still out of work your wife went back to teaching, is that it? A. Yes. That is it.

Q. How long after that did she continue to teach it? A. Kept right on.

Q. Up to the time of her death? A. Yes.

40 Q. No children came to you at all, did they? A. No.

Charles Timmanus, direct.

Q. And what salary did she earn during her teaching career? A. During the beginning?

Q. Well, suppose you give us the figures. Tell us about how much she earned. A. Well, I think she started with salary fifty dollars a month and ended with \$2,800 a year. 10

Q. She was getting \$2,800 a year when she got married? A. Yes.

Q. Will you tell us to what your wife devoted her income? A. Well, she contributed largely to the maintenance of the home.

Q. Did she keep the same home all during the married life? A. We did.

Q. Never moved at all? A. During her whole life we maintained it. 20

Q. I thought you spoke of a mortgage that you started with at the outset. Was that paid off? A. That was never paid off. There was \$1,500 mortgage on it.

Q. That was never paid off? A. It was never paid off.

Q. It was never paid off? A. No.

Q. Now, you told us that your wife contributed to the maintenance of the home? A. She contributed largely to the maintenance of the home. 30

The Court: Just a minute. You said she was earning \$2,800 at the time of the marriage.

The Witness: No, I understood—

The Court: That is what you said, or what Judge Doherty said. Now, what was she earning at the time of her death?

The Witness: \$2,800.

Q. How long had she been getting that salary? A. About five years, I think. 40

Charles Timmanus, direct.

Q. Can you tell us what her salary was, the rate below that? A. Below that. No. \$2,400, I think.

Q. For about how long was she getting that salary? A. Oh, about, they kept getting raises continually, I think,—\$100 a month and so on.

10 Q. Can't you tell us how long she was on the \$2,400 basis? A. How old she was?

Q. How long she was getting \$2,400 a year? A. I guess about five years.

Q. Can you tell us what proportion of her salary she devoted to the maintenance of the home? A. It was about, I should judge about eight-tenths of her salary.

Q. Eighty per cent. of it? A. About eight-tenths.

Q. Eight-tenths? A. Eight-tenths.

20 Q. And specifically to what was her contribution put? How was it distributed or laid out? A. Well, it went towards the housekeeping, the girls.

Q. Anything else? A. And so forth and so on.

Q. By and so forth you mean taxes? A. Exactly. Taxes and painting and repairs and improvements.

Q. There were improvements made on the house? A. Yes.

30 Q. Did you have any investments at the time of your wife's death? A. I had about—at the time of her death?

Q. Yes. A. Well, I had \$800 in bonds. That is all.

Q. Did she have any, did she contribute anything to that? A. No. That was my own money that I had when I was single.

Q. Did you have any investments together, the two of you? A. Together?

40 Q. Yes. A. No. She had bonds that were negotiable and sums of money, and she gave me her

Charles Timmanus, direct.

key; in case anything happened I could be a deputy and get into her box and draw it.

Q. What was the paid face value of those bonds?
A. I had \$800 and she had \$2,500.

Q. And she gave you the key? A. She gave me the key, making me a deputy, so she said. That was the term she applied. That I was a deputy. And I could go there and take the bonds, because they were negotiable. 10

Q. Putting the bonds at your disposal, is that it?
A. Yes, exactly, because, anything happening, she said herself here is the key, and you are the deputy.

Q. As to those, did you get those bonds eventually? A. I did.

Q. As a result of that gift? A. Yes. It was the gift that she left to me. 20

Q. How old are you now? A. Sixty-six.

Q. At the time of your wife's—your wife died August 13, 1929? A. Yes.

Q. How old do you say and can you say Mr. Timmanus, she was at the time of her death? A. About sixty.

Mr. Townsend: About what?

The Witness: About sixty.

Mr. Townsend: Don't you know her exact age? 30

The Witness: No, I could not swear to it.

Q. What was your wife's health? A. I beg your pardon?

Q. At the time of her death.

The Court: What was her health, good, bad or indifferent?

The Witness: She seemed to me to be in perfect health. 40

Charles Timmanus, cross.

Q. She was suffering from no physical ailment at all? A. One of her eyes was weak. That is about the only thing.

Q. What is your own health at this time? A. My own health?

10 Q. Yes. A. At that time?

Q. No, no. Now? A. There is nothing the matter with me. I don't know.

Q. You are in good health now? A. Perfect health.

Mr. Doherty: I think that is all.

Cross examination by Mr. Townsend:

Q. You were born in Honesdale, Pennsylvania?

20 A. No. I was born in Philadelphia, Pennsylvania.

Q. Philadelphia, Pennsylvania? A. Philadelphia, Pennsylvania.

Q. And your father's name was De La Marr? A. That was my right father.

Q. Now, your father died before you were born? A. I was a posthumous child.

Q. And your mother afterwards married Mr. De La Marr? A. Exactly.

30 Q. You adopted his name and then omitted the De La? A. Yes. My mother, along with my consent.

Q. What part of Philadelphia did you live in? A. I was six months old and my mother left.

Q. No. As far as your recollection, if you know what part of Philadelphia did you live in? A. I often heard mother say Charley Street. Is there such a thing?

Q. Charley Street? A. I don't know. I never paid any attention to it.

40 Q. Do you know the date of your birth, Mr. Timmanus? A. 1865.

Charles Timmanus, cross.

Q. I ask you as a fact if you are not seventy-two years old? A. Am I seventy-two years old?

Q. Seventy-two or seventy-three years of age?

A. Am I seventy-two or seventy-three years of age?

Q. No, sir, I am not arguing. I am asking if that is not a fact. A. I could not swear to it, because I have no birth certificate. 10

Q. So you really do not know how old you are? A. Exactly. That is all. I could not swear to it.

Q. Why, isn't it a fact that your wife was sixty-three years of age? A. I could not swear to that.

Q. You don't know that. You were married when you were 28 years old? A. Yes.

Q. How long after you were married was it that you lost your position? A. How long? 20

Q. Yes, sir. A. Oh, about seven or eight months.

Q. You were about 28 and a half years old? A. About that.

Q. And you have never had a steady job since then? A. Well, I had a job off and on.

Q. Have you never had a steady job since then? A. Oh, I won't say that.

CHARLES TIMMANUS, the previous witness, resumes the stand. 30

Cross examination (continued) by Mr. Townsend:

Q. (Last question read.) Do you remember what year you were married, Mr. Timmanus? A. I believe it was 1892.

Q. And do you know how old you were at the time you were married for a certainty? A. I was not sure because I have no certificate and it never bothered me. 40

Charles Timmanus, cross.

Q. You were at least 28 years old? A. About that, approximately. Nothing certain.

Q. So, on that date, you are at least 68 years old today? A. Around that, 66, seven, eight.

10 Q. Well, if you were at least 28 years old at the time you were married, in 1892, you are at least 67, and you will not deny the fact that you were born in the year 1859, 1860 or 1861, will you? A. Oh, deny that?

Mr. Doherty: I object. It is not a fact. It is series of problems.

The Witness: That is something I don't know, I was there but I was too young.

20 Q. You don't know today whether you are 70, 71 or 72, do you? A. I don't know today?

Q. No? A. I don't know whether it is that or not. I won't say it is, and I won't say it ain't. I never bothered with my age.

Q. You have not any nickname by the name of Mac? A. That is what they call me.

Q. How long have you been called that? A. Oh, that is quite some time.

Q. Would you mind signing your name Mac, for me? A. Mac?

30 Q. Yes, sir. A. Have you a pencil?

Q. Here is a pen. Can you use a pen? A. (Witness writes name on a piece of paper.)

Mr. Townsend: May I have this marked in evidence?

(Paper was marked Defendants' Exhibit D-6 in evidence.)

40 Q. How long do you think you have worked since you have been married? A. Beg pardon?

Q. How long do you think that you have worked

Charles Timmanus, cross.

since you were married? A. Well, I will tell you; when there was that depression, why, at that time I had a job about six months, and then I would be out again. But then I had a steady job with G. Shirmer for about seven years. Then they made a change there, discharging all those over a certain age and taking on the young fellows, and I had another job. 10

Q. How many years do you think that you have worked since you were married? A. How many years?

Q. Yes. A. Well, seven years with G. Shirmer, and about five years with Klim, Linder and Bauer, lithographers.

Q. That is two. A. And about five years with Hug and Boskowitz, also lithographers; and then I worked five years for jewellers, by the name of Blanchard; and in about 1925 I was laid off there and I think they went out of business. Of course, I was never taken back again. And since then I worked about six months in the drug concern at 200 6th Avenue, a firm of Runyon, Borecke and Runyon. You can figure that out yourself how long. 20

Q. About 22 years. A. And before that and in between I was on and off. 30

Q. Well, when was the last time you have worked? A. The last time?

Q. Yes, what year? A. In the 6th Avenue place, in this drug store.

Q. In what year? A. What year? About, it was, about '27, I think.

Q. Was it your practice, was it the practice of Mrs. Timmanus in the summer to go to Lake Hopatcong with her sister, Miss DeWitt? A. We 40

Charles Timmanus, cross.

were there every year. When I was working I went there for two weeks' vacation.

10 Q. And wasn't it your practice when you were away for the summer for you to lay off work and then come up there and spend the summer? A. I did not spend the summer until I had no more work. But before that, when I was working, I would come up for two weeks, and week-ends.

Q. You and your sister-in-law, Miss DeWitt, are not friendly today, are you? A. Beg your pardon?

Q. You are not friendly with Miss DeWitt today? A. She is not friendly with me. That is the way it is. I never said a word to her. She shuns me, because I brought this suit. I am not bringing it against her. She ought to understand that.

20 Q. I show you a letter, a signature, and ask you is that your signature? A. (No answer.)

Q. I show you a letter and signature and ask you if that is your signature? A. (No answer.)

Q. Right here, sir (indicating). A. Where is the letter?

Q. Is that your signature? A. No.

Q. It is not? Is there any part of this your handwriting? A. Oh, yes. I think it is.

30 Q. It is yours? A. Yes. I did not recognize that.

Q. Is this your handwriting? A. It is—let us see. It looks like it.

Mr. Townsend: I ask that this be marked for identification.

The Court: Let it be marked.

(Two papers marked Defendants' Exhibits D-7 and D-8.)

40 Q. Are you engaged to be married, Mr. Timmanus? A. No.

Tilly A. DeWitt, direct.

Q. Have you ever been engaged to be married since your wife died? A. No.

Q. I thought you spoke yesterday about the home that you had, about a home that you had or a house. A. A house.

Q. Where was that? A. 46 Lincoln Street. 10

Q. Jersey City? A. Jersey City.

Q. And is that in your wife's name or yours?
A. We were in joint ownership. I had the house when I was single. But I took her and put her name on to make it joint ownership.

DEFENDANTS' CASE.

TILLY A. DEWITT, having been previously sworn, recalled as a witness in her own behalf. 20

Direct examination by Mr. Townsend:

Q. Miss DeWitt, you were on the stand yesterday? A. Yes.

Q. Do you live in Hutton Street, Jersey City?
A. No. Zabriskie.

Q. How long have you lived there? A. All my life.

Q. You are a school teacher, are you not? A. I am. 30

Q. Where do you teach? A. Number 28 School, on Hancock Avenue.

Q. How long have you taught school there approximately? A. 35 years.

Q. How many sisters did you have? A. I had six sisters.

Q. In August, 1929, as I remember— A. In 1929, I had three sisters.

Q. What were their names? A. Amelia, Anna, and Ada. 40

Tilly A. DeWitt, direct.

Q. And the one that died, Mrs. Timmanus. A. Emma.

Q. Were you and Mrs. Timmanus particularly friendly and close? A. We always went out together. We were inseparable.

10 Q. How old was your sister at the time of her death? A. Sixty-three.

Q. Do you know what year she married Mr. Timmanus? A. 1892.

Q. Did Mr. Timmanus ever state or tell you what his age was? A. Never.

Q. Did he ever state what his age was? A. No. But sister always said he was ten years older than she.

20 Mr. Doherty: I object to that.
The Court: No, no.

Q. What information you have got about his age came from your sister? A. Yes.

Q. How long have you lived at Lake Hopatcong? A. Since 1918.

Q. Did you own the cottage there? A. We owned the cottage, yes, jointly.

Q. Who owned it? A. My sisters Ada, Amelia, my sister-in-law and myself.

30 Q. Where had you spent your summers? A. At Lake Hopatcong.

Q. For how many years? A. Since 1918.

Q. You owned this Franklin automobile that was in the accident? A. I do.

Q. How long had you driven an automobile at the time of the accident? A. Eight years.

40 Q. How long had you had this car? A. One year, and I bought it in April, 1928, and the accident occurred in 1929, August the 13th.

