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**Notice of Appeal.**

Filed April 16th, 1928.

**New Jersey Supreme Court.** 10

PASSAIC COUNTY.

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MARTHA PURCELL and ALEX. PURCELL, Plaintiffs,	}	Action at Law Notice of Appeal.	20
vs. ROBERT G. POLLOCK, Defendant.			

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To JOSEPH P. BETZ, Esquire, Attorney for  
Plaintiffs.

Sir:

Take Notice that the defendant appeals to the  
Court of Errors and Appeals of the State of New  
Jersey from the whole of the judgment entered  
in this case. 30

Dated, March 21, 1928.

Respectfully yours,

HEINE, BRADNER & LAIRD,  
Attorneys for Defendant.

**Grounds of Appeal.**

Filed May 2, 1928.

**NEW JERSEY COURT OF ERRORS AND  
APPEALS.**

10	MARTHA PURCELL and ALEX. PURCELL, Plaintiffs,  vs.  ROBERT G. POLLOCK, Defendant.	}	Action at Law On appeal from New Jersey Su- preme Court, Passaic Circuit.  Grounds of Appeal.
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The defendant herein states the following grounds of appeal:

- 20     1. The refusal of the trial court to grant the defendant's motion for non-suit on the ground that
- (a) The plaintiffs failed to prove any negligence on the part of the defendant.
- (b) The plaintiffs were guilty of contributory negligence.
- 30     2. The refusal of the trial court to direct a verdict for the defendant on the ground that
- (a) The plaintiffs failed to prove any negligence on the part of the defendant.
- (b) The plaintiffs were guilty of contributory negligence.

Respectfully yours,  
 HEINE, BRADNER & LAIRD,  
 Attorneys for Defendant.

To JOSEPH P. BETZ,  
 Attorney for Plaintiff,  
 40 National Bank Building,  
 Passaic, New Jersey.

**Summons.**

*The State of New Jersey to*—ROBERT G. POLLOCK:

You are Hereby Summoned to  
 answer the annexed complaint of  
 Martha Purcell and Alex Purcell,  
 (Seal) in an action at law in the New  
 Jersey Supreme Court, Passaic  
 County, and Take Notice that un- 10  
 less you file your answer to the  
 said complaint with the Clerk of the New Jersey  
 Supreme Court, at Trenton, New Jersey, within  
 twenty days after the service upon you of this writ  
 and the annexed complaint, the plaintiffs may pro-  
 ceed in the suit and judgment may be entered  
 against you.

Witness, WILLIAM S. GUMMERE, Esq., Chief  
 Justice of our New Jersey Supreme Court, at 20  
 Trenton, this twentieth day of December, 1926.

E. J. KELLEHER,  
 Clerk.

JOSEPH P. BETZ,  
 Attorney.

30

40

**Complaint.**

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

10	MARTHA PURCELL and ALEX. PURCELL, Plaintiffs,  vs.  ROBERT G. POLLOCK, Defendant.	}	Action at Law  Complaint.
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20 Plaintiffs Martha Purcell and Alex Purcell of the City of Clifton, in the County of Passaic and State of New Jersey, say that:

## FIRST COUNT.

30 1. On or about the fifth day of October, 1926 the defendant Robert G. Pollock was the owner of a certain Buick automobile which he was driving on and along Watchung Avenue, a public highway in the town of Bloomfield, New Jersey, in a general westerly direction and approaching the intersection of Watchung Avenue with Broad Street.

40 2. At the time aforesaid plaintiff Martha Purcell was a passenger in an automobile being driven by Alex Purcell on and along the aforementioned Broad Street, a public highway in the town of Bloomfield, in a general northerly direction. Plaintiff Martha Purcell did not exercise any control over the automobile in which she was a passenger nor over the operation thereof.

*Complaint.*

3. On the fifth day of October as aforesaid defendant in driving the Buick automobile as aforesaid was under the duty of driving the same in a careful and lawful manner, and of safeguarding the rights of other lawful users of the said highways and of complying with all the laws of the State of New Jersey, regarding the operation of Motor Vehicles. 10

4. Defendant in violation of his duty as aforesaid operated his automobile along the said Watchung Avenue at or near the Broad Street intersection in a negligent, careless and reckless manner, without having proper control thereof, and did drive toward and over the intersection of Watchung Avenue and Broad Street at an excessive and unlawful rate of speed without giving any warning of his approach and without taking any precaution to avoid endangering the life of any one driving along the said Broad Street. 20

5. That by reason of his negligent, careless and reckless driving as aforesaid the defendant struck the automobile in which the plaintiff was a passenger with such force so as to drag it along the road and to smash it, and the force of the impact caused by the negligent, careless and reckless driving of the said defendant was so great that the plaintiff was thrown from her seat against the plate glass window of the automobile in which she was a passenger, and was thrown to the floor of the said car and was hurled and buffeted about with great force and violence. 30

6. By reason of defendant's action as aforesaid plaintiff sustained severe injuries to the head, 40

*Complaint.*

sides, back, legs and fingers and suffered severe bruises and contusions of the entire head, right shoulder and right arm, and the entire right side of her body, and her back and legs, and sustained severe cuts and lacerations and scars on the fingers of her right hand, and suffered divers other painful  
10 internal and external injuries, which scars and injuries are of a permanent and lasting nature. Plaintiff also sustained a severe and grievous shock to her entire nervous system from which she still suffers and will continue to suffer for a long time to come.

7. Plaintiff by reason of said injuries lost a great quantity of blood and became and was sick, sore, lame and disordered, and has suffered from  
20 the results of said injuries ever since that time.

8. By reason of said injuries said plaintiff has suffered and undergone great pain and torment both of body and mind and still suffers therefrom.

9. As a result of the said injuries caused by the defendant's actions plaintiff was confined to her home and bed for a long time and prevented  
30 from attending to her usual duties, and will be so prevented for a long time to come, all to her great damage.

Wherefore, plaintiff Martha Purcell, demands from defendant Robert G. Pollock the sum of Fifteen Thousand (\$15,000) Dollars damages on the First Count.

*Complaint.*

## SECOND COUNT.

1. Plaintiff Alex Purcell is the husband of the plaintiff Martha Purcell and incorporates in this count all the allegations contained in the first count of this complaint.

2. By reason of the injuries sustained by his wife this plaintiff has been compelled to expend large sums of money for medicine and physicians services in endeavoring to heal and cure the injuries sustained by his wife Martha Purcell. 10

3. By reason of the injuries sustained by his wife Martha Purcell and caused by the negligence of the defendant Robert G. Pollock, plaintiff Alex Purcell has been deprived of the services and attention of his said wife and has suffered the loss of consortium. 20

Wherefore, plaintiff Alex Purcell, demands damages from defendant Robert G. Pollock in the sum of Five Thousand (\$5000.00) Dollars on the Second Count.

JOSEPH P. BETZ,  
Attorney of Plaintiffs.

30

40

**Answer.**

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

10	MARTHA PURCELL and ALEX. PURCELL,	}	Action at Law Answer.
	Plaintiffs,		
	vs.		
	ROBERT G. POLLOCK,	}	
	Defendant.		

---

20 The defendant, answering the plaintiffs' complaint herein says that

He denies each and every allegation contained in the first and second counts of the complaint.

**FIRST DEFENSE.**

This defendant says that the plaintiffs were guilty of contributory negligence.

**OBJECTION IN POINT OF LAW.**

30 This defendant will object at or before the trial of the issue joined herein that the complaint filed does not contain facts sufficient to sustain a cause of action.

HEINE, BRADNER & LAIRD,  
Attorneys for Defendant.

**Demand for Bill of Particulars.**

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

<p>MARTHA PURCELL and ALEX. PURCELL, Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>ROBERT G. POLLOCK, Defendant.</p>	}	Action at Law	10
	}	Demand for Bill of Particulars.	

To the above named plaintiffs, and or, Joseph P. Betz, National Bank Building, Passaic, N. J. 20

Please take notice that the defendant herein demands that you furnish him with a bill of particulars in reference to the following matters:

1. What injuries does the plaintiff, Martha Purcell claim to be permanent, as a result of the alleged accident?
2. How long was the plaintiff, Martha Purcell confined to her home, as a result of the alleged accident? 30
3. What are plaintiff's Martha Purcell's usual duties as alleged in paragraph 9 of the complaint?
4. Give in detail medical expenses expended

*Bill of Particulars.*

by the plaintiff, Alex Purcell as alleged in the second count in the complaint.

Dated, December 28, 1926.

Respectfully yours,

10

HEINE, BRADNER & LAIRD,  
Attorneys for Defendant.

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**Bill of Particulars.**

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

20

MARTHA PURCELL and ALEX.  
PURCELL,

Plaintiffs,

vs.

ROBERT G. POLLOCK,  
Defendant.

Action at Law  
Bill of  
Particulars.

30

To Heine, Bradner & Laird, Esqs., Attorneys of  
Defendant:

Gentlemen:

The following is a Bill of Particulars of the matters referred to and requested in your Demand:

40

1. Plaintiff, Martha Purcell, claims the follow-

*Bill of Particulars.*

ing injuries sustained in the accident referred to in the Complaint will be permanent; injuries to the fingers, left leg and right side rib fracture and great nervous shock.

2. Confined to bed for five weeks, still partially confined to home. 10

3. Housekeeper and all duties usually performed by a wife.

4. Alex Purcell has expended \$33.00 for doctor's bills and about \$15.00 for medicinals and appliances to assist in the cure of Martha Purcell. These expenses are not completed and are continuing.

Respectfully yours, 20

JOSEPH P. BETZ,  
Attorney for Plaintiffs.

30

40

**Postea.**

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

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10	MARTHA PURCELL and ALEX. PURCELL,	Plaintiffs,	}	Action at Law Postea.
	vs.			
	ROBERT G. POLLACK (or Pol- lock)	Defendant.		

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This cause was tried before Judge Newton H. Porter, at the Passaic Circuit, with a jury on March 1st and 2nd, 1928;

20 The jury rendered a verdict of \$1500.00 in favor of plaintiff, Martha Purcell, and a verdict of \$448.00 in favor of plaintiff, Alex Purcell, against the defendant.

NEWTON H. PORTER,  
Judge of the Passaic Circuit.

**Judgment.**

30

Wherefore it is Ordered that judgment final be entered in favor of the plaintiff, Martha Purcell in the amount of \$1500. and in favor of the plaintiff, Alex Purcell in the amount of \$448.00 and against the defendant, with costs to be taxed.

A true copy

FRED L. BLOODGOOD,  
Clerk.

40

**Testimony.**

NEW JERSEY SUPREME COURT.

PASSAIC CIRCUIT.

<p>MARTHA PURCELL and ALEX. PURCELL, Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>ROBERT G. POLLOCK, Defendant.</p>	<p style="font-size: 4em;">}</p>	<p>10</p> <p>Action at Law.</p>
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Paterson, N. J., March 1, 1928.

Before—Hon. NEWTON H. PORTER, Judge, and a Jury. 20

APPEARANCES:

JOSEPH P. BETZ, ESQ., (Messrs. Ward & McGinnis, of counsel), for the Plaintiffs;

MESSRS. HEINE, BRADNER & LAIRD, (James H. Dunn, Esq., of counsel), for the Defendant.

(A jury was duly empanelled) 30  
(Evening Recess).

Paterson, N. J., March 2, 1928;  
10:00 A. M.

Mr. McGinnis opened the case to the Jury on behalf of the Plaintiffs.

Mr. Dunn opened the case to the Jury on behalf of the Defendant. 40

## PLAINTIFF'S CASE.

RAYMOND G. PARKE, sworn for Plaintiffs.

*Direct-examination by Mr. Ward:*

Q. What is your profession? A. Assistant City Engineer of Passaic.

10 Mr. Dunn: May I ask, is it for the purpose of introducing the map?

Mr. Ward: Yes.

Mr. Dunn: I will admit the map.

Mr. Ward: I think the stenographer anticipated that and marked it P-1.

(Map marked Exhibit P-1)

The Court: I might also say that I live within a stone's throw of there, and I think the map is right.

20 Q. This map, Mr. Parke, is drawn to what scale? A. One inch is equal to ten feet.

Q. And is marked on the map? A. Yes, sir.

Q. What does this indicate? A. Those are gasoline tanks in front of a gas station.

Q. Of the usual type? A. Yes, sir.

Q. And the "Brookdale Service Station", one-story; what is that? A. That is the gasoline station.

30 Q. One story high? A. Yes, sir.

Q. Now, will you come down here, please, and tell us for the purpose of the record what the distance is between the line where this mark is, to the station? A. I will have to scale this off.

Q. Scale it, if you will. And I might ask you first, if the dark spot upon the—the black spot upon the map—if that indicates a telegraph pole? A. Yes, a telegraph pole; distance from that pole to the station is 43 feet.

40 Q. I notice you have indicated upon the souther-

*Raymond G. Parke—Direct.*

ly side of Watchung Avenue something that is marked as an oil sign. What is that? A. That is advertising for oils, for motor oils.

Q. What is the character of it? A. That is a sign, composed of \_\_\_\_\_, with a board—cross-board— on the top of it.

Q. What about the second place that is marked upon the map, along the southerly side of Watchung Avenue, as “oil sign”? A. That is the same, a sign. 10

Q. Going further towards the east,, this black spot is what? A. That is a pole.

Q. What is this on the southerly side of Watchung Avenue, east of Broad Street? A. That is a one-story building; it is vacant now, I do not know what it is used for.

Q. Now, on the northerly side of Watchung Avenue, how far back from the roadway is the walk? A. That is 50 feet. 20

Q. And it extends along—? A. Parallel with Watchung Avenue.

Q. Parallel with Watchung Avenue, in the manner that you have shown or indicated on the map? A. Yes, sir.

Q. This two story frame that you have indicated on the northerly side of Watchung Avenue, east of Broad Street; what is that? A. That is a dwelling. 30

Q. What is its character? A. It is a house, two story frame house, occupied.

Q. How far is it from the center of Broad Street down to the nearest line of the house on Watchung Avenue, that you have just described? A. About 190 feet; there is “190” right there,—is that what you mean?

Q. This mark that you have made with a lead 40

*Raymond G. Parke—Direct.*

pencil is 190 feet, the one furthest from that is 190 feet? A. Yes.

Q. The mark which is indicated on the map as a traffic beacon, what is that? A. That is the traffic beacon in the intersection.

10 Q. What is its character? A. I think that is a flashing beacon.

Q. How far is that beacon from the nearest part of the curb line on Broad Street, which would be the easterly side of Broad Street? A. This is not a curb; there is no curb on that side of the street.

Q. Just give the situation there to the jury, please; the jury wants to know. A. On the East side of Broad Street there is no curb; the pavement is shown as that black line on the southeast side.

20 Q. In other words, there is a pavement there, there being no curb line or no curb, so that the automobiles might run into the gas station; is that true? A. Yes.

Q. Well, how far is the curb line itself—by that, I mean, the place where the curb line would be,—from the beacon? A. I cannot tell that.

The Court: He could not tell that.

30 Mr. Ward: I understood he said there was a black mark there.

The Court: No, he said that mark represented the improved road; the nature of that is cinders, to go into the gas station, and he cannot tell. He would have to guess where the curb would be. There is no curb along there.

Mr. Ward: That, I do not know; your Honor is more familiar with the situation.

40 The Court: Yes, I am very familiar with

*Raymond G. Parke—Direct.*

it. You might ask him how far it is from the beacon light to the edge of the improved road, if you want to get that.

Mr. Ward: Yes, sir.

Q. Is that improved road? A. Yes, sir; that is asphalt road.

Q. How far is it from the beacon light to the edge of the improved road east of the traffic beacon? A. About thirty feet.

10

Q. Is there a curb line running along Watchung Avenue and into Broad Street as indicated by this black line? A. No, sir.

Q. No curb line there, you say? Well, how far is it from the traffic beacon to the edge of the improved road which would be west of the traffic beacon? A. West?

20

Mr. Ward: You know what I mean?

The Court: You mean north.

Q. I think we have agreed that this is going to be called north, this south, this west and this east.

The Court: You want the west and mean the north?

Mr. Ward: No, sir; here.

The Court: Well, that is exactly north, according to the arrow; you might say northwest.

30

Q. Make a mark, if you will, please, so that we won't be in doubt about it. Watchung Avenue, what is the character of that— A. That is 22 feet.

Q. —street? A. That is asphalt street pavement.

Q. Was it that character on the 5th of October, 1926? A. Well, I made the survey February 1,

40

*Raymond G. Parke—Direct.*

1928; and that is the character then, and it seemed to be over a year or two old.

The Court: When you say "asphalt", you mean a smooth pavement.

The Witness: That is right.

10

The Court: It is not, as a matter of fact, an asphalt pavement.

The Witness: It is the type of asphalt; it may be Topeka.

The Court: Or it may be bithulithic or Franklinite?

The Witness: Asphalt type, anyway.

The Court: Smooth surfaced?

The Witness: Yes.

Mr. Ward: Cross-examine.

20

*Cross-examination by Mr. Dunn:*

Q. Were you asked the width of these streets. Mr. Parke, by Mr. Ward? I did not hear. A. No. Broad Street is seventy-five feet wide; Watchung Avenue is sixty feet wide.

The Court: You mean the improved part?

30

The Witness: No, complete; over all.

The Court: From building line to building line?

The Witness: That is right.

Q. How wide is the intersection at this point in the vicinity of the beacon light? A. By scaling it, you mean?

Q. Yes, if you will, please. A. It scales about 46 feet.

40

Mr. Dunn: That is all.

*Raymond G. Parke—Cross.*

The Court: That would be at its nearest point, would it not, Mr. Parke?

The Witness: Yes, sir; I have scaled it to its nearest point; it is on a curve there.

Q. What is the width of the improved road at that point, Mr. Parke? 10

The Court: That is what he measured Mr. Dunn.

Q. And the roads that you have described as being sixty and seventy-five feet respectively, was that the improved surface that you had reference to? A. No, that would be from building line to building line, but there is no indication now because there is no building along there at the present time. 20

Q. What would you say was the width of the improved part of those roads? A. Show me what you mean. I will scale it for you.

Q. Broad Street, you say, that is seventy-five—Watchung— A. The pavement was twenty-five feet on Broad Street; now, down across here, the pavement is twenty-two feet wide.

Q. Well, at that point—

Mr. Ward: That is the improved road? 30

The Witness: Yes, sir.

Q. Yes, the improved part of Broad Street? A. Yes, sir.

Q. What would be the improved part at that point where you said the width was forty-six feet? Was that all improved there? A. Yes, that is from one edge of the pavement over to the other edge of the pavement; you see, that is supposed to be the pavement. 40

*Raymond G. Parke—Redirect.*

Q. At this point, at the traffic beacon, where you said it was forty-six feet; was that all improved?

A. Yes, it is the width of the pavement.

Q. I beg pardon? A. That is the width of the pavement.

Q. Yes? A. Yes.

10 Q. What would be the width of this section here? A. That is forty-six feet, scaling across from that line to this line.

Q. At that beacon, forty-six is the narrowest point, is it not? A. Yes.

Mr. Ward: Make two "X's" there.

Q. Yes, if you will. A. (Witness indicates.)

20 Q. Now, going to the east of that the improvement gets wider, does it not, the improved portion? A. Yes.

Q. And going to the west it gets wider? A. Going this way?

Q. Yes. A. It gets narrower, well, yes, until you get down to a point here, of course.

Q. That is the maximum width of the improvement? A. Yes.

Q. And at the narrowest point, it is forty-six feet? A. Yes.

30 Mr. Dunn: That is all.

*Redirect-examination by Mr. Ward:*

Q. Watchung Avenue itself before it reaches Broad Street, how wide is that improved road? (Interrupting witness) No, before it reaches, coming from the east. A. Twenty feet.

Q. Twenty feet? A. Twenty feet.

40 Mr. Ward: That is all.

*Alexander Purcell—Direct.*

ALEXANDER PURCELL, sworn for Plaintiffs.

*Direct-examination by Mr. Ward:*

Q. Mr. Purcell, what is your occupation? A. Superintendent of the Poor Farm, Passaic.

Q. In Passaic? A. Well, in Clifton; it is situated in Clifton.

Q. How old are you? A. I am sixty in August. 10

Q. Where do you live? A. I live on Mt. Prospect Avenue, Clifton.

Q. You are married? A. Yes, sir.

Q. You remember, of course, the day of this accident? A. I certainly do.

Q. Where had you been? A. I had been to Dr. Keppler's, in Newark, to have my little grandson's leg attended to.

Q. What was the matter with his leg? A. He had infantile paralysis, and he was a child, and the Dr. Lorenze operated on him. 20

Mr. Dunn: Just a minute; I object to that.

The Court: I think it might be important to show his condition with respect to what effect it may have with respect to the speed they were going at; that is all.

Mr. Dunn: I have no objection to that, but I mean, the history. 30

The Court: No, we do not want the history.

Mr. Ward: No, that was my only purpose as your Honor has said.

The Court: He had had infantile paralysis and you had taken him to Dr. Keppler for treatment.

The Witness: We had taken him to Dr. 40

*Alexander Purcell—Direct.*

Keppler for treatment; that was Dr. Lorenze's orders.

The Court: All right.

Q. Were you familiar with that location where the accident happened? A. Yes, sir; traveled it many times.

10 Q. How often had you passed there? A. Oh—

Mr. Dunn: I object to that as being irrelevant and immaterial.

The Court: Just a moment.

A. (Continuing)—dozens of times.

The Court: Just a moment, please.

The Witness: Pardon me.

20 The Court: What difference does it make as long as he is familiar with it, he said; traveled it many times, very familiar with it.

Mr. Ward: All right, sir.

Q. What time was it this accident happened? A. About twenty minutes to twelve, in the forenoon.

30 Q. You were operating the car, were you? A. I was; I was driving it.

Q. You were driving yourself? A. Yes, sir.

Q. What kind of a car was it? A. A Ford.

Q. You were going in which direction? A. I was going north.

Q. Along what street or avenue? A. Broad Street.

Q. That would be going toward Passaic from Newark? A. Coming to Passaic; yes, sir.

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

*Alexander Purcell—Direct.*

Q. Who was in the car with you? A. My wife and my grandson.

Q. Where was your wife Or, where were your wife and your grandson? A. My wife sat in the back of the car, to my right when I was driving, and my little grandson sat in the front with his leg braced out. 10

Q. Braced out how? A. Well, he had braces on the leg, you know, and he had to have it on the seat, you know, out straight like that.

The Court: He was sitting sideways.

The Witness: Beside me.

The Court: Sitting sideways?

The Witness: No, sat in the front, with his little leg out.

The Court: All right; how old was he? 20

The Witness: Seven.

Q. He was sitting in the front next to you? A. Yes, beside me.

Q. What kind of a day was it, Mr. Purcell? A. It was a nice day, the sun was shining, perfectly dry, no rain; no snow or rain.

The Court: What date was it? 30

The Witness: October the 5th.

The Court: You would not expect snow so soon, would you, October 5th?

The Witness: Yes, sir.

The Court: Of what year?

The Witness: 1926.

Q. What was the condition of the pavement along Broad Street at that particular place? A. All right; it was dry, everything was all right. 40

*Alexander Purcell—Direct.*

Q. Well, I mean with reference to the character of the pavement. A. It was smooth.

Q. And the pavement on Watchung Avenue, what was the condition and character of the pavement there at that time? A. Why, the same.

10 Q. Now, as you approached Watchung Avenue, do you recall any building or buildings which were on your right? A. Gasoline station on the right.

Q. And can you indicate that, please, without getting down from the witness stand? I do not suppose you mind, if I lead, in this?

Mr. Dunn: That is all right.

Q. Is this the gasoline station to which you refer? A. I do not think so.

20 The Court: You had better go down and look then.

A. That is the station; yes, sir.

The Court: All right.

Q. What was there in front of the station towards Broad Street? A. There was a pole there.

Q. Well, and were there tanks as indicated on the map at that time? A. Yes, sir.

30 The Court: Pumps, you mean, I take it.  
The Witness: Yes, sir.

The Court: The tanks are under the ground, I think, Mr. Ward.

Mr. Ward: They have them indicated as tanks on the map.

The Court: Well, they are not tanks; I do not think they are.

40 Mr. Ward: Tanks and pumps; perhaps we are both right.

*Alexander Purcell—Direct.*

Q. As you were coming along Broad Street, Mr. Purcell, at what rate of speed were you going? A. I should judge I was going about fifteen miles an hour.

Q. How long have you been a driver? A. Since 1916.

Q. And as you approached Watchung Avenue, did you do anything? A. I slowed down. 10

Q. Can you give us any idea to what rate of speed you slowed down? A. I should say, about twelve miles an hour.

Q. Did you make any observation? A. I looked to my left, to see if there was anything coming down from the Montclair direction, and I saw nothing, and I looked to my right, and I saw nothing in sight, and then I proceeded over the crossing. 20

Q. Now, whereabouts were you when you made those observations? A. By the gas tank here.

Q. Can you indicate on this map where that was? If you cannot, don't attempt to do so. A. (Examining P-1) I should say, I was about here.

