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Notice of Appeal.

(Filed January 7, 1931.)

10

New Jersey Supreme Court

MIDDLESEX COUNTY.

JOHN KOVACS and ELIZABETH  
KOVACS,

Plaintiffs,

v.

HARRY FORD,

Defendant.

Action at Law. 20

To

JOHN TOOLAN, Esq.,  
Attorney for Plaintiffs:

30

SIR:

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

HENRY K. GOLENBOCK.

40

**Grounds of Appeal.**

(Filed January 21, 1931.)

NEW JERSEY SUPREME COURT,  
MIDDLESEX COUNTY.

10	JOHN KOVACS and ELIZABETH KOVACS, <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;"><i>v.</i></p> HARRY FORD, <p style="text-align: right;">Defendant.</p>	}	Action at Law.
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To

20 JOHN TOOLAN, Esq.,  
 Attorney of Plaintiffs:

SIR:

PLEASE TAKE NOTICE that the defendant hereby assigns the following grounds of appeal in the above entitled cause.

- 30 1. The trial court erred in refusing to non-suit the plaintiff on the grounds that there was no proof of negligence on the defendant's part that would make him liable, and there was proof of contributory negligence on the part of the plaintiff.
2. The court below should have directed a verdict for the defendant.
3. The verdict of the jury was against the clear weight of evidence.
- 40 4. Because the trial court permitted, over the objection of the defendant, the following question

to be asked of Isidore Dubrow, a witness for the plaintiffs, by plaintiffs' attorney:

"Q. What conversation did you have with Mr. Ford respecting the accident?"

5. Because the trial court permitted, over the objection of the defendant, the following question to be asked of Martin S. Meinzer, a witness for the plaintiffs by plaintiffs' attorney: 10

"Q. Will you please tell us what Mr. Ford said to you?"

6. Because the trial court refused to charge to the jury the following:

(a) "The plaintiff was obliged to walk near the edge of the road, in order to be able to give way to an approaching vehicle, so as to permit its passage by stepping off the road." 20

(b) "The degree of care required of the plaintiff was much greater on this night on account of the condition of the weather, than it would have been on a clear night."

(c) "The plaintiff's failure to turn around and watch or look out for approaching automobiles in the rear, under the existing weather conditions, is guilty of contributory negligence." 30

(d) "It was the duty of the plaintiff to have used all her senses in order to exercise care in avoiding to be struck by an automobile using the same highway and in the same direction in which she was walking. In other words, not only should she have listened to the approach of automobiles, but also should have used her eyes to watch for approaching automobiles." 40

*Summons.*

---

(e) "If the jury finds that the plaintiff was walking on the highway, and failed to keep as near as possible to the extreme right side or edge of the same, she was guilty of contributory negligence."

10

(f) "The plaintiff was guilty of contributory negligence in failing to use the left side of the road so that she would be facing vehicles coming in her direction in view of the dense fog then existing; and also was guilty of contributory negligence in failing to carry a light or lamp so as to give notice or warning to automobile drivers of her presence on said roadway."

Respectfully yours,

20

HENRY K. GOLENBOCK.  
Attorney for Defendant.

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**Summons.**

(Filed January 5, 1930.)

THE STATE OF NEW JERSEY

30

HARRY FORD,

YOU ARE SUMMONED to answer the annexed complaint of John Kovacs and Elizabeth Kovacs, in an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the said New Jersey Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

40

*Amended Complaint.*

WITNESS, Hon. William S. Gummere, Chief Justice, of the New Jersey Supreme Court at Trenton, this 20th day of December, nineteen hundred and twenty-nine.

FRED L. BLOODGOOD,  
Clerk.

10

DUBROW & SELLYEI,  
Attorneys.

**Amended Complaint.**

(Filed September 30, 1930.)

NEW JERSEY SUPREME COURT,  
MIDDLESEX COUNTY.

20

JOHN KOVACS and ELIZABETH  
KOVACS,

Plaintiffs,

v.

HARRY FORD,  
Defendant.

Action at Law.

COUNT ONE.

30

Plaintiff, Elizabeth Kovacs, residing in the City of Perth Amboy, County of Middlesex and State of New Jersey, complaining of the defendant, says that:

1. On or about the 14th day of November, 1929, plaintiff was lawfully walking along a certain street or highway known as Amboy Avenue, between the City of Perth Amboy and the Township of Woodbridge.

40

*Amended Complaint.*

---

2. The defendant, at the time and place aforesaid, was the owner and operator of an automobile which he was operating in a northerly direction along the said highway.

10 3. It then and there became and was the duty of the defendant to so guide, manage, operate and control his automobile so as to have the same under his control at all times, and to operate the same at a reasonable, careful and legal rate of speed, to have due regard for the rights of other persons and vehicles on the said highway and to have the brakes on the said automobile in proper repair.

20 4. The defendant, notwithstanding his duties as aforesaid, did so negligently and carelessly operate his said automobile that he ran the same at a high and reckless rate of speed and without regard for the rights of other persons and vehicles on the said highway, and failed to have his brakes in proper repair, and he failed to have due regard for the rights of other persons and vehicles on the said highway, and failed to have his automobile under control so that he ran into the plaintiff, aforesaid, throwing her to the road.

30 5. As a direct and proximate result of the negligence of the defendant, plaintiff suffered grievous injuries about the head, face, body and arms, which injuries are of a permanent character and suffered great pain and anguish, both of body and mind, and was confined to the hospital for a long period of time and will be confined to the hospital for a long period of time in the future, and will be confined to her home and her bed for a long period of time in the future, and was prevented from going  
40 about her household duties for a long period of

*Amended Complaint.*

time and will be unable to go about her household duties for a long period of time in the future, and her clothing was torn and demolished as a result of the said accident to her damage in the sum of Seventy-five thousand (\$75,000.00) dollars.

Damages will be claimed in the sum of Seventy-five thousand (\$75,000.00) dollars on the first count. 10

## COUNT TWO.

Plaintiff, John Kovacs, residing in the City of Perth Amboy, County of Middlesex and State of New Jersey, complaining of the defendant, says that:

1. He repeats paragraphs 1, 2, 3 and 4 of the first count. 20

2. He is the husband of the said Elizabeth Kovacs.

3. As a direct and proximate result of the negligence of the defendant, he was obliged to and did expend a large sum of money for doctors' bills, hospital expenses, medicines and nurses, and other necessary treatment in order to cure his wife of her injuries and he will be obliged to expend a large sum of money in the future for doctors' bills, hospital expenses, medicines and nurses, and other necessary treatment in order to cure his wife of her injuries, and he was deprived of her consortium for a long period of time and will be deprived of her consortium for a long period of time in the future, and was obliged to expend a large sum of money in the hire of servants to do the necessary household work which his wife was unable to perform on account of her injuries as aforesaid and 30 40

*Answer.*

will be obliged to expend a large sum of money in the future for this purpose to his damage in the sum of Twenty-five thousand (\$25,000.00) dollars.

Damages will be claimed in the sum of Twenty-five thousand (\$25,000.00) dollars.

10

DUBROW & SELLYEI,  
Attorneys for the Plaintiffs.

**Answer.**

(Filed February 4, 1930.)

NEW JERSEY SUPREME COURT,  
MIDDLESEX COUNTY.

20

JOHN KOVACS and ELIZABETH  
KOVACS,

Plaintiffs,

*v.*

HARRY FORD,  
Defendant.

Action at Law.

30

The defendant answering the complaint of the plaintiff says:

COUNT ONE.

1. Denies the allegations contained in paragraph 1.

2. Admits the allegations contained in paragraph 2.

40

3. Denies the allegations contained in paragraph 3.

4. Denies the allegations contained in paragraph 4.

5. Denies the allegations contained in paragraph 5.

COUNT TWO.

10

1. Repeats the answers to the allegations contained in paragraphs 1, 2, 3 and 4 of the First Count.

2. Has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2.

3. Denies the allegations contained in paragraph 3.

20

FIRST SEPARATE AND DISTINCT DEFENSE  
TO THE FIRST AND SECOND COUNTS:

1. The said plaintiff Elizabeth Kovacs was at the said time and place guilty of contributory negligence in that she was walking on that part of the highway which is used by vehicles; in failing to use that portion of the road which is ordinarily and generally used by pedestrians; in that she walked along said highway without exercising the proper care and caution for her safety; in failing to heed the signal of warning given by approaching vehicles; in failing to have proper means to warn vehicles traveling along said road of her presence on the highway, which care and caution, a reasonably prudent person would have exercised at the given time and under similar circumstances.

30

HENRY K. GOLENBOCK,  
Attorney for Defendant.

40

**Reply.**

(Filed February 11, 1930.)

NEW JERSEY SUPREME COURT,  
MIDDLESEX COUNTY.

10	JOHN KOVACS and ELIZABETH KOVACS, <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> HARRY FORD, <p style="text-align: right;">Defendant.</p>	}	Action at Law.
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20 Plaintiffs deny all the allegations contained in the answer of the defendant.

DUBROW & SELLYEI,  
Attorneys for the Plaintiffs.

**Stipulation.**

NEW JERSEY SUPREME COURT,  
MIDDLESEX COUNTY.