Q. Had you had it at the service station at any

Tilly A. DeWitt, direct.

time before this accident, shortly before this accident? A. Yes, sir, in the morning before I came out, on the afternoon of the accident, I had it there.

Q. What day of the week did this accident happen on? A. Tuesday.

10

Q. You and your sister had come in from— A. Lake Hopatcong. Monday morning we came in, and I could not see the person that I wished to see, so we stayed over night at their home at 941 Summit Avenue.

Q. Did you have the car in the service station at that time? A. I called up the service station in the afternoon and told them to call for the car in the morning and I wanted it in the afternoon because I wanted to go back to Lake Hopatcong.

20

Q. Now, was the car delivered to you from the Franklin Service Station, was it? A. What is that?

Q. Did you have it in the Franklin Service Station? A. I had it in the Franklin Service Station.

Q. What time was it that you and your sister had left Jersey City that day, the day of the accident? A. Between three and four o'clock.

Q. How frequently had you driven over that road, the Pine Brook Road? A. Oh, ever since I was driving, since 1921.

30

Q. Now, will you just tell the court and the gentlemen of the jury what happened as you came down the Pine Brook Road, as you got near Lake Arrowhead? A. As I was going down the grade there on the hill, a car shot out from around the curve and came directly toward my car, and I said to my sister, "Oh, Em, look at this fellow coming straight for us," and I put on my brake and tried to slow down my car; almost got to a standstill,

40

Tilly A. DeWitt, direct.

and by that time he came into me and jabbed me in the left wheel toward the rear. That made my car turn in this direction (indicating), and I went over toward the south side of the road, toward the gutter. I got out of the car. I was so un-
10 nerved that I did not know what had happened, and I saw my sister lying in the gutter. The people across the road came to her assistance, mother and daughter. They were both nurses. A doctor was sent for, and the ambulance was sent for. And they attended to her while she was lying there. While I was in this predicament, Mr. Bald came up to me and asked me, "Let me see my license." He asked me if I was insured. I said, "Yes, are you?" And he said, "No," I said, "Who owns your car?"
20 He said, "My mother." And Mrs. Williams, that was the lady that was attending to my sister, she said, "Oh, do not bother with him."

Q. Now, Mr. Bald said that you accused him of something. A. I said, "It is all your fault, why didn't you keep to the right side of the road?"

Q. What did he say to that? A. And he said, "It is your fault." I said, "It was not."

Q. Now at the time of the impact, when he col-
30 lided with your car, what effect did that have on your car as far as the steering apparatus was concerned? A. Well, I held tight to my wheel and my car,—I did not know where I was going—I turned over toward the south of the road.

Q. Did your steering gear lock, or anything like that? A. No, no. They do not lock on a Franklin.

Q. Now, I show you a photograph and ask you if that is a photograph of your car after the accident? A. Yes, sir.

40 Q. Does that correctly depict the condition of your car after the accident? A. Yes, sir.

Tilly A. DeWitt, preliminary cross.

Mr. Townsend: I offer this in evidence.

The Court: All right. Let it be marked.

(Photograph marked Defendants' Exhibit D-9.)

(Mr. Townsend handed the exhibit to the jury.)

10

Q. I show you a photograph marked Exhibit D-3 for Identification and ask you if that shows the Pine Brook Road? A. It does.

Q. In the direction in which you were going?

A. Yes.

Q. And does it show the curve that you referred to? A. It does.

Q. Does that show the direction from which the Bald car was coming? A. It does.

20

Q. Does that show, can you indicate on that photograph, where the collision occurred? A. Right about there (indicating).

Mr. Siegler: Mark it.

Q. Will you mark that with a D? A. (Witness marks photograph.)

Mr. Townsend: I now offer this in evidence.

Mr. Siegler: May I cross examine as to this?

30

Mr. Townsend: Yes.

Preliminary cross examination by Mr. Siegler:

Q. Now, Miss DeWitt, is there anything on this picture that identifies the place where the accident occurred? A. Yes, sir.

Q. What is it? A. This house right here, because Mrs. Williams lives in one of these houses,

40

Tilly A. DeWitt, direct.

and she came over across the road to assist my sister.

10 Q. Now, have you any idea of the distance from the point that you have marked, pointing to this house? A. I have not estimated the distance, no. I have not.

Mr. Townsend: I understand you have no objection.

Mr. Siegler: No.

The Court: All right. Let it be marked. (Exhibit referred to was marked Defendants' Exhibit D-3 in evidence.)

Direct examination continued by Mr. Townsend:

20 Q. I show you a photograph, marked Exhibit D-4 for Identification, and ask you if that correctly depicts that street and view there, very generally in an easterly direction, or the direction in which Mr. Bald was going? A. Yes.

Q. That shows the curve referred to, does it? A. Yes.

Mr. Townsend: I offer this in evidence.

30 Mr. Siegler: Of course this is objected to as not indicating the part of the highway as described on the other picture where the accident occurred. I further object to the fact that there is nothing to show that the conditions on the day that the accident occurred were similar to the conditions that are represented here or whenever that picture may have been taken.

40 The Court: Does this picture show exactly the conditions that existed in the place where the accident happened on the day in question?

Tilly A. DeWitt, direct.

The Witness: It shows the grade of the road. Yes, sir.

The Court: How near to the place where the accident happened?

The Witness: Why, it shows the hill.

The Court: Right where the accident happened? 10

The Witness: Right where the accident happened. Yes.

The Court: All right. It may be marked.

(The photograph is marked Defendants' Exhibit D-4 in evidence.)

By Mr. Townsend:

Q. I show you another picture marked D-5 for Identification and ask you if that is also another view of that road looking generally in an easterly direction, showing the curve? A. It is. 20

Q. At the time the accident happened? A. It is.

Mr. Townsend: I offer this in evidence.

Mr. Siegler: Objected to as not indicating the point of the collision and as not indicating the conditions of the highway on that day, on August 13th, as similar to those represented here. 30

The Court: Does this photograph show the place where the accident occurred and the conditions exactly as they existed on the day of the accident?

The Witness: Some of the embankment has been removed since the day of the accident and the collision.

The Court: This picture then does not show it as it existed on that day?

The Witness: Well, the embankment on that— 40

Tilly A. DeWitt, direct.

The Court: Well, does it or does it not?

The Witness: It does not.

The Court: Sustained.

10 Q. Does it show the roadway? A. It shows the roadway.

Q. The same as it existed on that day? A. The same as it existed on that day.

The Court: Where is the embankment that is not there now? On the side of the road?

The Witness: On the left side of the road.

Mr. Townsend: It would indicate, if the Court please, that it would be on the right side of the road. I now renew my offer.

20

Mr. Siegler: The same objection.

The Court: Sustained.

Mr. Townsend: Your Honor will allow me an exception?

Q. I show you another photograph marked D-2 for identification and ask you whether that, other than the—if that shows, correctly shows the highway at the curve looking in an easterly direction as it existed at the time of the accident? A. It does.

30

Q. And is it not a fact that the embankment spoken of, started some distance to the east, easterly of the curve in question?

Mr. Siegler: That is objected to as leading.

The Court: Yes. I sustain the objection. Let her tell it.

Q. Where did this embankment start that you

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Tilly A. DeWitt, direct.

have spoken of? A. Right beyond these trees. Here (indicating).

Q. Will you indicate that on here with an E showing the embankment? A. I will have to see that other picture first.

Q. All right. Refer again to D-5 for identification (handing to witness). No. There is another one. The other picture. 10

Q. Referring now to Exhibit D-3, marked in evidence, by referring to that again can you tell where this embankment started? A. This is the embankment (indicating).

Q. Will you just mark that an E on this photograph? A. (Witness marks photograph.)

Q. Referring to D-2 for identification, can you indicate there where that embankment started? D-2 for identification is what you have in your hand. A. It would be up beyond here (indicating). 20

Q. Just mark that E, will you please. A. (Witness marks photograph.)

Q. Now, referring again to D-5 for identification, will you indicate on that where the embankment started? A. (Witness marks photograph with a letter E.) 30

Q. Now, referring to D-5 for identification, does that correctly show the roadway and the curve as it existed at the time of the accident? A. It shows the roadway. Yes.

Q. And it showed E on there as where the embankment started or began at the time of the accident, is that correct? A. Yes.

Q. That is to the east of the curve in question, that direction being east (indicating)? A. What? Yes. 40

Tilly A. DeWitt, preliminary cross.

Preliminary cross examination by Mr. Doherty:

10 Q. Are we to understand that no change whatever has been effected in the topography at that place since the time of the accident, no change at all has taken place? A. Part of the embankment has been—the road has been widened, the dirt dug away from the embankment.

Q. And the embankment has been removed? A. Not all of it. No. There is some standing there still.

Q. And the road has been widened, has it not? A. No. The roadway has not been widened.

Q. What has been widened? A. The embankment has been taken away.

20 The Court: Then the picture is not a true representation of the conditions that existed there at the time of the accident, is it, if something has been taken away?

(No response.)

The Court: Is that correct?

(No response.)

The Court: Well, Madam, it seems to me that that is a very clear question for you to answer, and I wish you would answer it.

30 The Witness: Well, it shows the roadway.

Q. Does it illustrate an embankment that existed there at the time of the accident? A. It does not illustrate any embankment there.

Mr. Townsend: This is the one your client identified as a correct representation of his automobile after the accident.

40 Mr. Siegler: Oh, no objection.

The Court: Let it be marked.

(Photograph marked D-1 in evidence.)

Tilly A. DeWitt, direct.

Direct examination (continued) by Mr. Townsend:

Q. Now, Miss DeWitt, about how wide was the roadway or the driveway itself of the Pine Brook Road at the point where the accident happened?

A. About 20 feet.

10

Q. Do you know approximately how far from the curve, indicated in the photograph, that the accident occurred? A. How far from the curve?

Q. Curve. A. To the curve, about 350 feet.

Q. Now, as you and your sister were driving along there, what part of the roadway were you driving in? A. On the right-hand side of the roadway.

Q. Now, next to your right-hand side of the roadway was there, or was there not, a gutter? A. There was a concrete gutter.

20

Q. Were you injured in this accident? A. I only had a cut here on my hand and bruises and scratches.

Q. Were you laid up for any length of time at all? A. I had to ask for a leave of absence. I had a nervous breakdown after the accident.

Q. How long were you away from school? A. A month. Then the doctor advised me to get back to school. He said it would be better to be employed than to stay home thinking over the accident.

30

Q. And who was your doctor? A. Dr. Reich.

Q. And he practiced in Jersey City? A. Summit Avenue.

Q. Dr. Reich is now dead, isn't he? A. He is dead now, yes.

Q. Didn't he die last fall? A. This year.

Q. This winter? A. Yes.

Q. How often did Dr. Reich treat you, Miss DeWitt? A. He came in every day that I was home,

40

Tilly A. DeWitt, direct.

while sister lay at her home, and then he advised me to go back to the lake, and I stayed there, and then I had a doctor up there examine me.

10 Q. Do you know about how often or how many times Dr. Reich attended you? A. Three or four times.

Q. And up at the lake did you have the doctor attend you there? A. I had a doctor up there. Yes.

Q. How many times did he attend you? A. Once.

Q. Do you know what the bills were? A. They were three dollars a visit.

Q. Now, did you have your automobile repaired? A. I told the service man to come and get my automobile and take it down to the service station and have it repaired.

20 Q. Was it repaired? A. No.

Q. Was it ever repaired? A. Which one, the new one?

Q. The one that was in the accident? A. The one that was in the accident?

Q. Yes. A. Well, the salesman came to me—

Q. Did you trade this in afterwards? A. I did not want to drive that car again.

30 Q. Did you trade the car in afterwards? A. I traded my car in, yes.

Q. What allowance did they make you for your car? A. \$950.

Q. What had you paid for that automobile? A. Two thousand eight hundred something.

Q. Two thousand eight hundred? A. Yes.

The Court: Was it new?

The Witness: It was new.

The Court: How many miles had it been driven, about?