Q. About opposite the pole? A. About there; yes, sir.

The Court: That is when you looked to your right? 30

The Witness: That is when I looked to my right; I looked here first, because I had been over this crossing before.

Q. You say you had already looked to your left? A. Yes, sir.

Q. Why did you first look to your left? A. Because that is the first street that I came to.

Q. I know, but irrespective of the streets, why did you look to your left first? A. I always, when 40

*Alexander Purcell—Direct.*

I pass Watchung Avenue, I always look at my left first.

Q. That is the first part which you cross, is it not? A. Yes, sir.

Q. Then when you got to the pole you say you looked to your right? A. Yes, sir.

10 Mr. Ward: May I put a "P" there?  
The Court: Yes.

Q. At that time there was nothing in sight? A. Nothing.

Q. Go back to the stand. Did you or not continue at the same rate of speed then, that is, at the rate of about twelve miles an hour? A. Well, when I saw nothing coming, I just kept going about—put a little more gas on, and started on.

20 Q. What was the next thing that happened that attracted your attention, Mr. Purcell? A. Well, the first thing I saw some children coming along on the sidewalk, on the left there; I looked along where they were coming, just glanced along, and the next thing was something like a cloud just behind me, as it were, coming up, and there was a crash. It just happened in an instant; I didn't have time to think, it just seemed just like a cloud.

30 Q. You say there were some children; where were those children? A. Coming along the sidewalk on the left, coming from school.

Q. Was that the sidewalk— A. Yes, sir.

Q. —which was on the westerly side of Broad Street? A. Yes, sir.

Q. When this, as you have described, a cloud seemed to come upon you— A. Yes, sir.

40 Q. —what was the position of your car at that time? A. I was traveling right along, straight along.

*Alexander Purcell—Direct.*

Q. How far had you gotten across Watchung Avenue? A. Well, I was about, I should say, about five or six feet past that beacon on my left there.

Q. When you refer to the beacon, are you referring to the traffic beacon? A. That traffic beacon there; I was past that.

10

Q. What part of your car was five or six feet past the traffic beacon? A. I guess, all of it.

Q. All of it? A. Yes, sir.

Q. This crash that occurred, what was the cause of it?

Mr. Dunn: I object to that as calling for a conclusion.

The Court: I suppose you mean, who hit him?

Mr. Ward: Yes, sir.

20

Mr. Dunn: No objection to that.

The Court: All right, reframe it. Who hit you?

A. Mr. Pollock's car struck me, and I just felt myself going around just like that, in the air, just swished me right around like that; I felt myself going right around; and there was a crash again and my car stopped.

30

Q. Where did your car stop? A. It stopped facing down Watchung Avenue, right up in the corner there, near the sidewalk.

The Court: When you say down, you mean on Watchung?

The Witness: Facing east; I was facing east.

The Court: All right.

40

*Alexander Purcell—Direct.*

The Witness: Facing the direction he came up.

Q. Can you indicate on the map where your car was after the collision? A. Yes, sir.

10 Q. Will you show us please? A. Yes, sir. The car stood about here (indicating on P-1), at the corner, facing down this street.

Q. Will you make—

The Court: Suppose he makes an oblong there, shaped like the automobile.

Mr. Ward: Yes, sir.

The Court: Show where the back wheels were and the front wheels.

20 The Witness: Well, I should say, my wheels were about here, about there, the wheels (indicating).

The Court: All right.

Q. You have made a circle; now, try to make an oblong. A. I do not understand just what you mean.

The Court: Well, make an oblong, that is the shape of a car.

30 The Witness: All right. I can make it square.

The Court: Make it square, if you had a square Ford.

The Witness: About there (indicating).

Q. Have you indicated the front? A. (Indicating).

The Court: Put an arrow there, Mr. Ward.

40 Mr. Ward: He has, sir, or at least he has pointed.

*Alexander Purcell—Direct.*

The Court: All right, that is good.

Mr. Ward: Perhaps I might emphasize it.

The Court: That is all right.

Q. And the rear of your car, where was that?

A. Here is the rear of the car.

The Court: What he means was, I take it,—were the rear wheels of your car off the pavement, or not? 10

The Witness: They were up in the corner, up beside the sidewalk.

The Court: One was off the pavement?

The Witness: One was on the pavement, there; the other was up in the corner.

The Court: The rear left wheel was the one that was off the pavement? 20

The Witness: Yes, sir.

The Court: How far off the pavement?

The Witness: I couldn't just exactly tell you, because I was so excited, and my wife was so—

The Court: All right. It was not on the sidewalk?

The Witness: No, it was not on the sidewalk. 30

Q. Can you describe the force of the collision? In other words, was this a collision of much force or little force? A. It was of terrific force, just a crash.

Q. I do not think I had you mark where your car was when the collision occurred. Can you come down here and mark on this map where it was? A. I should say there—

Q. The rear of your car? A. The rear of my 40

*Alexander Purcell—Direct.*

car would be about here, I should say.

Q. Just mark— A. It was past, about five feet past the beacon.

Mr. Dunn: I suggest that the point indicated be marked with some letter.

10 The Court: Either a letter or another square.

Q. Make another square. A. (Indicating).

Mr. Ward: May we have that marked for identification, P-2?

Mr. Dunn: Smaller square referring to the place—

The Court: That was the back of your car, or the front of your car?

20 The Witness: The back.

The Court: The back of your car?

The Witness: Yes, sir.

The Court: Just beyond the beacon light?

The Witness: Yes, sir.

The Court: Five feet, you think?

The Witness: About that.

The Court: All right.

30 Q. What became of your grandson? A. Well, when the crash come and we were swung around, and then it struck over on the corner beside the sidewalk, and the door flew open, and then my little grandson fell out on the dirt, on his head.

The Court: Then the second crash—

The Witness: —was when the car stopped with a jolt.

40

*Alexander Purcell—Direct.*

The Court: —was when the car stopped up against the sidewalk?

The Witness: Yes, sir.

The Court: You were only hit once?

The Witness: I was hit once, that was—

The Court: All right.

The Witness: That was enough. 10

Q. What became of your wife? A. Well, my wife was in the back of the car, she was moaning; she was cut and bleeding, fingers cut, one finger; and there was a policeman came, and he had a car, and he took her up to the Mountainside Hospital in Montclair.

Q. Did you notice where the other car was that struck you after the accident had happened? Or, did you notice after the accident where that car was, rather? A. Yes, sir; it was down to the other side, you know, to my left; when I jumped out of the car to get the little boy up, the other car was further over. 20

Q. Can you show us on the map where that car was? A. I should say that car was up about here (indicating), a little up there to the left.

Mr. Dunn: I would like to have that point indicated, sir. 30

Q. Put a mark there. A. (Indicating).

Q. Make a square. A. (Indicating).

Mr. Dunn: I think possibly we had better have these cars marked in some manner.

Mr. Ward: P-3.

Mr. Ward: P-3, indicating the last one.

Mr. Ward: Yes.

Mr. Dunn: Indicating the position of the car at the time of the accident. 40

*Alexander Purcell—Direct.*

The Court: Has he indicated the way that car was headed?

Mr. Ward: No, sir; not yet.

10 Q. What was the position of that car in the roadway, when you saw it after the accident? A. I couldn't tell you very much about what the position; the car seemed to be standing over there like that. Of course, I was more interested in the little boy and my wife, and I wanted to get her someplace to see if something could be done; she was bleeding profusely at the fingers.

Q. Can you tell the position of the car at that time? A. It seemed to me, it stood over there, like; it was facing up Montclair direction, facing that way up.

20 Q. That would be up Watchung Avenue? A. Up Watchung Avenue, in the direction it had come.

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

Q. What was the condition of your wife, did you say? A. Well, we took her to the hospital, the officer did, and the doctor said that he did not

The Court: No, do not tell us what the doctor said. What did you observe about her condition?

30 A. (Continuing) She was bleeding from the fingers; her fingers was all cut. Her head—she hollered about her head and her side; she was laying on the back of the car.

Q. Did she receive treatment at the hospital? A. Yes, sir; the doctor sewed her fingers.

40 Q. Then where was she taken? A. I asked him if it would be possible to remove her home; he said, I would have to have X-rays taken, and I asked him

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if it couldn't be done in Passaic as well, because I would rather have her in the Passaic Hospital where it would be more convenient for me to go and see her.

Q. Then where was she taken? A. I took her home.

Q. The same day? A. Yes, sir.

Q. Who attended her, if anybody? A. Dr. Caverley; I sent for him right away.

Q. How soon after her return home did he come to see her? A. I guess he was there, up there, within an hour.

Q. How long a period of time did he attend her? A. Well, I should judge, about, off and on, about three or four weeks.

Q. During that time, what was her condition? A. Well, she was confined to her bed.

Q. Did she or not seem to suffer pain? A. Oh, yes.

Q. During that time? A. She suffered great pain, she was unable—she couldn't turn herself in bed; she had to be turned and lefted.

Q. After that, you said three or four weeks? A. Six weeks.

Q. Six weeks? After the six weeks— A. Yes, sir.

Q. —did she go out and get about— A. She got about, but she couldn't dress herself; for a while she had to be helped, more or less.

Q. For how long a period of time did that extend? A. Well, for quite a few months, and then she got so she could get around fairly well, but she is by no means well yet.

Q. Who did your housework before the accident? A. My daughters, my two daughters.

Q. Pardon me. A. My daughters.

10

20

30

40

*Alexander Purcell—Direct.*

Q. What did your wife do before the accident happened? A. Well, she helped around the house.

Q. After the accident happened, did you require the attendance of any other person to do the work that your wife had done, or not? A. No, sir.

10 Q. Your two daughters still continued to do the work, did they? A. Yes, sir.

Q. What was your doctor's bill, Mr. Purcell? A. I think the doctor's bill was about—I would not be sure—I think it was about thirty-three dollars.

Q. Did you incur any other expenses? A. No, we had to get a heating pad that cost about seven or eight dollars, I am not sure now, I won't—and then different medicines and liniments.

20 Q. Have you any idea of what they cost you? A. Well, I figured at the time, I think the whole thing—I think it was about fifteen dollars.

Q. Including the heating pad? A. Yes, sir.

The Court: Electric heating pad?

The Witness: Yes, one of those little pads.

Q. Have you noticed any difference in your wife, with reference to the way she acted before the accident and has acted since? A. Well, she is never able to—you know—any little walking tires her; if she walks any distance she gets tired very easily.

30 Q. What was her condition of health before this accident? A. She was fairly well, fairly good.

Q. Just describe, if you can, to the court and the jury the difference in her. A. Well, she is not—so goes to do any lifting or anything like that, she gets—she tires very easily and she complains a great deal about her side; she has trouble all of the time with her side and her leg, and isn't better by no means.

40 Q. Mr. Purcell, I show you a picture, and ask

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you if that is a picture of the scene of the accident.

A. Yes, sir.

Q. Does that correctly represent the situation as it existed at the time of the accident? A. Yes, sir.

Q. Whose figure is that near the traffic beacon?

A. I will have to use my glasses. Pardon me.

Mr. Dunn: Possibly I can save some time; I have not seen them.

10

Mr. Ward: I will be very glad to have you see them.

A. (Continuing) That is my picture.

Q. That is your figure, is it not? A. Yes, sir; that is my figure.

Mr. Dunn: (After examining photographs) By consent, we will admit all of the photographs into evidence, if the court please.

20

Mr. Ward: All right. Let them be marked.

Mr. Dunn: With, of course, the reservation that they do not—that they were taken sometime after.

Mr. Ward: Yes.

Mr. Dunn: Admitted for what they represent, not as being pictures of the accident. They are pictures, in other words, and we admit them for that purpose.

30

Mr. Ward: Of course, in one picture there appears a truck that was not there at the time of the accident, such things as that is what Mr. Dunn means.

Mr. Dunn: Yes.

(Marked Plaintiff's Exhibit P-2)

40

*Alexander Purcell—Direct.*

Q. Now, showing you Exhibit P-2, in which you identified your own figure— A. Yes, sir.

Q. —how long after the accident was that taken? A. Four hours.

Q. And with reference to the place where you were struck, can you indicate on that picture where it was? A. Right here (indicating).  
10

Mr. Ward: Now, I think we can perhaps agree on this, Mr. Dunn. For the convenience of the jury, we have put an arrow indicating Mr. Purcell was going in a certain direction. There is no dispute about that, and Mr. Pollock going in the other.

Mr. Dunn: I might say the only trouble, I can see, with counsel's attempt to indicate on the photograph the position, is that the photograph was taken in a position that I think would be confusing to the jury. We have indicated the positions on the map, and I am afraid if we attempt to indicate them on the photograph, that that will be confusing.  
20

The Court: The directions are right?

Mr. Ward: Yes, sir.

The Court: According to that picture where these children stand is about where the rear of your car was after the accident?  
30

The Witness: Yes.

The Court: Did you have them stand there for that purpose?

The Witness: No, sir.

The Court: This is going to Montclair, up the hill?

The Witness: Right up the hill; yes, sir.

The Court: This is going to Paterson, this way?  
40

*Alexander Purcell—Direct.*

The Witness: Yes, sir.

The Court: This ice cream place and the gas place is over on this corner; that is not shown.

The Witness: Yes, sir.

The Court: And he was coming down this way? 10

The Witness: Yes, sir.

The Court: The other fellow?

The Witness: Yes, sir; he was coming down this way.

The Court: I do not see any harm in it, and I do not see that it will help you much.

Q. As his Honor has just said, the Pollock car was going into the picture? A. Yes, sir. 20

Mr. Ward: That is correct, Mr. Dunn?

Mr. Dunn: Yes, sir.

Mr. Ward: (Exhibiting to jury) Going in that direction, that way, was the picture, or that the camera was pointing, at the time the picture was taken; Mr. Pollock with the arrow, as indicated.

The Court: Of course, the jury understands that the photograph does not give you the same idea that the map does. There is a perspective and things close by seem to be very close, and as you get off in the distance the road narrows out. You understand enough about the art of photography to understand that. 30

Mr. Ward: In other words, the road, Watchung Avenue here seems much narrower as it goes away from the place where the picture is taken. 40

The Court: As a matter of fact, it is not.

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Mr. Ward: And as a matter of fact, it is not.

The Court: And the map shows, the map is in focus all of the way, and the picture is not.

10 Mr. Ward: And Mr. Purcell was going in that direction, in which this arrow is indicated. In other words, Newark is toward the left of the picture and Passaic toward the right.

Q. Now, you indicated a spot on the picture where you were struck, and I ask you if there is a mark there, as disclosed by the picture? The picture speaks for itself, of course. A. Yes, sir.

20 Q. Was that mark there at the time you first stopped there after the accident? A. Yes, sir.

Q. Was that mark there directly after the accident? A. Yes, sir.

Q. And I am referring now to two marks in that roadway. A. Yes, sir.

Q. That show upon the hard surface of the roadway. A. Yes, sir.

Q. Is that where you say the accident occurred? A. Yes, sir.

30 Q. What were those marks? A. Those marks here are the marks of my car here, and those marks are the marks of Pollock's car, coming up here, when he struck me.

Q. Now, you have indicated that the accident occurred at this place? A. Yes, sir.

Mr. Ward: Mark that with a P, sir?

The Court: Yes, but do not obliterate the marks.

40 Mr. Ward: No, sir.

*Alexander Purcell—Direct.*

The Court: How would it be to put a circle around the mark which he indicated?

Mr. Ward: Well, the marks are quite large; they are skid marks.

The Court: All right.

(Mr. Ward indicates with red pencil.)

Q. And the mark that you indicated as being the marks of your car are right at the top of the letter "P" that I have put upon this photograph, Exhibit P-2? A. Yes, sir. 10

Q. And the mark that you indicated as being the mark of the Pollock car is the mark which is just over the—what appears to be a little roughness in the road? A. Yes, sir.

Q. The place that was mentioned by his Honor as where the children were standing, as disclosed in the photograph, and the place where your car was— A. Yes, sir. 20

Q. After the accident, is where I am indicating now, is it not? A. A little ahead of that, over there in that corner.

Q. Was your car there or not at the time this photo was taken? A. They pushed my car, while I was away, you know; when we came back, they had shifted the car. 30

Mr. Ward: Mark this P-3.

(Marked Plaintiff's Exhibit P-3.)

Q. That also shows the intersection, does it not? A. Yes, sir.

Q. And that shows Broad Street? A. Yes, sir.

Q. And shows the direction in which you were going, as indicated by pencil and by the arrow? A. Yes, sir; in this direction.

Q. In other words, the oil station that you have 40

*Alexander Purcell—Direct.*

mentioned was to your right, or off of the picture, to the right of the picture; that is correct, is it not? A. Yes, sir.

Q. And that picture is looking along Broad Street in the direction of Passaic? A. Yes, sir.

Q. This way, from Newark? A. Yes, sir.

10 Q. And the Pollock car came from the right of the picture? That is correct? A. Yes, sir.

Mr. Ward: Mark this one.

(Marked Plaintiffs' Exhibit P-4)

Q. I show you Exhibit P-4, and ask you if that shows more in detail of the marks that you have identified, as being on P-2? A. Yes, sir.

Q. (Continuing) As the marks of your car? A. Yes, sir.

20 Mr. Dunn: I do not like to interfere with counsel, but I think these pictures speak pretty well for themselves, unless there is some point you want to bring out.

Mr. Ward: All of this is important, I think, sir.

The Court: All right.

30 Q. Is that, where the boy was standing, is that the corner where the children were on the former photograph? A. Yes, sir; that is the corner where the children were.

Q. Those marks on P-4 are the same as shown right above the red letter "P"— A. Yes, sir.

Q. —in Exhibit P-2; that is correct, is it not? A. (No answer).

Q. P-5 is a picture of the same marks, is it not? A. Yes, sir.

Mr. Ward: Mark this P-5.

40 (Marked Plaintiffs' Exhibit P-5)

*Alexander Purcell—Direct.*

Mr. Ward: And this P-6.  
(Marked Plaintiffs' Exhibit P-6)

Q. I show you this picture, P-6, and ask you what is this a picture of? A. That is a picture of Mr. Pollock's car.

Q. That is the Buick? A. Yes, sir. 10

Q. Does that accurately disclose the condition of the right front fender? A. Yes, sir.

Q. And wheel, as it was? A. Yes, sir.

Q. At the time the picture was taken? A. Yes, sir.

Mr. Ward: Mark this one.  
(Marked Plaintiffs' Exhibit P-7)

Q. I show you Exhibit P-7; does that likewise disclose the condition of the Buick car? A. Yes, sir. 20

Q. Right front fender and the right front wheel as it was right after the accident? A. Yes, sir; after the accident.

Mr. Ward: Mark this one.  
(Marked Plaintiffs' Exhibit P-8)

Q. I show you Exhibit P-8, and ask you what that is. A. That is the car that I was driving.

Q. And the rear wheel? A. Yes, sir. 30

Q. Was that in the condition— A. Yes, sir.

Q. —that you saw it there after the accident? A. Yes, sir.

Q. A glass broken out of the car? A. Yes, sir.

Mr. Ward: Mark this.  
(Marked Plaintiffs' Exhibit P-9)

Q. P-9, is that likewise a photograph of your Ford car after the accident? A. Yes, sir; that is the side that I was struck on. 40

*Alexander Purcell—Direct.*

Q. That shows the side? A. Yes, sir.

Q. Right side of the Ford car, does it? A. Yes, sir.

Mr. Ward: And this one.

(Marked Plaintiffs' Exhibit P-10)

10 Q. P-10, does that show the right side and the run board? A. Yes, sir.

Q. Of the Ford car as it was directly after the accident? A. Yes, sir; afterward, when the pictures were taken.

Q. And the doorway which is shown on that car, is that the doorway through which your little grandson was precipitated? A. Yes, sir; that is where he fell out.

Mr. Ward: And this.

20 (Marked Plaintiffs' Exhibit P-11)

Q. P-11, that likewise is a picture of the car, is it not? A. Yes, sir; that is where it is lying into the side.

Q. Side? What do you mean? A. Where they pushed it into the side, you know; that is where the picture was taken.

Q. That was where it was pushed after the accident? A. Yes, sir.

30 Q. That is not where it was pushed by the Buick car? A. No, sir.

Mr. Ward: Cross-examine.

The Court: Is there any claim for damage to his car?

Mr. Ward: No, sir; it was not his car that he was driving at the time.

The Court: All right.

*Alexander Purcell—Cross.**Cross-examination by Mr. Dunn:*

Q. These pictures represent the condition of the cars after the accident, do they not, Mr. Purcell?

A. Yes, sir.

Q. Neither car had changed its appearance since the accident when the pictures were taken? 10  
A. Sir?

Q. I say, the condition of either car had not been changed before the pictures were taken; they represent the conditions of the cars after the accident, don't they? A. The cars were pushed out of the way to allow traffic—

Mr. Ward: Mr. Dunn, pardon me a minute. I omitted to put in here this picture. With your Honor's permission? 20

The Court: Very well.

Mr. Dunn: I will consent to it. Do you want to ask him?

Mr. Ward: Yes. Mark this.

(Marked Plaintiff's Exhibit P-12)

*By Mr. Ward:*

Q. Does this picture, Exhibit P-12, likewise show the condition of your car? A. Yes, sir. 30

Q. Now, what is that mark that you see in the roadway in the center of the picture? A. I could not—I guess that must be where they skidded around.

Mr. Dunn: Through, Mr. Ward?

Mr. Ward: Yes.

*By Mr. Dunn:*

Q. The pictures of the Ford represent the condition of your car after the accident, do they not? 40

*Alexander Purcell—Cross.*

Nothing had been done to your car before the pictures were taken? A. Well, my car was pushed into one side to allow the traffic—

10 Q. Well, other than the fact that the position was not the same as after the accident, nothing was done to your car before the pictures were taken? A. No, sir; nothing.

Q. And the same is true as taken of the picture of the Buick, is it not? Will you just look at that, please, Mr. Purcell? A. Yes, sir.

Q. And the one included in P-6 and P-7? A. Yes, sir.

20 Q. That is exactly the same condition of the car after the accident? A. With the exception of this cable on here; they put that on and wanted to pull the car away, and I wouldn't allow them to, until I got the pictures taken.

Q. Well, with the exception of the cable, the car is exactly the same as it was after the accident? A. As far as I know.

Q. I call your attention to the front right mud-guard, and that is in the same position as it was after the accident? A. Further down.

30 Q. Where did you live at that time, Mr. Purcell, at the time of the accident? A. On Prospect Avenue, Clifton.

Q. That is an institution, is it not? A. I have been there twenty-eight years.

Q. Yes, sir; what time did you leave there that morning? A. About half past eight.

Q. In the morning? A. Yes, sir.

Q. And you went over to Newark, did you not? A. Yes, sir.

Q. To Dr. Keppler's? A. Yes, sir.

40 Q. You remained there until when? A. I

*Alexander Purcell—Cross.*

should judge, about ten minutes to eleven, I left Newark.

Q. And you continued up here without stopping, until the time of the accident? A. Yes, sir.

Q. This car belonged to the city, did it not? A. Yes, sir; belonged to the city.

Q. What time did you have lunch at the institution? A. Sir? 10

Q. What time did they serve lunch at the institution? A. What time did they serve lunch?

Q. Yes, sir. A. Well, about eleven-thirty.

Q. Did this accident happen at about twenty minutes of twelve? A. Yes, sir.

Q. The car belonged to the institution? A. Under my supervision.

Q. I say, it belonged to the institution? A. Yes, sir; under my supervision. 20

Q. How far were you away from the institution at that time of the accident? A. I should judge, about two miles. Probably three. I wouldn't just be exactly sure, but I should judge about two miles.

Q. And possibly four? A. Well, I would not—

Q. Probably over five? A. Over? No.

Q. Well, four; would you say it was four miles from the institution? A. No, I wouldn't. 30

Q. Well, you are usually at the institution at lunch hour, are you not? A. No, sir; not necessarily.

Q. Well, that is the usual thing, is it not, for you to be at the institution at lunch hour? A. No, sir.

Q. Was it not customary for you and your wife to be away from the institution at lunch hour? A. We had taken the little boy down frequently; I took his mother down frequently to Newark, but 40

*Alexander Purcell—Cross.*

she was sick on the day that my wife went, and she couldn't go; she was about to be confined.

Mr. Dunn: Would you mind repeating the question?

10 Q. (As repeated by stenographer) Was it not customary for you and your wife to be away from the institution at lunch hour? A. Yes, sir.