30	JOHN KOVACS and ELIZABETH KOVACS, <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> HARRY FORD, <p style="text-align: right;">Defendant.</p>	}	Action at Law
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40 It is hereby stipulated by and between counsel that the within amended complaint be filed in lieu

*Substitution.*

of the complaint herein, and that all proceedings filed subsequent to the complaint in this cause be and the same shall apply to the amended complaint herein.

Dated, July 19, 1930.

DUBROW & SELLYEI,  
Attorneys for the Plaintiffs.

HENRY K. GOLENBOCK,  
Attorney for the Defendant.

10

**Substitution.**

NEW JERSEY SUPREME COURT,  
MIDDLESEX COUNTY.

20

JOHN KOVACS and ELIZABETH  
KOVACS,

Plaintiffs,

v.

HARRY FORD,

Defendant.

Action at Law.

30

It is hereby stipulated that John E. Toolan be substituted as attorney for the plaintiffs.

Dated, October 3, 1930.

DUBROW & SELLYEI,  
Attorneys for the Plaintiffs.

40

**Postea.**NEW JERSEY SUPREME COURT,  
MIDDLESEX COUNTY.

10	JOHN KOVACS and ELIZABETH KOVACS, Plaintiffs, <i>v.</i> HARRY FORD, Defendant.	}	Action at Law
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This case was tried before Judge John P. Kirkpatrick, with a jury, on the ninth day of October, 1930, at the Middlesex Circuit.

20 The jury rendered a verdict in favor of the plaintiff Elizabeth Kovacs and against the defendant Harry Ford in the sum of Six Thousand (\$6,000.00) dollars, and in favor of the plaintiff John Kovacs and against the defendant Harry Ford in the sum of Eighteen Hundred and Fifty (\$1850.00) dollars.

JOHN P. KIRKPATRICK,  
Judge.

30

**Judgment.**

This action was tried before Judge John P. Kirkpatrick with a jury in the presence of counsel of the respective parties at the Middlesex County Circuit Court on October 9, 1930.

40 The case having been heard and submitted to the jury, they returned their verdict as follows: that they find in favor of the plaintiff Elizabeth Kovacs and assess the damages at the sum of Six thousand

*Testimony.*

(\$6,000.00) Dollars, and in favor of the plaintiff John Kovacs and assess the damages at the sum of Eighteen hundred and fifty (\$1850.00) Dollars.

Whereupon it is adjudged that the plaintiff, Elizabeth Kovacs, recover of the defendant Harry Ford the sum of Six thousand (\$6,000.00) Dollars and that the plaintiff, John Kovacs, recover of the defendant Harry Ford the sum of Eighteen hundred and fifty (\$1,850.00) Dollars and costs, which are taxed in the sum of Seventy dollars and fifty-four cents (\$70.54). 10

Judgment entered October 14, 1930.

**Testimony.**

20

NEW JERSEY SUPREME COURT,  
MIDDLESEX COUNTY CIRCUIT.

September Term, 1930.

JOHN KOVACS and ELIZABETH KOVACS,  Plaintiffs,  <i>against</i>  HARRY FORD, Defendant.	}	30
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Transcript of stenographer's notes of evidence in the above-entitled cause, taken before HON. JOHN P. KIRKPATRICK, Judge, and a Jury, at the Middlesex County court-house, in the city of New Brunswick, New Jersey, on the ninth day of October, 1930. 40

## APPEARANCES:

JOHN E. TOOLAN, ESQ.,  
 Attorney for the Plaintiffs.  
 HENRY K. GOLENBOCK, ESQ.,  
 Attorney for the Defendant.

10

(A jury was duly impaneled and sworn.)

(Mr. Toolan opened the case for the plaintiffs.)

(Mr. Golenbock opened the case for the defendant.)

Mr. Golenbock: Counsel for the plaintiffs has no objection to this map going in evidence at this time.

20 (The map referred to was received in evidence and marked "Exhibit D-1.")

Mr. Toolan: Do I understand you deny hitting her?

Mr. Golenbock: Yes.

Mr. Toolan: May I call Dr. Meinzer out of turn?

Mr. Golenbock: No objection.

30

MARTIN S. MEINZER, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Toolan:

Q. Doctor, you are a practicing physician of the city of Perth Amboy? A. I am.

40

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

Q. And, Doctor, did you, on or about the fourteenth of November, 1929, attend a Mrs. Elizabeth Kovacs? A. I did.

Q. And where, Doctor? A. I attended her in Perth Amboy Hospital.

Q. What time was it, Doctor, when you were called? A. It was somewhere between seven and eight o'clock in the evening. 10

Q. When you first saw her at the hospital, Doctor, will you please describe her condition? A. Mrs. Kovacs' left arm was very extensively injured. It was mutilated, the arm.

Q. Did you say mutilated, Doctor? A. It was mutilated. It was torn. The arm was nearly amputated. A portion of the bone of the lower end of the humerus was missing.

Q. When you say the lower end of the humerus you mean what? A. The humerus is the upper bone which goes into the formation of the two lower bones to form the elbow joint. 20

Q. Do I understand the humerus is one of the bones between the shoulder and the elbow? A. Yes, there is only one bone there, the humerus.

Q. Yes. A. The lower portion where it goes into the elbow joint formation was missing, and the tissues were torn in all directions, and the ends of the bones were exposed for a distance of two or three inches. All the soft tissues over a large area had been torn away, the skin, the muscles that fastened it, the nerves. All that held the arm was some muscles down the back. It just dangled around, absolutely loose, like a piece of ribbon. It did not seem possible that the arm could be saved, but through some good fortune it was saved; but it is useless. It is paralyzed from the point of injury down, and then the shoulder—the ligaments and the shoulder were also torn and injured, and 30  
40

that has been followed by fibrosis. So that she is unable to raise the shoulder joint. The arm is gradually atrophying. She is unable to raise her hand or move her fingers to any extent. She can move her fingers just a little bit, but there is no power.

10 Q. Doctor, is the condition, as you have just described it, a permanent condition? A. It is.

Q. Doctor, in your opinion, will that arm get better or worse in time? A. It will gradually grow worse, that is, the muscles will atrophy, more and more. It will get just like a broomstick.

Q. When you say the muscles will atrophy, what do you mean by that? A. They will waste away. The tissues or the muscle nerves have been severed and injured the nerve supply, why, the muscles atrophy.

20 Q. What feeds the muscles and so forth, and keeps life and vitality into them? A. The nerves regulate that.

Q. And those nerves are destroyed altogether? A. Yes.

Q. Doctor, what course of treatment did you give this woman besides what you did for her? A. As I said a minute ago, it did not seem possible that the arm could be saved. She was very anxious that it be saved. I think the family was told at that time that it could not be saved, but through some good fortune, it remained.

30 Q. What did you do, Doctor? A. Oh, she was taken immediately to the operating room. I brought the two ends of the bones together. Of course, there was a piece missing, which made it somewhat shorter, and then the parts were cut away that were ground up, and some sutured, and blood vessels ligated; connecting drain put in. She was brought down—she was brought downstairs and had an irrigation with an antiseptic solution.

40

She had a special nurse day and night, and was given opiates for pain for days.

Q. Would that injury cause pain? A. Oh, yes, she had terrific pain.

Q. You say you had to give her opiates day and night for a time? A. Yes.

Q. The opiates are given for what purpose, Doctor? A. To relieve pain. 10

Q. Doctor, how long did you continue to give her opiates? A. I don't just remember how long, but I should imagine for a period of about two or three weeks.

Q. Well, following that period, Doctor, did she continue to have any pain? A. Oh, yes. She had a lot of pain. This arm had to be dressed and moved. Why, she went through real pain. You could see by the way her expression was, it seemed to me that the woman had a lot of pain. Sometimes she used to indicate that it should not be dressed, so that she could escape the pain of the dressing. 20

Q. Doctor, how long a period was she in the hospital? A. She was in the hospital from the night of November 14, 1929, until March 18, 1930.

Q. And you say she had pain continuously during that entire period, Doctor? A. I don't think she had so much pain toward the latter end if you moved her arm about. The latter months she complained of the most pain in her shoulder. 30

Q. Doctor, did she continue under your care and treatment after she left the hospital? A. Yes, I supervised her case until August 19. I had Mr. Klem give her what we call physiotherapy, that is, heat and electricity in the sides, trying to keep tone in the muscles and see if it was possible to do anything to raise function, but we knew we were working at a hopeless job with the nerves gone, but at 40

any rate she got some comfort. She said she felt better after the physiotherapy treatment, so that continued along until August 19, and I noticed that for the past four months, that previous—the four months previous that her condition was about stationary, and I told the family I thought it was  
 10 useless to continue with it, so I stopped going, and Mr. Klem also stopped visiting her.

Q. In other words, you felt that any further treatment would not produce any further results, Doctor? A. No.

Q. And your bill, Doctor, for services to Mrs. Kovacs? A. \$500.

Q. And you regard that as a reasonable bill for the services rendered? A. I think so.

20 Q. Doctor, expressed in terms of percentage, what would you say the extent of the disability of the arm was? A. I should say the arm is practically a hundred per cent. She is paralyzed from here down (indicating), and she can't raise this part (indicating).

Q. Now, when you say she has a paralysis from here down, you refer from the elbow down? A. Yes.

30 Q. When you say she can't raise this? A. She can't raise this, just a little ways, perhaps maybe a part of the distance.