40 The Witness: About five thousand.

Tilly A. DeWitt, direct.

Q. Do you know about how much the car was worth immediately before this accident, what its value was? A. Well, they say the next day that you take the car out it is a second-hand car.

Q. That is quite true, but do you know at the time of the accident how much your car was worth before the accident? A. Well, to me it was worth just as much as I paid for it. 10

Q. I know, but that is not the test. What would it be worth in the open market if you had gone to sell it? A. I expected about \$1,500 for it, if I had tried to sell it.

The Court: How much did you say you paid?

The Witness: About \$2,800. The 1928 model it was. 20

The Court: That is what you paid for it. What we want to know is what it was worth.

The Witness: Well, \$1,500 to \$1,600 is what I would want.

Mr. Siegler: Now I understand your Honor asked her what she paid for it is not the question?

The Court: That is the worth, what it was worth. 30

Q. Referring to Exhibit D-4 in evidence, you have indicated on Exhibit D-3 where the accident happened, on the photograph D-4 in evidence can you indicate there the point where the collision took place? A. (Writing on exhibit.) What letter shall I put there?

Q. Just put a D. A. D. Over on that side (indicating).

Q. What side do you mean? A. This side over here. 40

Tilly A. DeWitt, cross.

Q. That is your right-hand side? A. Yes.

Q. Or the northerly side? A. On the north side.
Yes.

10 Q. Now is it a fact, Miss DeWitt, that you and your sister were driving down the center of that road? A. It is not.

Q. Over the left side of the road? A. It is not.

Q. Is it a fact that you went over the left-hand side of the road and ran into this Ford car? A. It is not.

Cross examination by Mr. Siegler:

Q. Now, Miss DeWitt, I show you Exhibit D-4. Which direction were you going? A. I was going west.

20 Q. You were coming in a westerly direction and this is coming west? A. This is coming west, yes.

Q. Now, the point that you have marked D—
A. Yes.

Q. That is the place where the accident occurred? A. The right-hand side of the road I was coming down. Yes.

Q. That is the point where the accident occurred? A. That is the point where the accident occurred.

30 Q. So that the accident occurred before you reached the curve? A. It did.

Q. How long before you came to the curve did the accident occur? A. How long?

Q. How far from the curve? A. About 350 feet.

40 Q. So that at the point of the accident, the road was a straight-away—there was no curve between the point 350 feet away from this angle on the picture, from this angle down to the point where the accident occurred is a straight road, is it not? A. It is a grade.

Tilly A. DeWitt, cross.

Q. Yes. It is a grade, but the road itself is straight? A. It is straight, yes.

Q. So that you had a view down that road for 350 feet? A. Yes.

Q. Is that correct? A. That is correct.

Q. Now, let us see: you had this accident, as you have already indicated, 350 feet before that angle of the curve? A. Yes. 10

Q. Now, how far were you from the point of the collision when you first saw this car coming up the road? A. 350 feet.

Q. Was that the first time you saw the car? A. Yes.

Q. That is the time the collision occurred? A. Yes.

Q. And you had not seen this automobile until the time you struck it or it struck you, as you put it? A. I saw him come across the road to me. Yes. 20

Q. About how long before that time, that he came across the road, did you see this car on this road?

Mr. Townsend: You mean in time or in figures?

Q. How far was it from you when you first saw the car down the road? A. I should say 350 feet. He came around the curve. 30

Q. He was coming down the curve and you were 350 feet up the road, were you? A. Up the roadway. Yes.

Q. You saw him come around the curve? A. Yes.

Q. You saw him? A. As he turned the curve I saw him.

Q. As he turned the curve? A. Yes. 40

Tilly A. DeWitt, cross.

Q. At that time where was he? Where was his car with respect to the center line of the road?

A. He came right to me.

Q. He was 350 feet away from you? A. Yes.

10 Q. And he continued in your direction? A. He crossed the road to me.

Q. What did you do? A. What did I do? I stepped on my brake.

Q. Yes. A. I slowed down my car.

Q. Where was he then, would you say? A. I slowed down my car.

Q. How far away from you was he then? A. About 250 feet.

Q. Did your car come to a stop? A. Almost to a stop.

20 Q. Now, then, from the time that you saw him when he was 350 feet away from you until the time that your car came to a stop, how far did you travel? How many feet did your car go? A. About 100.

Q. 100 feet? A. Yes.

Q. And you had not yet come to a stop at all, had you, when the collision occurred? A. No.

Q. Your car was still moving? A. Yes.

30 Q. So that after you applied your brakes, your car went more than 100 feet until the point of the collision, with your brakes applied? A. No.

Q. No? Well, how far did it go with your brakes applied, how many feet did your car go after you applied your brakes? A. That I could not say.

Q. Well, did it go 50 feet? A. No.

Q. Did it go 20 feet? A. No.

Q. 10 feet? A. No.

40 Q. Well, how far did it go? A. It almost stopped.

Tilly A. DeWitt, cross.

Q. It came almost to a standstill? A. I did not put my brakes down to the floor.

Q. At no time? A. No.

Q. At no time did you apply your brakes fully?
A. No.

Q. Just partially? A. Partially.

10

Q. How fast were you going? A. From 20 to 25 miles an hour.

Q. 20 to 25 miles an hour? A. Yes.

Q. And when you finally did apply your brakes the car came to practically a stop, didn't it? A. When I applied my brakes down to the floor. Yes.

Q. Now did you attempt to turn in either direction? A. I could not because the concrete gutter was there.

Q. You could not turn to the right? A. No.

20

Q. Because you were right in close to the gutter?
A. Yes.

Q. How about the left side? Did you have any room on the left side between your car and the center line of the road? A. Why should I go to the left side?

Q. But was there any room between your car and the left side of the road? I did not ask you why you should go. A. Was there any room?

30

Q. Yes. How many feet were between your left-hand side of your car and the center line of the road? A. About four feet.

Q. About four feet? A. Yes.

Q. During this entire length of 350 feet from the time he rounded that curve until he came into contact with you, how far down the road had you gone, how many feet? A. About 100 feet, I said.

Q. About 100 feet? A. Yes.

Q. So that the point of contact, the point of col-

40

Tilly A. DeWitt, cross.

lision on that road was about 250 feet from the turn in the road, wasn't it? A. Yes.

Q. Isn't that correct? A. Yes.

10 Q. Then the point that you place here marked D, on this picture, as being the point of contact, some 350 feet away from the curve, is incorrect, isn't it? A. No, it is not.

Q. Well, you just said it was 250 feet where you collided with the other car. A. When you are excited you don't know exactly where it was.

Q. No. But you are not excited now, I hope, Miss DeWitt. A. I certainly am not.

Q. And your mind is clear now as to what took place that day? A. Yes, sir, it is.

20 Q. And when you said a moment ago that the collision occurred about 250 feet away from the curve on the road, was that correct? A. That is correct.

Q. And your description on this picture, as representing the point of contact 350 feet away from the curve, is incorrect then, is it not? A. No. It is correct.

Q. Well, now, they both cannot be correct, can they, Miss DeWitt? Can both of those statements be correct? A. Can you tell exactly what you do?

30 Q. No. I am not asking you that, Miss DeWitt. I am just trying to clear up the point of contact. A. I think you are. I think you are.

Q. Now which is correct? A. 350 feet.

Q. 350 feet is the point of contact away from that curve? A. Yes.

Q. West of it? A. Yes. That is where the accident occurred.

Q. That is where the accident occurred? A. Yes.

40 Q. Now then you must have seen this car before

Tilly A. DeWitt, cross.

you reached the point of the accident, did you not? A. I did see the car.

Q. So that how many feet away from the curve were you when you saw the car the first time? A. 350 feet.

Q. You were 350 feet from the place where the accident happened, from the curve in the road, where the accident occurred, and you were 350 feet from the curve in the road when you first saw the car? Is that correct? Can you straighten that out, Miss DeWitt, for us? A. All I know is when he came around the curve I saw him coming. I don't know exactly how many feet. That is my estimate, 350 feet, from the curve, is where the accident occurred. 10

Q. That is your estimate? A. That is my estimate. 20

Q. How wide is that Pine Brook Road? A. About 20 feet.

Q. Did you measure it? A. Not I. No.

Q. Did anybody measure it for you? A. No.

Q. Well, you had a photograph there to take pictures—

Mr. Siegler: I will withdraw that.

Q. You estimate the width of that road to be 20 feet? A. About 20 feet. 30

Q. Does that include the gutters? A. It does not.

Q. How wide were the gutters over all? A. About three feet.

Q. About three feet on each side? A. Three feet on each side.

Q. That would be six feet. About 26 feet for the entire width of the road? A. Yes. 40

Tilly A. DeWitt, cross.

Q. You would call that a rather narrow roadway, wouldn't you? A. I certainly would.

Q. Now, this embankment which you speak about, on which side of the road was that going westerly? A. Going westerly it was to my left, on the south side of the road.

Q. To your left? A. Yes.

Q. So that the embankment was on the side that the defendant Bald was driving on, is that correct? A. Yes.

Q. Now, you say that you were to the south side of the road after the accident? A. Yes.

Q. In other words, this fellow ran into the left front of your car? A. Yes.

Q. Is that correct? A. That is right.

Q. And then where, what happened to your car? Were you thrown over to your right? A. No. My car turned around this way (indicating), and went toward the south side of the road.

Q. Well, which part of your car turned around, the front of it? A. All of it. The whole car.

Q. The front side of your hood turned toward the south side of the road? A. It did.

Q. That was your wrong side? A. Yes.

Q. And after the accident that is where you found your car? A. Yes.

Q. Where did you find the late Mrs. Timmanus? A. In the gutter.

Q. On which side? A. On the south side.

Q. In the gutter on the south side? A. Yes.

Q. She had been sitting on your right? A. She was sitting on my right in the front seat.

Q. She was on your north side, she had been sitting on the north? A. Yes.

Q. And when she was picked up she was found in the gutter on your south? A. Yes.

Tilly A. DeWitt, cross.

Q. In the south gutter? A. Yes.

Q. Is that correct? A. That is correct.

Q. Now with reference to Mr. Bald's automobile, after the accident where was your car, immediately in front of his? A. I could not say.

Q. Alongside of him? A. I could not say.

10

Q. Well, how close was your car to his? A. I don't know.

Q. Well, was it within 25 feet of you? A. I don't know.

Q. Did you see his car after the accident? A. I did.

Q. Did you have to walk over to it or could you see it from where you were standing? A. After I got out of my car, after I parked it on the south side of the street, I got out and I saw his car in the middle of the road.

20

Q. You parked your car? A. I pulled up my brake, yes.

Q. When? A. On the south side of the road.

Q. Did you see Mrs. Haunstein that day? A. I do not remember whom I saw.

Q. Did your car strike the car of anybody else that day? A. I don't know.

Q. You do not recall whether there was any other car in back of Mr. Bald's automobile? A. I don't know.

30

Q. Did you see another car coming up in an easterly direction immediately before the accident in back of the Bald automobile? A. I was only watching Mr. Bald's automobile.

Q. And you saw nothing else? A. That is all I saw.

Q. Now after you collided with Bald's car did your car travel for any distance or did you come

40

Tilly A. DeWitt, cross.

to an immediate standstill? A. After the accident, you mean?

Q. Yes, with the Bald car, and yours, when they collided? A. Yes.

Q. Did your car move in any direction at all?

10 A. It did, toward the south of the road.

Q. It moved toward the south of the road? A. Yes.

Q. About how many feet did it move, approximately? A. About 14 feet.

Q. About 14 feet, and that in a southerly direction? A. It did.

Q. Is that correct? A. That is correct.

Q. Do you recall whether Bald's car was then in front of your car or was it to the rear of your automobile? A. It was to the rear of my automobile.

20

Q. It was in back of you, then? A. Yes.

Q. Is that correct? A. That is correct.

Q. That is, it was to your east? It was to the east of you? A. It was to my north.

Q. To your north and to your east? A. Yes.

Q. Is that correct? A. That is correct.

Q. So that if there was another automobile involved in this accident, or another automobile in front of you, you did not see it? A. I did not.

30

Q. Do you know as a matter of fact whether you struck another car or collided with another car on that day? A. I do not know.

Mr. Townsend: Right after the accident?

Mr. Siegler: After the collision with Mr. Bald.