Q. You were in no particular hurry to get back? A. No, sir.

Q. The fact that you were ten minutes late did not make any difference to you? A. No.

Mr. Ward: Now, one minute; he was not ten minutes late; he has not said he was.

20 Mr. Dunn: Withdraw that.

Q. The fact that it was ten minutes past the lunch hour, and you were a number of miles away from the institution, did not make any difference to you?

Mr. Ward: Answer, Mr. Purcell.

A. No, sir.

30 Q. After the accident, Mr. Purcell, how often did Dr. Caverley call at your home? A. Well, I would not—now, I couldn't just exactly tell you; he came up the first week a few times and then later he did not come just quite so often.

Q. Well, his total bill was \$33.00, wasn't it? A. Yes, sir. And he charges three dollars a visit, so you can figure it out.

Q. When was his last visit to your wife? A. Sir?

40 Q. When was his last visit to your wife? A. I couldn't just exactly tell you that.

*Alexander Purcell—Cross.*

Q. Well, the accident happened on the 5th of October, 1926, did it not? A. Yes, sir.

Q. These treatments that he rendered in his visits were all made during the five or six weeks that she was confined to the bed at the home, were they not? A. Yes, sir.

Q. And he has not seen her since, has he? A. 10  
Oh, yes; he has seen her since.

Q. Has he? A. Yes.

Q. Without charge? A. Well, yes.

Q. Well, when without charge? A. I guess he saw her two months ago.

Q. Professionally? A. Well, no, not professionally; but she went down to have some electric treatments from time to time, for her fingers; she hasn't got the power of those fingers very good.

Q. There was no charge made for that call? A. 20  
Which call?

Q. That you have just spoken about? A. I would not be sure. I think there was a two dollar call at the office; that is what he charges at the office; when he comes out to the house he charges three.

Q. Is that included in your thirty-three dollar medical bill? A. I couldn't just exactly tell you now; I do not want to tell anything that is wrong. 30

Q. There is nothing the matter with your eyesight, is there, Mr. Purcell? A. Sir?

Q. You can see all right, can't you? A. I should say I could.

Q. Vision is very good, isn't it? A. Very.

Q. You were very familiar with the intersection of Watchung Avenue and Broad Street, weren't you? You were very familiar with that? A. I have been past it very often.

Q. You testified on your direct-examination that 40

*Alexander Purcell—Cross.*

you were very familiar with it? A. I passed there with horses; I used to drive a team of horses before I ever had a car.

Q. I presume your answer is "Yes"? A. Yes, sir.

10 Q. You approached that corner, that intersection, with extreme caution, did you not? A. Yes, sir; always; yes, sir.

Q. Looked to the left and to the right? A. Yes, sir. Q. You did not see Mr. Pollock's car before the accident, did you? A. No, sir.

Q. When was the last time you looked to the right before the accident? A. When I passed the gas station, when I got within the sight, so that I could see down the street, I looked down. I saw nothing, and I proceeded to cross the intersection.

20 Q. That is the point which you have indicated with the cross, is it not? A. Sir?

Q. Is that the point which you have indicated with the cross? A. No, I think back a little more.

Q. Would you mind coming down to the map and showing us where you were when you looked to the right? A. (At Exhibit P-1).

30 Q. Would you mind indicating on the map where you were when you first looked to the right? A. I should say, about here (indicating).

Q. Would you mind making a mark on the map?

The Court: Well, there is a mark there.

The Witness: There is a mark there.

Mr. Dunn: Well, counsel has said that that may not be his mark, your Honor.

Mr. Ward: That was a mark made by Mr. Parke.

40 Q. Will you put a mark on there? A. I want to look at the map.

*Alexander Purcell—Cross.*

Q. Don't let me hurry you. A. I don't want to do anything wrong.

The Court: As nearly as you can, point where you were when you first looked to your right.

The Witness: I judge I was about here (indicating). 10

The Court: Put a mark there.

The Witness: (Indicating).

Mr. Dunn: Indicated by "B-1".

The Court: Where were you when you last looked?

The Witness: I didn't have a chance to look any more.

The Court: That was the first and last time, then, was it? 20

The Witness: Yes, sir.

The Court: All right.

Q. Go back on the stand. A. (Witness resumes stand) I looked ahead of me.

Q. Your wife accompanied you on the trip, did she, Mr. Purcell? A. Yes, sir.

Q. I suppose, from time to time, she took care of the nephew and his wounds, did she not? A. She had no occasion to. 30

Q. Well, that was her purpose in going along with you, wasn't it? A. It was her purpose to go in to strip him for the doctor, to just a little look for the boy.

Q. So that you had her to go along with you for the purpose of assisting you in taking care of the youngster? A. She was to look for him.

Q. She was so engaged on her return home? A. He sat beside me in the front; she was sitting in the back. 40

*Alexander Purcell—Cross.*

Q. But you brought her along for that purpose, to assist you in taking care of the youngster, on this trip to the doctor's in Newark, did you not?

A. Well, that arrangement was made between the child's mother, that was, really, and my wife.

10 Q. That was the purpose of your wife, to go along to assist you in taking care of the youngster in this trip to the doctor? She was so engaged when the accident occurred; isn't that correct? A. Yes, sir.

Q. I think you testified on your direct-examination that Mr. Pollock's car was going at a very great rate of speed, did you not? A. I couldn't tell you anything with what speed Mr. Pollock was going, because I didn't see it, whether it was fast or slow, until it struck me.

20 Q. Didn't you say on your direct-examination that Mr. Pollock was going at a very great rate of speed? A. I said nothing of the sort, because I couldn't; I didn't see what speed he was going, because I never saw him until we struck together.

Q. Did not. As a matter of fact, you do not know how fast? A. No, I do not, nor even if I did know, I couldn't tell.

30 The Court: You do not even know if he came over Watchung Avenue, do you?

The Witness: I do not.

Q. You do not know whether or not his car was stopped at the time your car collided with it, do you? A. I didn't see him; only thing I saw was dark, just like a cloud, when the crash come, and I turned around in the air like a merry-go-round.

40 Q. Will you just come down a minute, Mr. Purcell, to the map? A. Yes, sir (at Exhibit P-1).

*Alexander Purcell—Cross.*

Q. Your car had been going in a northerly direction on Broad Street? A. Yes, sir.

Q. Is that correct? A. Correct.

Q. You have indicated by this diagram here on Exhibit P-1 the position of your car after the accident? A. Over in that direction.

Q. Yours? A. Yes, sir.

10

Q. You have indicated this as the rear of your car after the accident? A. To the best of my knowledge.

Q. Yes, sir. I think you indicated the original position of your car in this manner, by this mark, P-2; is that correct? A. That was where I was when I was hit.

Q. That P-2 is your attempt to indicate the position of your car at the time you were hit? A. Yes, sir.

20

Q. Do I so understand you? A. Yes, sir.

Q. How did your car get from this position to the position that you have indicated over there? A. I told you that I went around in the air, and I got swung right straight around, pushed right over.

Q. So that the rear of your car slid around in that fashion; isn't that so? A. The rear of my car went around and the front of the car faced down Watchung Avenue.

30

Q. If your car had been headed in a northerly direction on Broad Street, after the accident, it was in that position? A. Yes.

Q. Then your car gyrated around in that manner, did it not? A. Lifted around, carried around, I told you.

Q. Would you mind going back on the stand, Mr. Purcell? A. Yes, sir (resumes stand).

Q. You told Mr. Ward on direct-examination,

40

*Alexander Purcell—Cross.*

did you not— A. Yes, sir.

Q. —that these marks were made by your car?

A. To the best of my knowledge.

Q. Well, now, is it not a fact that these marks are not in the direction which you stated your car went after the accident? A. Why ain't they?

10 Q. Do you still think they are? A. Well, if you come up for a minute, I will show you.

Q. Why, don't those marks go toward the sewer? Don't they go towards that sewer? A. Yes, sir.

Q. Are there any marks from the direction of the sewer around into Broad Street? A. My car—this is Broad Street here, driving along; this is Watchung Avenue up here.

20 Q. Just a moment. Just come down to the map, Mr. Purcell.

The Court: I think the sewer basin is marked on there.

Mr. Ward: Yes, the basin is.

Q. Just come down to the map a moment. A. Yes, sir. (At the easel).

Q. Looking at the map and the photograph at the same time— A. Yes, sir.

30 Q. This is Broad Street, is it not? A. Yes, sir.

Q. Now, indicate on the map, if you can, refreshing your recollection from this picture, which way these skid marks go, if this is the sewer basin as indicated there. A. Well, they turn around, don't you see.

Q. These agree with what you testified to, do they? A. I should say they did.

40 The Court: Indicate, as he asked you to,

*Alexander Purcell—Cross.*

the curve on the road that also appears on the picture.

Mr. Ward: Indicate on the map here.

The Witness: This is the curve on the road here.

The Court: No, no; I mean the skid mark.

There is a skid mark on that picture. 10

The Witness: Yes, sir.

The Court: Mark it with his pencil.

Q. Indicate on the map, with the pencil, where you say this skid mark was. A. I was drove around like this way, and the skid mark,—the car was struck from this direction.

The Court: Now, mark that skid mark.

Q. Just mark that skid mark, if you will. Mark it a little heavier. A. (Indicating). 20

The Court: Well, are there two skid marks?

Mr. Dunn: Yes, sir.

The Court: All right.

Mr. Dunn: I will mark this D-2, Mr. Ward, with your permission.

The Court: Now, just a moment, Mr. Witness. As I understand it, your car was struck where the circle is. 30

Mr. Dunn: P-2.

The Witness: Yes, my car was struck there.

Q. And your car after the skid was over was over to the left? A. Onto the left; yes, sir,

The Court: Why did you put the skid marks further north and further west than 40

*Alexander Purcell—Cross.*

that? or further northeast than that? further up Broad Street?

The Witness: I don't know; I was drove this direction, and the car swung around like that.

10 The Court: You mean, your skidding didn't begin immediately that the crash came? Your car was not moved after the accident, was it?

The Witness: Yes, it was pushed over to one side.

The Court: But the mark that you have marked there indicating the position of the car is where it was after the accident and before it was moved.

20 The Witness: Probably I might be wrong there when I—

The Court: That is why I am asking you about it.

The Witness: Yes, sir.

The Court: You see, your skid marks do not agree with your marks on there.

The Witness: Let me have that picture again.

Mr. Dunn: Certainly, have both of them.

30 The Witness: You see, the car came up Watchung Avenue, up this way, and I was driving this way, (indicating on photograph).

The Court: I understand that, but you see your skid marks don't begin where you say you were when you were hit.

The Witness: Well, it is according probably to the picture, the way the picture was taken.

40 The Court: All right.

*Alexander Purcell—Cross.*

Q. The pictures differ from your story, don't they, Mr. Purcell? A. No, I was past the dummy here; the dummy don't show on that.

Q. Just come back on the stand, will you? A. Yes, sir (resuming stand).

The Court: You were past the dummy? 10

The Witness: Yes, sir.

The Court: You are sure of that?

The Witness: I was sure of that.

Q. Don't you know that these skid marks are Pollock's marks? Don't you know that? A. They are Pollock's marks there too.

Q. Pollock's marks; first part of the marks are just preceding this curve, are they not? A. That is his brake marks. 20

Q. Where did you say Pollock's marks were— A. Right here (indicating).

Q. —on this photograph? A. Yes, sir; right there, and there is my marks (indicating).

Q. How do you know these are Pollock's marks?

Mr. Ward: Wait a moment. I would like the jury to see where he indicates. Put your finger again, when you say "right there". 30

The Witness: There is Pollock's marks there, and there is where my skid marks starts, right there (indicating).

Q. Well, those are the marks that you indicated on the map, the second one, are they not? A. Yes, sir; this here (indicating).

Q. You say that the other mark is Pollock's Mark? A. That is where he applied his brake, I guess. 40

*Alexander Purcell—Cross.*

Q. You do not know whether this is Pollock's mark or your mark, do you? A. I know that there was marks; I know that where—where I was turned around.

Q. You say you were turned around from the point of the accident, P-2, don't you? A. Yes, sir.

10 Q. Didn't your tires make marks when you were turned around to this position? A. I guess so.

Q. And didn't they continue to make marks until you stopped? A. Well, I told you that the car was shifted after the accident; it was pushed into one side.

Q. Don't you know that the marks on the pavement come from this direction, like that, and go like in that manner, come down from Broad Street, and they turn in that manner?

20

Mr. Ward: Oh, now, I object to that. They do not. They do not do anything of the kind.

Mr. Dunn: You say they do not.

Mr. Ward: I say they do not.

Mr. Dunn: That is a matter of argument then. May I have the question repeated again?

30

Mr. Ward: I object to the question as argumentative.

The Court: Well, that is not intelligible without being illustrated again from the map.

Q. Is it not a fact, Mr. Purcell, that these skid marks begin in Watchung Avenue and go towards the northerly side of Watchung Avenue? A. No, sir.

40

Q. Mr. Purcell, there were no other vehicles on

*Alexander Purcell—Cross.*

the street at that intersection at the time of the accident, were there? A. Not to my knowledge.

Q. Were there any obstructions of any kind to your right prior to the accident? A. Not to my knowledge.

Q. Do you know of anything that would have prevented you seeing the car of Mr. Pollock, if you had looked? A. I did look. 10

Q. I will repeat the question. The last time you looked to your right was when you were at a point you have indicated as "B-1"? A. Yes, sir.

Q. Do you know of anything that would have prevented you from seeing Mr. Pollock's car before the accident, if you had looked up until the time the cars came together? A. Then you want me to keep looking steady; I did not look.

Q. I would like you to answer the question. A. I did not see anything. 20

The Court: And you do not see anything in the way?

The Witness: No, sir.

The Court: There were no cars in front of the filling station getting gasoline?

The Witness: Not to my knowledge.

The Court: And there is no building on the corner? 30

The Witness: No, sir.

The Court: To your right?

The Witness: No.

The Court: So that you had a clear view up Watchung Avenue to your right?

The Witness: Well, you know, the view is cut off quite some at Watchung Avenue; you cannot see very good down there.

The Court: You cannot down at the cen- 40

*Alexander Purcell—Cross.*

ter of Bloomfield, but when you get up there, what is to prevent you from looking up, when you get to the point where you indicated you looked? What is to prevent you looking?

10 The Witness: Nothing; I did look up there and I saw nothing.

The Court: At the time you looked up, you had a clear view of Watchung Avenue?

The Witness: Yes, sir.

The Court: For how long? for how great a distance?

The Witness: Well, I should say I could look down Watchung Avenue about two hundred feet.

20 The Court: You could look beyond that house?

The Witness: Yes, sir.

The Court: (Continuing) That is indicated there to the right—not to the left?

The Witness: Yes, sir.

The Court: You could look beyond that point from the point where your mark is, could you?

30 The Witness: No, I do not know as I could.

The Court: Why not?

The Witness: There is a house on the left of Watchung Avenue; I could have seen down to this house.

Mr. Dunn: You refer to this—

The Court: No, he refers to the one on the left, on the other corner.

The Witness: Yes, sir.

40 Q. This side? A. Yes, sir.

*Alexander Purcell—Redirect.*

Q. This house here? A. No.

The Court: Which one do you refer to?

The Witness: There is a house there, going down Watchung Avenue, it is on the left hand side, past the gas station.

The Court: That is the one over on the other corner? 10

The Witness: Yes, sir.

The Court: That did not interfere?

The Witness: I say, I could see down as far as that.

The Court: Oh, as far as that?

The Witness: Yes, sir; I could get a clear view, and I saw nothing there.

The Court: Very well.

Mr. Dunn: That is all. 20

*Redirect-examination by Mr. Ward:*

Q. Mr. Purcell, you have been down to the scene of this accident, since, have you not? A. Yes, sir.

Q. To make observances at the request of counsel? A. Yes, sir.

Q. From the time that you first looked to your right up to the time that the impact occurred— A. Yes, sir. 30

Q. —how far did you go? A. I went about sixty-five feet.

Q. That is, now, understand me; from the time you looked to your right— A. Yes, sir.

Q. —and ceased looking to your right— A. Yes, sir.

Q. —up to the time of the impact— A. Yes, sir; about— 40

*Alexander Purcell—Recross.*

Q. —about sixty-five feet— A. Yes, sir; about that.

Q. —as you looked to your right, and looked to your right for the last time,— A. Yes, sir.

Q. —how far down Watchung Avenue to your right could you see? A. I could see about 195 feet.

10 Mr. Ward: That is all.

*Recross-examination by Mr. Dunn:*

Q. While you went this whole sixty-five feet, you could all of the time see 190 feet down there, couldn't you? A. I did see that distance when I looked down.

Q. Well, you didn't look at all— A. I did look down—

20 Q. —from the time you left B-1 and you went sixty-five feet to the point of the accident? A. Yes, sir.

Q. You testified you could have seen 190 feet to the right, but you did not look? A. I was looking ahead of me.

Q. You did not look to the right during the whole time you went the sixty-five feet, did you? A. A man don't keep looking all of the time; you give a glance to see if everything is clear.

30

Mr. Dunn: Your Honor please, I insist the witness answer the question yes or no.

The Court: I think he has answered; he did not look.

A. No.

Mr. Dunn: That is all.

The Court: He has told us that repeatedly, that he looked when he was at a point sixty-five feet from the point of the accident,

40

*Alexander Purcell—Recross.*

and did not look again; at the time of the accident he could see 195 feet, which was opposite the house on the left side of Watchung Avenue.

The Witness: Yes, sir.

The Court: Of course, when you get further along, when you got to the point where the accident occurred, you could clear up to the bend in Watchung Avenue, practically, couldn't you? 10

The Witness: If I had looked.

The Court: Of course, if you had looked.

The Witness: Yes, sir.

The Court: Anything more?

*By Mr. Ward:*

Q. Mr. Purcell, you were injured yourself, were you not? A. Well, not much; just a little shaken up. 20

Q. You are making no claims? A. I have been always a little bit nervous since.

Q. But, as I say, you are making no claim for that? A. No, sir, I am not; but I feel nervous.

Mr. Ward: That is all.

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FRED S. CAVERLEY, M. D., sworn for Plaintiffs.

*Direct-examination by Mr. Ward:*

Mr. Dunn: I will admit the doctor's qualifications.

Mr. Ward: For the purpose of the record, I will put them on. 40

*Fred S. Caverley, M. D.—Direct.*

Q. You are a practicing physician of this county and state, doctor? A. Yes, sir.

Q. And practice where? A. Passaic.

Q. Graduate of what institution? A. Dartmouth.

10 Q. How long have you been practicing? A. Since 1906.

Q. Did you attend Mrs. Purcell after the accident occurred in which she was injured? A. Yes, sir.

20 Q. What was her condition at that time? A. She had previously been to the hospital and I believe had her fingers stitched. She had the right side of her chest strapped up with adhesive plaster, that is, just ordinary surgical plaster; her right hip, right leg, were badly swollen and discolored; and then she complained of pains in the head. Whether there is any now, or not, I am not sure.

Q. Did you attend her after that, doctor? A. Yes, sir.

Q. Was the condition in which you found her a painful one or not? A. Yes, sir; very painful, especially the chest condition, because she could hardly breathe.

30 Q. Did you attempt to make any diagnosis of what the trouble was in the chest? A. She is a very fleshy woman, you couldn't feel very much. To me she gave all of the presumptive evidence of having a fractured rib.

Q. What examination did you make? A. I had an X-ray taken, it is (unintelligible).

Q. What was that? I did not hear that? A. I had to have an X-ray taken, 9th and 10th, and that didn't show fractured rib.

40 Q. Even where there is a fracture, does that

*Fred S. Caverley, M. D.—Direct.*

sometimes happen? A. Even where there is a fracture, that does sometimes happen, especially in a fleshy woman like she is. She was suffering too much pain to be moved, so I went ahead on the presumptive evidence that she had a fractured rib or traumatic pleurisy, one of the two.

10

The Court: And the treatments that you would give would cure either, I suppose?

The Witness: It is, that when you get a fractured rib, you would get a certain amount of traumatic pleurisy, and we simply strap them, hold them tight, and they will heal, that is all; but it was already strapped when I first saw her.

Q. How long did that painful condition last, doctor? A. Well, I saw her, I think, pretty nearly every day for a week or so, and then after at less frequent intervals, and I think she came later on to my office, that is, for electrical treatments.

20

Q. What was the condition of the fingers? A. I have forgotten. I think there were three of them that had been lacerated and had been sutured, that is, stitched, in the hospital, and, of course, they were swollen and painful.

30

Q. Did you treat the fingers after the accident? A. She did come to the office a few times afterward, and I gave her electrical treatments to see if we could get results that way, by taking out some of the pain and stiffness.

Q. That stiffness of which you spoke, was that, in your opinion, a natural consequence of the injury that she sustained? A. Yes, sir.

Q. For how long a period of time did you attend her, if you recollect? A. Well, I think I went

40

*Fred S. Caverley, M. D.—Direct.*

there daily, as I said, for a week or so, and then I saw her probably three or four times a week, and then off and on, I went to the house, between three and four weeks, and then later, I should judge, it might have been a month afterwards, she came to the office.

10 Q. Do you recall when you last saw her? A. Well, I have been City Physician there in Clifton and I go out to the Poor Farm, and I see her to speak to but not professionally; last time I saw her professionally, she was in my office, that was, I guess, a year ago.

Q. One year ago? A. I think so, it was quite a year ago.

Q. What was the condition then? A. She complained then, I think it was the index finger; I  
20 am not sure, but it was quite stiff and painful.

Q. Before this accident, what was her condition then of health? A. From what I have seen on visits out there, I thought she was a pretty healthy woman, appeared to be.

Q. On the last occasion when you saw her, what was her condition? A. She is somewhat more nervous than she used to be; she complained of being tired very easily on exertion.

30 Q. And the condition of nervousness and this condition of tiredness of which she complains, is that, or not, in your opinion, a probable consequence of the injuries that she suffered in this accident? A. I think so.

Q. How much was your bill? A. I haven't the exact amount, possibly it is a little over thirty dollars, and I think the two visits she paid at the office, she paid cash; I don't think they were included in the bill.

40

*Fred S. Caverley, M. D.—Cross.*

Mr. Ward: Cross-examine.

*Cross-examination by Mr. Dunn:*

Q. Doctor, you did not treat her for the nervous trouble? A. I gave her something to quiet her nerves, to ease the pain a bit.

Q. Is that included in your bill? A. Oh, yes.

10

Q. You effected quite a cure, didn't you doctor?  
A. What is it?

Q. You effected quite a cure, didn't you? A. No, I don't say—

Q. I beg pardon? A. I don't think she is completely cured, no.

Q. You haven't treated her in over a year, have you? And the last time was for a stiff finger? A. That is what I gave her treatment for the last time.

20

Mr. Dunn: That is all.

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EDWARD FERGUSON, sworn for the Plaintiffs.

*Direct-examination by Mr. Ward:*

Q. Officer, you are a police officer of the Borough of Bloomfield?

30

The Court: Not a borough; it is a town.

A. Yes, sir.

Q. You have been for how long? A. Going on seven years.

Q. Were you on duty at the time this accident happened? A. Yes, sir.

Q. Whereabouts? A. Broad and Watchung Avenue.

40

*Edward Ferguson—Direct.*

Q. What was the first thing that you noticed about this accident? Withdraw that for the moment, and ask you for how long at the time of the accident you had been on duty there? A. Well, several months, but that day—

10 Q. Upon that day, for how long had you been on duty? A. From eight o'clock in the morning.

Q. Now, did you see the accident? A. A second after it happened.

Q. What was it you saw? A. Just as—I really didn't see the accident, when the cars first hit, but I was standing about thirty-five feet from where they hit, and with the crash—I had my back toward them at the time—and with the crash I turned around, which I would say would be about a  
20 second or so.

Q. Yes? A. When I turned around I noticed the front of the Buick against almost the right rear of the Ford sedan.

Q. What was their position in the roadway? A. Well, they were both moving at the time.

Q. Yes, the Buick was pointed in which direction? A. West.

Q. And the Ford was pointed in which direction? A. Well, for a second, the Ford was pointed north.

30 Q. For a second? A. Yes.

Q. Then what happened? A. Then he was pointed east.

Q. What caused that change in these cars? A. Well, the Buick kind of pushed him around in that position.

Q. Where did the Ford land up? A. Why, right at the edge of the road, close to the sidewalk.

Q. Are you familiar with this map? A. I am familiar with that neighborhood.

40 Q. Do you think you can familiarize yourself

*Edward Ferguson—Direct.*

with this map sufficiently to identify the place where the Ford was after the accident? Come down here, please. A. Yes, sir.