Q. Now, then, for the record, will you say what you mean, when you said she can't raise this? Define it for me. A. She is unable to raise her elbow—unable to raise the arm at the shoulder.

Mr. Toolan: That is all I have, cross-examine.

Mr. Golenbock: No questions.

THOMAS KLEM, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Toolan:

Q. Mr. Klem, what is your business? A. Mas- 10  
seur.

Q. How long have you been in that business? A.  
For fourteen years. Since 1916.

Q. Do you know the plaintiff in this case, Mrs.  
Elizabeth Kovacs? A. I do.

Q. Was she referred to you by Dr. Meinzer for  
treatment? A. She was.

Q. When did your treatment begin, Mr. Klem?  
A. My first treatment was on the third of Febru- 20  
ary.

Q. The third of February? A. The third of Feb-  
ruary, 1930.

Q. How long did you continue to treat her? A.  
Until the eighteenth of August.

Q. 1930? A. 1930.

Q. What was the nature of your treatment, Mr.  
Klem? A. It consisted of massage and passive  
motions.

Q. Massage and what? A. Passive motions.

Q. What do you mean by that? A. Exercising 30  
the arm in the elbow joint as far as possible, and  
exercising the fingers as far as possible, trying to  
get more motion than was there.

Q. Well, did your treatments produce any ap-  
preciable result? A. Well, it improved the gen-  
eral appearance and the general condition of the  
arm. The arm was extensively swollen at the time  
I started. The swelling went down and the pain  
subsided somewhat, but we did not succeed in get-  
ting much more motion, if any.

Q. What was your bill for services? A. \$300. 40

*Elizabeth Kovacs—Direct Examination.*

Q. How frequently did you attend her? A. At the hospital daily, and three times a week when the patient went home.

Q. Is that bill the usual charge you make for services om like character? A. It is.

10 Mr. Toolan: That is all I have.

Mr. Golenbock: No questions.

Mr. Toolan: I want to offer in evidence, if the Court please, the hospital bill for \$600.

(The paper referred to was received in evidence and marked, "Plaintiff's Exhibit 1.")

20 ELIZABETH KOVACS, the plaintiff, being duly sworn according to law, on her oath, saith:

Direct Examination by Mr. Toolan:

Q. Mrs. Kovacs, where were you living on the fourteenth of November, 1929? A. On Inslee Street.

Q. Where? What city? A. Perth Amboy.

30 Q. You were living there with your husband and your family? A. Yes, sir.

Q. On the evening of the fourteenth of November did you leave your house? A. Yes, sir.

Q. About what time? A. About seven o'clock.

Q. Who was with you? A. Ida Kovacs.

Q. That was your step-daughter? A. Yes, sir.

Q. Where were you going? A. We were going to church in Woodbridge.

Q. That was the Hungarian church? A. Yes, sir.

40 Q. Now, what road or street did you walk along in order to go to the church? A. I walked on Amboy Avenue.

Q. That is what is known as the old road? A. Yes, sir.

Q. What sort of a night was it, Mrs. Kovacs?

A. Well, it was a little rainy in the afternoon, but not much, and in the night it was not raining at all.

Q. What sort of night was it? A. It was a nice 10  
night, a little bit foggy, but not much.

Q. Did you have any umbrella? A. No.

Q. Did you wear a raincoat? A. No.

Q. Did you have rubbers on? A. No.

Q. How far along the road did you walk? A.  
A foot on the dirt.

Q. A foot on the dirt? A. Yes.

Q. What I mean is this: Do you know where the  
new state highway comes into the old road? A.  
Yes. 20

Q. Did you walk up that far along Amboy Ave-  
nue? A. Yes, sir, I walk even farther up.

Q. You walked even farther? How much farther  
did you walk beyond the point where the two roads  
come together? A. Well, I guess about a block  
away or two blocks away.

Q. About a block or two past them? A. Yes.

Q. There are no blocks along there, are there?  
That is, there are no streets that run off from the  
main highway? A. No. 30

Q. When you say a block or two, can you tell us  
in some other way about how far you think it was  
past that place where the two roads come to-  
gether? A. Well, I don't know how far should I  
tell you from here.

Q. Well, I don't know. I want to know how far  
you went past that point where they came together.  
A. I could not tell you now how far that was from  
here.

Q. Well, you say you think it was a block or 40  
two, is that right? A. Yes.

- Q. Now, where were you walking at that time?  
A. I was walking on the side of the dirt.  
Q. On the side of the dirt? A. Yes.  
Q. What sort of a road is it there where the new highway is? A. That is concrete.  
10 Q. Concrete? Had you walked up to the point where the concrete road starts? A. Yes, yes.  
Q. And where were you walking with reference to the edge of the concrete? How close to the edge of the concrete? A. About a foot.  
Q. About a foot from it? A. Yes.  
Q. Well, which way a foot? A. Like this. This is the road, and I was about like that (indicating).  
Q. I mean, were you walking on the concrete?  
A. No, we was walking on the dirt.  
Q. On the dirt? A. Yes.  
20 Q. And do you know, with reference to direction, whether you were walking north or south?  
A. I was walking towards Woodbridge.  
Q. Towards Woodbridge from Perth Amboy? A. Yes.  
Q. Now, as you walked along there did you hear anything? Was your attention attracted by anything? A. No, I didn't hear nothing.  
Q. You didn't hear nothing. Did you see anything? A. No, I didn't see nothing in back of  
30 me.  
Q. Well, what, if anything, happened? A. Well, I don't know what happened. All I know when I got up, I don't have no arm.  
Q. Did you know what struck you? A. No, I didn't.  
Q. Did you see what struck you? A. No.  
Q. Did you hear any automobile horn blown? A. No, there was not hardly any automobiles on the road then.  
40 Q. There weren't any automobiles on the road then? A. No.

Q. Did you see any automobiles go by you? A. No.

Q. What did you say a minute ago? What happened to you? A. I got knocked down.

Q. You got knocked down? A. Yes.

Q. Well, did you get up by yourself? A. No.

Q. How did you get up? A. I don't know who picked me up. 10

Q. Well, what did they do with you when they picked you up? A. When they picked me up, they put me in an automobile.

Q. Then what? A. And they took me to the hospital.

Q. Well, how many automobiles were you in altogether, more than one? A. Only one, one.

Q. Is the man who picked you up the same man who took you to the hospital? A. I don't know. 20

Mr. Golenbock: I object.

The Witness: I don't know that either.

By Mr. Toolan:

Q. You don't know that either? A. No.

Q. What I want to know is this: whether more than one automobile was there after you got hit. A. I could not tell you how many was there, because I was sick and unconscious, see. 30

Q. Well, you walked in the hospital by yourself, didn't you? A. No, they took me in. There were two men there; they took me in.

Q. I mean, you walked in? A. Yes, they had me on the arm and took me like that (indicating).

Q. And you don't know who the man was who took you to the hospital? A. I don't know who the man was at that time, and I don't know the man yet.

Q. And where were you walking at the time you got hit? A. On Cleveland Avenue. 40

- Q. Yes. Going towards Woodbridge? A. Yes, sir.
- Q. How close to the concrete? A. How close to the concrete?
- Q. Yes. How close to the edge of the concrete? A. About a foot.
- 10 Q. A foot which way? On the concrete or off? A. On the concrete.
- Q. That is, were you on the concrete when you were hit? A. No, I was on the sand side when I got hit.
- Q. On the sand side? A. Yes, it is nice and sandy there.
- Q. Do you mean on the dirt side? A. Yes.
- Q. You weren't on the concrete? A. Yes.
- Q. After you were taken to the hospital, what
- 20 happened? A. Well, they undressed me there, and they took me to the operating room, and had me fixed up. I was all full of blood, my head.
- Q. Was your head cut too? A. Yes.
- Q. You were operated on, were you, that same night? A. Yes, sir.
- Q. After that where were you taken? A. After that? After the operation?
- Q. Yes. A. I had a private room in the hospital.
- Q. How long were you in the hospital? A. Four
- 30 months and a half.
- Q. Did you have any pain? A. Yes, sir, I still got some today yet.
- Q. Well, did you have much pain when you were in the hospital? A. Oh, yes, I did. I didn't say it to nobody.
- Q. I see. How long did the pain keep up while you were in the hospital? A. Oh, they were pain-
- 40 anything. ing yet when I come home. I had the arm in a basket. I could not do nothing. They hurt like

*Elizabeth Kovacs—Direct Examination.*

Q. How long did that continue to hurt you? A. How long?

Q. Yes. A. It hurted always. Now, about a month there was—it don't hurt so much any more.

Q. Do you have any trouble with it any more? A. Sure, it hurts now too.

Q. What? A. Sure, it hurts now yet. 10

Q. When does it hurt now? A. Pretty near always.

Q. Where does it hurt you? A. It hurts me right here in this bone.

Q. Do you mean in the shoulder? A. In the shoulder, in the back.

Q. How about your arm, does that hurt you? A. Well, sure. That is no good for nothing.

Q. Can you roll up your sleeves there and show the jury that arm? A. Yes. 20

Q. Will you kindly come over here, Mrs. Kovacs? A. (The witness exhibited the arm to the jury.)

Q. Will you take the stand now? A. Yes.

Q. Mrs. Kovacs, will you stand up just a minute? A. (The witness stood.)

Q. Will you raise your arm out that way (indicating)? A. No.

Q. Push it out as far as you can. A. No.

Q. Can you turn it sideways, the way I have mine? A. No. 30

Q. Can you put your hand down at your side? A. (Indicating).

Q. Raise it up straight. A. I can't.

Q. Raise it as far as you can. A. I can't.

Q. Get it up. Come on. A. I can't.

Q. All right, that is all. Can you put your hand down at your side? A. No.

Q. Put it down as far as you can. A. This way?

Q. Can you bend your elbow and bring your arm up so that your fingers can touch your shoulder? A. No. 40

*Elizabeth Kovacs—Cross Examination.*

- Q. Try hard. A. (Indicating.)
- Q. Will you hold your hand out this way (indicating)? Can you stretch it out in front of you?
- A. No.
- Q. See if you can stretch your arm out in front of you. A. I can't.
- 10 Q. Lift it up, right straight out like I have mine.
- A. I can't, that is all I can do (indicating).
- Q. Will you bend up your fingers, Mrs. Kovacs? Can you bend them up? A. I can't.
- Q. Try hard. A. I can't.
- Q. Can you bend your wrist? A. No, that is all.
- Q. Can you straighten your arm out? A. No.
- Q. Down at your side? A. No, that is all.
- Q. Can you bend or bring your arm any more than it is there now? A. No.
- 20 Q. You cannot? A. No.