Q. You don't know? A. I don't know.

40

Q. Did you have control of your automobile

Tilly A. DeWitt, cross.

after you struck Bald, or after you collided with Bald? A. I had control of my automobile.

Q. And you recall everything you did after the collision? A. I do.

Q. And you recall bringing your car to a standstill? A. I do. 10

Q. And you don't know whether there was another car that collided with you? A. No.

Q. Well, will you deny that there was another car that collided with you? A. I will not.

Q. You won't deny that? A. No.

Q. Don't you think you ought to recall what happened?

Mr. Townsend: I object on the ground the question is argumentative. 20

The Court: Yes.

Q. Don't you think that you ought to recall what happened if you had full control of your automobile after the collision with Bald?

Mr. Townsend: I object to it as argumentative.

The Court: Yes. Sustained.

Q. Did you see Mrs. Haunstein there at the scene of the accident at all? A. I saw a woman and a young child. That is about all. I don't know who she was. 30

Q. You saw a Miss Williams and a Mrs. Williams? A. That was the lady who lived in the cottage.

Q. Did you talk to her after the accident? A. After the accident.

Q. And she assisted you, of course? A. She assisted my sister and she assisted me. 40

Q. Did you take her name? A. Mrs. Williams?

Tilly A. DeWitt, cross.

Q. Yes. A. I did not need to take her name.

Q. You knew her? A. No, I did not know her. She was a perfect stranger.

Q. You did not need to take her name? A. No.

10 Q. Did you have a conversation—you had a conversation with Mr. Bald after the accident? A. I did.

Q. And you remember everything that he said?

A. I do.

Q. And you remember everything that you said?

A. I do.

Q. You remember that very clearly? A. I do.

Q. But you cannot recall if you struck another car? A. I cannot.

20 Q. As a matter of fact, Miss DeWitt, did you not travel down that road in a westerly direction a distance of 200, 150 or 200 feet after the collision with Mr. Bald? A. I did not.

Q. And as a matter of fact, after the collision with Mr. Bald, didn't you travel down that road 150 or 200 feet and strike the car of Mrs. Haunstein? A. I don't know.

30 The Court: Well, can you tell us whether or not—or tell us at least what condition your sister was in immediately after the collision with the Bald car? Did you observe her?

The Witness: I could not, because I had to keep my eye on Mr. Bald coming toward me.

The Court: I see.

Q. Now, you were riding down a steep grade, were you not? A. Rather steep.

40 Q. It was a rather steep grade? A. A gradual grade I would call it. Not very steep.

Tilly A. DeWitt, cross.

Q. And as you started down this grade your car was in high? A. Yes, certainly.

Q. High speed you were driving? A. Yes.

Q. And as you started down this grade you did not have your brakes to throw on or applied, did you? A. Why? No.

10

Q. There was no occasion for it, was there? A. No.

Q. You were driving normally in high speed down this road, your brakes were not applied, is that correct? A. That is right.

Q. Is that right? A. Yes.

Q. And you were driving 20 to 25 miles an hour? A. That is it.

Q. Down the grade? A. Yes.

20

Q. Now, tell us this: how far did you get down this grade from the summit of the hill to the point of the collision? A. How far?

Q. How far was it from the summit of the hill, down the hill to the point of the collision? A. About 350 feet.

Q. But up until then, the time you came off the summit of the hill, until the time you collided with Mr. Bald, you had to go about 350 feet? A. Yes.

Q. Did your car speed up as it was going down this grade? A. It did not.

30

Q. You say then that your car did not gain speed coming down the hill even though your brakes were not applied? A. I did not watch my speedometer.

Q. I know, but do you recall whether your car—whether the momentum of your car had increased as it traveled this 350 feet down this hill? A. Of course naturally it would travel a little faster going down the hill.

40

Q. So that probably you were going more than

Tilly A. DeWitt, cross.

20 or 25 miles an hour? A. I have never gone down hill more than 25 miles an hour.

Q. But you never did anything to stop the speed of your car going down, did you? A. Why should I?

10

Cross examination by Mr. Doherty:

Q. Miss DeWitt, you do not at the present time possess any purpose except to tell us the truth of what happened as you are now able to recall it?

A. I am telling you the truth and nothing but the truth.

Q. And that is your purpose now? A. That is my purpose now.

20

Q. But during those transactions out there on this unhappy day, you were in a state of alarm for the greater part of the matter, weren't you—

Mr. Doherty: I will withdraw that.

Q. When you first saw the Bald car approaching you, did it alarm you or not? A. It certainly did, because he came across the road toward me.

30

Q. And your alarm perturbed you and continued until you were mentally prostrated by the fact of what happened to Mrs. Timmanus? A. Oh, no. I was not mentally prostrated.

Q. Were you able at all times during that intervening period to observe calmly what was taking place about you? A. I was not calm, certainly not. Nobody would be calm under the circumstances.

Q. I think you answered, in your direct examination, that when you first saw Bald's car that you commented to Mrs. Timmanus— A. I said to her, "Em, look at this car coming straight for us."

40

Q. Well, now, Mrs. DeWitt, how far was the car

Tilly A. DeWitt, cross.

away, at that time when you mentioned it? A. About 350 feet.

Q. And then at that great distance you were able to divine that this man was going to come towards you and put you in peril, were you? A. Yes, sir.

Q. You were on a road, that you described as being 20 feet wide? A. Yes. 10

Q. What was there specially manifested about his behavior when he was 200 feet away from you, on that narrow road, to indicate to you that he was going to hit you? A. Because he came across the road, across the center of the road toward my car.

Q. Did he tell or indicate that when he was 200 feet away from you? A. He did. If you draw a line immediately from the curve over to the right-hand side of the road, you can see it. 20

Q. Are we to understand that when he was that distance away from you, 200 feet, coming up the hill, he came over to your side of the road and then he persevered in staying on that side of the road? A. He did.

Q. So that when he was 200 feet away from you you had an admonition that he was there in your path? A. I did. 30

Q. He stayed in your path? A. He stayed in my path.

Q. And you started at the top of that hill at 20 or 25 miles an hour? A. 20 to 25 miles.

Q. How far from the apex of the hill had you descended at the time when you saw him 200 feet away from you on your side of the road? A. About 350 feet.

Q. And you say your car may have gathered speed during that time? A. Probably a little. 40

Tilly A. DeWitt, cross.

Q. Then you say you did something in the way of putting on your brakes? A. When I saw him coming towards me.

Q. So that when he was still 200 feet ahead of you— A. Yes.

10 Q. Can you account for your failure to apply your brakes with enough sufficiency to stop your car? Why didn't you stop your car when you saw him? A. Because I thought if I did he might go over into the gutter in front of me in place of striking me.

Q. Will you elucidate that phrase: you feared that if you stopped your car that that might be some inducement to him to go over in the gutter. A. Yes.

20 Q. On your side of the road? A. Yes.

Q. And then you kept your car going at the same speed for the purpose of signalling to him to do something, was that it? A. Oh, no. I would not signal anybody to do anything of that kind.

Q. Well, we are chiefly concerned now in just what your purpose was at that time, and I mean, that is, I do not understand what it was. A. I wanted to avoid the accident.

30 The Court: Wait a minute.

Q. You did not stop your car lest that action on your part might induce him to go over into the gutter on your side. Now, I don't quite understand that. Will you tell us a little more about it? A. I saw him coming across the road to my car and I slowed up.

40 Q. Yes. A. Thinking that I could avoid him hitting me, and if the wheels of his car had locked then I could have escaped the collision.

Q. What would have been your egress from the

Tilly A. DeWitt, cross.

danger? A. He could have turned off. Why didn't he turn off?

Q. Then the collision— A. If I continued on down, and he is coming across this way here, we would have had a worse collision, would we not?

Q. Was the collision entirely due to the result of his failure to turn off when you gave him the opportunity to do so by slowing up your car? A. Yes.

Q. And he did not turn off? A. He did not turn off. He came directly toward my car.

Q. I am a little obtuse, but I understood you to say that when you first saw him ahead of you he was coming then directly towards your car and that is when you directed your remarks to Mrs. Timmanus, is that true? A. Yes. That is true.

Q. Then did both he and you persist in the same course after you saw him? A. I kept on my course.

Q. And so did he? A. And so did he.

Q. And the two of you came together? A. Yes.

Q. You saw his car after the misfortune subsided. You saw his car over on the south side of the road, did you? A. His car.

Q. Where was his car at? A. His car was in the middle of the road.

Q. In the middle of the road? A. Yes, after the accident.

Q. In what direction was it heading, if you observed it? A. In what direction was his car heading?

Q. Yes. How was its front? A. I did not take notice of it. All I know is that his car was turned over.

Q. It was turned over? A. Yes.

Tilly A. DeWitt, cross.

Q. It was on its side, was it not? A. It was turned over.

Q. You did eventually notice Mrs. Haunstein's car there, didn't you? A. Yes.

10 Q. What was the state of her car? A. To the best of my recollection, Bald's car was in the middle of the road and her car was over toward the south side of the road.

Q. Was hers overturned? A. Up against the embankment, yes.

Q. Was yours? A. Mine was not. Mine was standing.

Q. And was your car at rest at a point westerly, west of the both of these other cars? A. A little west and to the south.

20 Q. A little west and to the south? A. Yes.

Q. So that the order of the cars was first the Bald car overturned in the curb? A. Yes, sir.

Q. The Haunstein car overturned at the south gutter? A. Yes.

Q. And then your car standing? A. My car standing toward the south.

Q. Can you give us any account of how Mrs. Timmanus was expelled from your car? A. I don't know.

30 Q. It was a sedan with closed doors? A. It was a sedan with closed doors. Yes. And very tight doors, being a new car.

Q. Have you any credible recollection at all of the striking of the Haunstein car? A. No, I have not.

Q. And you told Mr. Siegler, however, that you won't deny that you struck the Haunstein car? A. Yes.

40 Q. Isn't the failure of your memory on that point, due to the alarm and consternation, that you

Tilly A. DeWitt, cross.

were in at the time there, and isn't that why you are not able to recall? A. Probably I was all muddled up. So was anybody, under the circumstances after a collision.

Q. Well, now, going back to my original inquiry: isn't it true that your excitement and dismay started at the time when you saw the Bald car first? 10

A. I was startled to see him coming over toward my side of the road. Yes. And that is the reason I made that statement to my sister.

Q. I think, in answering Mr. Townsend, you used the formula that you saw Bald shoot around the curve, did you? A. Shoot around the curve.

Q. Yes. A. I said he came at a pretty good speed.

Q. That was your diction? A. No. You do not stop on the curve— 20

Q: No. You said a car shot around the curve? A. Yes.

Q. That was your observation, you saw a car coming rapidly around the curve? A. Yes.

Q. You were then 350 feet away? A. Yes.

Q. Are you confident of the accuracy of your estimate as to the distance? A. Well, I won't swear to it. 30

Q. It might be likely, as you answered to Mr. Siegler, that you cannot exactly recall what happened in a situation like that, isn't that so? A. What do you mean to infer?

Q. You profess—I want to know; do you profess to be able accurately to recall everything that happened at the time of this trouble? A. I think I am able to recall everything that happened.

Q. And still there are a few lapses in your memory. You cannot recall the Haunstein car? A. No. I cannot. 40

Tilly A. DeWitt, cross.

Q. Your sister was enjoying good health at this time? A. She was in good health? No. She was not. She was failing due to the accident that occurred two or three years before.

10 Q. You were not the driver in that accident? A. No. She was with a friend at the time and the car upset.

Q. Your sister died near the scene, didn't she? A. She died what?

Q. At the scene of the accident? A. At the scene of the accident she died.

Q. What did eventually bring your car to a stop, Miss DeWitt? Was it your own brakes? A. My own brakes, and I pulled up the emergency brake.

20 Q. Well, didn't your car swing around? A. It swung around. Yes.

Q. Let me ask you this question: if it be true that the car actually stopped as a result of your application of the brakes, was there any reason why you did not apply those brakes before you did and stop it prior to the time it did come to rest?

Q. (Last question repeated by the stenographer.) A. Not that I know of.

30 Q. You are grieved because you are made a party to this action, Miss DeWitt? A. I am grieved?

Q. Yes. What is your sentiment on that? A. What is my sentiment?

Q. Do you feel aggrieved or peeved that you should be made a party to this proceeding? A. I certainly do.

40 Q. And you are pained by the suggestion that you might have been the instrumentality in the fatal result of this transaction, isn't that so? A. I certainly am.