Q. If I might explain to you; this is the direction of Newark, this is going towards Passaic, and this is Broad Street, this Watchung Avenue; this is east, toward the river, this is going out towards Montclair, out over the Hill, I think his Honor said, or up over the hill. First, I will ask you whereabouts you were. This indicates the gas station. A. Right here at the tanks. 10

Q. At the gas pumps or tanks?

The Court: Well, I have never seen the tanks myself. I think they are always buried. 20

Mr. Ward: Yes, sir, they are.

Q. You had your back towards the place where the accident happened? A. Yes, sir.

Q. Now, when you swung around, where were those cars? Can you show us on the map? A. Is that the traffic beacon?

Q. That is the traffic beacon. A. I would say that the cars were five feet north of that traffic beacon, one car facing that way. 30

Q. Now, five feet north of the traffic beacon, that would be in this direction, and one car facing north? A. Yes, sir.

Q. And the other? A. Facing west.

Q. And in contact, as I understood you to say, with the one that was facing north? A. Yes, sir.

Q. That is, against the rear part of it? A. Yes, sir.

Q. Now, get back on the stand, please. 40

*Edward Ferguson—Direct.*

The Court: What were you doing over by the pump?

The Witness: I was talking to a man over there.

The Court: Was he getting gas?

The Witness: No, sir.

10 The Court: Were there any cars at the pumps or tanks?

The Witness: No, sir.

The Court: You are sure about that?

The Witness: Positive.

The Court: No cars in the yard there, to the right of the gas station?

The Witness: In the yard? I don't know what you mean.

20 The Court: Well, there is a space there, on the corner that you drive in, and a driveway is around the corner, on Watchung Avenue, to drive in for your gas; isn't there?

The Witness: Well, yes.

The Court: You make a loop in there?

The Witness: Yes, on both sides of the gasoline tanks.

The Court: Exactly, on both sides you can get in, from either end?

30 The Witness: Yes, sir.

The Court: Now, were there any cars standing in there, on that corner?

The Witness: No, sir.

The Court: Or anywheres around there?

The Witness: No, sir.

The Court: All right.

40 Q. What did you do, officer? A. Why, I run right over there, and as I got there, there was a little boy in the Ford; the door opened up before I

*Edward Ferguson—Direct.*

reached there, and as I got there, why a little boy rolled out of the door that opened up in the Ford, and he was a cool sort of a boy, he did not appear to be hurt, but I picked him up; and Mrs. Purcell was screaming there with pain, and some gentleman came along—I don't know who he was,—and took Mr. and Mrs. Purcell and the boy and myself to the Mountainside Hospital. 10

Q. You said that after the accident, the Ford car was pointed east? A. Yes, sir.

Q. What was its position in the roadway after it had stopped? Do I make myself clear to you? A. Not quite.

Q. Well, after the accident had occurred, when the Ford finally came to its lodging place, where was it in the road? A. Well, I wouldn't say that it was exactly in the road. 20

Q. Can you give us any idea of where it was? A. Only that I say it was more in the curb.

Q. In the curb? A. In the gutter.

Q. Do you recall the cement walk that runs along the westerly side of Broad Street? A. Yes, sir.

Q. And with reference to that cement walk, where was the car—the Ford car? A. Why, I would say almost in between the cement walk and the edge of the pavement. 30

The Court: Well, how many wheels of the car were there off the pavement, would you say?

The Witness: Two.

The Court: Two rear wheels?

The Witness: Well, I don't know about that, to be so positive of two, but one for 40

*Edward Ferguson—Direct.*

sure; the two front wheels were on the pavement.

The Court: It was headed then in an easterly direction—

The Witness: In an easterly direction—

The Court: —towards Nutley?

10 The Witness: Yes, sir.

The Court: All right.

Q. Where was the other car, the Buick? A. Why, he was on Watchung Avenue, more to the right of the road.

The Court: He had passed the beacon light and was around the corner, was he?

20 The Witness: He was past the beacon light.

The Court: Was he turning the corner? He was off Broad Street?

The Witness: Yes, sir.

The Court: He was past the sidewalk, if the sidewalk continued over?

Mr. Ward: That would be the cross-walk.

30 The Court: I mean the sidewalk on the westerly side. Yes, it would be the cross-walk. He was past where the cross-walk would be if there was one there; is that right?

The Witness: Well, I wouldn't say that his whole car was past the cross-walk, probably some of it was.

The Court: Well, if he was not, he interfered with traffic, didn't he?

The Witness: They both was interfering with traffic.

40 The Court: That is the narrowest point

*Edward Ferguson—Direct.*

there between that beacon and the northerly side, is it not?

The Witness: Yes, sir.

The Court: If he had stuck in there, why, you would remember it, wouldn't you?

The Witness: Well, he was stuck in there because—

10

The Court: Then you do remember. That is right, is it?

The Witness: Well, I want to get it straight. Are you trying to find out if the car was past the sidewalk?

The Court: Trying to find out where it was, the Buick car.

The Witness: I should say that it covered—part of it was past the sidewalk, part of it was right on a line with the sidewalk.

20

The Court: All right.

Q. By the sidewalk, you mean this sidewalk that we see indicated on the map here, on the westerly side of Broad Street? A. Yes, sir.

The Court: Had the cars been moved when you came back from the hospital?

The Witness: Why, I do not believe they were moved right away. No, I think I moved them myself when I came back from the hospital.

30

The Court: All right.

Q. Does that correctly show the condition that existed there that day? Of course, I do not mean directly at the time of the accident; I mean the streets and the crossings? A. Yes.

Q. Where one street crosses the other? That is,

40

*Edward Ferguson—Direct.*

showing you Exhibit P-3. A. (No answer).

Q. I show you Exhibit P-2, and I ask you, if you will, to indicate upon that picture about where you saw these two cars in contact, when you turned around? A. Why, I would say about five feet this side of the beacon.

10 The Court: This side of the beacon is toward Bloomfield?

The Witness: No.

The Court: Yes, it is, isn't it?

The Witness: No, this is toward Passaic; that is toward Montclair.

The Court: All right; you are right.

A. (Continuing) About five feet north of the beacon, right along in here.

20 The Court: Yes, very well.

Q. Now, can you put an "X" there, please? A. Is this supposed to indicate five feet?

Q. Then your cross,—and, of course, photographs, as his Honor said, are deceptive,—but that was after the impact and as you looked around?

A. Yes, sir.

Q. Did you see the condition of the Buick car?

30 A. I did.

Q. I show you Exhibit P-7 and ask you if that discloses the condition of the right fender of the Buick car after the accident? A. Yes, sir.

Q. Did you see the Ford car? A. Yes, sir.

Q. I show you Exhibit P-8, and ask you if that shows the condition of the right wheel? A. Yes, sir.

40 Q. I should say, the left rear wheel; that is the left rear wheel, is it not? A. Yes, sir.

*Edward Ferguson—Direct.*

Q. Was that broken in that manner? A. Yes, sir.

Q. As shown in that picture? A. (No answer).

Q. I show you Exhibit P-9, and I ask you does that show the side of the Ford car, right side of the Ford car, was it after the accident? A. Yes, sir.

10

Q. Was the running board and the mudguard in that condition? A. Yes, sir.

The Court: May I see that, Mr. Ward?

Mr. Ward: Yes, sir.

The Court: Was that where it was right after the accident, do you know?

The Witness: It was right there, or practically there, but not in that position.

The Court: It had been moved, had it? Had it been moved before this picture was taken?

20

The Witness: Before it was taken, it was facing east, and the front wheels were out on the road, and was interfering with traffic there.

The Court: So that the front part was this way and you moved it this way?

The Witness: Yes, sir.

30

The Court: Parallel with the sidewalk?

The Witness: Yes, sir.

The Court: You will notice that the rear right wheel is on the pavement?

The Witness: Yes, sir.

The Court: And the rear left wheel is just off the pavement, or where the rear left wheel ought to be?

The Witness: Yes, sir.

40

The Court: Now, would you say that both

*Edward Ferguson—Direct.*

of the rear wheels were off the pavement and between the pavement and the sidewalk, as you said before, after it came to a stop?

The Witness: I didn't say before that both of them were off.

10 The Court: I understand you to say that two wheels were off the paving.

The Witness: I said one positively was, and possibly the second, as it was not exactly straight.

The Court: All right, very well.

Q. Exhibit P-10, that likewise discloses the right side of the Ford automobile, does it not? A. Yes, sir.

20 Q. Did you notice any marks in the roadway?  
A. I did.

Q. I again show you Exhibit P-2, and ask you if the marks that are shown in the roadway by the letter "P" were there at the time of this accident, right after the accident occurred? A. At the time.

Q. After the accident had occurred? A. Why, yes, it was.

30 Q. And I also show you Exhibits P-5 and P-4, and ask you if these marks were in the roadway right after the accident happened. A. Yes, sir.

Q. Now, you went to the hospital, I believe, with Mrs. Purcell. A. Yes, sir.

Q. Before you went to the hospital, did you make any investigation or take any names of any of the persons who were there? A. Just of the ones that were in the cars.

Q. Of the persons who were in the cars? A. Yes, sir.

40 Mr. Ward: I might ask your Honor, this officer is very anxious to get away, and this

*Edward Ferguson—Direct.*

perhaps is rebuttal, but I am anticipating from what was said in the opening.

The Court: No, he won't get away until after noon, if Mr. Dunn is going to cross-examine.

Mr. Dunn: Very briefly, sir.

The Court: Are you through? Go ahead 10  
with your rebuttal.

Mr. Dunn: Are you through, Mr. Ward?

The Court: Not quite; he is going to anticipate something.

Q. Was there present at that time any old gentleman in Mr. Pollock's car? A. Positively not.

Q. Are you sure of that? A. Positive.

The Court: Who was in Mr. Pollock's car? 20

The Witness: A lady that said she was Mr. Pollock's wife and a little youngster two or three years old.

The Court: And who else?

The Witness: Nobody else.

The Court: The lady was driving?

The Witness: No, sir.

The Court: Who was driving, the child?

The Witness: No, Mr. Pollock. 30

The Court: Mr. Pollock was there, too, was he? You see, you did not tell us about Mr. Pollock. The question was: Who was in the car? You said a lady and a child there and Mr. Pollock was driving, so I assume Mr. Pollock was also there.

The Witness: Yes, sir.

Q. Did you take the names of Mr. and Mrs. Pollock? A. I did. 40

*Edward Ferguson—Cross.*

Q. Did you take the names of Mr. and Mrs. Purcell? A. I did.

Q. And the child that was in the car with Mr. Purcell? A. I wouldn't say that I took the name of the child, only that on my report I made out "a child."

10 Q. Now, have you ever heard it asserted at any time by Mr. Pollock, that his father-in-law was in the car at the time of the accident? A. Never.

Mr. Ward: Cross-examine.

*Cross-examination by Mr. Dunn:*

Q. You did not see the accident, did you, officer? A. A second after it happened.

20 Q. You were in the garage, weren't you? A. Positively not.

Q. Do you know Mr. Ems? A. Mr. Who?

Q. Mr. Ems? A. If it is the insurance man, I do know him by name.

Q. You do not know who he is, but a man by the name of Ems that was in the garage the night of this accident, talking to the garage man and you, do you know him? A. Do I know Mr. Ems?

30 Mr. Ward: Wait a moment; I object.

Q. Do you know Mr. Ems? A. No, I do not know Mr. Ems.

Q. Well, did you see a man by a similar name in the garage at this intersection on the night of the accident? A. Why, the man that I was talking to, I don't know his name; his name might be Mr. "Arms."

The Court: All right.

*Edward Ferguson—Cross.*

Q. It was in the garage, wasn't it? A. Positively not in the garage.

Q. You testified in another trial, did you not?

A. I did not; he did.

Q. Do you know Judge Rawson? A. Yes, sir.

Q. Of Glen Ridge? A. Bloomfield.

Q. Excuse me; did you testify down there? A. 10  
No, sir.

Q. Ems did, didn't he? A. I couldn't tell you; I was not there.

Q. Where were you at the time of the crash? A. Standing alongside of the gasoline pump.

Q. And you got over to the side of Ford sedan in time to catch the child as the child toppled out?

A. Oh, no.

Q. Well, you hurried over there? A. I did. 20

Q. And just as you got there, the door opened and the child came out? A. He did.

Q. And you caught the child, didn't you? A. Oh, no.

Q. What did you do? A. The child hit the ground before I got there.

Q. Did you catch the child on the first bounce? A. I didn't notice whether he bounced.

Q. Well, now, you indicated on one of these photographs, did you not, by an "X" the place where the cars came together? A. Yes, sir. 30

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

Q. Do you see some marks between the letter "P" and that "X"? A. Yes, sir.

Q. Do you know in which direction Mr. Pollock's car was going? Can you tell from that photograph? A. Tell from the photograph?

Q. Yes. A. Which way his car was going? 40

*Edward Ferguson—Cross.*

Q. Yes. A. I cannot tell you the direction that he was going.

Q. Well, refreshing your recollection by the directions indicated by Mr. Purcell right here, Pollock and Purcell, would you now be able to tell which way Mr. Pollock was going and which way Mr. Purcell was going?

Mr. Ward: I object to the question "refreshing your recollection."

The Court: He probably needs no refreshing.

Q. Well, if the arrow at the bottom of this photograph, P-2, indicates the direction that Mr. Pollock was going in, and the arrow—the name Purcell indicates the direction in which Mr. Purcell was going in, and if the cars met at a point which you have indicated by the letter "X", and if, as you testified in your direct-examination, the marks between the "P" and the "X" were made by one of the cars in that accident, which car made those marks?

Mr. Ward: I object to the question upon the ground that the officer has definitely stated he did not see the collision, that he heard the impact, and that he turned, and then when he turned, which was probably a second after the impact, the cars were at "X."

The Court: I will allow it.

Q. Which car made the marks?

Mr. Ward: Counsel has said, "if, as you indicate, the collision occurred at the place

*Edward Ferguson—Cross.*

that you have marked 'X' ", and that is not the witness' evidence, sir.

The Court: Well, that is where he saw them.

Mr. Ward: That is not where the collision occurred, however.

The Court: They were moving, he said, when he saw them; I will allow him to answer. 10

The Witness: Answer.

Q. Do you want it repeated? A. Which car was the cause of the marks? Is that it?

Q. Yes. A. Why, I would say they were the marks of the Ford.

Q. Which direction was the Ford going? In which direction was the Ford going? A. He was going north. 20

Q. Which direction was the Buick going? A. West.

Q. That would be in the direction from "P" towards "X", would it not? A. It would.

Q. And you still think the Ford made those marks? A. Well, because these marks here, from "P" to "X" that mark does not end at "X"; it goes around in a circle. 30

Q. Did the Ford go in that direction, from "P" to "X", at any time? A. Why, it might have, but from "X" is when I seen it.

Q. You think that the Ford made these marks? A. Why, I sure do.

Q. Does this diagram on the map, P-1, indicate your recollection of the way the Ford was after the accident? Does that agree with your recollection? A. That is the Ford there? 40

Q. Yes. A. Pointing east?

*Edward Ferguson—Cross.*

Q. Yes. A. Yes.

Q. Come down here a moment. A. (At P-1).

Q. Will you indicate on this map the position of the cars, the Ford and the Buick, when you turned around? A. Why, that is a good position of the Ford.

10 Q. When you first turned around? A. When I first turned around?

Q. Yes, when you first observed them. A. That was a second after they hit.

Q. Well, that was when you first observed them? North that is. A. Well, that was when I observed them, a second after they hit.

Q. All right. A. Why, I might say that the Ford going by the right of the beacon, about five feet, was about on a turn, just about making a—

20 Q. Would you mind indicating the point where the cars came together, there, officer? A. I couldn't say that I could mark the point where they came together; I didn't see them come together.

Q. Well, will you mark the point where you saw them when you looked around? You looked around, didn't you? A. Sure.

30 Q. Will you mark that point where the cars were when you looked around? A. I judge, about five feet north of the beacon.

Q. Would you mind making a mark there? A. What kind of a mark?

Q. A cross.

Mr. Ward: Make a star, so many crosses there.

A. (Witness indicates as directed).

40 Q. Now, where are the skid marks that you observed after the accident with reference to the place that you have marked with an "X"? A.

*Edward Ferguson—Cross.*

Where are the skid marks?

Q. Yes, just indicate them on the map, if you will, A. Why, I would say the skid mark was starting—I have got this “X” on a line with the beacon; I should have had it here.

Q. Place it anywhere you want to; you are marking it; I am not. A. This “X” doesn’t count— 10

Q. All right. A. —I would say—

Q. Subtract “X”. That “X” you have now indicates the position of the two cars when you first saw them? A. Yes, sir.

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

Mr. Ward: Indicate that as “XF”, Ferguson.

The Court: All right, “XF.” 20

Q. Now, will you indicate the position of the skid marks on that map? A. Do you want me to make a mark also?

The Court: Yes, make a skid mark.

Q. Yes, if you will. A. I would say around like that (indicating).

Q. That is one; were there more than one? A. There was more than one. 30

Q. All right, make the other one. A. I wouldn’t say it was a skid mark.

Q. Make whatever kind of a mark you say it was. A. A brake mark.

The Court: If it had anything to do with this accident, not otherwise.

Q. Did it have anything to do with this accident? A. The mark? Yes.

The Court: Put it down then. 40

*Edward Ferguson—Cross.*

Q. Put it on. A. (Witness indicates as directed).

Q. Now, so that I understand, what did you mark on the map? What did you mark on that map? A. I marked a skid mark and a brake mark.

10 Q. That you saw on the roadway when? A. When I came back from the hospital.

Q. On your direct-examination, didn't you say you saw them immediately after the cars collided, and they were not there before that time? A. They were not there before what?

Q. Didn't you say on your direct-examination, that immediately after the accident, you saw those marks on the roadway, and they were not there before the accident? A. Yes.

20 Q. Then you saw them before you came back from the hospital? A. I guess I saw them both times.

Q. What are they? What did you say those marks were that you have put on the map? A. Skid mark and a brake mark.

Q. And that is the position that you saw them in after you came back from the (hospital) accident, from after the accident; that is what you saw on the road? A. That is pretty close to it.

Q. Look at the photograph. A. Yes, sir.

Q. Do they appear on that photograph? A. The skid mark does.

Q. Well, which is the skid mark?

Mr. Ward: You are showing him Exhibit P-4.

Q. Which is the skid mark on Exhibit P-4? A. (Indicating) .

40 Q. Now, will you show to the jury here those

*Edward Ferguson—Cross.*

skid marks that you have attempted to place on the map? A. Skid marks?

Q. Yes. A. Yes.

Q. Show the skid mark that you see on Exhibit P-4 that you attempted to indicate on the map. Just indicate it on Exhibit P-4. A. (Indicating)

Q. Now, which mark on the map have you represented here as a skid mark? A. I don't see it on the map. 10

Q. What did you put on this map? A. What I seen down there.

Q. Is that what you saw down there? A. I saw that and a brake mark.

The Court: Which is the mark on that map that corresponds to that curved mark on the photograph? 20

The Witness: This here one (indicating).

The Court: All right, that is what he is asking you.

Q. Where is that sewer? Are you familiar with this map? A. I guess I am.

Q. This is the sewer, is it not? sewer basin? A. Yes, sir. 30

Q. You still say that this line of yours indicates this curve there, do you? A. Yes, sir.

Q. What is the other mark that you made there? A. Brake mark.

Q. Is that on these photographs? A. I would have to see them.

Q. Is it on Exhibit P-5 (handing to witness)? A. Not that I can see.

Q. Is it on Exhibit P-2 (handing to witness)? A. I cannot see it. 40

*Mrs. Martha Purcell—Direct.*

Q. Go back on the stand, will you please? A.  
(Witness resumes stand).

Q. Are you sure you saw the other mark? A. I  
am positive.

Q. As sure as you are about everything that you  
have testified to—

10 Mr. Ward: I object to that question.

Mr. Dunn: That is all.

(Noon recess)

MRS. MARTHA PURCELL, sworn for Plain-  
tiffs.

*Direct-examination by Mr. Ward:*

20 Q. Mrs. Purcell, you are one of the plaintiffs in  
this case? A. Yes, sir.

Q. How old are you? A. Sixty in May.

Q. Sixty next May? A. Sixty next May.

Q. You remember this accident, of course? A.  
Yes.

Q. You remember riding in the car with your  
husband at the time the accident occurred? A.  
Yes.

30 Q. Where had you been? A. We had been down  
to Newark to see the doctor.

Q. Your grandson, I believe, was with you at  
the time? A. Yes.

Q. Now, did you see anything before the acci-  
dent occurred—anything unusual? A. Nothing  
unusual.

40 Q. What was the first that you knew anything  
about the accident? A. First thing I knew was  
something like a kind of a dark shape coming and  
then the impact.

*Mrs. Martha Purcell—Direct.*

Q. What do you mean by "dark shape"? A. Like something.

Q. Can you be more specific than that? A. Anything like on the side of you.

Q. Along on which side of you? A. Right hand side.

Q. Then the impact? A. Yes, sir.

10

Q. You were injured? A. Yes.

Q. Whereabouts? A. Well, my hand was pretty badly cut and my first two fingers were cut.

Q. Which hand? A. Right hand.

Q. First index finger and the next finger? A. Just two front fingers.

Q. Anything else? A. In fact, the whole hand was injured, but the fingers were the worse.

The Court: How were they hurt?

20

The Witness: Cut.

The Court: Very well.

A. (Continuing) Cut, you can see the lumps on them yet.

Q. You say the lumps are still there? A. Still some of them, yes.

Q. Where else were you injured? A. The fact of the matter, I was injured all over; that means my head was injured and my back was injured and my leg was pretty well injured, it was real black, but the automobile made the injury.

30

Q. You were taken care of by some doctor in the hospital, were you? A. Doctor in the hospital.

Q. Then you were taken home? A. I was taken home then, yes.

Q. And attended by whom? A. Dr. Caverley.

Q. You suffered much pain? A. Yes, an awful lot of pain.

40

*Mrs. Martha Purcell—Direct.*

Q. For how long a period of time? A. Well, for about six weeks I couldn't move on my back, I couldn't lift at all my head for pretty nearly six weeks—four weeks anyhow, I couldn't lift my head.

Q. After that you gradually grew better? A. Gradually, with the aid of pillows, I can move over just a little.

10 Q. How long was it before you were up and around? A. Well, I believe I was up, out of bed, after five weeks or six weeks, but I was not going around very much for a little while longer.

Q. After the five or six weeks had elapsed, when you began to going around, what was your condition then? A. Well, I couldn't put my clothes on, because my hands—I couldn't clothe and undress myself; I had to have that done for me, and my clothes kind of partially put on me.

20 Q. Your daughters done that? A. Yes. (Continuing) My shoes had to be tied for me, for four or five months, I couldn't stoop over, with my back to do that.

Q. What is your condition today? A. Well, today, seems my fingers are stiffened up so I can't hold as good as I could; and if I go to handle anything, I have to use this finger and my thumbs, and I can't write as good as I could, nor I can't lift anything; suppose I try to pour a cup of tea, I cannot lift it up, I have to use this hand to do it.

The Court: Lift what? teapot?

The Witness: The teapot, I have to use the left hand to pour it.

Q. Anything else? A. Back hurts, I can't stoop as I did formerly; also, when I walk a good deal, the shins and feet hurts, due to the mark, as

40

*Mrs. Martha Purcell—Direct.*

I had a black mark and a dent, and when I walk now it smarts a bit, which it didn't use to do.

Q. What about your side? A. If I turn quick, something like this on my feet, I have to hold it, and I cannot stoop as well as I did before.

The Court: On what side is it, Mrs. Purcell? 10

The Witness: On the right side.

The Court: And the left leg?

The Witness: And the left leg.

A. (Continuing) I was all black and blue, and my head was great bumps there, but that has gone down.

Q. After you got out and around, after the six weeks' had elapsed, about which you spoke a minute ago— A. Yes. 20

Q. —from that time up to the present, have you suffered any pain? A. Well, of course, off and on, I have headaches, perhaps it is headaches, I don't know what hurts, they leave and come back maybe once or twice a week; and when I walk too much my leg hurts a bit, and sometimes the back hurts on and off sometimes, quite frequently.

Q. You do not know anything about the position of these automobiles after the accident, do you? 30

A. No, I do not, no.

Mr. Ward: Cross-examine.

*Cross-examination by Mr. Dunn:*

Q. How old did you say you were, Mrs. Purcell? A. I will be sixty in May.

Q. Sixty? A. Yes.

Q. I think you said you had difficulty lifting a 40

*Mrs. Martha Purcell—Direct.*

tea pot with your right hand? A. Yes. Anything—you go to lift anything—I go to lift anything—a teapot, I just illustrated with the teapot,—but any other thing was the same.