Mr. Toolan: You may cross-examine.

Cross Examination by Mr. Golenbock:

- Q. You say it was raining a little bit that day, is that right? A. Yes.
- Q. Then you say that it was not raining at night? A. No.
- 30 Q. You said it was a nice evening? A. Sure, it was nice. It was not cold or anything.
- Q. It was not cold? A. No.
- Q. Was the moon out? A. The moon?
- Q. Yes. Did you see the moon in the sky? A. Well, I didn't look at the moon.
- Q. Well, had you looked at it, could you have seen? I mean, was it so clear that night that you could see the moon if you looked for it? A. Well, I didn't look for that.
- 40 Q. But it was clear enough to look up to the sky? A. Yes, it was clear enough to walk ahead.
- Q. I didn't ask you that. Was it clear enough

to look up and see the sky? Do you understand my question? A. Yes.

Q. Was it? A. Yes.

Q. You are sure of that? A. Well, it was night.

Q. Well, you were walking towards Wood-bridge? A. Yes.

Q. Do you know where that restaurant is on Amboy Avenue right near Cleveland Avenue? You know where that restaurant is, a little bit of a shanty? A. Yes. 10

Q. Now, how far away from the place where this restaurant is did you get hit, or was your arm injured? A. It was near there some place.

Q. Near there? A. I think, yes.

Q. But you don't know exactly? A. I just don't know exactly on which spot.

Q. You don't even know how far you had gotten toward where the restaurant is when this happened, do you? A. No, I don't know. 20

Q. And this little girl is your step-daughter? A. Yes.

Q. She was going with you? A. Yes.

Q. Now, was she on your right side or was she on your left side as you were walking along? A. She was right ahead of me.

Q. Ahead of you? A. Yes.

Q. In front of you? A. In front of me about ten feet away from me. 30

Q. Now, you know that road is concrete, don't you? A. Yes, sir.

Q. And was the ground wet or dry that night? A. It was a little wet, but not much.

Q. A little wet? A. Yes.

Q. Didn't you use the concrete part of the road— A. No.

Q. When this happened? A. No.

Q. Are you sure? A. Sure.

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

Q. What was the first thing you know happened? Were you thrown or were you standing up all the time when something happened? A. No, I was laying down when it happened.

Q. Laying down? A. Yes.

10 Q. Now, isn't it a fact that you were first taken into one automobile and then taken out of that automobile and put into or taken into another automobile? A. No, I don't know that.

Q. You don't remember? A. No.

Q. This happened after seven? A. Yes, sir.

Q. And you say you started from your house at seven o'clock? A. Around seven o'clock, yes.

Q. And your home is quite a distance from where this happened? A. This is about two miles.

Mr. Golenbock: That is all.

20 Re-direct Examination by Mr. Toolan:

Q. Are there any sidewalks along the side of the road where you were walking on that evening? A. Not there where I got hit; a little further on there is sidewalks.

Q. Were there any sidewalks on either side of the road at the point where you got hit? A. No.

Q. No sidewalks at all? A. No.

30 Q. People walking along there have to walk where? A. They have to walk on the dirt.

Q. On the dirt? A. Yes.

Mr. Toolan: That is all I have.

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IDA KOVACS, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on her oath, saith:

Direct Examination by Mr. Toolan:

40 Q. Miss Kovacs, how old are you? A. Fifteen.

Q. And you were with your step-mother on the evening that she was hurt, is that correct? A. Yes.

Q. Now, speak out loud. Don't be afraid. Where were you going, Miss Kovacs? A. To church.

Q. And you live where? A. On Inslee Street.

Q. And the church was where? A. In Wood-bridge. 10

Q. So that you were walking from Inslee Street in Perth Amboy to the Hungarian church in Wood-bridge, is that correct? A. Yes.

Q. What sort of night was it, Miss Kovacs? A. Well, it was a little foggy. Very little though. It was raining during the day.

Q. Was it raining that evening? A. No, it was not raining that evening.

Q. As you walked along the road there— A. No.

Q. (Continuing)—did you have an umbrella? 20  
A. No.

Q. Did you have rubbers on? A. No.

Q. How were you dressed? A. Coat and hat.

Q. And a raincoat? A. No.

Q. Was your coat wet? A. No.

Q. So you were sure it was not raining? A. Yes.

Q. How were you walking just prior to the accident? A. Well, I was walking in front of her.

Q. You were walking in front? A. Yes, sir. 30

Q. How far in front of her were you walking? Do you know, Miss? A. A very little distance in front of her.

Q. About how far? A. About eight or nine feet.

Q. And where were you walking, Miss? A. On the ground.

Q. Certainly on the ground, that is right. A. Well, I mean not on the pavement.

Q. Were you walking on the pavement or off the pavement? A. Off. 40

Q. How far off? A. Well, I was quite a ways in, because there was water puddles right next to the pavement.

Q. When you say quite a ways in, how far in did you walk? A. About three feet.

Q. About three feet? A. Yes.

10 Q. You were not struck, Miss? A. No.

Q. Did you actually see your step-mother struck? A. No.

Q. What was the first that you knew that she was struck? A. I had the habit of looking back if she was coming after me, so I happened to look back, and so I saw her lying on the ground, so I wanted to pick her up, but I could not dress her up.

Q. Well, did you hear her struck or anything? A. No.

20 Q. You just turned around and saw her lying there? When you looked around and saw her lying there on the ground how far away from her were you? A. Well, not so very far, about fifteen or eighteen feet.

Q. Fifteen or eighteen feet? A. Yes.

Q. What did you do then, Miss? A. I walked over to her, and I was trying to pick her up.

Q. Did she talk to you then? A. No.

30 Q. How long was it before she spoke to you? A. She didn't speak, but two men came, and they picked her up, and they started making her walk, and she didn't talk to anyone. After she sat in the car she started hollering they broke her arm.

Q. What car was that, do you know, that they put her in? A. No.

Q. Did she stay in that car? A. No, they took her out and put her in another one.

Q. They took her out and put her in another one? A. Yes.

40 Q. What was said — what was the reason for

taking her out of that car and putting her in another one? A. I don't know. They were saying there was no room for her in this one. There was people sitting in the back.

Q. Was there anything else said about the reason for her being put into this car? A. No, they didn't tell me. 10

Q. Do you know who took her to the hospital? A. No.

Q. You don't. A. No.

Q. Have you ever seen the man since they took her to the hospital? A. No.

Q. Did you go to the hospital with her? A. Yes.

Q. And you don't know the man now if you saw him, who took her to the hospital? A. I think I would.

Q. Do you see him in the courtroom here this morning? A. No. 20

Q. Did you see this automobile or any automobile strike your mother? A. No.

Q. Did you see any automobile go by about the time or shortly before you turned around— A. Yes.

Q. (Continuing) —and saw her lying on the ground? A. Yes.

Q. You did? A. Yes.

Q. What kind of automobile was it, do you know? A. I don't know. 30

Q. You don't know? A. No.

Q. Do you know what kind of automobile it was that took your mother to the hospital? A. No.

Q. Well, did you have any conversation with the man that drove your mother to the hospital? A. No.

Q. Did you ask him anything about who struck your mother? A. Yes.

Mr. Golenbock: I object to that, if your Honor please. She has already said no, and 40

it is improper to urge an answer of that kind.

10 Mr. Toolan: I am not going to urge her, if your Honor please, and I do not consider that urging. I simply want to refresh her memory. I know the witness's statement. That is all.

By Mr. Toolan:

Q. Did you talk at all to the man who took your mother to the hospital? A. Yes, sir.

Q. What did you say to him?

20 Mr. Golenbock: I object to that, if your Honor please, what she said to him. It cannot be binding upon anybody.

The Court: Objection sustained.

By Mr. Toolan:

Q. What did he say to you?

Mr. Golenbock: I object to that.

The Court: Objection sustained.

30 Mr. Toolan: If the Court please, I desire to prove—

The Court: Do it in the proper way, Mr. Toolan, and I won't sustain the objection, but it is clearly incompetent now for this girl to tell what the man who took her to the hospital said to her.