Mr. Doherty: I think that is all.

Tilly A. DeWitt, redirect.

Redirect examination by Mr. Townsend:

Q. Miss DeWitt, from the time that you saw the Bald car cross the road, how far did you go approximately before the collision occurred? A. How far did I go?

10

Q. Yes, from the time you saw the automobile, the Bald automobile, come over on your side of the road, how far did your car go, what distance did your car cover before the collision took place? A. About 50 or 100 feet.

Q. Now, you said to Judge Doherty, I think it was Judge Doherty, in speaking before, that you gave him an opportunity and he did not turn off. You expected him to turn off. Which way did you expect him to turn? A. To keep to his right-hand side of the road.

20

Q. Now, referring to photograph Exhibit D-9, when the Bald car hit you, as you have testified, it damaged your left front wheel, did it not? A. It did.

Q. Did it interfere with your steering the car after that? A. Well, I held tight to the wheel. I don't know.

Q. After this car hit you, you then went over to the left-hand side of the road, isn't that correct? A. That is right.

30

Q. When did you find, when did you first find out or did you see your sister thrown from the car? A. I did not.

Q. When did you first ascertain that anything had happened to your sister? A. After I had gotten out of the car.

Q. And where was she lying then? A. In the gutter.

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Q. Now, at the time you got out of the car was your car up against another car? A. It was not.

Q. Was this other car near you at the time, this Chrysler owned by Mrs. Haunstein? A. I don't know.

10 Q. At the time that you were talking with Mr. Bald after the accident, do you recall whether Mrs. Haunstein said anything to him? A. I was giving most of my attention to my sister, and I asked Mrs. Williams to take down their—

Q. No. Did Mrs. Haunstein say anything to you? A. I don't remember.

20 Mr. Townsend: If the Court please, on behalf of the defendant Tilly DeWitt, I move for a direction of a verdict on the ground that it appears under the evidence that at most the deceased was a licensee, and the only duty that this defendant Tilly DeWitt owed her was to refrain from acts wilfully injurious. There is no proof of that in the case, and in addition there is no allegation in the pleadings that she was guilty of acts wilfully
30 Squires' case, that I tried in Freehold, and which the Supreme Court reversed, and the Court of Errors, your Honor will recall, divided on what constituted acts wilfully injurious.

The Court: There is no evidence of anything like that here.

40 Mr. Townsend: No, sir. Now I may say this to your Honor: although in his complaint Judge Doherty alleges she was there at the special insistence and request, the invitation and the request of the defendant Tilly DeWitt, it is denied in the answer. Now the only proof in the case and the

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mere fact that she was there does not raise a presumption that she was there at any invited instance other than that of licensee, and I refer your Honor to the case of *Lyon v. Fitzgerald*, with which your Honor is familiar.

The Court: That will be conceded. 10

Mr. Townsend: Now the testimony is brought out by Judge Doherty, and it is undisputed as to how she came to go and as to what she said. She said, "I had said I was going to Jersey City; she says 'I will go with you.' I said, 'All right.'" Now, that does not create a relation of invitee. She in fact invited herself and had no greater status than that of a licensee, and I refer to your Honor the case of *Gilles v. Liberty*.

In one of these cases, and I don't recall just off-hand just which one it was, there was an accident to one of the relatives living with her— 20

The Court: On the Perth Amboy bridge?

Mr. Townsend: Yes, sir. Where they asked the driver whether he would not take them for a ride, and he gave in, and the Court then held that he was a mere licensee to whom the defendant owed no greater duty than acts wilfully injurious. That is the situation here. There is no proof whatever that she was an invitee. She was nothing more than a licensee. 30

The Court: Well I can see it is a close question, but in order that I might have before me the exact testimony I had a transcript made, and it is very short. She was asked why her sister was riding with her, and the answer was,

"I said I was going down to Jersey City.

"Q. That was earlier in the day? A. That was on Monday morning. 40

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"Q. Yes. A. And I said I would like to go into the city, at the breakfast table, and she said 'I will go with you, Till.' I said, 'Very well.' And that is all I said."

10 Now that is quite different from the present situation. There are two sisters here and, apparently from what has been testified to, they were there living together, or on very intimate terms; and while it would seem that you could very well say, and very well argue, that she was a licensee, that she asked to be taken, still it is quite apparent that she was not sure that she was going to the city. "I would like to go to the city," she said at
20 the breakfast table—not that she was going, but that she would like to go into the city. That being said to the sister, I am going to hold that the jury might find from that an inference. I am going to hold that it is not a court question, but that the jury will have to say whether or not an inference may be properly drawn from that testimony as to whether there was not at least an implied invitation extended to this sister to go with her. I do not think it is a case that the Court can handle as a court only, although I am perfectly willing to
30 concede that the language is very susceptible to interpretation which you very naturally put upon it. But I also feel that it is a question which the Court cannot properly decide without the aid of the jury, and which means that it would be a jury question.

// Mr. Townsend: May I say this, with all deference to your Honor: so far as being any implied invitation, there is no allegation in the complaint that there was any implied invitation.

40 The Court: Of course, there would not have to be.

The Court's Charge.

Mr. Townsend: The allegation in the complaint is there was an express invitation.

The Court: Well, then, that would be sufficiently broad, of course, to include implied right.

Mr. Townsend: My point is that I beg to differ with the Court in that respect. 10

The Court: Well, you naturally would.

Mr. Townsend: I am called upon to meet the issue raised in the pleadings, and that was an express invitation.

The Court: So I will deny the motion and allow you an exception. 11

The Court's Charge.

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The Court charged the jury as follows:

The Court: Gentlemen of the Jury: On August 13, 1929, Emma Timmanus was riding in an automobile of her sister, Tilly A. DeWitt, on a public highway, and it is claimed that the DeWitt car was involved in a collision with two other cars, one belonging to Catherine Bald, and driven by her husband, Louis Bald, and another car driven by Anna Haunstein; and as a result of the collision of two or more of these cars, it is claimed that Mrs. Timmanus met her death, and this suit has been started by her husband, Charles Timmanus, as administrator *ad prosequendum*, as we say, that is, for the purposes of this suit, of his deceased wife against Catherine Bald, the owner of one of these other cars, her husband, Louis Bald, the driver thereof, against Anna Haunstein, the owner of the first car said to have been involved in this collision, and also against 30

40

The Court's Charge.

Tilly DeWitt, the sister of the deceased woman, in whose car Mrs. Timmanus was riding.

10 Now, during the course of this trial the Court has granted a nonsuit as to Anna Haunstein, and she no longer is a defendant in this case; and, so far as the plaintiff's case against Catherine Bald is concerned, the Court granted a nonsuit as to her with the acquiescence of the attorney for the plaintiff here; so that, on the case of the plaintiff, Charles Timmanus as administrator against Catherine Bald, she has been eliminated from this case, although she is still in the case with respect to a counterclaim filed herein by the defendant, Tilly A. DeWitt.

20 So that on the plaintiff's case, there are now two defendants remaining, Louis Bald and Tilly A. DeWitt. Now, you must have that in mind at all times.

30 From an historical standpoint, if for no other reason, it is interesting to know that prior to 1848 in this State where death resulted from the alleged negligent act of another, there could be no cause of action surviving for the benefit of the deceased spouse, if there were any such, and the next of kin, because the cause of action in that respect died with the deceased; but in that year an act was passed, generally referred to as the Death Act, through which a cause of action is preserved for the benefit of the widow or widower, as the case may be, and the next of kin of the deceased person, to recover for any pecuniary injury that may have been sustained through the death of the deceased.

40 Now, this action is brought under that so-called Death Act, and it is important in this case as it

The Court's Charge.

will relate primarily to the question of damages, if you get to the point of damages in this case.

Now, gentlemen, on behalf of the defendant, Tilly A. DeWitt, there has been a counterclaim filed against the two defendants, Catherine Bald, as the owner, and Louis Bald as the driver, of one of these cars, and in that counterclaim Miss DeWitt seeks to recover from the Balds for the damage done to her, Miss DeWitt's, car. And of course you will have to consider that counterclaim along with the claim here brought by Charles Timmanus as administrator *ad prosequendum* of his wife. But so far as the counterclaim is concerned, it is filed only by one defendant, Tilly A. DeWitt, to recover for the damage done to her automobile, and it is a claim against only Catherine Bald and Louis Bald.

Now, gentlemen, the mere fact, if it is a fact, that Mrs. Timmanus met her death as the result of this accident, standing alone by itself, without considering for a moment the question of fault, would not be sufficient to justify you in bringing in a verdict in favor of the plaintiff here and against the defendants, or any of them, because you must consider in this case the question of fault, as the case is based upon a charge of negligence, and negligence presupposes the violation of or the failure to perform some duty which one person owes to another.

And so in this case the charge is that these defendants were negligent with respect to some duty which they owed to this deceased person, and therefore the duty rests upon the plaintiff of satisfying you by a fair preponderance of the evidence that these defendants, or at least one of the defendants, was negligent with respect to some

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The Court's Charge.

duty that was owed to this deceased woman, and that such negligence was a proximate cause of her death.

10 Now, what duty does the operator of an automobile upon a public highway owe to other users of the highway? They are required so to manage, control and operate their machines, to make such observations for other traffic along the highway, and to exercise such judgment to avoid collisions and accidents as a reasonably prudent person would have exercised under exactly the same circumstances.

20 Now, gentlemen, right there is the apparent reason why so much time has been taken and such care exercised in presenting to you evidence in this case, because that was for the purpose of enabling you to determine the circumstances under which this accident happened. Therefore, when you go to the jury room, you will have to determine and agree upon just how this accident happened, because that will involve the circumstances, and when you have found out what the circumstances were, then you will have to apply the rules of law that I am to give you here in fixing or deciding the question of whether or not there was liability.

30 Now, then, from the outset there is one question that I think you will have to determine before you proceed with the rest of this case, because it pertains to the question of whether or not the defendant Tilly A. DeWitt, in whose car Emma Timmanus was riding, is to be retained in this case for the ascertainment of the question of whether or not there was negligence. And that question turns upon whether or not Emma Timmanus; this
40 deceased woman, was an invitee or licensee in Miss DeWitt's car; and the duty rests upon the plaintiff

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of proving that she was an invitee therein, by a fair preponderance of the evidence in this case.

Of course that does not mean the greater number of witnesses produced on one side than on the other; but it does mean the greater weight of the testimony. Whenever that phrase is used, it has reference to the weight of the testimony, rather than to the quantity or number of witnesses that may be produced.

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// Now, what do we mean by "an invitee" and "a licensee"? Well, of course, an invitee, as the very word implies, is one who is invited or asked or induced to ride in the car of another, speaking of particularly the conveyance of a person by an automobile.

But you must remember, gentlemen, in that connection that mere permission—now, follow me—mere permission to ride in a car, or acquiescence to ride therein, for the benefit or convenience alone of the person thus permitted, does not give rise to an invitation, and creates no duty on the part of the owner, or driver, except to refrain from acts wilfully and wantonly injurious. And there is no evidence in this case of the commission of any acts of wanton or wilfull injury.

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But if the owner or the driver induced a person to enter a car for the purpose of riding therein, he may thereby be said to assume an obligation of exercising reasonable care in the operation of the car with respect to the safety of the person who is thus induced or invited to enter the car.

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So you want to have in mind, at all times, the distinction between one who merely acquiesces in a person entering his car and one who extends an invitation to ride in his car. //

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Now, a licensee is a person who is neither a pas-

The Court's Charge.

10 senger by invitation nor a servant who is operating the car for a master, nor is a trespasser, and not standing in contractual relationship with the owner, and is permitted to get into a car or place for his own interest, convenience or gratification only.

20 Now you see a trespasser is one who, without any rights whatever and against the rights of another, enters upon the land or enters upon the property belonging to another. But the owner of a car may acquiesce in a person riding in his car, or he may accede to a request that is made of him to permit another to ride in his car, and if he does that, don't you see the relationship of licensor and licensee arises? By acquiescing in the use or by permitting a person at his request to enter the car and ride therein, you are taking that person into that car as a licensee. Now a licensee is no more entitled than a trespasser to have any other duty performed in his behalf other than that the person who has been thus trespassed against or who has granted the license, shall refrain from acts which are wilfully and wantonly injurious.