Q. Is it the weight of the teapot? A. I can't grip, I haven't got the grip.

10 Q. You haven't got the grip? A. Not the grip in this hand.

Q. But your fingers were cut, weren't they? A. Cut by the glass, yes.

Q. Dr. Caverley didn't treat your fingers, did he? A. Well, he treated them and he put them in a solution; he put my hand in a solution every time he come for a week for fear of anything setting in, and then he came and took the stitches out. He took the stitches out when they were  
20 ready to come out.

Q. They put the stitches in in the hospital? A. In the hospital; they also strapped me up in the hospital too.

Q. Well, with reference to your hands, they put the stitches in in the hospital, and then Dr. Caverley applied some antiseptic, I suppose, to it? A. He come up there, and he put my hand in that solution or dressing, until it was time to take the stitches out.  
30

Q. Well, the cords weren't cut; the cords of your fingers weren't cut, were they? A. I don't know; they may be.

Q. You don't think you can lift a teapot up in your left hand or the right hand? which is it? A. I cannot lift it in the right hand, not the teapot only; I have illustrated it with that, but everything else, I can't lift nothing else heavy.

40 Q. When did these injuries to your fingers first heal, Mrs. Purcell? A. Oh, they were not healed

*Mrs. Martha Purcell—Cross.*

because the stitches came out, but before I could write and it was three months before I could hold a pen, and then I held it with this finger and the thumb; I can't write as good as I used to write.

Q. May I see your hand, please? A. Yes (exhibiting); this is numb, there is no feeling in it, and this is where the flesh was gathered in there. 10

Q. You can bend this finger, can you not? A. Yes, I can bend that finger, but just the joint I can't.

Q. Just bend this finger down here? Don't resist me. A. It hurts to bend that joint over.

Q. But you can bend it, can't you? A. No, I can't; you see it was cut right straight through here (indicating).

Mr. Dunn: That is all. 20

Mr. Ward: That is all; we rest.

(Plaintiffs rest)

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DEFENDANT'S MOTION FOR NON-SUIT.

Mr. Dunn: Now, if your Honor please, I move for a non-suit on the ground, first, that the plaintiffs have failed to produce any negligence on the part of the defendant. They have remarkably failed in that respect. They have not produced in this court room a single person who can testify that he or she saw the machine of the defendant before this accident. Necessarily, we cannot infer negligence, and there is no testimony in this case that the defendant was speeding at the time of the accident or that he failed to make any observations or that he failed to do any of the other acts that are alleged in the complaint. I might say 40

*Defendant's Motion for Non-Suit.*

that I cannot recall of a case where the plaintiff has so singularly and totally failed to show any act of negligence on the part of the defendant. That is the first point I make.

10 The second point I make is that the plaintiffs were guilty of contributory negligence. The plaintiffs here have testified that he, and his wife, who was a passenger in the machine, were engaged in this joint enterprise of taking the grandson over to this doctor in Newark for the purpose of receiving treatment, that he took her along for the specific purpose of assisting in giving such attention to the child as the child might need, and he and she were so engaged, when this accident happened.

20 Under the circumstances, of course, the acts of negligence of the plaintiff, Mr. Purcell, are attributable to her, or, rather, the negligent act of Mr. Purcell was her act of negligence. Now, he testified that when he arrived at a point which is indicated on the diagram as P-1 or B-1, placed opposite the pole, he continued to travel across this intersection for a distance, according to his own testimony, of sixty-five feet, without making any observation of anything that might be approaching on his right. I do not know of a case, in my brief  
30 experience at the bar, where a plaintiff so notably committed negligence. On his own story, he travels a distance of sixty-five feet without attempting to make any observation for what might be approaching from the right; he continued until the very time of the collision, and he does not once look to the right. He testified that from the position B-1 he had made an observation down the roadway some 165 to 190 feet; from that position  
40 as he progressed across that road, his length of

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vision would necessarily increase, and he continued this sixty-five feet and he doesn't see this car approaching him, until it strikes him, as he says. He says there was nothing in his way, that would interfere with his vision, that he just does not look. So under those circumstances, I respectfully ask your Honor to grant a non-suit.

10

The Court: I think that both questions are fact questions, and I think that they being fact questions, I will let the jury decide them. I think there are facts that have been testified to, which raise the question. I do not think that it is a question of law. If it be true, for instance, on your first point, that he was struck a sufficiently violent blow to cause his car to be swerved, as he says, like a merry-go-round, over to the side of the road, I think it is a question of fact for the jury as to whether that blow that he received was a negligent act. The mere fact that no one saw it, that there is a lack of proof as to the speed with which he came, is not enough to say that there is no proof. The proof as to where he was when he was struck and where he was when he stopped going, and the condition of the cars, is evidence from which they may find an act of negligence. On the other hand, with respect to your asking me to decide that there is contributory negligence here, because he traveled sixty-five feet from the time he looked up the road until the time he was struck, I think raises a question of fact for the jury and not for me to decide, because he says that he was able to see, as he judges it, 190 feet, or thereabouts, from the point where he last looked, to his right. Now, was it an act of negligence, if he could look up 195 feet and see nothing, to go on across the street? That is a question for the jury; if he went

20

30

40

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10 sixty feet and somebody had to come more than  
 190 while he was going sixty, that is a question  
 for the jury, as to whether the man that came two  
 hundred feet while he went sixty was guilty of an  
 act of negligence. In other words, it is a question,  
 I take it, for the jury, as to the question of whether  
 a man ought to have looked again while travers-  
 ing that sixty-five feet, or whether it was not an  
 act of negligence because of the fact that he could  
 see for nearly two hundred feet and then, seeing  
 nothing there, or whether a reasonably prudent  
 man would not be obliged to look again, not anti-  
 cipating, and not feeling that anybody would be  
 coming along at a speed great enough to beat him  
 to the corner. I think both questions should be  
 left to the jury, and for that reason it is not my  
 20 province to decide the case, it being a question of  
 fact rather than of law. You may have an excep-  
 tion noted—

Mr. Dunn: Your Honor will allow me an ex-  
 ception.

The Court: —of course, to the ruling.

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30 ROBERT G. POLLOCK, sworn for Defendant.  
*Direct-examination by Mr. Dunn:*

Q. Mr. Pollock, how old are you? A. Thirty-  
 five.

Q. You are married? A. Yes, sir.

Q. And have two children? A. Yes, sir.

Q. Your profession is clerical work; is that cor-  
 40 rect? A. Yes, sir.

The Court: What?

The Witness: Clerical work.

*Robert G. Pollock—Direct.*

Q. How long have you been engaged in that occupation? A. Since I came out of the Service.

Q. I beg pardon? A. Since I came out of the Service, 1918.

The Court: Keep your voice up.

Q. I believe you were also cited while you were in the Service. 10

Mr. Ward: If your Honor please, I object to this last question.

The Court: What harm is there? He ought to be proud.

Mr. Ward: Certainly, we are all proud of him having been cited.

The Court: But if it was in connection with running an automobile or ambulance or anything else between the lines, or behind the lines, or in face of danger, you ought to be able to show it. 20

Mr. Ward: Yes, sir; he may have been reckless in his bravery.

The Court: Therefore it will do you no harm.

Mr. Dunn: Therefore, I presume, Mr. Ward withdraws the objection.

The Court: I have overruled his objection anyway. 30

Q. Now, Mr. Pollock, on the day that this accident happened, you were proceeding, were you not, along Watchung Avenue, in a generally westerly direction? A. Yes, sir.

Q. In a Buick coupe; is that correct? A. Yes, sir.

The Court: You were not cited for talking loud at the Germans, were you? 40

*Robert G. Pollock—Direct.*

The Witness: No, sir.

The Court: Well, try; you must talk up so that we can hear you.

Q. Somewhat modest, are you not? A. Kind of.

Q. However, you were proceeding in a westerly direction in a Buick coupe on that occasion, were you not, Mr. Pollock? A. Yes, sir.

Q. Who was in that machine with you at the time? A. My wife, baby, and my father-in-law.

Q. The father-in-law, is he in court? A. Yes, sir.

Q. Mr. Hammond, is that his name? A. Mr. Hammond.

Q. The other car was a Ford, was it not? A. Ford sedan.

Q. Ford sedan, driven by Mr. Purcell, who was on the stand this morning? A. That is right.

Q. Now, in your own way, Mr. Pollock, will you tell us what happened as you approached the intersection of Watchung Avenue and Broad Street on that occasion? A. Yes, sir. I was running from Nutley with the occupants of the car I have just mentioned,—my father-in-law, wife and baby.

Q. Yes; keep your voice up. A. I was traveling in a westerly direction, going home, to Montclair, where I live, about eleven-forty in the morning, as Mr. Purcell has testified. Well I went about twenty to twenty five feet from the Broad Street intersection, I noticed this Ford sedan, who was then approximately a hundred feet to the south of Watchung Avenue intersection. In other words, he had not arrived at the intersection, because I looked left first and I turned my eyes to see anything approaching from my right. There is nothing at all to obscure your view to the left,

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but to the right there is considerable shrubbery there; there is five or six trees, and I note it only shows one on the map, I noticed that.

The Court: You do not mean trees, do you?

The Witness: Yes, sir; I really mean trees; they are fruit trees, I think. 10

The Court: Aren't they lilac bushes?

The Witness: They may be that, but there are ten or twelve feet high, sir.

The Court: All right; they grow high.

The Witness: They were higher than the car.

A. (Continuing) At any rate, I glanced my eyes to the right to see if anything was coming. 20

Q. Just tell us what you did. You looked to the right to see if there was anything? and then?

A. I looked to see if there was anything coming, and not more than three seconds elapsed when I turned straight, and this Purcell car was bearing down on me, going left to go right around my car, in front of me, and I immediately put the foot brakes on,—(unintelligible).

Q. I think you said you turned your car slightly to the left? A. I put the brake on and pulled the car slightly to the left, and Purcell's car was bearing down on me at an angle. If he had kept on going he would have to go to the right. 30

Mr. Ward: One moment—

The Court: You are giving us conclusions; you cannot do that; that is for the jury to decide.

Mr. Dunn: With your Honor's permission, I will instruct the witness. You can- 40

*Robert G. Pollock—Direct.*

not say where he would have gotten if he had done something. That is your conclusion. Just tell us the relative positions of your car and his, and talk distinctly so we can understand you and the stenographer, as well.

10 Q. Go ahead, Mr. Pollock. A. I tried to pull to turn to avoid the collision; I had been struck possibly about—I was in the—front part of my car was then well beyond the middle of the road—three or four feet beyond, if I put a straight light right down the center of Broad Street,—this Purcell car was on the left hand side of Broad Street at that time and turned right again in order to get back on the right of Broad Street again. In  
20 other words, he made a turn to go around the front of my car, that that is where the accident happened, and I pulled around sharp to avoid him. He was going at a terrific rate of speed right past the intersection, at such a high speed, with which he hit my car, that he bent my front springs right around like that, pushed in the front right fender, knocked the wheel around, knocked the steering gear out of commission. My car was just about  
30 stopped when he hit it; at the time I was not going more than twelve miles an hour; he was going at least forty-five miles an hour, to my best judgment of the speed.

Q. What happened to the position of your car, Mr. Pollock, as your cars came in contact? A. As the cars came in contact, as he struck my car, as I just explained, on the right fender, on the spring, and he pulled the—the wheel went spinning out of my hand, as he sideswiped it, and he  
40 drug my car two or three feet with him. I was

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heading down Watchung Avenue, as he struck that car on the side, and it pulled my car around, and that made that kind of a                      in my left rear wheel.

Q. Now, after the accident, did you take a picture of your car? A. I did.

Q. Have you that picture with you? A. (Witness produces photograph). 10

Mr. Dunn: I ask to have this marked for the purposes of identification.

(Marked Exhibit D-1, Id.)

A. (Continuing) That picture was taken fifteen minutes after the accident.

Q. Just a moment. I show you Exhibit D-1 for identification, Mr. Pollock, and ask you if that is a picture that you took? A. It is, sir. 20

Q. When did you take it? A. Within fifteen minutes after the accident. In other words, before twelve o'clock—the accident happened about twenty minutes or a quarter of twelve.

Q. Is the automobile that appears on that photograph your automobile? A. It is.

Q. Was it in the same position that it was immediately after the accident? Was the position of the automobile as it appears on that photograph the same position that it was in after the accident? 30

A. Well, right immediately after the collision my car was stopped absolutely, both by the brake and the impact.

Q. I don't think you are listening to my questions. Does that picture show the position of that car as it was immediately after the accident? A. Yes, sir.

The Court: In other words, it had not 40

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been moved from the time of the accident, or as it had stopped after the accident, until that picture was taken; is that right?

The Witness: I stopped immediately after the accident happened.

10 The Court: Is there anything wrong with that question.

The Witness: Yes, sir.

The Court: What don't you understand about that?

The Witness: Because when I am—

The Court: Listen to the question. The car stopped after the accident?

The Witness: Yes, sir.

The Court: Did it move again from that minute until the picture was taken?

20 The Witness: No, sir.

The Court: Maybe that is a little plain-er.

Mr. Dunn: I offer the picture.

Mr. Ward: No objection.

The Court: Let it be received.

(Marked Exhibit D-1.)

30 Q. While the jurors are looking at that picture — I notice some marks on the pavement, as they appear on that picture; what were they, Mr. Pollock? A. Those were the brake marks of my automobile. They couldn't be another.

Mr. Ward: Now, I ask that be stricken out.

The Court: Strike it out, and please, don't volunteer anything.

40 Q. Just answer my questions.

*Robert G. Pollock—Direct.*

The Court: You have got good counsel, and he will have it explained to the jury. He does not need your help.

Mr. Dunn: I don't think the witness does it intentionally.

The Court: I do not think so either, but I have cautioned him several times, and that ought to be enough. 10

Mr. Ward: He is too hasty.

Q. Whose marks were they, Mr. Pollock? Whose marks were those marks you observe on the pavement? A. They were the marks made by the rear wheels of my car.

Q. Are they the same marks that appear in Exhibits P-4, P-2, P-5 and P-12? Are they the same marks that appear in these exhibits, Mr. Pollock? 20  
A. They are, sir.

Q. Did Mr. Purcell's car make these marks or any of these marks that you see there? A. Absolutely not.

Q. Did his car ever come that far to the right as these marks appear on any of these photographs? A. No, sir; these marks were made by the rear of my car, and Purcell's car was never to the rear of mine. 30

Q. After the accident, did you have a talk to Mr. Purcell relative to the accident? A. Yes, after he returned from the hospital.

Q. Do you recall that conversation? Yes or no. A. Yes, I recall the most of the conversation.

Q. Do you recall whether or not, without repeating the whole conversation, anything was said at that time with reference to the rights of the drivers of either car, by you or Purcell? A. Yes, sir. 40

*Robert G. Pollock—Direct.*

Q. What was said? A. Why, he told me in fact that the right of way didn't mean anything, and he started to cite a story about a horse and a buggy, about the buggy being hit, and the horse running away, something to that effect.

10

The Court: Where was your car taken after the accident? Did it put it out of commission? Could you run it?

The Witness: No, sir; I had to be towed.

The Court: Where was it taken immediately after the accident?

The Witness: Why, to the garage on Watchung Avenue, from the scene of the accident, just around the corner.

20

The Court: Why didn't they move \* \* if you were going up Broad Street, if it was on the right of Broad Street?

The Witness: Because it was more feasible to move it around the other way.

The Court: They had to turn it, didn't they, to get it around on the other side of Watchung Avenue?

The Witness: Not necessarily.

30

The Court: According to D-1, it is head-up Broad Street, is it not?

The Witness: This is not headed directly up; no, sir. \* \*

The Court: Show me on the map how it was pointed according to that picture.

Q. Do you understand the map, Mr. Pollock? A. Yes, sir.

40

Q. Don't mark on it. This is north, that is south, east, west; that is Broad Street, Watchung Avenue; here is the traffic beacon, here is the

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sewer, here is the pole, here is the gas station. A. My car was in that general direction (indicating); my car was on an angle about like that, as is shown in that photograph.

The Court: Where, on the picture?

The Witness: Right about here (indicating). 10

The Court: All right, and it remained there until the officer came back from the hospital?

The Witness: No, sir; I think the other officer moved it before he came back from the hospital.

The Court: You stayed there, did you?

The Witness: Yes, sir; all of the time. 20

Q. I may have misunderstood you, Mr. Pollock; were you indicating the position of your car when you pulled it up to the curb, or where it was after the accident? A. Where it was after the accident.

The Court: Before it was moved?

The Witness: Before it was moved.

The Court: And when that picture was taken? 30

The Witness: And when that picture was taken; yes, sir.

Q. Is that the way it appears in this photograph? A. Well, I have just given the direction there. The Judge asked me where it pointed up Broad Street.

Q. Oh, you are indicating the direction. A. Just indicating the direction of the car. 40

*Robert G. Pollock—Direct.*

The Court: But I also asked you to place it on the map just where it was.

The Witness: You told me not to mark the map.

The Court: I do not want you to mark it, but you put it over in the gutter.

10

Q. Would you mind coming down to the map and clear up any misunderstanding there may be about it, Mr. Pollock? A. Yes, sir (at the easel).

Q. Will you indicate to us, from the Exhibit D-1, where your car was on the map? Can you place it on the map? A. I place my car on the map about here (indicating).

Mr. Dunn: May we indicate that?

20

The Court: You can mark it. My only thought in saying not to mark it was that you are going to have a lot of marks on top of each other, and you are going to confuse the jury.

The Witness: I have got a different colored pencil.

The Court: If you have got a different colored pencil from any that is there, you may mark it.

30

Q. Just indicate where your car was, as it appears in that picture, after the accident. A. (Witness indicates on P-1.)

Q. Just put a little point on it, if you will, to indicate the front of the car. A. (Indicating).

Q. The arrow indicates the front of the car, and the diagram has been marked in red pencil? A. Yes, sir.

40

Q. Will you indicate on that map where the

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skid marks were, with relation to the position of your car, as it appears on that map? A. Yes, sir. Shal I also mark it?

Q. If you will, mark it with red pencil. A. (Witness indicates on P-1).

Q. Indicating two marks on the map, in the rear of the oblong, indicating the position of your car after the accident. A. Yes, sir. 10

Q. Just go back on the stand. A. (Witness resumes stand).

Q. Did you know a man by the name of Ems or Emmis,—something of that sort? A. Not until he testified, I didn't know him at that time.

Mr. Ward: I ask that be stricken out.

The Court: What is the matter with that answer? 20

Mr. Ward: We are not concerned with any other testimony, sir.

The Court: I do not know, but you might be.

Mr. Ward: We are not up to this point.

The Court: Oh, I will let that stand. It does you no damage.

Mr. Ward: Exception.

The Court: You may have an exception. 30

Q. You did not know him before the accident, did you? A. No, sir.

Q. Was he there at the scene of the accident? A. Yes, sir.

Q. Did you know where he lived at that time, or did you learn where he lived at the time of the accident? Did you learn where Mr. Ems lived at the time of the accident? A. Yes, sir.

Q. Have you made inquiries and endeavored to 40

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locate Mr. Ems at any time? A. Yes, sir.

Q. Were you able to locate him? A. No, sir.

Q. Do you recall Officer Ferguson? A. I do.

Q. Did you see him at the scene of the accident?

A. I saw him after the accident happened.

10 Q. How long after the accident happened did you see him? A. It was several seconds.

Mr. Dunn: That is all. Take the witness.

*Cross-examination by Mr. Ward:*

Q. Officer Ferguson took your drivers' license from you and examined it, did he not? A. Yes, sir; he did.

20 Q. That was immediately after the accident? A. That is, after he came over to the scene of the accident, yes, sir.

Q. Now, as I understand you, you were going westerly, on what—Watchung Avenue? A. Right.

Q. You got to the intersection of Broad Street? A. Yes, sir; I got there, past it.

Q. As you got to the intersection of Broad Street, did you look to your left? A. I did.

30 Q. Was it then that you saw this car of Mr. Purcell's? A. I saw Mr. Purcell's car when I was twenty to twenty-five feet before I got to the intersection.

Q. So that before you got to the intersection of Broad Street, when you were twenty or twenty-five feet away from the intersection, and by that I presume you mean the most easterly line? A. That is right.

Q. Of Broad Street? A. Exactly.

Q. You saw Purcell's car? A. Yes, sir.

40 Q. And you saw it going about forty-five miles

*Robert G. Pollock—Cross.*

an hour? A. I should judge, approximately that speed, sir.

Q. And yet you kept on going? A. Yes, sir.

Q. And you kept right on going until you drove into his car, didn't you? A. Yes; you would have done the same thing.

Q. Well, irrespective of that, you kept on going when you saw this man driving— A. (Interrupting) I saw the car— 10

Q. One moment, now. —when you saw this man driving, going at the rate of forty-five miles an hour, you kept right on straight until you drove into his car, did you not? A. Put the question properly; I will be glad to answer.

Q. Did you not?

The Court: That question is proper. 20

Q. Did you not?

The Court: If you cannot answer it, we won't compel you to.

A. When I saw his car—

Q. Did you not? Answer me, please; yes or no.

Mr. Dunn: Now, your Honor please, I feel that the witness under the circumstances, cannot necessarily answer that question, yes or no. 30

Mr. Ward: His Honor has just instructed him.

The Court: I just told him, if he cannot answer it, not to do it; if he cannot answer it yes or no, say so.

The Witness: Put the question again.

Q. (Repeated by the stenographer) When you saw this man driving, going at the rate of forty- 40

*Robert G. Pollock—Cross.*

five miles an hour, you kept right on straight until you drove into his car, did you not? A. No.

Q. You did not? A. No, I did not drive into him.

Q. Yet the right front wheel of your car came into contact with his right rear wheel of his car; that is true, isn't it? A. No, sir.

10 Q. I show you Exhibit P-10, and ask you if that does not show the condition of his car after the accident? A. It does, sir.

Q. The front of his car did not come in contact with your car at all, did it? A. No, sir; but—

Q. Never mind arguing with me. Just answer my questions. But the front of your car came in contact with the part of his car that is shown in that picture; that is true, isn't it? A. The right front fender of my car,—

20 Q. The right front fender of your car? A. — came in contact with—

Q. Yes? A. —about the middle of this car.

Q. Yes, so that the front part of the—some part of the front of your car came in contact with the middle of his car? A. Yes, sir.

Q. But no part of the front of his car came in contact with your car, did it? A. No.

30 Q. When you saw this man going at the rate of forty-five miles an hour, where was he? A. He was at least a hundred feet from the Watchung Avenue intersection.

Q. A hundred feet away? A. One hundred feet away.

Q. How did you measure it? A. I know exactly from the telegraph pole just about where he was, and I measured it with a tape.

40 Q. Did you watch the telegraph pole at that time? A. Yes, sir; I did.

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Q. Were you able to see if he was right opposite the telegraph pole at that time? A. Little bit past.

Q. Were you or were you not able to see if he was right opposite the telegraph pole at that time? A. I never said he was opposite the telegraph pole.

Q. I beg pardon; I understood you to say that. What did you say about the telegraph pole? A. I said I placed him on account of the telegraph pole. 10

Q. You placed him on account of the telegraph pole? A. I got my bearings.

Q. What telegraph pole? A. Second from the corner.

Q. On which side of the road? A. On his right hand side, going up.

Q. So you say he was about there, do you? A. No, I do not say he was about there; I said he was between those two telegraph poles. 20

Q. And the other telegraph pole is the one that is immediately in front of the gas station, that is true, is it not? A. That is right.

Q. So you placed him about— A. About midway between the two.

Q. Between the two? A. Between the two, that is right.

Q. Now, are you sure about that? A. About what? 30

Q. About his being at that place? A. Why, certainly; I am.

Q. There is a long curve around the corner of Broad Street and Watchung Avenue at that place, isn't there? A. There is a long curve around all corners.

Q. Well, there is a particularly long curve around that corner, isn't there? A. There isn't. 40

Q. Longer than the others? A. (No answer).

*Robert G. Pollock—Cross.*

Q. How far did you say he went from the time you first saw him until you struck him? A. How far did he go?

Q. Yes. A. Why, he went a hundred and twenty-five feet, approximately a hundred and twenty-five feet.

10 Q. 125 feet? A. Yes, sir.

Q. And how far did you go? A. I went—I was about twenty or twenty-five feet from the intersection, and I went about twelve to fifteen feet over, so I went twenty-five and fifteen,—forty feet.

Q. You went forty feet to his 125 feet? A. Approximately, yes, sir; that was correct.

Q. Yet you say you were only going twelve miles an hour? A. Approximately twelve miles an hour.

20 Q. And you say he was going forty-five miles an hour? A. Approximately forty-five miles an hour; I cannot see the speedometer of his car.

Q. You are approximating all of these things, aren't you? A. Yes, sir.

Q. As a matter of fact, this thing occurred very quickly, didn't it? A. It certainly did.

30 Q. How much time elapsed from the time that you first saw him up to the time your car came into contact with him? A. Not more than two or three seconds.