Mr. Toolan: That may be out of order, but I will establish that at a later time. The only reason I asked the question now is for the purpose of saving time. It is necessary for us—

40 The Court: The objection must be sustained.

Mr. Toolan: If counsel insists upon it, I will ask the question later.

That is all.

Cross Examination by Mr. Golenbock:

Q. Now, you were walking on the concrete part of the roadway at the time, weren't you? A. No. 10

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

Q. Now, this was rather a foggy night? A. Not very—very little fog.

Q. It was so foggy that you could not look up and see the sky above you, could you? A. Well, no.

Q. I beg your pardon? A. What was the question?

Mr. Golenbock: Read the question, please.

(The question was repeated by the reporter as follows:) 20

“Question: It was so foggy that you could not look up and see the sky above you, could you?”

A. Well, yes, I could.

Q. You could? A. Yes.

Q. And yet you could not describe the automobile that passed you shortly before your mother screamed or called to you or made some sound which attracted your attention? 30

Mr. Toolan: I object. There is no testimony that her mother called or screamed or attracted her attention.

The Court: Objection sustained.

By Mr. Golenbock:

Q. What was the first thing you heard? A. I didn't hear anything. I just looked back, and I saw her lying on the ground. 40

Q. I see. You did see some automobiles pass you before that happened, didn't you? A. What was it?

Q. You saw some automobiles pass before that happened, didn't you? A. Yes, sir.

10 Mr. Golenbock: That is all.

Mr. Toolan: That is all.

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ISIDORE DUBROW, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith:

Mr. Toolan: Is Harry Ford in court?

(No answer.)

20

Direct Examination by Mr. Toolan:

Q. You were the attorney of record in this case?

A. I was.

Q. And you represented Mr. and Mrs. Kovacs in this matter? A. I did.

Q. Did you know the defendant Harry Ford?

A. I did.

30 Q. How long have you known him? A. I have known him about two or three years.

Q. Subsequent to the happening of this accident, and in the course of your investigation of this accident did you have any conversation with Mr. Harry Ford? A. I did.

Q. Respecting the accident? A. It came—I had some conversation respecting the accident, but my conversation was general.

40 Q. Well, confine yourself to the conversation you had respecting the accident. Did you make any inquiry of Mr. Ford or ask him whether or not he

was the driver of the car that struck Mrs. Elizabeth Kovacs on the evening of the fourteenth of November, 1929?

Mr. Golenbock: I object to the question. I object on the ground, if your Honor please, it is incompetent, irrelevant, and immaterial, and if it is based on anything, the ground would have to be laid first, to ask the defendant what he said, and furthermore on the further ground that he cannot prove admissions of this kind. 10

The Court: I think an admission is always competent. When a person makes an admission against interests, it would have to be proved. I don't see that this question is objectionable on that ground. 20

Mr. Golenbock: I object to it on the further ground that any conversation with this defendant by this witness is incompetent.

The Court: Why?

Mr. Golenbock: On the ground, if your Honor please, that unless the conversation was such as would indicate that it was for the purpose of getting an admission or for the purpose of ascertaining as to what action or participation this defendant had in this case, and on the further ground, if your Honor please, that this time especially on the affirmative side of the case that it is not proper to produce any admissions if there were any such admissions. 30

The Court: Well, I will permit the question on all the grounds of the objection.

Mr. Golenbock: May I have an exception?

The Court: You may have an exception.

Mr. Toolan: Read the question. 40

(The stenographer read as follows:)

10       “Question: Well, confine yourself to the conversation you had respecting the accident. Did you make any inquiry of Mr. Ford or ask him whether or not he was the driver of the car that struck Mrs. Elizabeth Kovacs on the evening of the fourteenth of November, 1929?”

The Court: That question is so leading that I cannot permit it to be made, even though there is no objection on the ground that it is leading.

Ask him what conversation he had, if any, with Mr. Ford.

20       Mr. Golenbock: May I have the same objection and same exception?

The Court: Yes.

By Mr. Toolan:

30       Q. What conversation did you have with Mr. Ford respecting the accident? A. I had a general conversation with Mr. Ford. I did not attempt to find out whether he drove the car or not. I was not interested in it, but during the course of the conversation he told me he had driven the car. He did not see the plaintiff in this case, Mrs. Kovacs, until after he had struck. He told me that he had felt a bump on his bumper, and then he had stopped his car after that, and he came back and he found out that somebody—Mrs. Kovacs had been struck. He never told me at that time or at any subsequent time that he intended to deny the fact that he struck the woman.

40       Mr. Golenbock: I ask that the latter portion be stricken out.

The Court: What is the objection to it?

Mr. Golenbock: At no time did he say after that that he denied it.

The Court: It may be stricken out.

By Mr. Toolan:

Q. Did he say anything to you in that conversation? A. Yes, he said he didn't see the woman until after he had struck her. 10

Q. All right. A. And he also said—well, that is all I remember.

Mr. Toolan: Cross-examine.

Cross Examination by Mr. Golenbock:

Q. Mr. Dubrow, you are the attorney who started the suit in this case? A. That is right. 20

Q. And you met Mr. Ford at the Elks, didn't you? A. Yes, sir, that is right.

Q. That is the time you had this conversation that you allege? A. Yes.

Q. And you knew he could be found at the Elks because he is an exalted ruler, is that right? A. No.

Q. You know he is— A. He is not.

Q. What is he then? A. He is not an exalted ruler. 30

Q. He is not? A. No.

Q. But the conversation that you had with him was at the Elks? A. That is right.

Q. And it was during the business meeting? A. It was not.

Q. Where was it? A. It was downstairs in the social room.

Q. Was it after the meeting or before the meeting? A. I don't recall whether there was any meeting that evening. 40

Q. Isn't it a fact, Mr. Dubrow, that Mr. Ford absolutely denied hitting the woman? A. It is not.

Q. It is not, and you say that he said he did not see Mrs. Kovacs until after he hit her. Is that the word he used? A. I don't remember his exact words.

Q. You don't remember his exact words? A. That was the conversation.

Q. Well, now, can you refresh your recollection after the statement you made that you cannot tell whether those are the exact words, what he did actually and exactly say to you about this woman? A. Certainly not. I did not intend to use it as evidence. I was speaking to him along a friendly line, not as I would to try to elicit information from a witness.

Q. Well, you started to talk about this case. Apparently you knew that he was interested and in fact you knew he was interested? A. I should say I did. I started a suit against him.

Q. And knowing he was the defendant, you started talking to him about the case, didn't you? A. Certainly.

Q. Then you talked to him for the purpose of getting information, didn't you? A. I said I didn't.

Q. You didn't, but you can't tell us now the exact language that he used at the time? He told you, as you say, in substance, that he did not see this woman until after he struck her? A. Certainly not. I would have marked it down if I thought you wanted it denied that he hit her.

Q. You are still interested in the case, I presume, are you not? A. My interest in the case is simply to see that Mr. Toolan has the information that I had when I had the case.

Q. Now, Mr. Dubrow, you don't want this Court and jury to believe that you haven't a monetary

interest in the case at this time, do you? A. I represent Mr. Kovacs.

Q. You also have a monetary interest as a result of this case? A. I do not.

Q. Do you mean to say that you are not going to get any share of any verdict that may be obtained by this plaintiff? You don't mean that, do you really? A. I said I may as far as Mr. Kovacs is concerned. I am not interested in Mrs. Kovacs. 10

Q. Now, you had Mrs. Kovacs' case, didn't you? A. That is right.

Q. And as well as Mr. Kovacs' case, and you have been substituted in both as far as Mr. Kovacs and as far as Mrs. Kovacs is concerned in this case, isn't that right? A. That is right.

Q. Although as attorney of record you are not an attorney for either one of the plaintiffs? A. No. 20

Q. And isn't it true that you have still retained a monetary interest in the case if there is a verdict for the plaintiff or plaintiffs? A. As far as Mr. Kovacs alone is concerned.

Mr. Golenbock: That is all.

By Mr. Toolan:

Q. At the time you had this conversation with Mr. Ford, had you started a suit against him? A. Yes, certainly. 30

Q. And he knew that you were the attorney for the Kovacs when he was talking to you? A. Certainly.

Mr. Toolan: That is all I have.

By Mr. Golenbock:

Q. Just one question, Mr. Dubrow. You had never talked to Mr. Ford before that day, did you? A. Why, certainly I did. 40

*Martin S. Meinzer—Recalled, direct.*

Q. Lots of times? A. Oh, I would not say lots of times. Four or five times.

Mr. Golenbock: That is all.

10

MARTIN S. MEINZER, recalled, resumed the stand and testified further as follows:

Direct Examination by Mr. Toolan:

Q. Doctor, did you have a conversation with the defendant Harry Ford on the evening of this accident at the hospital? A. I did.

Q. Respecting the happening of the accident? A. I did.

20 Q. Will you please tell us what Mr. Ford said to you?

Mr. Golenbock: I object to that, if your Honor please.

The Court: I will permit it.

Mr. Golenbock: I pray for an exception.

30 A. I had a conversation with Mr. Ford in the hospital, and he said that he did not see Mrs. Kovacs, but he heard a thud or a knock against the side of his car, and he stopped, and he got out, and she was by the roadway.