30 And so I charge you, in this case, that there has been no testimony in this case with respect to any wanton or wilful acts on the part of these defendants or any of them. And therefore, gentlemen, if the position of Mrs. Timmanus in the DeWitt car was that of a licensee only, and not the position of an invitee, it would be your duty to find a verdict upon that situation in favor of Tilly A. DeWitt, and against the plaintiff, a verdict of no cause of action.

40 But if you do find that Mrs. Timmanus was an invitee in her sister's car, then you will have to

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take up the other questions that will have to be considered when you determine the case as against this other defendant, Louis Bald.

Now, so far as Miss DeWitt is concerned, if her sister was an invitee in her car, and so far as Louis Bald is concerned in any event, the next step that you will have to determine is whether or not these defendants, DeWitt and Bald, were negligent, or whether one of them was negligent. And again the duty rests upon the plaintiff herein of establishing negligence as against these defendants, or one of these defendants, to your satisfaction by the greater weight of the evidence. 10

Now, here you have the drivers of two cars, whose conduct must be considered. Each of them was required to exercise reasonable care in the management, control and operation of their cars, and to make such observations for other vehicles coming along the highway; and to exercise such judgment to avoid collisions as a reasonably prudent person would have exercised under the same circumstances. Now, it is conceded that where this accident happened, the buildings being at a greater distance apart than 100 feet, was in the open country. That being so, the rate of speed prescribed by the Traffic Act was 40 miles an hour. The Act, however, goes on to prescribe: 20

“A rate of 15 miles an hour, in traversing or going around curves or traversing a grade upon a highway when the driver’s view is obstructed within a distance of 100 feet along such highway in the direction in which he is proceeding.” 30

There has been some testimony, of course, in this case with respect to the grade—you will re- 40

The Court's Charge.

member what it was—and with respect to a curve. There is some divergence of testimony, however, as to placing just where the accident did happen with reference to this curve.

10 There is a limitation, however, to this rule regarding the speed, and that is, that nothing therein contained shall be held to permit an automobilist to drive his car recklessly or at any speed greater than that which is reasonable under the circumstances, or so as to endanger the life, limb or property of another person, and it is also provided that it shall be *prima facie* lawful to drive at the speed specified under the circumstances in a given case, and it shall be *prima facie* unlawful to drive at a greater rate of speed; and then, too,
20 automobiles are required to have signalling devices and the operators shall give reasonable warning whenever necessary to insure the safety of other users of the highway, or when approaching another vehicle upon the highway. But there is a qualification there that the signal shall not be given unnecessarily.

30 But, gentlemen, that rule would have very little applicability, if the witnesses who were the drivers of the respective cars saw the other vehicles involved in the collision or the accident, when they were a long way away, and if the blowing of the signal had no bearing upon the accident.

And then, too, an automobile shall keep to the right of the center line of the road whenever the road is of sufficient width to permit that being done, except, of course, in passing a vehicle ahead.

40 And there is a provision also in the Act requiring the keeping to the right. In this case there was not a question of overtaking a vehicle going in the same direction.

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What I was about to say to you has no applicability to that situation. However, I want to say to you that the mere violation of a traffic rule, standing alone of itself, is not of itself alone negligent. It is evidence, of course, which you can take into account, but only in connection with all the other testimony in the case, in order that you may say after you have gotten a complete picture of just how this accident happened, whether the driver, whose conduct you are investigating, exercised reasonable care under all the circumstances of the case. 10

Now, gentlemen, if the defendant, or these defendants Louis Bald and Tilly A. DeWitt, were not negligent, you bring in a verdict in favor of them and against the plaintiff herein, a verdict of no cause of action. 20

Or if you find that one of them was not negligent, that one then would be entitled to a verdict against the plaintiff, a verdict of no cause of action.

But if you find that one or both of these defendants were negligent, then you will have to determine whether such negligence was a proximate cause of the accident. 30

And again, as I have already said to you, the plaintiff has the duty of satisfying you that any negligence, if there was any, on the part of these defendants, or one of them, was a proximate cause of this accident, satisfying you by the greater weight of the testimony.

Now, by "proximate cause" we mean that cause which in all probability and in the ordinary course of events might be expected to bring about the very thing that happened. That is, the moving and 40

The Court's Charge.

efficient cause of an accident, without which the accident would not have happened.

10 And so in this case, if you find that these defendants here, or one of them, were or was negligent, but such negligence was not a proximate cause of the accident, why, again it would be your duty to bring in a verdict in favor of the defendant, or defendants, whose negligence, if any, was not a proximate cause of this accident.

20 Now, if you find that these defendants, or one of them, were or was negligent, and that such negligence was the proximate cause of this accident and you further find with respect to the deceased, Emma Timmanus, that she was an invitee in the car of her sister, then you will have to take up, gentlemen, and consider certain other questions that are raised in this case, and which we will now proceed to consider.

The next question is, whether or not Mrs. Timmanus was guilty of contributory negligence. That is raised as a defense here by these defendants; and, of course, the duty rests upon them of satisfying you as to that by the greater weight of the testimony in this case.

30 Now, I want you to have in mind that she was riding in the car, and not driving it, and there is no evidence in this case to show that she had any control or management over the car or its driver, and so, gentlemen, any negligence, if there was any, on the part of Tilly A. DeWitt could not be imputed to Mrs. Timmanus, and for the reason that I have just stated, namely, that she had no right of control over the operation of the car, and it would therefore be unjust to visit any negligence on the part of Miss DeWitt—if she was negligent—
40 upon Mrs. Timmanus, if Mrs. Timmanus, so far as

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her own conduct was concerned, and so far as her own situation was concerned, was free from contributory negligence.

But although she was a passenger riding in this car, gentlemen, that did not absolve her from all duty with respect to her own conduct, because she was required to exercise reasonable care for her own safety.

10

Such care, as a reasonably prudent person, if riding there in the seat where she was on this occasion, would have exercised under the same circumstances.

And so from what testimony has been adduced here on the witness stand, with respect to the conduct of Mrs. Timmanus in this case, it is for you to say whether or not she exercised reasonable care for her own safety.

20

Now if you find that she did not, if she was negligent, and she contributed thereby in any degree to the happening of this accident, that would bar a recovery by the present plaintiff as administrator *ad prosequendum* of her estate, and even though you might at the same time find that Bald was guilty of negligence, and even if you should find that Miss DeWitt was negligent, and even if they were more negligent than Mrs. Timmanus was.

30

So that if in this case you find that Mrs. Timmanus was negligent and contributed thereby in any degree to the happening of this accident, it will be necessary for you to bring in a verdict in favor of the defendants and against the plaintiff here, a verdict of no cause of action.

Now, gentlemen, if you do find that Mrs. Timmanus was an invitee in the DeWitt car, and you further find that Miss DeWitt, or Mr. Bald, or both of them, was or were negligent, and you further

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find that such negligence was the proximate cause of the accident, and you are, further, satisfied from the evidence in this case that Mrs. Timmanus was free from contributory negligence, then this plaintiff should have a verdict against these defendants, or one of the defendants, who have been found negligent, and whose negligence may have been found to have been the proximate cause of this accident, if, as I have said, Mrs. Timmanus was free from contributory negligence.

Now, before I say anything about the question of damages, it is necessary to allude for a moment to the counterclaim that has been filed in this case by Tilly A. DeWitt.

She has filed a counterclaim against Catherine Bald and Louis Bald only. Not against the other defendant who has been given a nonsuit. But only against Catherine Bald and Louis Bald.

Miss DeWitt seeks to recover for the damage done to her automobile in this case. Now, here you have to consider again the conduct of the operator of an automobile. Mr. Bald, as I have already said, was required to exercise reasonable care in the management, control and operation of his car, to make such observations for traffic and exercise such judgment to avoid collisions, as a reasonably prudent person would have exercised, and such of these traffic rules as may fit his situation would have to be considered in determining whether or not he was negligent, on this counterclaim; but you must also remember that the defendant, DeWitt, now has the duty, on this counterclaim, of satisfying you, that, in the first place, so far as Mrs. Bald is concerned, the owner of that car, it was being operated at the time by her husband, Louis Bald, as her agent or servant. That

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is the first requirement, in order to hold Catherine Bald on this counterclaim, because, don't you see, gentlemen, she was not in the car, although the car was hers; and there is a presumption when the ownership of a car is proved that the car at the time of an accident is being operated by the owner's agent or servant, within the scope of his employment. 10

But that presumption is a rebuttable one, and if it is overcome by fair and uncontradicted proof to the contrary, why, then, gentlemen, the presumption falls, and the owner would be entitled to a verdict, because the owner of an automobile cannot be held responsible for the negligent operation thereof by someone to whom the car may have been loaned but who may be operating the car, unless the car is being operated by that person as the agent or servant of the owner within the scope of whatever that driver has been given to do. 20

So, that is the first thing you will have to determine on this counterclaim; and in determining that question, you must have this in mind: that to constitute the relationship of master and servant, as to third persons, it is not essential that any actual contract will subsist between the parties or that compensation should be expected by the so-called servant. 30

While the relationship of master and servant in its full sense invariably and wholly arises out of a contract between servant and master, yet such contract may be either express or implied. The real test, as to third persons, is as to whether the act is done for one by another with the knowledge of the person sought to be charged with the act, with his assent express or implied, even if 40

The Court's Charge.

there was no request on his part of the other to do the act in question.

10 And so, as I have said here, if Bald, when he was operating this car at the time of this accident, was not the servant or the agent or the representative of his wife, in the sense that I have explained, then it would be your duty to find a verdict on this counterclaim in favor of Catherine Bald, this co-defendant, and against Tilly A. DeWitt, who has filed the counterclaim,—a verdict of no cause of action.

20 But if you find that Mr. Bald was the agent and servant of his wife, and he was in the scope of his employment at the time, whatever you may find with respect to her; nevertheless, so far as Louis Bald is concerned, inasmuch as he was the operator of the car, you will have to determine whether or not on this occasion he was negligent and whether his negligence was a proximate cause of this accident.

30 Now, if you should resolve those questions in favor of Miss DeWitt, then, gentlemen, you see, she would be entitled to a verdict upon this counterclaim, because you would not have to consider the question of contributory negligence, because it is not pleaded in this case so far as the answer to the counterclaim is concerned.

40 With respect to the question of contributory negligence, as it is alleged here by the defendant against Mrs. Timmanus, on the plaintiff's case, I think I should say to you this: that where the driver of an automobile, on the public highway, and this may be considered as to the drivers involved in this accident, without any fault on his part is placed in a position of imminent peril by another vehicle, the law will not hold him guilty

The Court's Charge.

of such negligence as to defeat his recovery if he does not select the very wisest course, and an honest mistake of judgment in such an emergency will not of itself constitute contributory negligence, although another course might have been better and safer.

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All that is required from a person in such an emergency is to act with ordinary care under the circumstances, it being for the jury to determine whether such an emergency existed, and whether he acted with due care or not.

And so in this case as to the charge of contributory negligence, as alleged against Mrs. Timmanus, you will have to take that into consideration.

Now, if you find that the plaintiff here is entitled to a verdict against the defendants or either of the defendants, remembering that there are two defendants, Bald and DeWitt, then the Death Act, to which I have previously referred, gives you the measure of damages which you will apply, and it says:

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“That the jury shall give such damages as they may deem fair and just with reference to the pecuniary injuries sustained by the surviving spouse or next of kin of the deceased person.”

30

Now, you will notice that the first part of that rule is rather broad. It says you shall give such damages as you deem fair and just, but you will remember that the last part of that quotation is of equal importance, and it is this: that you shall only give such damages as will compensate for the pecuniary injuries sustained by those designated persons.

And our Court of Errors and Appeals has said

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The Court's Charge.

that pecuniary injury in this sense means the deprivation of a reasonable expectancy of pecuniary advantage which would have resulted from a continuation of the life of the deceased.

10 Well, now, you cannot, of course, shut your eyes
to the facts that many things might have happened
in the lives of Mr. and Mrs. Timmanus if this un-
fortunate accident had not happened; and you will
have to take into account all the possibilities and
probabilities of this case. She might have died, if
this accident had not happened, from any number
of other causes shortly afterward. She might
have been estranged from her husband or her hus-
band estranged from her. He may go from this
20 court room and not live to see another day. And
while there is evidence that she was teaching
school and earning about \$2,800 at the time of her
death, that condition might not have continued.
You must keep all these things in mind. You must
have in mind also the ages of these respective
parties, Mrs. Timmanus, and also of her husband,
Mr. Timmanus, and also the probability of the con-
tinuation of Mrs. Timmanus' earning power. What
did she contribute of a monetary advantage to her
husband here?