Q. Two or three seconds? A. Two or three seconds.

Q. You were driving a Buick car? A. I was, sir.

Q. And a Buick car is a pretty heavy car, isn't it? A. It is, sir.

Q. Going at the rate of twelve miles an hour, within what distance could you stop your car? A. Oh, I should say, about nine or ten feet.

40 Q. So that although you saw this man coming

*Robert G. Pollock—Cross.*

at the rate of forty-five miles an hour, you made no effort to stop your car until you struck him, did you? A. No, because I didn't realize—

Q. No. Well, just one moment—

Mr. Dunn: Just a moment.

Q. As a matter of fact, you did not, did you, make any effort to stop your car? A. Yes, I did. 10

Q. Didn't you just say that you did not make any effort to stop your car? A. No, I did not, not that I know of.

Q. Did you not say that you could stop your car within about nine feet? A. Yes, sir.

Q. And didn't you say in answer to the other question, the following question of mine, that although you saw him coming at the rate of forty-five miles an hour, you did not make any effort to stop your car until your car came in collision with his? A. I do not recall such a question. If I did, I misunderstood the question. I did not make any effort to stop when I saw him a hundred feet away. Put the question so that she can be understood. 20

Q. When you first saw him, you did not make any effort to stop, did you? A. No, sir.

Q. Although you saw this car was racing down at the rate of forty-five miles an hour towards the place where you were going to cross, nevertheless, you kept on going at the same rate of speed, and turned your head away and looked in the opposite direction? A. I was not, your Honor. When I first saw that car, I did not realize he was going forty-five miles an hour. 30

The Court: You were not asked that.

The Witness: The question is not correct. 40

*Robert G. Pollock—Cross.*

The Court: If you cannot answer it, say so.

The Witness: I do not want to answer the question.

The Court: You cannot answer it?

The Witness: I cannot answer it.

10 The Court: All right, say so then.

Q. Haven't you said that when you first saw the car, you knew it was going at the rate of forty-five miles an hour? A. No, sir; I did not say—

Q. Didn't you say that when you were within twenty or twenty-five feet of the intersection of Broad Street, then you looked to your left, and you saw this car, and you knew it was going forty-five miles an hour? A. I judge he was going  
20 forty-five miles an hour.

Q. One moment—

Mr. Dunn: Let him finish, Mr. Ward. That is what happened before. He started to say why he subsequently judges his speed, and Mr. Ward interrupts.

Mr. Ward: I am entitled to his answer without his explanation.

30 The Court: You are, but he did not say, at any time, in his testimony, that I recall, that he knew at that time that it was going at forty-five miles an hour. He said he was going forty-five miles but he did not say he came to the conclusion that he was at that instant, as I understand the witness.

Q. Did you know he was going fast? A. No, I did not.

40 Q. Couldn't you tell whether or not he was go-

*Robert G. Pollock—Cross.*

ing fast? A. Not at the time; that car was coming almost toward me.

Q. You saw the car? A. I saw the car; yes, sir.

Q. You saw him then about 125 feet away from you? A. That is right.

Q. You couldn't tell then whether or not he was going fast? A. I was so close—

10

Q. One moment.

Mr. Dunn: If your Honor please, I feel this witness is deserving of some courtesy, even at the hands of Mr. Ward, and I think that he ought to be permitted to answer the question.

The Court: If he will answer it, we will be obliged to him, but instead of answering he explains always. You can ask the reasons. The question will be repeated.

20

Q. (Repeated by the stenographer) You couldn't tell then whether or not he was going fast?

The Court: Now, you see, Mr. Pollock, there is nothing in that question that calls for an explanation at all, but for a direct answer. Your counsel will ask you for your reasons, if he wishes them.

The Witness: Your Honor, I don't really know whether he means a hundred feet away—

30

The Court: If you do not understand the question, he will withdraw it and ask another.

The Witness: I do not understand the question.

The Court: All right.

Q. When you were twenty or twenty-five feet

40

*Robert G. Pollock—Cross.*

away from the intersection of Broad Street, when you looked to your left and saw this on-approaching Ford car for the first time,—or, perhaps, I might ask you: Was that the first time that you did see it? A. Yes, sir.

Q. That was the first time that you saw it? A. Yes, sir; when he was about a hundred feet away—125 feet away.

Q. You know the scale of this map, do you not? A. I heard it mentioned this morning; I don't know just what it reads, though.

Q. One inch, ten feet to one inch. A. Ten feet to one inch.

Q. Can you come down here, please, and tell us what your position was when you first looked to your left? A. When I first looked to the left, be-  
20 about this location here (indicating on P-1).

Q. Now, had you looked to the right before that? A. No, sir.

Q. You had not looked to your right before that? A. No, sir.

Q. You are sure of that. Go back on the stand. Are you? A. I did not look at the right before, I said,—

Q. Yes? A. No, because—

Q. Hold— A. —I did not need to before that.

Q. You had not looked to your left before you got to that position? A. Yes, I looked to my left before I got to that position.

Q. Couldn't you see the Ford car then before you got to that position? A. I didn't see it before that time.

Q. What was there to prevent you from seeing it, when you were back as far as my pencil? A. What was to prevent me from seeing the on-com-  
40 ing Ford?

*Robert G. Pollock—Cross.*

Q. Yes. A. He might have been in Bloomfield.

Q. He might have been Florida, but he wasn't. Was there anything actually to prevent you from seeing it? A. No, I didn't see no necessity for me to look any further up Broad Street.

Q. You say you did look, however? A. I looked in that direction; I don't say I looked up Broad Street. 10

Q. Yes. Did you look more than once to your left before looking to your right? A. Yes, sir; I must have.

Q. You remember distinctly now that you looked more than once to the left before you looked to the right? A. Before I looked to the right?

Q. Yes. A. I cannot recall it; I probably did.

Q. Do you remember whether you did, or not? A. No. 20

Q. The first distinct recollection that you have of looking to your left was when you were at the position that you have indicated on the map as about twenty feet back from the intersection? A. Oh, well, you can see the left without looking when you are further back; there is nothing to obstruct your view.

Q. Do you remember seeing this Ford car before you got into that position? A. No, sir. 30

Q. That was the first you saw of it then? A. When I am about twenty to twenty-five feet of the intersection.

Q. According to you, Mr. Pollock, this car was struck where? Where was it? On Broad Street?

Mr. Dunn: Wait a minute. I object to the form of the question on the ground that it is not clear as to which car was struck. 40

*Robert G. Pollock—Cross.*

The Court: Where did the collision occur?

Mr. Dunn: That is all right.

10 A. Where did the collision occur? The collision occurred, I should say, about three feet over a straight line drawn right down the center of Broad Street, slightly to the right, in other words, in the northwest quarter.

Q. Three feet to the right of the center of Broad Street? A. In other words, the front of my car, say, was about three feet over a straight line drawn down the middle of Broad Street.

Q. Mr. Pollock, had your car passed the middle of Broad Street— A. The front of my car—

20 Q. —when this collision occurred? A. The front of my car; not the back.

Q. The front of your car had passed the center line of Broad Street when this collision occurred, had it? A. Yes, sir.

Q. And how far were you away from this traffic beacon when the collision occurred? A. From twenty to twenty-five feet.

Q. Twenty-five feet in which direction? A. When the collision occurred?

30 Q. Yes. A. Well, it was shown on the map—I will come down there and show you where the collision occurred.

Q. Can't you tell us? Tell us, please.

Mr. Dunn: Aren't we taking a great deal of time on this?

The Court: He may be able to tell us.

40 A. I should say the beacon light was about twenty or twenty-five feet in a southwesterly direction

*Robert G. Pollock—Cross.*

from where the collision occurred, if that is clear enough.

Q. Then, according to you, this Ford car, going at the rate of forty-five miles an hour, come down and turned around or turned off the center line of Broad Street, around this traffic beacon? A. No, sir; I do not say he went around the traffic beacon. 10

Q. Did he go around it at all? A. Purcell's car?

Q. Yes. A. No, he didn't go around the traffic beacon.

Q. He came on up straight? A. He veered to the left of the road and then had to turn off on the street again; he didn't go around the beacon.

Q. Did he come anywheres near the beacon? A. He must have come pretty close to it.

Q. He must have come pretty close to the beacon? A. Must have. 20

Q. Did you notice how close he came to the beacon? A. No.

Q. What else? A. I was driving the car, trying to avoid the collision, trying to avoid him cutting me off.

Q. Now, do you mean what you said, when you said that that collision occurred, or did I understand you correctly, twenty-five feet to the southwest of the beacon? 30

Mr. Dunn: He did not say "southwest".

A. I did not say anything of the kind.

Q. I beg pardon, if I did not understand you. What did you say with reference to the beacon, where it was? A. You asked me the distance of the beacon from the actual collision.

Q. In other words, the beacon was southwest of where the collision occurred? A. That is right. 40

*Robert G. Pollock—Cross.*

Q. That is correct, is it not? A. Yes.

Q. Twenty-five feet southwest of where the collision occurred? A. Approximately; I never measured it.

10 Q. How far do you say that you were past this line of this beacon when you stopped your Buick car? A. I never said I was anywheres near the line of the beacon; I never got as far as the line of the beacon.

Q. Well, had you gotten past the beacon when you stopped your car?

Mr. Dunn: Just a moment. I object to that question, because it seems to me it is a difficult question to answer. The beacon apparently was on the left of this man's position.

20

Mr. Ward: I do not think that is a proper objection.

Mr. Dunn: I do not mind—

The Court: If he can answer it, he may.

Mr. Dunn: —taking the whole day, but I do not think that it is a question that can be readily answered.

30

The Court: I think it is a proper question. The question is: Did he get by the beacon, and, if so, how far past the beacon?

Mr. Dunn: Withdraw my objection.

The Witness: Ask the question.

The Court: How far had you gotten past the beacon up to the time when you stopped? I think that is the question.

Q. Yes, sir. A. Neither car got as far as the beacon, your Honor.

40

The Court: All right, that is the answer.

*Robert G. Pollock—Cross.*

Q. You were going west along Watchung Avenue, weren't you? A. That is right.

Q. Now, the day that this accident happened, did you not have to pass the beacon? A. No, the beacon is not on Broad Street.

Q. Well, it is at the intersection there, isn't it? A. Yes.

The Court: I know exactly where it is, and I have wondered why it is where it is.

The Witness: It is on Watchung Avenue.

Q. What I want to ask you is this: You have testified that your car was in that position which you have shown on the map, after the accident, as outlined in red. Now, how far west of the beacon was that? A. It was not west of the beacon at all.

Q. Doesn't it show on the map there it was west of the beacon?

Mr. Dunn: I think counsel is confused about the map. I think it is east of the beacon.

The Court: I think it is north.

Mr. Ward: Northwest.

The Court: Yes, but his car is not where you are pointing, Mr. Dunn.

Mr. Dunn: But the question was, is he east or west? is he west of the beacon?

The Court: Watchung Avenue goes west, up Watchung Avenue is west.

Mr. Ward: There is your line.

Mr. Dunn: Can't we agree on where that car was, in a northeasterly direction, north-east of the beacon? Is that satisfactory, Mr. Ward?

The Court: I think the question is: 40

10

20

30

*Robert G. Pollock—Cross.*

“How far were you from the beacon when you stopped?” irrespective of directions.

Mr. Ward: I will ask that question.

The Court: All right.

10 Q. How far were you away from the beacon when you stopped, your car? A. Oh, I should judge approximately forty feet.

Q. Forty feet away from the beacon, in which direction? A. The way as shown on the map.

Q. Do you mean towards the—which would be the northerly corner of Watchung Avenue and Broad Street? A. The cars were stopped in a northeasterly direction, and speaking about the beacon light, they were northeast of the beacon.

20 Q. Well, if you were to extend a line along where this beacon is, each side along Broad Street, it would be past that particular line? A. No, sir. Neither car had got as far as the beacon. If I put that car beyond the beacon, I erred in doing it, because I know that neither car had gotten beyond the beacon.

Q. Neither one had gone beyond the beacon? A. Neither one.

30 Q. In other words, Mr. Pollock, in coming up from Newark, going towards Passaic, he had not gotten to the beacon yet when the collision occurred? A. He had not got to the beacon yet?

Mr. Dunn: Now, if your Honor please—

The Court: Wait a moment, let him answer. You said neither car had gotten past or to the beacon. Now, the question is whether Mr. Purcell's car had not gotten to the beacon.

40

*Robert G. Pollock—Cross.*

The Witness: Your Honor, if I may interrupt—

The Court: Isn't that plain and simple enough?

Mr. Dunn: No, that is not the way Mr. Ward put it.

The Court: Let me ask him again. You say that neither of them got to the beacon? 10

The Witness: After the accident, your Honor; I am not talking about the running of the automobiles.

The Court: All right, very well.

Q. At the time of the accident, how far from the beacon was Mr. Purcell's car, at the time of the accident? A. That was, when the cars came to a stop? 20

The Court: When they came into collision with each other?

Mr. Ward: Yes, sir.

The Court: How far was he then from the beacon if you know?

A. I should judge approximately twenty to twenty-five feet, in a northeasterly direction from the beacon.

The Court: All right. 30

The Witness: I couldn't understand his meaning.

The Court: Well, you sometimes have to ask them a good many times.

The Witness: He does not ask the question clear.

Q. Mr. Pollock, when you looked up the last time, and you saw this car coming down upon you, 40

*Robert G. Pollock—Cross.*

how far was it away from you? A. At that time?

Q. Yes. A. Five or six feet.

Q. In which direction was he? A. He was coming.

Q. Was he ahead of you, to your right or left or where? A. He was ahead and to the left.

10 Q. He was ahead and to the left, was he? A. Exactly.

Q. At that time you had the whole of Broad Street southeast of this beacon to turn into, didn't you? A. Yes, that is what I endeavored to do.

Q. But you didn't do it, did you? A. No, because his car was there.

Q. The front right wheel of your car ran into the side of his car? That is what actually happened, wasn't it? A. No, sir.

20 Q. Was it the front right wheel of your car that came in contact with his car? A. It was.

Q. It was the middle of his car, wasn't it? A. Approximately the middle of his car.

Mr. Ward: That is all.

*Redirect-examination by Mr. Dunn:*

30 Q. One question I overlooked, Mr. Pollock. Would you mind coming down to the map here, and indicating in red where the Purcell car was after the accident? A. (Witness indicates on P-1).

Q. Would you indicate which is the front of the Purcell car? A. (Witness indicates).

Q. Now, what was—was that position that you have indicated there the position of that car after the accident? A. Yes, sir.

40 Q. You were asked by Mr. Ward, as I recollect it, how far your car was from the traffic beacon, and how far the Purcell car was from the traffic

*Robert G. Pollock—Redirect.*

beacon. Will you tell us how far those cars were from the traffic beacon, Mr. Pollock? A. Well (indicating).

The Court: You mean at the time of the collision or after the accident?

Q. After the accident? 10

The Court: After the accident.

Mr. Dunn: That is the position he has indicated.

The Court: All right.

Q. First, may I ask you to indicate for the purpose of identification of the two cars with the initial—mark D-3 to indicate your car, Pollock, and D-4 to indicate the Purcell car? A. (Witness indicates on P-1.) 20

Q. Now, may I ask you to tell us how far, in your opinion, your car, D-3, was from the traffic beacon, and how far D-4 was? A. My car was about thirty feet, twenty-five to thirty feet, from the beacon, and his car—his car—his car was about five feet more.

The Court: Five feet further?

The Witness: The width of the car; both cars were together. 30

Mr. Dunn: That is all.

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MRS. CLARA POLLOCK, sworn for Defendant.

*Direct-examination by Mr. Dunn:*

Q. Mrs. Pollock, you are the wife of Mr. Pollock who was just on the stand? A. Yes, sir. 40

*Robert G. Pollock—Redirect.*

Q. You were in Mr. Pollock's car at the time of this accident, were you not? A. Yes, sir.

Q. At the time of the accident, you were injured, were you not? A. Yes, sir.

Q. At the time of the accident, who was in the car, Mrs. Pollock? A. Why, my little son, Leslie.

10 Q. That is the small boy with you today? A. The youngest one.

Q. Yes? A. And my father.

Q. That is the gentleman here? A. Yes, sir.

Q. What is your father's age? A. Eighty-two this last December.

Q. Where were you seated in your husband's car, Mrs. Pollock? A. Directly in back of him, to the left.

20 Q. Where was your father seated? A. Right beside me, in the back. It was a coupe.

Q. What do you recall about this accident? A. Why, as I recall it, we were coming up from Nutley to Montclair, in a westerly direction, and as we neared Broad Street I noticed Mr. Pollock glancing toward the right, and, in fact, I wasn't thinking very much of an accident at the time, it seemed such a beautiful and peaceful morning.

30 Q. May I interrupt just a minute. Just tell us what you saw. Don't make the error your husband did. I know you are inexperienced in these matters, but don't tell us any conclusions, but just what you did, what he did, and what you saw. A. As we neared the corner I happened to glance up toward the left and I saw a car bearing down on us at a very great rate of speed, and I felt immediately that we were just—

The Court: Don't tell us how you felt.

40 Q. Don't tell us how you felt. A. I thought he

*Mrs. Clara Pollock—Direct.*

was going to hit us.

The Court: No, no; don't tell us what you thought, either, but what you saw. You saw a car bearing down on your left.

A. (Continuing) I saw it bearing down on us.

The Court: How far away was that car at that time, would you say? If you know. 10

The Witness: Well, it was above the gas station; I am sure of that.

The Court: You mean beyond the gas station?

The Witness: Beyond the gas station.

The Court: From the corner?

The Witness: Yes, up.

The Court: How far were you from the beginning of Broad Street? 20

The Witness: Well, I judge about fifteen feet, I imagine.

The Court: How many?

The Witness: Fifteen, I imagine.

The Court: About fifteen feet?

The Witness: I am not real positive.

The Court: Do you understand the map?

The Witness: Now I can, I was looking at it the wrong way. 30

Q. This is Broad Street. A. Yes.

Q. This is Watchung Avenue. A. Yes, I see it now.

Q. This is a general northerly direction here. A. Yes.

Q. This would be east, west and south. A. Yes.

Q. Here is the traffic beacon that has been referred to.

The Court: Now, go on. When you were 40

*Mrs. Clara Pollock—Direct.*

about fifteen feet, you saw the approaching car bearing down on you, as you say, beyond the gas station. Then what happened?

10 A. (Continuing) The car—I don't know just exactly whether fifteen feet, but somewhere around there.

The Court: We understand that that is the best estimate you can give.

A. (Continuing) Then, as I looked up, I saw this car bearing on us, and I think I put my arms around the youngster; I had him on my lap, and I thought—

Q. Not what you thought—

20 The Court: You had your arms around the baby.

Q. —but what you did. A. Then, just as it neared us, it seems that the car swerved, as I remember it, and Mr. Purcell's car struck us on the left or toward the left front, as I can remember it, that is, our left front, but not really the left front, more toward the middle, I should say, and it swerved somewhat. Before that Mr. Purcell had put on the brakes, as he saw the car, and that motion, as I held the baby, knocked me against the side seat, the little side seat there, and my father with that, stooping like that, it knocked him down or, at least, it sent him on the floor, and then—

30

The Court: That was before the collision?

The Witness: That was before the collision.

40

*Mrs. Clara Pollock—Direct.*

A. (Continuing) And then as this happened, as I recall it, seeing the—feeling the car move around and the wheel just seemed to spin around, and Mr. Pollock acted as if he tried to grapple it and make it move along in one direction, you see, to guide it, and I think,—I don't know, I am a little bit hazy about it; I got knocked out.

10

The Court: Did you keep your eyes on the car that was bearing down on you at that time?

The Witness: Yes, I did; I was rather fascinated, to a certain extent; I did.

The Court: What did you see it do?

The Witness: It frightened me.

The Court: No, no; what did you see it do?

20

The Witness: Mr. Purcell tried to either turn up Watchung Avenue or else go around us, and then he narrowed in up that Broad Street, or at least he tried to narrow in, like he cut out right that way, and the cars, both cars, came around like that, and he caught us, and sort of bounced off and around. As I say, Mr. Pollock seemed to try to get out into the—or at least get out around the road there.

30

Q. Mrs. Pollock, I show you pictures, Exhibits P-8 and P-12. A. I did not get out of the car; I do not know, really.

Mr. Ward: I cannot hear.

Q. "I did not get out of the car; I do not know, really." I show you P-7; do you recognize that picture? A. I recognize our car.

40

*Mrs. Clara Pollock—Direct.*

The Court: A little louder, Mrs. Pollock.

The Witness: I recognize it as our car.

Q. Now, after the accident, did you observe any marks in that roadway, Mrs. Pollock? A. Well, I had sometime afterwards, but, as I say, at the time I was pretty well stunned, and we sat in the car, waiting to be taken home. I did not know—  
10

Q. Did you see what portion of your car, the Buick, came in contact with what portion of the Ford, the car of Mr. Purcell? A. As I recall it, I think our left front, or, at least, he caught the front left; it seemed to me as though he caught it under the front left—left front fender, at least, as it appeared to me, sitting in the back seat, and as it did it it pulled our car around, both cars around with the impact.  
20

Q. The front left or the front right of your car, Mrs. Pollock? A. Well, it would be the—left, I think, coming up.

The Court: Front left.

Q. You think it was the left? A. As we were coming up toward Montclair.

Q. How fast was your car going at the time of the accident, Mrs. Pollock? A. Well, Mr. Pollock slowed up as we neared the corner, I don't  
30 know, about, perhaps, well, maybe around twelve miles an hour somewheres; I know it was not so very fast, and I know he had slowed up in coming up there.

Mr. Dunn: That is all; take the witness.

*Cross-examination by Mr. Ward:*

Q. As I understood you to say, you noticed your  
40 husband turn, to glance to the right? A. Yes.

*Mrs. Clara Pollock—Cross.*

Q. To his right? A. Yes.

Q. Had you been looking at him, by the way?

A. No, not particularly; I was not thinking of any accident at the time.

Q. He was directly in front of you, wasn't he?

A. What is that?

Q. He was directly in front of you, wasn't he? 10

A. Yes, just about.

Q. You could notice him as he turned his head?

A. Well, yes, if I were thinking about it.

Q. What you did notice was that he appeared to look to the right? A. As he always does.

Q. That is so, is it not? A. Yes, sir.

Q. That was the last you noticed about your husband; the next thing— A. I noticed that he looked at the left after that, just as he glanced to the right; as he went toward the road, he looked toward the left, I guess, about the same time as I did. 20

Q. Before he got to the road? A. I don't know just when, but before he got to the road; it all happened so quickly.

Q. It all happened very quickly, didn't it, Mrs. Pollock? A. Yes.

Q. As a matter of fact, you saw your husband look to the right before you saw him looking to the left? A. As I was watching, yes. 30

Q. As you were watching? A. As far as I watched.

Q. Then, as I understood you, his brakes were applied? A. Yes.

Q. And the force with which the brakes were applied was so great that it threw you and your child out of the— A. No, it didn't throw us; it just—my youngster sat that way, and the seat, you know, there is a little back on the seat, and the 40

*Mrs. Clara Pollock—Cross.*

force of it, it seemed, almost as if the crash came—sounded just about the same time, or just a few minutes after he applied the brakes; it wasn't very long.

10 Q. Now, you say a few minutes after he applied the brakes. Of course, that is not quite accurate, is it? A minute is sixty seconds, and I do not want to confuse you. A. No.

Q. When he applied the brakes, you do remember that you were partially dislocated from your seat? A. Yes, sir, and the impact of the other car came almost with it.

Q. Pardon me, just a minute. A. I will, yes.

20 Q. Were you conscious of your father being thrown from his seat, too? A. Yes, after this happened, as I saw the other car spinning around, I looked.

Q. I mean, when the brakes were applied. A. Well, I don't think just at the minute.

Q. I see. A. Not just at the minute.

Q. Now, you were looking at the—in the direction of the left when the brakes were applied, were you not? A. I think I looked to the left the minute before that or the second before, whatever you are a-mind to call it.

30 Q. But you continued, did you not, or I understood you to say on your direct examination that you continued to look to your left? A. Well, it is so confusing, I—I looked to my left, and then I looked—I don't remember whether I looked at Mr. Pollock, as the car—everything came so quick, that it all seemed as if the whole thing happened in just one second almost.

Q. When you looked at Mr. Pollock, did you see this car directly in front of you,—Purcell's car?

40 A. Yes, I must have—not in front of me, at the

*Mrs. Clara Pollock—Cross.*

side of—my side and front, because during the time it was bearing down on us.