Q. He then picked her up and brought her to the hospital? A. Yes.

Cross Examination by Mr. Golenbock:

Q. Doctor, didn't he also tell you she was being put into some other car, and he volunteered to take her to the hospital and take her in his car? A.  
40 There was something about the two cars, but Mr.

*John Kovacs—Direct Examination.*

Ford said that he felt a knock against the side of his car.

Q. But he did not admit that he struck the woman, did he? A. He said that he did not see her or he did not know that he had struck her. The only thing was that he felt this thud against the side of the car. 10

Q. Did he say that he struck this woman, Doctor? A. No.

Mr. Golenbock: That is all.

JOHN KOVACS, one of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Toolan: 20

Q. Mr. Kovacs, you are the husband of Elisabeth Kovacs? A. Yes.

Q. And you and your wife at the time this accident happened, on November 14, 1929, were living together at Inslee Street? A. Yes.

Q. Mr. Kovacs, have you had any bills other than the doctors' bills and Mr. Klem's bill, and the hospital bill, by reason of the injuries sustained by Mrs. Kovacs? Have you had any other bills? A. I paid one, the special nurse. That is all, the bill I got, and the housekeeper. 30

Q. How much did you pay the special nurse? A. \$28.

Q. What other expense did you have? A. What?

Q. What other expense did you have? A. Well, that is all I got, then the housekeeper. \$10 a week she wants.

Q. Who is the housekeeper? A. Mrs. Ruskey. 40

*John Kovacs—Cross Examination.*

Q. That is a daughter of yours, is it, who is married? A. Yes.

Q. And her husband's name is Ruskey? A. Yes.

Q. And she took care of the household, did she?  
A. Yes.

10 Q. And you paid her what?

Mr. Golenbock: I object, if your Honor please, you paid her what, that is calling for a conclusion. Did he pay her?

The Court: He paid her \$10 a week.

Mr. Toolan: It really isn't necessary.

By Mr. Toolan:

20 Q. Well, what did your family consist of? How many members of your household is there? A. I got only one girl home. She is a school girl. She is going to school.

Mr. Golenbock: I object.

The Witness: I got nobody else.

The Court: Objection sustained.

Mr. Toolan: That is all.

Cross Examination by Mr. Golenbock:

30 Q. You say your daughter took care of the house? Who was the lady that took care of the house? A. Mrs. Ruskey.

Q. Is she related to you? A. She lives upstairs.

The Court: It is his daughter.

Q. It is your daughter? A. Yes.

Q. She lives upstairs? A. Yes.

Q. She is married? A. Yes.

40 Q. And has a family? A. No.

Q. No family? A. No.

Q. You had to pay her ten dollars a week? A. Yes.

Q. Cash or by check? A. I pay cash for that.

Q. You paid cash every week? A. Yes.

Q. You took no receipts? A. What?

Q. No receipts from her, you took no receipts? 10  
A. No, he no give me a receipt.

The Court: He didn't say how many weeks he paid her.

Mr. Golenbock: That is all.

Re-direct Examination by Mr. Toolan:

Q. How many weeks did you pay her, do you know? A. What is that?

Q. How many weeks did you pay your daughter? 20  
A. How many?

Q. How many weeks did you pay her? A. Oh, about ten months now. Pay each week ten dollars I pay for him.

Q. What does she do for the ten dollars? What does she do for the ten dollars? A. What he do?

Q. What did she do for the ten dollars? A. Well, because he clean the house, housekeeper. I got nobody home, but my wife is four months in the hospital and four days, maybe more than that. 30

Mr. Golenbock: If your Honor please, I move to strike out all that testimony on the ground that the answers to the interrogatories do not indicate the time of Mrs. Ruskey's work, as now stated.

The Court: That is merely a matter of calculation. He says it is ten months. I would not strike it out on that ground.

Mr. Toolan: That is all I have. We rest. 40

(The plaintiffs rested.)

Mr. Golenbock: May I recall Mrs. Kovacs, if your Honor please?

Mr. Toolan: You want to call her in our case?

The Court: Yes, he says he wants to recall her.

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ELIZABETH KOVACS, recalled.

By Mr. Golenbock:

Q. Mrs. Kovacs, as you were walking on this road you were looking right in front of you, weren't you? A. Yes, sir.

Q. You were not looking backwards at any time?

20 A. No.

Mr. Golenbock: That is all.

By Mr. Toolan:

Q. And what side of the road were you walking on?

Mr. Golenbock: I object to that, if your Honor please. It has already been gone into.

The Court: On the right-hand side of the road.

30

Mr. Toolan: That is all right if he will admit it.

Mr. Golenbock: Yes, we will admit it.

The Court: She testified to that.

Mr. Toolan: I am not so sure.

The Court: All right. Ask her.

By Mr. Toolan:

Q. What side were you walking on, the right or left? A. The right side.

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*Motion for Direction of Verdict.*

Mr. Toolan: If the Court please, I just said I rested, but I would like at this time to read into the record some dimensions from the map.

Mr. Golenbock: I have no objection.

The Court: They show for themselves.

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**Motion for Direction of Verdict.**

Mr. Golenbock: If your Honor please, I desire to move for a direction of a verdict on the ground that these plaintiffs have failed to make out a cause of action, to establish negligence on the part of the defendant or connecting the defendant with this accident.

There is no testimony here to indicate or to predicate— 20

The Court: I don't think you need to argue it any further, Mr. Golenbock. The state of the case, as I visualize it, at the present moment, is that the defendant, according to the evidence that has been testified to here by the two witnesses, says that he did not see the plaintiff until after his car had come in contact with her. That would appear to me to be such a circumstance as would require him to explain why he did not see her until the car came in contact with her even if it was at night.

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Mr. Golenbock: I also will have other grounds, if your Honor please, besides what I have indicated, if your Honor will permit me to put them on the record, so as to make the record clear so far as my motion is concerned. A further ground that the non-suit should be granted is that the defendant was

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*Motion for Direction of Verdict.*

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10 guilty of contributory negligence as a matter of law, in using that part of the highway ordinarily used by automobiles on a night such as this has been described to have been, without carrying a lamp or light, which would give automobiles, using the same highway, a notice or warning of the pedestrian's presence on the highway; on the further ground that the plaintiff is guilty of contributory negligence as a matter of law, by using that portion of the highway and in taking a chance of being struck by an unseen automobile from behind; on the further ground, if your Honor please, that the plaintiff was duty bound to use that portion of the highway not generally used by automobiles, even though she said or, as the testimony as I understand it and remember it, that she was walking one foot off the concrete portion of the road. I also contend, if your Honor please, that the fact that the plaintiff failed to turn around to watch for automobiles approaching in the rear.

20  
30 The Court: You have got on the record that your motion is denied, and you may have an exception noted. You need not argue it.

Mr. Golenbock: I also want to move on the further ground that the plaintiff is guilty of contributory negligence as a matter of law in failing to use the left side of the road where she should have been walking.

40 The Court: You have said that four or five times. You want a nonsuit granted because the plaintiff was guilty of contributory negligence as a matter of law, and that motion was denied. You can argue it to the

Supreme Court when you want to—when the proper time comes, but it is not necessary to argue it here, because I am ruling against it.

Mr. Golenbock: I pray for an exception.

The Court: You may have it.

Mr. Golenbock: The defendant is not here. 10  
May I ask for a recess now?

Mr. Toolan: If the Court please, under the circumstances in this case I think that counsel ought to go ahead. The defendant is one of the parties in this suit. His absence from court this morning was not an accident.

The Court: If you wanted him here, you could easily have gotten him here.

Mr. Toolan: I know. 20

The Court: But you haven't any right to complain about it. If the defendant sees fit to stay away, he can.

Mr. Toolan: I am not complaining about that in my case, but if he wants—

The Court: It is a matter for the Court. Have you any other witnesses here?

Mr. Golenbock: Yes.

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JOHN H. COYNE, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Golenbock:

Q. Mr. Coyne, where do you live? A. Wood-  
ridge.

Q. Do you recall November 14, 1929, having been on a road from Perth Amboy to Woodridge? A. I  
do. 40

Q. Were you operating an automobile? A. I was going by there, yes.

Q. I mean, you were riding in an automobile? A. Yes.

Q. Were you driving it? A. No.

10 Q. Were you in and somebody else driving? A. My wife.

Q. Do you recall what time of night your attention was attracted to something that happened on the road? A. I should judge about 7:30 to 8:00. Somewheres along there.

Q. Can you tell us whereabouts on the highway this occurred? A. Just as you make the turn between two highways; between the old highway coming in from Perth Amboy and the main highway, about 50 or 75 feet, I should judge.

20 Q. The other way? Do you mean north side or south? A. Towards Woodridge.

Q. Do you recall the condition of the weather that night? A. It was misty and foggy.

Q. To what extent? A. Well, it rained a little, and it was quite foggy and misty.

Q. How was the visibility of other cars? A. It was rather hard to see very much. I know that.

30 Q. How far ahead of you or in front of you could you see? A. Well, I could not see say fifteen or twenty foot.

Q. Could you see automobiles a further distance than that? A. I didn't say you could see them. I could have tried to see them. I was going by. I heard this woman crying and wondered what happened. I pulled in to see what happened.

Q. When you pulled in what did you see? A. I heard the woman screaming, and also I saw the two men taking her to the car, and one I happened to know, Harry Ford.