30 Now, you see it is a grave responsibility that is
imposed upon you. A person of the age of Mr.
Timmanus here naturally could not expect, con-
sidering the age of his wife and her earning
capacity, to receive a verdict, if he is entitled to a
verdict at all in this case, commensurate with the
death of a man who was making a million dollars
a year, and who had a lot of small dependent
children. That is why we have to caution you that
40 that portion of the rule that says that you shall
give such a verdict as shall be fair and just has

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to be considered in connection with the pecuniary, the money injury, that has been sustained; and the condition of the life, the resources and the earning capacity, the ages of the persons, have a great bearing upon the question of monetary loss.

And then, too, you must remember this, that even if Mr. Timmanus had an expectancy of contributions from his wife, they would not in all probability come in one lump sum. They probably would have been extended over a period of years. So that you have to capitalize whatever verdict you might find, if you so find, for the plaintiff in this case, by giving the present worth of such expectancy, somewhat in the manner as you discount a note at a bank. You have to get the present worth of any such contributions of expectancy.

Now, gentlemen, just a word about the form of your verdict: if you find in favor of the plaintiff, you will say, "We find for the plaintiff," and then specify whether it is against both defendants—that is, against Mr. Bald, Louis Bald, or against Tilly A. DeWitt, or whether it is against both of them.

Of course, if it is against only one of the defendants, you will say, "We find for the plaintiff and against such defendant and assess the damages in one lump sum."

But at the same time you would say "We find for the other defendant and against the plaintiff a verdict of no cause of action."

If you find in favor of the plaintiff and against both defendants, naturally you will have to say, "We find for the plaintiff and against both defendants," and assess the damages at so much money.

Now, with respect to the counterclaim. If you find that Tilly A. DeWitt is entitled to a verdict

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The Court's Charge.

10 against Catherine Bald and Louis Bald, or against only Louis Bald, you will express that verdict by saying, "We find in favor of the defendant Tilly A. DeWitt on her counterclaim against"—if it is against both of these persons, Catherine and Louis Bald, or if it is against only one, then if that one is Louis Bald, "We find a verdict in favor of Tilly DeWitt against Louis Bald, and assess the damages at so much money."

And if you find a verdict in favor of Catherine Bald and against the defendant Tillie A. DeWitt, on the counterclaim, a verdict of no cause of action, if that is the conclusion you reach.

20 And, of course, if you find in favor of Tilly A. DeWitt and against both of these co-defendants, Catherine Bald and Louis Bald, you will express your verdict by stating just that fact, and state the damages in just one lump sum.

30 Now, if you do find on this counterclaim for Tilly A. DeWitt, you would have to assess the damage done to her automobile. How would you do that? You would find the difference between what the car was worth just before the accident and what it was worth just after the accident. That is what she would be entitled to if she was entitled to recover at all on the counterclaim.

Now, there has been testimony in the case on her behalf that this car was bought new for \$2,800, and she says that she was given an allowance, as I recall it, afterwards of \$950, presumably on a trade-in, and that she says the car was worth before the accident from \$1,500 to \$1,600, and that an expert produced here says that it would cost to repair the car about \$513.70.

40 Of course, as a secondary rule, you are entitled to consider what it would reasonably cost to re-

Requests to Charge.

pair the car provided it would not make the car more valuable than it was before the accident.

Now, remember this, gentlemen, that you are to find a verdict on each branch of this case. In the main case, the plaintiff's case, you will find either for the plaintiff and against these defendants, or one of them, and if against one only, then in favor of one defendant and against the plaintiff a verdict of no cause of action; and if in favor of both defendants, then a verdict of no cause of action against the plaintiff or if against both defendants and in favor of the plaintiff, then assess the damages that you may find. If you find for Miss DeWitt on the counterclaim, then give her a verdict against either or both of the Balds. If the verdict should be the other way, it would be a verdict of no cause of action.

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I think I have covered your requests, have I not, Judge Doherty?

Judge Doherty: Except numbers three and four, as follows:

If there is no evidence whatever as to the conduct of Mrs. Timmanus at and before the time of the injury, then the jury must assume that she was not guilty of contributory negligence. And, if Miss DeWitt expressed the suggestion to Mrs. Timmanus that the latter ride with her, in order to have the benefit of her society on this trip, then Mrs. Timmanus was in the car by invitation.

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The Court: The requests were offered to the Court after he had finished the charge, and not offered to the Court before the charge, and the Court could not have had an opportunity to inspect them, but says that the charge as delivered is sufficiently comprehensive to cover them as far as proper.

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Exception to Charge.

10 Mr. Townsend: I except to the part of your Honor's charge leaving it to the jury to determine as to whether the plaintiff was an invitee, by the defendant Miss DeWitt, and I wish to except to that part of the Court's charge on the same subject where he said that the owner or driver inducing a person to enter therein assumes the obligation to use due care. The exception is taken on the ground that as stated on my motion for a direction of a verdict, under the evidence there was no express invitation for Mrs. Timmanus to ride in the defendant DeWitt's car. Also on the other ground that this permits the jury to find an implied invitation; that an implied invitation was not pleaded in the complaint, but, on the contrary, the complaint 20 stated that at the special invitation and request of said defendant Tillie A. DeWitt, the said Emma Timmanus then and there rode as a passenger, etc. I think that covers everything.

I have no quarrel or disagreement with the Court over what he said in respect to the law as to a licensee or an invitee. But merely on the ground that there was not any evidence to show that she was not an invitee, and secondly, under the complaint and pleadings the issue of implied invitation was not raised or not called upon to meet. Your Honor will allow me an exception? 30

The Court: Yes.

Mr. Doherty: As to the exception to the Court's instruction that the jury should consider the question of contributory negligence of the deceased, Emma Timmanus, you mean that the defendants have offered no evidence whatever in support of that defense?

The Court: Yes. All right. 40

Mr. Townsend: What the Court said in that connection.

The Court: All right, gentlemen, you may retire.

New Jersey Court of Errors and Appeals

CHARLES TIMANNUS, administrator
ad prosequendum of EMMA
TIMANNUS, deceased,
Plaintiff-Appellee,

v.

TILLIE A. DE WITT,
Defendant-Appellant.

Action at Law.

On Appeal from
Supreme Court.

Tried below at
Hudson Circuit
before Ackerson,
J., and a jury.

Verdict for Plain-
tiff.

Defendant's appeal.

BRIEF FOR DEFENDANT-APPELLANT.

(Italics ours except as otherwise indicated.)

This is an appeal from the judgment of \$4,000.00 entered in the Supreme Court, Hudson County Circuit, in favor of the plaintiff Charles Timannus, administrator *ad prosequendum* of Emma Timannus, deceased, and against the defendant-appellant Tillie A. De Witt (hereinafter called appellant).

Plaintiff's intestate, the wife of the plaintiff and a sister of the appellant, was riding in appellant's car, driven by appellant, when it was in collision with two other cars on the public highway. Deceased sustained injuries from which she died.

The plaintiff, upon the opening of his case, submitted to a voluntary nonsuit as against the other defendants, Catherine Bald, Louis Bald and Anna A. Haunstein, the owners and drivers of the other two automobiles involved in the collision.

The sole and basic question involved in this appeal is whether, as a matter of law, the deceased was a licensee or invitee in appellant's car at the time of the accident. The question was raised in the court below upon a motion for a direction of verdict and upon exceptions to the Court's charge.

It is conceded on this appeal that the issue of negligence of the appellant was a jury one.

Pleadings.

The complaint alleged that "at the *special invitation* and *request* of the said Tillie De Witt (appellant), the said Emma Timannus then and there rode as a passenger * * * in her car" (Case p. 2, line 25). The answer not only denied this but alleged that the deceased was merely a licensee (Case pp. 6-7).

We will hereinafter argue that this allegation in the complaint limited plaintiff to proving a special invitation as distinguished from an implied one.

The complaint only alleged ordinary acts of negligence (Case pp. 3-5). Therefore, there was no issue of wilful or gross negligence as involved in the case of *Rose v. Squires*, 101 N. J. L. 438, affd. 102 N. J. L. 449, and the Trial Court so recognized this in his charge to the jury (Case p. 126, lines 30-40).

Facts.

Appellant was driving her automobile in a westerly direction, near Denville, New Jersey, along the Pine Brook Road, with the deceased sitting beside her, when there was a collision with two other automobiles operated by the other defendants, and proceeding in an easterly direction. The deceased was catapulted from the car sustaining the injuries from which she later died (Case pp. 87-88).

The deceased and the appellant were very friendly, living together or near each other and on the day before the accident, which was Monday, had driven to Jersey City (Case pp. 74 and 86). The accident happened on Tuesday afternoon, they

having stayed overnight at the home of deceased at 941 Summit Avenue, Jersey City.

The only evidence as to how the deceased came into the appellant's car is from the appellant, called as plaintiff's witness (Case p. 74, lines 30-41).

"Mr. Doherty:

"Q. Now, without reference to any other circumstances of this accident which I do not want to elicit from you, Miss De Witt, will you just tell us under what circumstances your sister became a passenger in the car with you—why she was riding with you? A. I said I was going down to Jersey City.

"Q. That was earlier in the day? A. That was on Monday morning.

"Q. Yes. A. And I said I would like to go into the City at the breakfast table and she said, 'I will go with you, Till,' and I said, 'Very well, that is all right.'"

We respectfully urge that for the reasons hereinafter discussed, the deceased thereupon became, at the most, a mere licensee.

POINT I.

The Court erred in overruling defendant's motion for a direction of verdict at the close of the whole case. (Assignments 1 and 2, Case p. 12; Motion and Exception; Case pp. 118-121.)

POINT II.

The Court erred in charging the jury as follows:

"Now then from the outset there is one question that I think you will have to determine before you proceed with the rest of this

case, because it pertains to the question of whether or not the defendant, Tillie A. De Witt, in whose car Emma Timannus was riding, is to be retained in this case for the ascertainment of the question of whether or not there was negligence. And that question turns upon whether or not Emma Timannus, the deceased woman, was an invitee or licensee in Miss De Witt's car; and the duty rests upon the plaintiff of proving that she was an invitee therein, by a fair preponderance of the evidence in this case. Of course that does not mean the greater number of witnesses produced on one side than on the other; but it does mean the greater weight of the testimony. Whenever that phrase is used, it has reference to the weight of the testimony, rather than the quantity or number of witnesses that may be produced * * * (Case p. 124, line 30, to p. 125, line 13). * * * And therefore, gentlemen, if the position of Mrs. Timannus in the De Witt car was that of *a licensee only, and not the position of an invitee, it would be your duty to find a verdict upon that situation in favor of Tillie A. De Witt, and against the plaintiff, a verdict of no cause of action.* But if you do find that Mrs. Timannus was an invitee in her sister's car, then you will have to take up the other questions that will have to be considered when you determine the case as against the other defendant, Louis Bald" (Case p. 126, line 34, to p. 127, line 3).

"Now gentlemen, if you do find that Mrs. Timannus was an invitee in the De Witt car, and you further find that Miss De Witt, or Mr. Bald, or both of them, was or were negligent, and you further find that such negligence was the proximate cause of the accident, and you are, further, satisfied from the evidence in this case that Mrs. Timannus was free from contributory negligence, then this plaintiff should have a verdict against these defendants, or one of the defendants, who have been found negligent, and whose negligence may have

been found to have been the proximate cause of this accident, if, as I have said, Mrs. Timanus was free from contributory negligence" (Case p. 131, line 38 to p. 132, line 15). (Assignments 3 and 4, Case pp. 13, 14; Exceptions, Case p. 140.)

ARGUMENT.

Points I and II involve the same fundamental question of law and will therefore be argued together.

A.

The Honorable Court below conceived that an implied invitation could be spelled out of the above language of the appellant (see Colloquy, Case pp. 118, 119, 120 and 121). The Court was apparently satisfied that the above language did not constitute a special invitation (Case p. 120).

The difficulty with this position of the Trial Court, as we see it, is that the plaintiff in his pleadings relied upon a special invitation and not an implied one, and that he therefore was confined to establishing an invitation of a greater degree than even an express invitation, namely, a special invitation.