Q. Then, when you looked at Mr. Pollock at that time, this Ford car was not in front of you?

A. No, it was side front of us, I imagine.

Q. I beg pardon?

The Court: Side front; keep your voice up. 10

Q. What I mean is this: You have spoken of having realized that the brakes were applied. Now, that was, of course, before the collision, wasn't it? A. Just the second before, you might say.

Q. Yes. A. A minute before, I don't know length of time.

Q. But it was some time before the collision that the brakes were applied; that is true, isn't it? 20

A. Yes.

Q. Then, after the brakes were applied, your car continued to go forward, didn't it? A. No, it seemed,—it just then at the time after the brakes were applied, of course, immediately Mr. Purcell's car took us under the fender, towards the front fender, I might say, somewhere near there, as both cars swerved around. I am only saying it as I can recall it. 30

Q. Whether your car swerved around or what cause it to go forward, it went forward, didn't it?

A. As our car stopped at least I don't know where they are at. If you will repeat your question, please?

Q. Surely. After the brakes were applied, no matter what may have caused it to go forward, your car did go forward, didn't it? A. Mr. Pollock steering, that was after Mr. Purcell hit us. 40

*Mrs. Clara Pollock—Cross.*

The Court: No, no. Between the time that Mr. Pollock put his brakes on and the time of the collision, you continued; the brakes did not stop the car? You were not at a standstill when the collision occurred, were you?

10

The Witness: No, but the cars, as I can recall it, Mr. Purcell narrowed in before, I guess, and they went forward.

The Court: I understand, but the question is, that from the time your husband applied his brakes, your car did not stop, did it?

The Witness: No, sir.

The Court: —immediately?

20

The Witness: No, sir.

The Court: It kept on going?

The Witness: Yes.

The Court: And he did not change his course, did he? He did not turn to the right or to the left?

The Witness: I think he tried to steer out of the way, as I can recall it, with his car, but I cannot tell you.

30

The Court: All right; you cannot be sure of that.

The Witness: Yes.

The Court: Is that right?

The Witness: Yes.

Q. You think it was the front left of your Buick car that came in contact with the Ford? A. Yes.

Q. Now, did you see these cars after the accident? A. As I say, we waited in the car a little while until my brother came, and then we went  
40 home.

*Mrs. Clara Pollock—Cross.*

Q. Does this refresh your recollection at all? I am showing you Exhibit P-6; that is a picture of your car, isn't it? A. Yes.

Q. That is the front right mudguard, isn't it, Mrs. Pollock, that is damaged? So that you were mistaken about that, weren't you? A. Well, it is certainly as I can recall.

10

Q. No, no; you were mistaken, weren't you, about that? A. Well, if that was the—

Q. This is a picture of your car, isn't it, as it was after the accident? So that as a matter of fact when you did say the front left mudguard it was not, but it was the front right mudguard of your car that was damaged? A. Well, I only remember—

Q. That is true, isn't it?

20

Mr. Dunn: Just let her answer, Mr. Ward.

Mr. Ward: I will let her answer, but perhaps not to your satisfaction.

Mr. Dunn: Entirely so.

The Court: What is the answer? I did not hear it.

The Witness: As I say, I can recall it, I just remember that Mr. Purcell took us under, as I thought it was, our left. Let me— no, it would be our right.

30

The Court: That is what the picture shows. Now the picture and you agree, don't you?

The Witness: Just excuse me a minute. I am terribly nervous.

Q. Don't get confused; if there is anything you do not understand. A. We were going up from Nutley—

40

*Mrs. Clara Pollock—Cross.*

Q. Pardon me; there is no question pending.

The Court: She is thinking out loud. What fender was it that came in contact with the Ford?

The Witness: It would be our right.

10 The Court: Then the picture is correct, isn't it?

The Witness: Yes.

The Court: All right.

Q. You were mistaken when you said on your direct-examination it was the left? A. Yes, I was mistaken when I said it was the left.

Q. Did you see the Ford car, Mrs. Pollock, also; or didn't you notice that? Did you see the Ford car?

20 The Court: After, he means, after the accident.

A. After the accident?

Q. Did you see what part of that was damaged?

A. I imagine it was the left front.

Q. Not what you imagine. A. It seemed to me as if it were; I was in the car, I did not get out, as I say.

The Court: She did not get out.

30 The Witness: No.

Q. Would this refresh your recollection at all, showing you P-9? A. I only saw it in conjunction, at the time it was in front of our car, away from it; of course, seeing it in the car, I didn't just see it in that light.

Q. So that, as you recall now, all you saw of the Ford car was when it was in the front of your car away from you? A. Just a little of it.

40 Mr. Ward: That is all.

*Harmonious G. Hammond—Direct.*

HARMONIOUS G. HAMMOND, sworn for Defendant.

*Direct-examination by Mr. Dunn:*

Q. Mr. Hammond, you are the father of Mrs. Pollock, are you not? A. Yes, sir.

Q. How old are you? A. Eighty-two past birthday. 10

Q. Were you in the automobile of Mr. Pollock at the time of this accident, on October 5, 1926? A. I was.

Q. Officer Ferguson in court? Will you stand up? Did you see that officer there that day? A. I saw the officer there, but he was not around the street there; I didn't see him for quite a while until after the accident.

Q. Now, do you know anything about the accident? What do you know about it? A. Well, all I know, we was coming down from Nutley, going to Montclair, and we got hardly over the street when Mr. Purcell's car coming down Broad Street running north, and the first thing I saw, I was not paying particular attention, first thing I saw was a car just before it come to us, right on the side, when the car was trying to cross in front of us. 20

Q. Was the Purcell car going fast or slow? A. Well, I should judge, from the looks, it must have been going fast; of course, I wasn't far enough away to make any judgment about it. 30

Q. You do not drive an automobile yourself, do you, Mr. Hammond? A. No, sir; I do not.

Q. Was your car—was Mr. Pollock's car going fast or slow at the time of the accident? A. It was not going so fast, because he slowed down before he got down to the—down to Broad Street. 40

*Harmonious G. Hammond—Cross.*

Mr. Dunn: That is all; you may take the witness.

*Cross-examination by Mr. Ward:*

10 Q. Mr. Hammond, as I understand, all you know is that his car, Mr. Pollock's car, came to Broad Street, the Purcell car, you saw the Purcell car passing in front of Mr. Pollock's car, and then the collision occurred? That is right, isn't it? A. That is all.

Mr. Ward: That is all.

Mr. Dunn: The defendant rests.

The Court: Any rebuttal?

Mr. Ward: Mr. Purcell.

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 PLAINTIFFS' REBUTTAL.

ALEXANDER PURCELL, recalled.

*Direct-examination by Mr. Ward:*

30 Q. Mr. Purcell, after the accident, did you have any discussion with Mr. Pollock in which you discussed with him the right of way? A. I did not.

Mr. Ward: That is all.

*Cross-examination by Mr. Dunn:*

40 Q. Did you say anything at all to Mr. Pollock about a horse and buggy and the rights of the horse and buggy? A. I do not remember saying anything of the sort; I will tell you what I do remember saying to him.

*Alexander Purcell—Rebuttal—Cross.*

Mr. Ward: Wait, please, Mr. Purcell.

The Court: No, we don't want that.

Mr. Dunn: Just stand up.

Q. Do you know this gentleman? A. Yes, sir.

Q. Wasn't he present? A. I do not know whether he was present, or not.

Q. You do not want to tell this jury that you did not have any discussion with Mr. Pollock about the rights of way, do you? 10

Mr. Ward: I object to the form of that question.

The Court: I think it is objectionable.

Mr. Dunn: Withdraw the question.

Q. Do you now say you did not talk to Mr. Pollock about the rights of way, or do you say you do not remember whether you did or not? A. You ask the question, I will answer it, if you will let me. I said, as far as the right of way was concerned, I would let anybody have the right of way, right or wrong, right or left, to avoid an accident at any time. 20

Q. Well, now, would you mind answering my question, Mr. Purcell? A. Yes, sir.

Mr. Dunn: Read the question. 30

Q. (Repeated by stenographer) Do you now say you did not talk to Mr. Pollock about the rights of way, or do you say you do not remember whether you did or not? A. I would not tell a lie now; at the time I do not know just exactly, but I never to my knowledge.

Q. Well, you do not remember whether you did, or not, do you? A. Well, I would not tell you a lie. 40

*Defendant's Motion for Direction of Verdict.*

Q. On your direct-examination you said that you did not say that to him, didn't you? A. Well, not to my knowledge.

Q. Well, you might be mistaken about that? A. I might be, but I do not know.

Mr. Dunn: That is all.

10

Mr. Ward: We rest.

Plaintiffs Rest.

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DEFENDANT'S MOTION FOR DIRECTION  
OF VERDICT.

Mr. Dunn: If your Honor please, at this time, I  
20 would like to renew my motion for direction of a  
verdict, on the same grounds presented on my motion for a non-suit. In view of the shortness of time, I won't repeat them at this time.

The Court: All right, motion denied.

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

The Court: You may note it.

30

Mr. Dunn thereupon summed the case to the jury on behalf of the Defendant.

Mr. Ward thereupon summed the case to the jury on behalf of the Plaintiffs.

Thereupon the Court charged the jury as follows:

Ladies and Gentlemen of the Jury:

40

Martha Purcell and Alexander Purcell have brought a suit in this court against Robert G. Pollock, and have asked for damages from Mr. Pol-

*Charge to the Jury.*

lock, to compensate them for the damages that they sustained in an automobile accident on October 5, 1926, in the Town of Bloomfield, at the corner of Watchung Avenue and Broad Street when their two cars came together in a collision, claiming that the proximate cause of the accident was the negligence of the driver of the defendant's car, and the burden is upon the plaintiffs to satisfy you by the clear weight of the evidence that what they contend for happened, viz., that there was an act of negligence on the part of Mr. Pollock which was the proximate cause of this accident. 10

Negligence is never presumed. The happening of an accident is not enough, but negligence must be proven. Their position is that they had been to Dr. Keppler, in Newark, a specialist in bone troubles, I think, where they were in the habit of taking their grandson, and at twenty minutes of twelve, I think, on the morning in question,—a bright clear day—they were returning home to Clifton, where they resided, and were going along Broad Street in a generally northerly direction at a slow rate of speed, and as they got to a point some sixty-five feet, I think, from Watchung Avenue, the driver of the Purcell car, Mr. Purcell, looked to his right and saw nothing approaching on his right on Watchung Avenue, and they proceeded on the way, and when he was in the intersection, at a point about five feet beyond the point where the traffic beacon is, suddenly he saw a shadow and immediately thereafter was collided into, swerving his car "like a merry-go-round," I have it, over to the left side of the road, near the end of the sidewalk that on the west side of Broad Street; that the door fell open and his little grandson slid out of the door; that his wife was injured, 20 : 0 40

*Charge to the Jury.*

- 10 apparently from flying glass, and because she was precipitated about in the car, that she was taken to the Mountainside Hospital, where she was given treatment, having been strapped up with adhesive surgical plaster, on her side or back, and having some sutures or stitches put on her cut fingers, that
- 20 then she was taken home, where she was attended for some time by the doctor who testified, that she was unable to do her household work, she says, for some time, and she was unable to dress herself without assistance, that she was in bed for a period which she stated, and she says that she is still suffering considerable pain, that for a number of months she was incapacitated and had to have assistance, that even now she is lacking in the same vigorous grip that she had before, so much so that
- 30 it is with difficulty or impossible for her to grip objects, and she gave you an example, a teapot in her right hand, because of the weakness of the fingers that were injured; that in addition to that she suffers from weakness of her left leg, having a shin dent, she said, and slight bruises, which tires and gives out and makes it inconvenient, to say the least, for her to have very much activity; and she also suffers from her back.
- 40 The doctor told you what he found her condition to be, and what his treatment of her was; and the expense to which her husband was put to effect her cure was \$33.00, as I recall it, for the doctor, seven or eight dollars for medicines and seven or eight dollars for an electric pad. That is what he is asking, in this suit, to be compensated for, and a sum in addition to that which you may think is proper to compensate him for the loss of his wife's services which he lost because of her illness.

*Charge to the Jury.*

Mrs. Purcell says that she wants you to give her what you think is fair and proper to compensate her for the pain and suffering which she has had and may have in the future, and the disability that she suffered.

The police officer who testified was there, standing over by the gasoline station, with his back to the street, and his attention was first attracted to the accident by the noise of the crash. He turned around and saw the two cars making a curve, with the Buick behind and the Ford in front of the Buick, and he told you where they stopped, and he told you that he went over immediately, that he picked the little boy up and he found out who they were, and a gentleman came along in a car which was commandeered and they were taken to the hospital,—all of the Purcells and the officer. 10

Then it appears that Mr. Purcell later on in the day, he says, within four hours, I think, came back with a photographer and had pictures taken of both cars and of the conditions surrounding the intersection of these two roads, and the marks on the road, which he says were made by the machines in the collision. There is also a map in evidence, which has been introduced on behalf of the plaintiffs, which shows the situation. 20 30

Then the plaintiffs had Mrs. Purcell tell you what she knew of the accident and with respect to the extent of her injuries.

The defendant, Mr. Pollock, comes in and says that is not true, "I was not going fast, I was driving along at a moderate rate of speed, and I looked to the right when I came to the intersection of Broad Street and Watchung Avenue; I was coming from the direction of Nutley going to my home in Montclair at about the time or at the time which 40

*Charge to the Jury.*

10 Mr. Purcell says it was, and when I got near the intersection I looked to the right and I looked to the left, and I was about fifteen feet or twenty, or some other distance,"— you will remember what he said,—“from the easterly line of Broad Street when I looked to the left and saw a car down the road. I did not appreciate at that time the speed at which it was coming, but I placed in my mind’s eye the point where he then was, and I afterwards measured it, and found it to be a certain distance,” I think he said, 100 to 125 feet, but you will remember that too, I hope,” and he continued on his way, and then just before he got across, he saw this car again directly to his left, towards the front of his left, and he says that Mr. Purcell then made a change in his course, swerved to the left and then to the right as though to go around the front of his car, and at that instant, he says, he applied his brakes and there was a collision; that the front mudguard of his car came in contact with the side of the Ford as the Ford gave it a glancing blow or sort of side-swiped it, as it brushed in front of him; that that caused both cars to swerve in a semi-circle toward the left.

20  
30 Now, there were marks on the road, and I will leave it to you to figure out whose marks they are, and if they will help you any. Each says they were the marks of the other, or at least they disagree with respect to whose markings they were. There are several photographs introduced in evidence, many of them on behalf of the plaintiffs. Then, there is a little photograph that was introduced on behalf of the defendant, which Mr. Pollock says was taken before his car was moved, in the position in which it came to rest after the accident,  
40 and which purports to show that the marks, or

*Charge to the Jury.*

some marks, in the road, describing a semi-circle, come up to the rear of these wheels, and he says that is the same mark that is depicted on the other photograph and is the mark made by his rear wheel.

There is no testimony that either side blew their horns when they came to the intersection, that I recall. It is true that there are no witnesses who testify, other than Mr. and Mrs. Pollock and Mr. Hammond, as to the speed at which the defendant's car was going. The officer did not testify to having seen either car before the accident. Apparently there were no cars at the filling station, nor in the space at the corner, nor parked at the curb, and nothing to obscure the vision of either driver toward the other.

Now, the defense is that he was not guilty of any act of negligence, and he says that the negligence was on the other side, that the boot is on the other leg, that the negligent act was the act of Mr. Purcell, and so they disagree. Each blame the other.

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing something which a prudent and reasonable man would not do. That is what the law says negligence is, and you will notice from that that the test is that of the reasonably prudent person, not that of a particular person, but the reasonably prudent person. The burden is on the plaintiffs to prove that there was an act of negligence on the part of the defendant.

What act was there on the part of the defendant that a reasonably prudent person would not have been guilty of? Didn't he look? Was he go-

*Charge to the Jury.*

ing too fast? Was his car out of control, or what?

Now, the defendant says there was negligence on the part of Mr. Purcell, and he says that that is what caused the accident; and the burden is upon him to satisfy you, by the weight of the testimony, that that is so.

10 If both were negligent, you will leave them where they are. If there was an act of negligence on the part of the defendant, and no act on the part of the plaintiff which caused this accident, or contributed to it in any way, the plaintiffs are both entitled to recover; but if there was an act of negligence on the part of the defendant and also an act of negligence on the part of Mr. Purcell, the plaintiff, which in any way contributed to the accident, he cannot recover—that is, Mr. Purcell,—  
20 because he would then be recovering in spite of the fact that he was in the wrong to some extent. In other words, if there should be a recovery for Mr. Purcell, you must find that there was an act of negligence on the part of Mr. Pollock and no act of negligence on the part of Mr. Purcell.

Now, with respect to Mrs. Purcell, she was not in charge of the car in which she was riding, and the law says that if a person is invited to ride with someone else, even though the person with whom  
30 they are riding is guilty of an act of negligence, they not being in control of the car, cannot be barred from a recovery because of the negligence of the driver in their car against the driver of the other car who was guilty of negligence. So, if Mrs. Purcell was an invitee in this car, and you find there was an act of negligence on the part of Mr. Pollock, and no act of negligence—or, there was also negligence, rather, on the part of Mr.  
40 Purcell, she can still recover, if she were an in-

*Charge to the Jury.*

vitee. She is in a different position from Mr. Purcell in that respect.

But if, on the other hand, notwithstanding the fact that she was not in charge of the car and not driving it, if she was engaged in a common enterprise with Mr. Purcell, whether or not she was also driving or had charge of the car, then his act of negligence would be also her act of negligence, in the eyes of the law, and if he were negligent, she could not recover.

10

At the close of the plaintiffs' case, counsel for the defendant made a motion for a non-suit, and again at the close of the entire case asked for a directed verdict, which motions were both denied, and you will recall that at the time I denied the first motion I did so on the ground that the testimony raised questions of fact; and where questions of fact are involved, it is the province and the duty of the jury to decide them, not mine. My job is to decide questions of law, and had there been simply a question of law involved, it would have been my duty to have decided it; but being, in my judgment, a question of fact involved, it was my duty to submit it to you. That was the only reason for my ruling and it has no significance otherwise and no bearing on your deliberations. The issue here is one of fact.

20

30

It is true that Mr. Purcell, if he arrived at that intersection first, had the right of way, because the car was coming on his right, and that is something that you may take into consideration with respect to the question of negligence. It is not conclusive; it is simply a factor.

What I mean by that is, it is unlawful to go at an excessive rate of speed, and it is charged here that each were going faster than the law allows.

40

*Charge to the Jury.*

The law says that you must blow a horn when you come to intersecting roads. But the defendant here is not being tried for violating any provision of the Traffic Act or of the Motor Vehicle Act, and these considerations—and they apply to both, because the question of negligence on both sides is before you—the negligence of both parties—  
 10 whether or not they did violate any of the provisions of the Traffic Act or of the Motor Vehicle Act are only factors in the situation. What I started to say, and meant to say, is this: The law says you must not go faster than thirty miles an hour in the open country where the houses are not closely built up, but you may go forty miles an hour, while you would be violating the law, you would not necessarily be guilty of negligence. The  
 20 question is not what the law says you must do, but what a reasonably prudent person would do under a given circumstance.

Now, you are the sole judges of the facts. You will find what the facts are in this case, and you will find them from the evidence that has been given. Of course, you must take into consideration the likelihood of the stories being true. Do they square with your common sense? Do they  
 30 square with your knowledge of the laws of physics? Is it likely that the witnesses observed just what they said they did? Are their measurements accurate? Are their estimates of speed and of distances correct? You must take into consideration the rapidity with which this all happened. According to their own statements, could they have observed all of the things which they say they did? The fact that there were no eye-witnesses is not the fault of either side. They did not, either of  
 40 them, intend to hit the other; they did not in-

*Charge to the Jury.*

tend to bring a lot of witnesses so that they could have witnesses afterwards. Probably both sides tried to find someone who saw it. So the fact that there were no other witnesses does not mean anything, excepting that they could not find anybody who could come here and help either side, I assume.

You are to reconstruct this accident out of the mouths of the witnesses, and give the evidence the tests that I have indicated, so that you may separate the wheat from the chaff, the true from the untrue. Perhaps no one has testified falsely. Perhaps every one who has testified in this case has testified honestly and according to their honest recollection of what took place. Just because witnesses do not agree in all essentials, of course, does not mean that anyone is telling an untruth, or testifying falsely, because it is a well known fact that two or more people seeing the same thing will not remember exactly the same things. But if, on the other hand, you should find, in weighing the testimony, that someone has testified falsely with respect to a material fact for the purpose of deceiving you, you may, if you wish, disregard everything that such a witness may have testified to.

You will decide this case entirely from your own recollection of what the testimony was, not from mine, because I may have misstated it. My recollection may not be, and probably is not, as good as yours, and if I have misstated it, you will disregard any misstatements that I have made and depend entirely on your own recollection of what happened, of what the testimony was.

You may now retire.

(The jury retires))

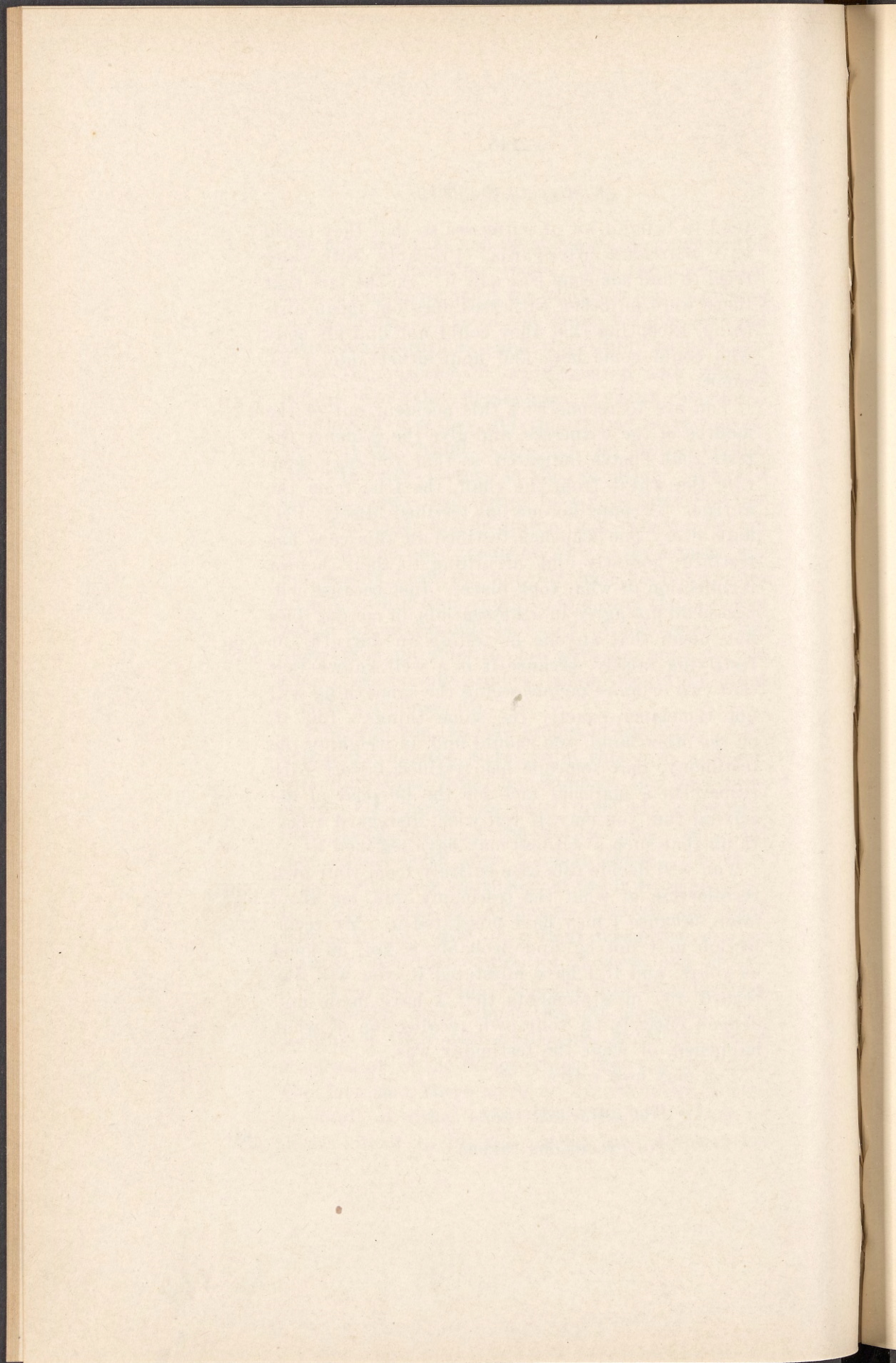
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No 125

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

# New Jersey Court of Errors and Appeals

<p>MARTHA PURCELL and ALEX PURCELL,  <i>Plaintiffs-Respondents,</i>  <i>vs.</i>          ROBERT G. POLLOCK,  <i>Defendant-Appellant.</i></p>	}	<p><i>Action at Law.</i>  <i>On Appeal from New Jersey Supreme Court, Passaic Circuit.</i></p>
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## BRIEF ON BEHALF OF APPELLANT.