40 Q. Was there any other car besides yours? A.

At that time I imagine there were three or four cars. They must have stopped the same reason I did.

Q. Did you see the woman as you passed? A. I would not say as I passed, because I just heard her screaming and stopped. I saw the two men taking her across to the automobile. 10

Q. How far away from where the woman was was your car? A. Mine must have been the third or fourth car to be stopped. I went to the side so I would not get hit on the main road.

Q. When you got out and saw the woman what part of the road was she? A. What do you mean, what part of the road?

Q. I am now referring to the concrete part of the road and the dirt part of the road. A. There is not very much dirt. It is all concrete as far as I can say. Both men had a hold of her and took her toward the car. 20

Q. When you first saw her was she on the concrete road? A. That I could not say.

Q. Was it in line where the cars were traveling? A. Yes. There is no road there at all. It is nothing but concrete as far as I can remember.

Mr. Golenbock: That is all.

Cross Examination by Mr. Toolan: 30

Q. Mr. Coyne, you travel that road frequently, do you not? A. Yes, sir, most every night.

Q. Back and forth to Woodbridge? A. Yes.

Q. You know Harry Ford very well? A. Very well.

Q. Are there any sidewalks at the point where the accident happened? A. No, I don't believe there are.

Q. So that people traveling along there must go on the highway? A. Yes. 40

Q. Did you speak to Mr. Ford that night about the accident? A. I didn't say a word to him. I just said, "Hello, Harry." He was going with these people. He just said, "Hello." He didn't know who it was. Everybody there was excited.

10 Q. Did you look at the Ford car? A. I didn't know which car was Harry's. There were three or four cars there.

Q. Did you ever have any conversation with Mr. Ford about that subsequently? A. Not a thing about it at all.

Q. How fast were you traveling along the highway there that night? A. Well, you could not go very fast. Just say fifteen or twenty miles. You see, it is just as you make the turn. You have to be careful where you make that turn.

20 Q. That is, you mean you must drive carefully along there because of automobiles coming and going in several directions? A. Yes, sir, exactly.

Q. Well, was the visibility such that night that you might travel at a greater rate of speed after you got by that? A. It is quite possible, yes.

Mr. Toolan: That is about all I have.

Re-direct Examination by Mr. Golenbock:

30 Q. You had passed, you say a number of times, that portion of the road? A. Most every night.

Q. And as you looked south in the direction of the state highway route four, there is a hollow there, is there not? A. Intersection?

Q. No. Further down. A. Further down.

Q. Now, you have passed that part of the road where this occurred many times? A. Yes.

Q. And times that it was foggy too? A. Yes.

40 Q. Did you find that at that point it is more foggy than any other point along the road?

Mr Toolan: I object.

A. I would not say that.

The Court: Objection sustained.

By Mr. Golenbock:

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Q. Now, to the right of the concrete there is a dirt shoulder, is there not? A. There is nothing there but a bank.

Q. A bank? A. A sand bank.

Mr. Golenbock: I see, that is all.

By the Court:

Q. Is that a pretty busy highway there? A. 20  
Pretty busy. It is a main highway all the way through.

Q. Heavily travelled? A. Well, it is the main highway from New York to Woodbridge.

Q. Can you show on the map where Mrs. Kovacs, at the time when you saw the two men taking her to the car? A. Where she was?

Q. Yes. A. Well, I don't just know how the map lays I can tell you—where she was struck was on the busy part of the highway, there is no question 30  
about that.

By Mr. Toolan:

Q. What is shown here is Amboy Avenue, the section that goes down by the Barber Asphalt. A. Well, it was on the main highway. I would judge about forty or fifty feet on the turn from the two sections of the road.

Q. You mean after you had straightened out on 40

*Harry Ford—Direct Examination.*

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the straight road? A. Yes, on the straight road, I would say fifty or sixty feet.

The Court: That is all the questions I have.

10 (A recess was had until 1:45 P. M.)

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Afternoon Session 1:45 P. M.

HARRY FORD, the defendant, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Golenbock:

20 Q. Mr. Ford, where do you live? A. Woodbridge.

Q. What is your business? A. I am a drug salesman.

Q. What firm? A. Park Davis & Company.

Q. Do you operate an automobile in the business? A. Yes, sir.

Q. On November 14, 1929, were you operating a car near Woodbridge? A. Yes, sir.

30 Q. Where had you been that day? A. Asbury Park.

Q. Who was with you? A. Norman Hertzler.

Q. Who is he? A. He is a special representative of Park Davis & Company.

Q. Was he with you all day? A. Yes, sir.

Q. And where was the last stop made prior to the time of your returning home? A. At the Hill drug store in Asbury Park.

40 Q. Do you recall what time you left Asbury Park? About what time? A. Well, I imagine it was between—I would say 5:30 to 6:00.

*Harry Ford—Direct Examination.*

Q. And after you left Hill's drug store, you continued straight on towards Woodbridge? A. Yes, sir.

Q. Did you stop anywhere on the road? A. No, sir.

Q. Now, you are familiar with the junction of Amboy Avenue and route four known as Cleveland Avenue? A. Yes, sir. 10

Q. You passed that quite a many years? A. Many years.

Q. How long have you been living in Woodbridge? A. Quite a number of years.

Q. What was the condition of the weather that night? A. Well, it was a very rotten night.

Q. What do you mean by that? A. Heavy fog.

Q. To what extent would you say it was foggy? Was it mild, dense or what? A. I would say that it was a dense fog. 20

Q. Could you see far ahead of you at the point or near the point where this occurrence took place that night? A. Well, I would say to that, you could see possibly ten feet in front of your car and not any further.

Q. What part of the roadway were you traveling at about that place? A. What part of the roadway?

Q. Yes. A. Well, I was hogging the black line in the center of the road, the only way that you can travel. 30

Q. And why? A. Because of the fog.

Q. Did that in any way assist you in traveling? A. That is about the only way you can travel in a heavy fog.

Q. Did you stop your car at any time as you passed the junction of Amboy Avenue and Cleveland Avenue? A. Yes.

Q. Why? A. Well, I was—felt a bump similar to a flat shoe and I pulled off the road. 40

*Harry Ford—Direct Examination.*

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Q. Where was Mr. Hertzler sitting at that time, here while you were traveling? A. In the front seat with me.

Q. This is a left-hand drive that you have, is it not? A. Yes.

10 Q. So that Mr. Hertzler was sitting closer to the edge of the road than you were? A. He was on my right.

Q. Now, when you turned off—did you turn off at the edge of the road when you felt that bump? A. I pulled off to the right.

Q. Then what did you do? A. Opened the door and got out.

Q. Yes, sir. A. All alone.

Q. On your side of the car? A. On the left-hand side.

20 Q. Then what did you do? A. I started back to see if I had a flat shoe.

Q. What kind of car were you driving? A. A Willys-Knight.

Q. What kind of wheels? A. It has a wire wheel equipment.

Q. What kind of tires did you have on it? A. Firestone.

30 Q. I don't mean the grade; I mean the size of them. A. They are regular balloon shoe standard equipment.

Q. And when you got out to see the tire, what did you do, observe, or hear? A. I heard a lady crying.

Q. How far away? Where was this lady? A. Oh, I would imagine fifty or sixty feet from where I was.

Q. In front of you or to the rear of you? A. In the rear.

Q. Then what did you do? A. I ran back.

40 Q. What did you see? A. I saw the poor lady standing there with her arm in a very bad condition.

Q. Anybody with her? A. A man.

Q. What was the man doing? A. He had hold of her arm.

Q. Then what did you see or observe or hear in reference to the man? A. He was going to take her to the Rahway Hospital.

Q. Was there a car there? A. Yes. 10

Q. Then, what took place? A. I said, "Why go to the Rahway Hospital? The Perth Amboy Hospital is only a short distance. My car is bigger. Put her in there and take her over there."

Q. Then what happened? A. I ran for Mr. Hertzler to assist me.

Q. Do you mean you went back to your car? A. To my car.

Q. During this time while this was going on where was Mr. Hertzler? A. In my car. 20

Q. Then you called him? A. Yes.

Q. Then what happened? A. Mr. Hertzler and I returned to this lady, put her in my car. Mr. Hertzler and this lady sat in the rear, and there was a little girl who also—and she sat in the front seat with me.

Q. And you brought this lady to the Perth Amboy City Hospital? A. Perth Amboy Hospital.

Q. Did you or did you not strike this woman before you stopped or at any time that night? A. I did not strike any woman. 30

Q. Did you strike this woman? A. I did not.

Q. Now, you have been connected with the Elks at Perth Amboy, haven't you? A. Yes, sir.

Q. Do you recall the time when—Oh, by the way, do you know Mr. Dubrow? A. Slightly.

Q. Do you remember seeing him at the Elks Club? A. He came over to me one night at a meeting in the meeting room, and told me who he was.

Q. Did he introduce himself? A. Yes. 40

Q. Did you, before that night, know Mr. Dubrow? A. I would not recognize Mr. Dubrow now if he had not told me his name that night.

Q. You say he sat down next to you? A. He came across our meeting room and sat next to me.

10 Q. And will you relate to the Court and jury what conversation you had with him or he with you on that night? A. As near as I can recollect during the business procession of the Elks, Mr. Dubrow was sitting next to me. He said, "Hello, Harry." I looked at him and said, "Hello."