While the language of the complaint in that respect is perhaps unusual, yet special invitation "*means more than a written or verbal invitation*" (which is an express one).

Special request is defined in Bouvier's Law Dictionary, Vol. 3, page 3100, as follows:

"A request actually made at a particular time and place; this term is used in contradiction to a general request which need not state the time when, nor the place where made" (3 Bouvier Inst. N. 2843).

Chief Justice MCKEE in the case of *Turess v. N. Y. S. & W. R. R. Co.*, 32 Vroom, at page 318, defined express invitation in the following language:

“* * * invitation which creates such a relation may be express as when the owner or occupier of land by words, invites another to come on it or make use of it or something thereon; * * *.”

“Special,” is defined by Webster as “Particular; peculiar; different from others; designed for a particular purpose, occasion, or person; limited in range; confined to a definite field of action.” *Platt v. Craig*, 63 N. J. E. 594, 66 Ohio St. 75.

“The primary signification of the word ‘special’ is designating a species or sort. It is also used as meaning ‘particular or peculiar; denoting something more than ordinary or appropriate; designed for a particular purpose; or extraordinary and uncommon.’ *Kundolf v. Thalheimer*, 12 N. Y. (2 Kern.) 593, 596.” (Words and Phrases, Vol. 7, p. 6565.)

We submit, therefore, that this language of the complaint implied something greater than an express invitation and that the plaintiff was, at least, confined to proving an express invitation.

It is a fundamental rule of law that a pleading will be construed against the pleader. This doctrine was held in the case of *State v. Jersey City*, 9 Gummere, at page 434, where the Chief Justice said:

“* * * and it is elementary law that each party’s pleading is to be construed most strongly against himself and most favorably to his adversary, and, so, any ambiguity or omission therein must be at the peril of that party in whose allegations it occurs. * * *”

We are not endeavoring to make merely a captious objection. That we relied upon this allegation of the complaint is apparent, we submit, from our failure to cross examine the appellant as to the circumstances and conditions under which said conversation took place (see Case pp. 75-75). We did not believe that the evidence on this point constituted a “special invitation and request.”

We submit for the reasons stated that the deceased was merely a licensee and that the Court erred in its refusal to direct a verdict for defendant.

B.

The construction of the above language of the appellant and not the circumstances under which it was uttered was, we submit, for the determination of the Court. This language presented no ambiguity. Neither the learned Trial Judge nor the jury could, we submit, thereunder properly add words thereto such as "I would like to go into the City if you will go," so as to create a special invitation. The deceased, upon the subject being mentioned, said, "I will go with you."

The construction of the word "will" is to be determined by the rules of grammar and the common significance of language. In the sense in which it is used in the context, the word "will" meant a present determination or direction by the deceased to go with the appellant whether or not the latter desired her to do so.

We therefore submit that this language did not constitute either a special invitation or an express one. We likewise urge that for the reasons aforesaid, the plaintiff could not rely upon an implied invitation because there was no justification for this position in the matter.

If the plaintiff intended to rely upon an implied invitation to become a passenger in appellant's car, it was necessary for him to so plead and that without an allegation as a foundation for proof to be offered thereunder, the plaintiff could not recover on that theory of law. It must be assumed that upon an issue of law words are used in their legal sense.

Kennedy v. N. J. Street Railway Co., 72
N. J. L. 20.

This case is analogous, we submit, to that of *Lutvin v. Dopkus*, 94 N. J. L. 65, where the plaintiff solicited the defendant for a ride in his automobile, and the Court held that the plaintiff was a mere licensee.

The deceased being, as we urge, a mere licensee, the appellant was under no duty except to refrain from acts wantonly or wilfully injurious.

Phillips v. Library Company, 55 N. J. L. 307;
Higgins v. Goerke Kirch Co., 91 N. J. L. 464.

The Court properly held that the issue of wanton or wilful injury was not in the case (Case p. 126, lines 30-40).

Referring to appellee's brief, it says under Point II, page 4:

"It cannot be claimed that a long sustained practice of devoted sisters to ride in each other's company, * * * constituted a repetition of mere permissions so as to constitute the guest a licensee."

The difficulty with this statement is that there is no evidence in the case to sustain such a contention, aside from the fact that it is quite immaterial as to the points herein raised.

The judgment should be reversed and judgment entered for the defendant-appellant.

Respectfully submitted,

MARK TOWNSEND, JR.,

Attorney for Defendant-Appellant.

MARK TOWNSEND, JR.

THOMAS F. DOYLE,

Of Counsel.

New Jersey Court of Errors and Appeals

CHARLES TIMANNUS, Administra-
tor *ad prosequendum* of Emma
Timannus, deceased,
Plaintiff-Appellee,

vs.

TILLIE A. DE WITT,
Defendant-Appellant.

On Appeal
from Supreme
Court.

BRIEF FOR APPELLEE.

This appeal brings up a judgment entered against the appellant in favor of the appellee on a verdict entered in a case brought under the Death Act. Appellee's wife was killed in a three-cornered collision between cars operated by appellant, Tillie A. De Witt, and by Louis Bald, agent of Catherine Bald, and by Anna A. Hanstein. The action was instituted against Miss De Witt, Mrs. Hanstein, Mrs. Bald and her operator. At the trial a non-suit was ordered as to Mrs. Hanstein, and the jury's verdict was in favor of Mrs. Bald and her operator on the question of negligence, and against the defendant, Tillie A. De Witt, the appellant, solely (Postea, p. 10). At the close of the whole case appellant's attorney moved for a direction in her favor on the sole ground that it appeared under the evidence that the deceased was a licensee, and that the appellant was not shown to have been guilty of acts wilfully injurious (p. 118, ll. 20-25). The motion was denied, and the grounds of this appeal are

that the Court erred in so ruling, as well as in two instructions, both relating to the distinctive obligations of the appellant to a licensee and an invitee (Grounds of Appeal, p. 12; Motion to Direct, p. 188; Charge, p. 124, ll. 30 to 40; p. 125, ll. 1 to 12; p. 131, ll. 36 to 40; p. 132, ll. 1 to 15; p. 126, ll. 32 to 40; p. 127, ll. 1 to 3).

The state of the case as printed omits the pleadings in respect of the defendants, Anna A. Hanstein, Catherine Bald and Louis Bald, and the record likewise omits the rule for judgment.

By her grounds of appeal the appellant accepts the finding of the jury as to her failure to use due care, her answerability for the damage and the propriety of the verdict in respect of those features. Her contention is that the status of the deceased as an invitee was not inferable from the evidence, and that the Court erred in its instructions on the subject. The evidence on the point was slight, but very significant.

Facts.

Appellant and the deceased were sisters, past middle age, and both followed the profession of teaching (p. 76, l. 11; p. 77, ll. 1 to 10; p. 79, l. 25; p. 85, ll. 30 to 35). According to appellant, although she had three other sisters, she and the deceased always went out together and were inseparable (p. 85, l. 40; p. 86, ll. 1 to 10). Since 1918 appellant and her sisters jointly owned and maintained a summer home at Lake Hopatcong, where the deceased each year spent her vacation, either as guest or as a member of appellant's family (p. 86, ll. 25 to 32; p. 83, ll. 38 to 40; p. 84, ll. 1 to 5). The deceased's husband was also entertained during his brief vacations or occasional week-ends (p. 84, ll. 5 to 15).

On the morning before the accident, while appellant and deceased were at the breakfast table, appellant told deceased that she would like to go to Jersey City, and deceased said, "I will go with you, Till," and appellant replied, "Very well. That is all right" (p. 74, ll. 30 to 40; p. 75, ll. 1 to 10), and this conversation was the explanation of why deceased was in the car at the time of the accident. The only purpose of the trip was a call which the appellant desired to make. They left their summer residence together on the morning of the conversation and when they arrived in Jersey City the appellant could not see the person whom she was to visit. She and deceased therefore stayed over night together at the deceased's home, and appellant was there entertained until between 3 and 4 o'clock the next afternoon. Then they started to return to their summer residence (p. 87, ll. 10 to 28), and the accident occurred on the trip. The appellant testified that just before the collision she saw a car shoot out from around a curve, and said to the deceased, "Oh, Em, look at this fellow coming straight for us" (p. 87, l. 38; p. 110, l. 39).

POINT I.

If an express invitation was not fully established by the evidence, it was at least a jury question.

Appellant and deceased, being inseparable companions who always went out together, were having breakfast when the trip was proposed. The intimate amenities were circumstantial evidence of their purposes. The proposal of the trip emanated from the appellant when she announced her intention to drive to the city. The deceased an-

nounced that she would go along, signifying her readiness to furnish company for the appellant. The former did not couch her words as a request, but submitted a mere suggestion. To such suggestion the appellant answered: "Very well. That is all right." From this testimony the jury, according to the construction which it put on the appellant's language, might have found an express invitation.

POINT II.

If there was no express invitation, there was abundant evidence from which the jury might legitimately infer that there was an implied invitation.

It cannot be claimed that a long-sustained practice of devoted sisters to ride in each other's company, and who "always went out together and were inseparable", constituted a repetition of *mere permissions* so as to constitute the guest a licensee. Invitation is identical with permission, but it is only when such permission is *mere* that it amounts to a license only.

If the visitor or guest enters upon the property or thing for a purpose in any degree connected with the business in which the occupant is engaged and thereby creates any mutuality of interest, he is there by invitation and not by mere permission, although the object of his visit may not be for the benefit of the occupant.

Southcote v. Stanley, 1 H. & N. 247, cited in *Kubinak v. Lehigh Valley R. Co.*, 79 N. J. L. 438.

Any act or conduct which leads another to believe that the owner's automobile is intended by

the owner to be used by such person, and that such use is not only acquiesced in but accords with the intention and design of the owner, constitutes an implied invitation.

Turess v. New York etc. R. Co., 61 N. J. L. 314;

Furey v. New York Central R. Co., 67 N. J. L. 270.

The gist of the liability consists in the fact that the injured party did not act *merely* on motives of his own, to which no act or sign of the owner or occupier contributed, but that he entered the premises because he was led by the acts or conduct of the owner or occupier to believe that the premises were intended to be used in the manner in which he used them, and that as such was not only acquiesced in, but was in accordance with the intention or design for which the land or place was adapted and prepared or allowed to be used.

Liability turns on the question whether the defendant knew or ought to have known that what he did, and permitted to be done, might give rise in an ordinarily discerning mind to a natural belief that he intended that to be done, which his conduct led plaintiff to believe that he intended.

Gibson v. Skidmore, 99 N. J. L. 131;

Creamer v. Levy, 9 N. J. Adv. Repts., 405 (June 20, 1931).

WRIGHT vs. BEITH, 157 ATL. 840 (Nov. 16, 1931).

The questions of the bearing of the kinship between the parties, their intimate association, long standing practice as to riding together, the beneficial nature of deceased's company to appellant on the trip, the errand being exclusively for the benefit of the appellant, the proper interpretation of the conversation before starting out,

the whole range of appellant's conduct towards deceased as constituting a sign of the former's intention and the normality of deceased's belief that she was a welcome and invited guest on the trip, were all to be considered by the jury in determining whether there was an invitation thereby express or implied.

If there is any evidence which might reasonably tend to support the verdict, though such evidence may not be of an entirely certain and satisfactory nature, it will not be disturbed.

Klitch v. Betts, 89 N. J. L. 348.

The charge of the Court was unexceptionable in point of law.

It is respectfully submitted that either this appeal should be dismissed because of the omission of the rule for judgment, or that the judgment should be affirmed.

RICHARD DOHERTY,
Attorney for, and of Counsel
with, Appellee.

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The whole course of appellant's conduct towards
deceased as constituting a sign of the former's
intention and the necessity of deceased's belief
that she was a witness and invited guest on the
part, were all to be considered by the jury in de-
termining whether there was an invitation thereby
extended to appellant.

If there is any evidence which might reason-
ably lead to support the verdict though not
conclusive it will be held a sufficient ground and satis-
factory notice is still not be disturbed.

Kirk v. Kirk, 89 N. J. L. 348.

The choice of the Court was unobjectionable
in point of law.

It is respectfully submitted that either this
appeal should be dismissed because of the mis-
take of the rule for judgment, or that the judg-
ment should be affirmed.

Respectfully,
Attorney for the Appellee
with Appellee.