### Statement.

This is an appeal from a judgment of the New Jersey Supreme Court, Passaic Circuit. The case was tried before the Honorable Newton H. Porter and a jury. The action is one of trespass on the case for negligence in which it is alleged that on October 5, 1926, the plaintiff, Martha Purcell, was a passenger in an automobile driven by the plaintiff Alex Purcell in a northerly direction on Broad street, Bloomfield, New Jersey, near the intersection of said street with Watchung avenue, and that the defendant, Robert G. Pollock, operated his automobile along Watchung avenue near the intersection of the same with Broad street aforesaid.

The specific acts of negligence as alleged in the complaint are as follows: "Defendant, in violation of his duty as aforesaid, operated his automobile along the said Watchung avenue at or near the Broad street intersection in a negligent, careless and reckless manner, without having proper control thereof, and did drive toward and over the intersection of Watchung avenue and

Broad street at an excessive and unlawful rate of speed without giving any warning of his approach and without taking any precaution to avoid endangering the life of anyone driving along the said Broad street." The plaintiff Martha Purcell suffered injuries as a result of the alleged collision. The defendant in his answer denied the allegations of negligence and set up the defense of contributory negligence.

### Facts.

The facts of the case briefly are as follows:

The plaintiff's car driven by Alex Purcell was proceeding in a northerly direction on Broad street, Bloomfield, near the intersection of the same with Watchung avenue. It was a dry, clear, sunshiny day (S. C., p. 23, l. 25). As the plaintiff approached Watchung avenue, he slowed down and made observations both to the left and to the right (S. C., p. 65, l. 18). He saw nothing and the first intimation that he had of the approach of any other vehicle was a crash (S. C., p. 26, l. 25; S. C., p. 27, l. 28). This constitutes the plaintiff's story of the accident and is corroborated by the other witnesses for the plaintiff.

The defendant, Robert G. Pollock, testified that he was approaching Broad street on the right of the Purcell car and as he pulled into Broad street he noticed the Purcell car coming at a rate of at least forty-five miles an hour (S. C., p. 46, l. 31) and that he was unable to avoid the Purcell car or avoid the collision, and that the said car driven by Mr. Purcell hit him so hard that it bent the front springs of Mr. Pollock's car and knocked the wheel around. This testimony is corroborated by Mrs. Pollock and Mr. Hammond for the defendant. There were no disinterested witnesses

who testified in the case, and at the close of the plaintiffs' case a motion for non-suit was made, which was denied, and at the close of the defendant's case a motion for the direction of the verdict was also made, which was also denied by the trial court.

### Grounds of Appeal.

The refusal of the trial court to grant the defendant's motion for non-suit on the grounds that:

(a) The plaintiffs failed to prove any negligence on the part of the defendant.

(b) The plaintiffs were guilty of contributory negligence.

2. The refusal of the trial court to direct a verdict for the defendant on the ground that:

(a) The plaintiffs failed to prove any negligence on the part of the defendant.

(b) The plaintiffs were guilty of contributory negligence.

### POINT I.

**It was error to refuse to grant the motion for non-suit and motion for direction of verdict.**

The motion for non-suit and motion for direction of verdict can be discussed together because they involve the same facts and practically the same legal situation.

We will consider first the plaintiffs' failure to prove any negligence on the part of the defendant.

There were three witnesses called by the plaintiff for the purpose of proving the liability of the defendant. These witnesses were Alex Purcell, one of the plaintiffs; Martha Purcell, the other plaintiff, and one Edward Ferguson.

Alex Purcell was the principal witness for the plaintiff and if a careful examination is made of his testimony, we find not one word that substantiates in any degree whatsoever the charge of negligence made in the complaint, nor do we find a single word which charges the defendant with any negligence whatsoever. We may even go further and see not even a word is found from which an inference of negligence can be made. And what is true of Alex Purcell's testimony is doubly true of the testimony of the other two witnesses in the plaintiff's case. Let us examine his testimony. It appears that Mr. Purcell was very familiar with the location where the accident happened (S. C., p. 22, l. 8). It was a bright sunshiny day (S. C., p. 23, l. 28). He made observations both to the left and to the right (S. C., p. 25), saw nothing coming and stepped on the gas, then the crash came. The defendant's car came from the plaintiff's right, thus having the right-of-way, but not one word is said about the speed that the car was traveling or what it did before the collision. All that Mr. Purcell testified to is that he saw nothing and then felt a crash. In fact when asked the direct question, "Q You did not see Mr. Pollock's car before the accident, did you? A No, sir" (S. C., p. 48, l. 12), also further examination, "Q You did not know whether or not his car was stopped at the time your car collided with it, do you? A I did not see him; only thing I saw was dark, just like a cloud, when the crash come, and I turned around in the air like a merry-go-a'round" (S. C., p. 50, l. 35).

The witness, Edward Ferguson, called by the plaintiff, testified that he *did not really see* the accident, but was standing with his back to the cars and turned around upon hearing the crash. Not a word in his testimony refers to any negligence upon the part of the defendant nor is there a word from which an inference of negligence can be drawn. To the same effect is the testimony of Martha Purcell, the other plaintiff (S. C., p. 84, l. 38). "First thing I knew was something like a kind of a dark shape coming and then the impact."

It is thus clearly proven that the plaintiff has not produced the evidence of the acts of negligence charged nor has he produced any evidence from which negligence can be inferred. Negligence is a fact which must be proved. It is never presumed. *McCombe v. Public Service Railway Co.*, 112 Atl. 255, also *Bien v. Unger*, 64 N. J. L. 596. Garrison, *J.*, says that in an act of negligence, the right of the defendant to have the plaintiff bear the burden of the affirmative is a substantial one and not a mere matter of form. This burden may be borne by a direct proof of some negligent act, or by the proof of circumstances from which the defendant's want of care is a legitimate inference. So that there seems to be no question that a non-suit should have been granted at the end of the plaintiff's case because the plaintiff has failed to prove any negligence on the part of the defendant and further than that, the Court erred in not granting the motion for direction of verdict on the same ground because the testimony of Mr. and Mrs. Pollock and Mr. Hammond clearly showed that they were not guilty of negligence but did all they could to avoid a collision with the Purcell car which was driven at a high and excessive rate of speed.

It was also apparent both from the plaintiff's case as well as from the defendant's case that the plaintiff, Purcell, was guilty of contributory negligence. Mr. Purcell testified that from the time he first looked to his right up to the time that the impact occurred, he went about sixty-five feet. In other words, he made one observation to the right and then traveled sixty-five feet from that point to the point of the accident, without making any further observation (S. C., p. 59, ll. 20-40) and not only did he fail to make observation during this space of sixty-five feet, but he testified if he had made observations, he could have seen at least 190 feet down Watchung avenue (S. C., p. 60, ll. 12-30). It seems to us that at least on a motion for direction for verdict if not on a motion for non-suit, the Court can hold as a matter of law that a man who is approaching a street intersection down which he can see 190 feet and sees nothing coming and then goes sixty-five feet without making an observation and is hit by a motor vehicle which he has not observed at all, he is guilty of contributory negligence, particularly when it is added to this fact the evidence of the defendant that the plaintiff was driving at the rate of at least forty-five miles an hour.

The law of contributory negligence has been well established for generations. *N. J. Express Company v. Nicholas*, 4 Vroom 434, Justice Depue says:

“To conclude the plaintiff from maintaining his action his conduct must have been negligent and his negligence must have contributed to the accident in such a way that if he had not been negligent he would have received no injury from the negligence of the defendant.”

If the plaintiff in this case had obeyed this rule there would have been no accident. In other words, if his speed had been within the law, there would have been no accident and if he had made proper observations there would have been no accident.

In *Brown v. Railroad Company*, 68 N. J. L. 618, Chancellor Magie, speaking for this court, said:

“When he says that, at that time, he could see no car in sight he conclusively establishes that he did not then make the observation which duty required of him because if he had done so he would undoubtedly have discovered the approaching car and have been able to avoid the collision.”

This case was cited as controlling *Ruggieri v. Public Service*, 86 N. J. L. 698, and the rule there laid down as applicable to pedestrians is equally applicable to automobilists at street intersections. They are required to look with the “seeing” eye. It is conclusive from the evidence out of the plaintiff’s own mouth that he did not look with this “seeing” eye or he would have seen the defendant’s automobile before the moment of impact.

In *Schnackenberg v. D., L. & W. R. R.*, 86 N. J. L. 517, Justice Minturn dealt with the case where the plaintiff was driving a baker wagon across a railroad crossing with which he was familiar. There were no noises to interfere with his hearing. He stopped, looked and listened about 30 feet from the tracks, along which he could see 400 feet in the direction from which the engine came that struck him. Having made his observation he started across, looking both ways, and the nearer he approached the track the clearer was his scope for observation.

He heard no bell or whistle and did not see the engine which carried a headlight (the accident occurred in the early morning), until his horse was upon the track and the engine practically upon him. The Court held

“This statement presents the plaintiff’s version of the accident, but in our judgment clearly convicts him of contributory negligence.” \* \* \* “It seems to us inconceivable that with a complete view of the track for a distance of 400 feet and with no disturbing elements intervening to distract him this plaintiff could, as we must view it, drive upon the track with his eyes open to the possibilities of impending danger and claim that he was unable to see the conditions or to appreciate the dangers in the situation.”

In the case at Bar the plaintiff approached the intersection and admits that he could have seen at least 190 feet along the street at his right, along which the defendant’s car was coming and yet did not see it and can testify nothing as to its movements until the collision. If there was ever a case for the application of the maxim “*volenti non fit injuria*” we have one in the present instance.

“There is perhaps no principle of law better settled than that if it clearly appears that the plaintiff’s conduct did contribute to the accident then the court which exercises control of the case should grant a non-suit or direct a verdict for the defendant.”

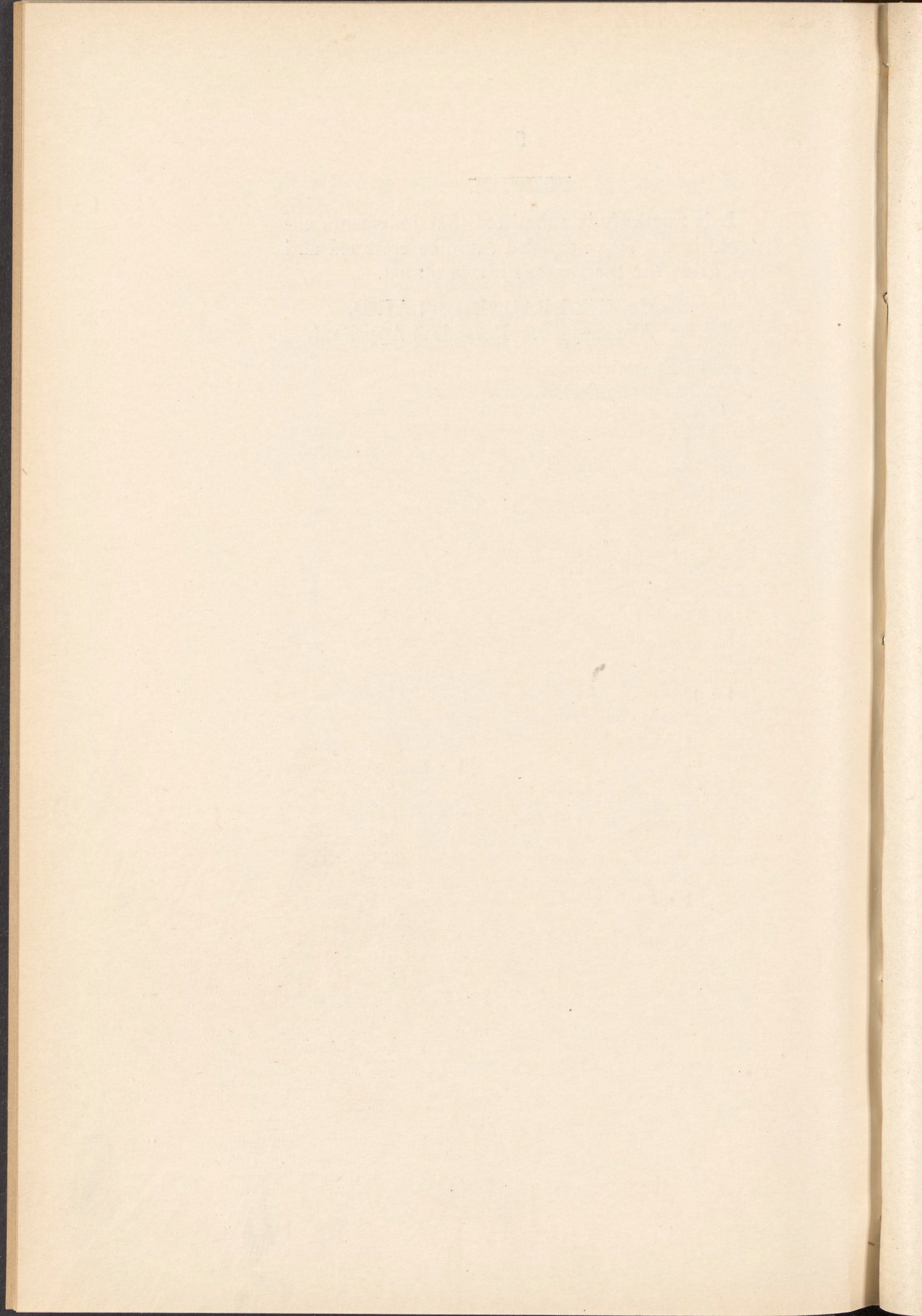
*Brigden v. Pirozzi*, 117 Atl. Rep. 602.

**POINT II.**

It is respectfully submitted that judgments entered in the above-entitled cause be reversed and set aside for the reasons above stated.

HEINE, BRADNER & LAIRD,  
Attorneys for Defendant-Appellant.

PALMER BRADNER,  
Of Counsel.



## New Jersey Court of Errors and Appeals

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Alex Purcell and Martha Pur-	}
cell, his wife,	
Plaintiffs-Respondents,	
vs.	
Robert G. Pollock,	}
Defendant-Appellant.	

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### BRIEF ON BEHALF OF PLAINTIFFS- RESPONDENTS

#### STATEMENT OF FACTS

On October 5, 1926, the plaintiff-respondent, Alex Purcell, was driving a Ford Sedan in a general northerly direction on Broad Street, in the Town of Bloomfield, Essex County. The defendant-appellant was driving his Buick coupe in a general westerly direction on Watchung Avenue, which intersects Bloomfield Avenue aforesaid. Bloomfield Avenue and Watchung Avenue do not intersect each other at right angles. It is somewhat about a forty-five or fifty degree intersection at the westerly approach of Watchung Avenue, driving north on Bloomfield Avenue. In other words, while driving north on Bloomfield Avenue, you first come to the westerly approach of Watchung Avenue on your left.

The other plaintiff-respondent was a passenger in the auto driven by Alex Purcell, and was his wife. The agreed testimony is that both cars came into contact at or about five or six feet north of the beacon light, which is at the intersection.

## REPLY TO POINT I.

**IT WAS NOT ERROR FOR THE COURT TO REFUSE THE DEFENDANT'S MOTION FOR NONSUIT, AND FOR A DIRECTION OF THE VERDICT AT THE CLOSE OF THE RESPECTIVE CASES.**

For the purpose of a motion for nonsuit, all the facts brought out upon the plaintiffs' case are admitted, and for the purpose of deciding that motion any legitimate inferences, which may be drawn from those facts are to be considered by the trial court.

Counsel for the defendant-appellant argues in his brief, that Mr. Purcell never saw the car before it crashed into him, and also that no rate of speed of the defendant's car was brought out, and by that says, that no negligence was therefore shown on the part of the defendant.

The mere fact that no one saw the car before the accident, and that there is a lack of proof as to the speed at which the defendant came, is not sufficient to say there is no proof of negligence.

Courts in this state have repeatedly held that it is sufficient to show facts or produce evidence from which they may find an act of negligence.

The plaintiff, Mr. Purcell, testified that when he arrived at the intersection of Watchung and Bloomfield Avenues, he looked down Watchung Avenue and saw no car coming. He testified that he could see 195 feet (S. of C., p. 60) and that from the last time he looked to his right down Watchung Avenue to the moment of the impact,

he had traveled about 65 feet. He said it took him about three seconds to travel this 65 feet. In other words, while the plaintiff traveled 65 feet across Watchung Avenue, the defendant's car, which was not seen at the time Mr. Purcell entered the intersection, had to travel 195 feet to the place of contact with Mr. Purcell's car. He was then necessarily going three times the speed at which Mr. Purcell was traveling. Mr. Purcell testified he was going about 15 miles an hour on Bloomfield Avenue, and that when he approached the intersection of Watchung Avenue, he slowed down to about 12 miles, and upon seeing no car coming up Watchung Avenue from his right, after having first looked to his left, he again applied the gas.

Edward Ferguson, a witness sworn on behalf of the plaintiff, who was a police officer of the Town of Bloomfield, testified (S. of C., p. 66, l. 20), that he saw the front of the Buick against the right of the Ford; that they were moving at the time; that the Ford was temporarily pointed north; then pushed around, so that the Ford then pointed east.

On line 36, he was asked where the Ford landed and he answered, "Right up close to the sidewalk." On page 69, he testified that two wheels were off the pavement.

This testimony shows that the Ford was pushed by the Buick from where the beacon light was, across the roadway, and up and against the sidewalk. The defendant, on his direct examination, testified that he was only going at the rate of twelve miles per hour. This would almost make,

what the officer testified to, an impossibility.

The force of an automobile going at the rate of twelve miles an hour, and with the brakes being applied, as defendant testified to on page 95, line 30, could never be so great as to push a Ford sedan across the street, and swerve it around.

By a reading of the testimony of the plaintiff and witnesses, it will be seen that the speed of the defendant was so great that the impact and force of that speed, swung the Ford around and pushed it over to the sidewalk on the side of Bloomfield Avenue. From all of these facts, it must certainly be conceded that a strong inference of negligence on the part of the defendant, may be drawn.

On page 4 of the appellant's brief, it is said,

"The defendant's car came from the plaintiff's right, thus having the right of way—"

This is not necessarily true. Simply because a man comes from another's right, does not mean that he has the right of way, for it is only so when all things are equal, and if they continued there would be a danger of coming to a collision, then the one approaching from the right, has the right of way.

There is, of course, a diversity of testimony on where the respective cars were when each was at or near the intersection, so therefore it was clearly a jury question.

The strongest point of negligence, on the part of the defendant, is brought out upon his own testimony on cross-examination (S. of C., p. 104). The defendant testified that he first saw Mr. Purcell's

car when he was twenty to twenty-five feet from the point of intersection, and that Mr. Purcell's car was then approximately 100 feet to the south of the intersection, (S. of C., p. 94).

On cross examination (p. 105, l. 30) the defendant testified that even though he saw this car coming at the rate of forty-five miles an hour, and while he was only going at the rate of twelve miles (as he says) an hour, he nevertheless continued on and crashed into the plaintiff's car. He testified at p. 108, l. 38, that at the rate of twelve miles an hour, he could stop his car in about nine to ten feet. So we have a man approaching an intersection, is twenty-five feet from the intersection, sees an automobile only 100 feet from that intersection, coming on at the rate of forty-five miles an hour, and deliberately proceeds on and crosses in the path of this oncoming vehicle, according to his own testimony.

Another point stressed in the appellant's brief is that the plaintiff traveled sixty-five feet without making any observation. If true, there is nothing unlawful about that. Going at the rate of twelve to fifteen miles an hour, it took Mr. Purcell approximately three seconds to travel sixty-five feet. He testified that he had first looked to his left, because he arrived at the left approach of Watchung Ave., first, and then at the intersection of the right approach of Watchung Ave., he looked to his right down Watchung Avenue; saw no car and proceeded on, and had traveled sixty-five feet when he sees a big dark cloud alongside of him. In other words, this man had only traveled three seconds after he had made his last observation. A man is not sup-

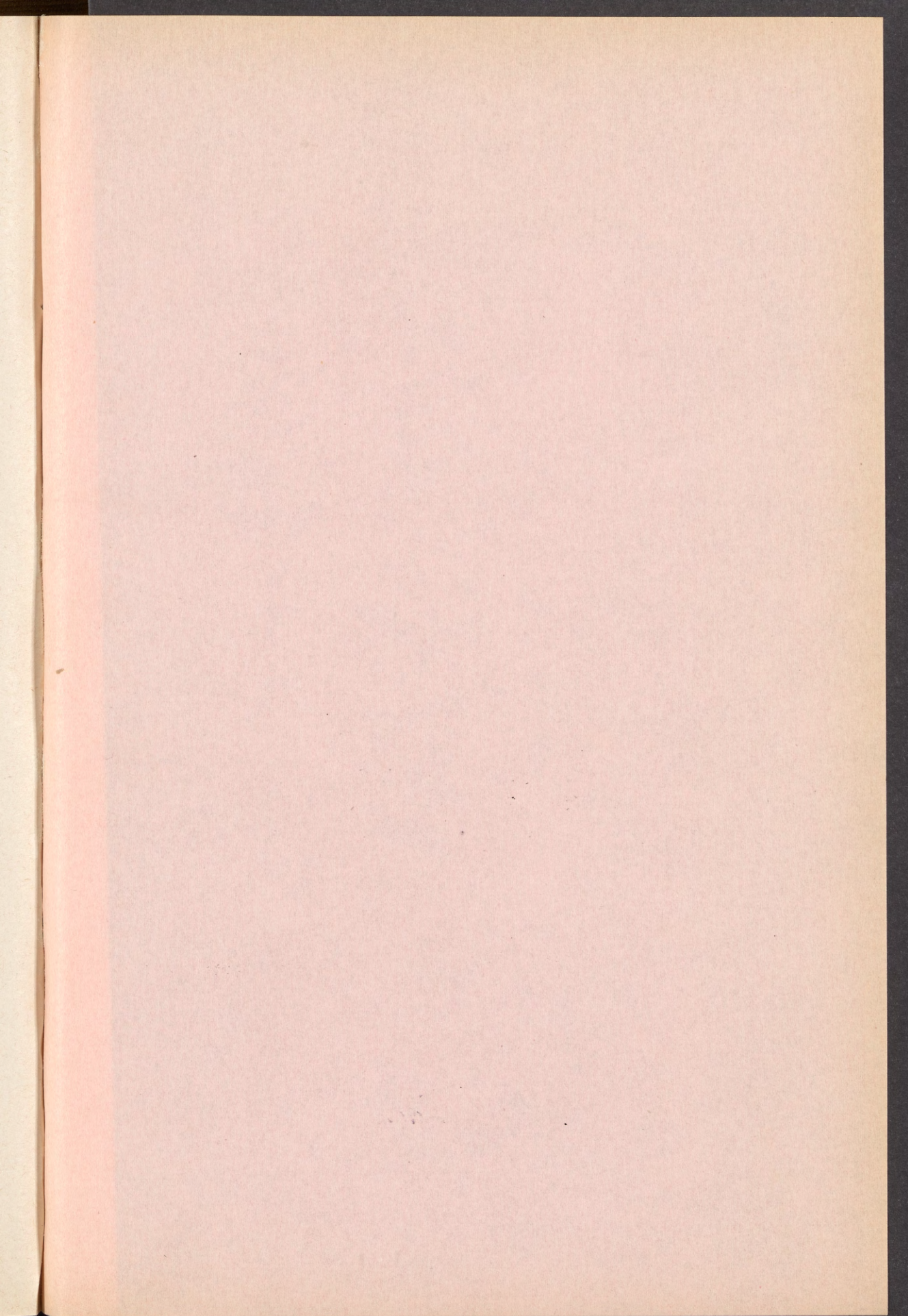
posed to be a mechanical contrivance, in that while he is driving his automobile on the public highway, and crossing an intersection, to be continually looking right and left. He must at some time, look ahead, and within the space of three seconds, a man could just take a good look to his right and turn his head forward, and the three seconds would have elapsed. There is certainly no negligence in that.

From all the testimony adduced at the trial, it will be clearly seen that it is a question of fact for the determination by a jury, and that the trial Court was correct in submitting the case to the jury.

It is respectfully submitted that the judgments entered in the above cause should be affirmed.

WARD & McGINNIS,  
Attorneys of Plaintiffs-Respondents.

PETER J. McGINNIS,  
Of Counsel.



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It is respectfully submitted that the judgment  
entered in the above cases should be affirmed.

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