He said, "I am Dubrow from Dubrow & Sellyei, the lawyers, who have a case against you."

Q. What did you say? A. I said, "Yes."

Mr. Dubrow said, "It is a kind of a serious case, isn't it?"

20 I said, "I don't know," and I have no recollection of having any further conversation with Mr. Dubrow.

Q. Did you say to him on that night or any other night, that you did not see that woman until after you struck her? A. I didn't.

Q. Had you met Mr. Dubrow before or after that time? A. I was at Seaman's Pharmacy in Perth Amboy—

Q. When? A. Either a week ago last Friday.

30 Q. And what happened? A. Nothing.

Q. Did you see Mr. Dubrow there? A. I did. He came in. I was sitting at the bar in the front of the store. Mr. Dubrow came in and sat down. I am quite positive it was Mr. Dubrow. He neither spoke to me nor me to him.

Q. And is that the next time that you saw Mr. Dubrow after the occasion that you related at the meeting? A. I think he passed me once or twice on the street but never any conversation of any  
40 kind.

*Harry Ford—Cross Examination.*

Q. Did you know him well enough to greet him?  
 A. Well, I would say that I would either say, "How do you do," or wave my hand. That is all.

Q. You knew he was an Elk? A. I didn't until the night he came over and sat next to me in the lodge room.

Q. Do you remember the night when you took the lady to the hospital? A. I do. 10

Q. Who was the first doctor who was called there? A. Dr. McCormick.

Q. Did he arrive there? A. He did.

Q. Did he take care of the lady? A. I don't think that Dr. McCormick did, owing to the fact he had an infected finger, and it was bandaged up, and he could not use his left hand.

Q. Then Dr. Meinzer was called? A. I think he was. 20

Q. How many doctors were there at the time, do you recall? A. Well, there are many doctors in there, but I don't know how many were called on this case.

Q. I mean, was there more than one doctor that night? A. There?

Q. Yes. A. Yes.

Q. Do you recall speaking to Dr. Meinzer? A. Well, I recall greeting Dr. Meinzer, yes.

Q. Do you recall any conversation you had with him? A. No. 30

Q. You would not say that you did not talk to him? A. I would not say that, no, because I was talking to a number of the doctors there.

Mr. Golenbock: That is all.

Cross Examination by Mr. Toolan:

Q. Mr. Ford, did you discover what this bump was that you struck? A. Did I discover what the bump was? No, there was no flat shoe. 40

Q. Can you account for the bump in any way?

A. I cannot whether there was a hole in the road or a brick or something there, I could not say. I did not bother when I heard the lady crying.

Q. You didn't see it, did you? A. No.

Q. You were on the concrete, were you not? A.

10 When I was driving, yes.

Q. And that road has only recently been completed, isn't that true? A. No.

Q. Say within the last couple of years that highway there? A. No. This highway has been there many years.

Q. Let us not quibble about the years it has been there. Well, it is a pretty good flat concrete road? A. Yes.

Q. In good condition? A. Yes.

20 Q. And in your various travels back and forth over that road, and you have travelled frequently, you never knew of any bump or hole in the road at or about the place where you felt this bump? A. No.

Q. Now, Mr. Ford, there are no sidewalks along there, are there? A. No.

30 Q. And people who travel back and forth at or about that point must use part of the highway in order to get along there, isn't that true? A. Not necessary.

Q. What else can they use? A. There is at least ten or fifteen feet on each side, and a pass on the left-hand side going north.

Q. A pass? A. Yes.

Q. There is no pass on either side, is there, that is, a sidewalk? A. There are gutters leading down to the tea room. There is a fence and a pass along that fence which is probably twenty feet from the concrete highway.

40 Q. At about the spot where this happened, is

there any sidewalk where a person may walk? A. On the opposite side of the road, it is not a sidewalk, it is a pass. I presume when you say sidewalk, you mean a concrete sidewalk.

Q. Any character of sidewalk. A. Well, it is a sidewalk there.

Q. And that is on the west side of the highway, you say? A. It is on the left-hand side of the highway going towards Woodbridge. 10

Q. And what is the character of sidewalk or pass that you refer to? A. It is sand.

Q. Well, you mean if you get over far enough you get into the dirt, is that what you mean? A. No, it is a path between this fence and the highway, also shade trees.

Q. At this point where the accident happened? A. Yes. 20

Q. Isn't it a fact that practically everybody uses the highway along there to get along?

Mr. Golenbock: I object to that, if your Honor please. I don't think this witness is able to tell that.

Mr. Toolan: I will withdraw the question.

By Mr. Toolan:

Q. You have seen people traveling along there frequently using the highway, haven't you? 30

Mr. Golenbock: I object to that as immaterial.

The Court: Well, I will let him answer it. I don't see it amounts to anything one way or the other.

By Mr. Toolan:

Q. Is that true? A. What is the question? 40

Mr. Toolan: Read the question, please.

(The stenographic reporter read as follows:)

“Question: You have seen people traveling along there frequently using the highway, haven’t you?”

10 A. Seldom.

Q. That is, I mean people on foot? A. Seldom.

Q. Will you look at this map here. Will you indicate to me where on this map here, if you can show the spot at which the accident happened as well as you can do it?

Mr. Golenbock: I object to that. There is no proof yet from this witness or from anybody else that an accident happened.

20

The Court: Well, there is proof that this woman was struck, but there is no proof that this man knows where she was struck.

Mr. Toolan: I will withdraw it and reframe it. If there was any question about an accident there, this woman has got an awful arm.

By Mr. Toolan:

30 Q. Can you show me about where you stopped?  
A. (Indicating).

Q. Mark it with an “F,” if you please. A. (Marks map.) Approximately there.

Q. And where was the woman say when you got out of your car and looked back? A. Oh, this is not made to the inch?

Q. Yes. It is. It is ten feet to one inch. A. Well, I would say it was about sixty feet.

40 Q. Will you please indicate then about where you think she was? Put K there, will you? A. Is this a street?

Q. No, that is just the end of the map. A. As near as I have any recollection this is where she was standing.

Q. All right, now, Mr. Ford. Will you look at this map? Is there any sidewalk shown on that map at or about that point on the right-hand side going north towards Woodbridge? A. There is no sidewalk on that side. 10

Q. Now, referring to the other side about opposite there, is there any sidewalk shown or delineated on the other side, that would be the west side of the road? A. It is not shown there, no.

Q. Now, there is a steep embankment, is there not, just a short distance off this road on the east side or right side going towards Woodbridge? A. A steep embankment?

Q. Yes. A. No, there is a hill on this side. 20

Q. That is what I mean, a hill going up there and when you first saw this woman, was she standing up or lying down or what? A. This lady was standing up.

Q. On the right-hand edge of the pavement going north towards Woodbridge? A. Yes.

Q. This other car that you speak of, what direction was that heading? A. It had the nose of the car towards the bank.

Q. Where was the car? On which side of the highway? A. The same side I was. 30

Q. Well, was it stopped towards Perth Amboy from the woman? A. No, the car evidently had been coming behind me.

Q. Do you know who that was? A. I do not.

Q. Did you make any inquiry to find out who it was? A. I did not.

Q. Had the car gone past the woman? A. Well, I could not say that.

Q. Well, was the car in between the woman and 40

you when you stopped? A. No, the lady was not—was between my car and his car.

Q. In other words—I want to get this clear. In other words, if your car was here, where the F sign, where you have marked F, and the woman is here, where you have marked the initial K, will you indicate to me where the other car is or was? A. I think it was right alongside of her, right there (indicating).

Q. That is, will you mark it with an O, the letter O? A. (The witness marked the map.)

Q. In other words, it was toward Perth Amboy from the woman, is that correct? A. Yes.

Q. And was your car and this other car the only two cars there when you first looked back? A. No, I am quite sure there was three or four cars there.

20 Q. Where were the other cars? A. Pulled in off the side of the road.

Q. Where? A. Behind this other car, I think, and were towards Perth Amboy.

Q. All the other cars that were there were on the Perth Amboy side of the woman? A. Yes.

Q. You didn't know who any of those people were? A. I didn't.

Q. And you didn't make any inquiry of them at all? A. I didn't.

30 Q. You didn't inquire there who, if anybody, struck the woman? A. I didn't.

Q. This Mrs. Kovacs was getting into one of those other cars, that is, somebody had volunteered to take her to the hospital? A. Yes.

Q. And you turned around and said you were going to take her? A. They were going to take her to the Rahway Hospital. I said, "the Perth Amboy Hospital is much closer. I have a larger car and I will take her there."

40 Q. And you turned your car around and took her? A. Absolutely.

Q. Do you remember telling Dr. Meinzer that you were driving along the road, that you didn't see this woman at all, that you felt a bump, stopped your car, immediately, and looked back and saw this woman screaming on the highway, or heard her screaming on the highway? A. I have no recollections of discussing that case with anyone outside of—I think it was Dr. McCormick that came and wanted to know what was the matter, and I said "The lady is in the operating room." 10

Q. You went to police headquarters and reported it? A. Yes.

Q. Didn't you report there that you struck her? A. No, sir.

Q. Who was at the desk that evening at police headquarters? A. I really could not say.

Q. Was it Sergeant Egan? A. Egan, that is right. 20

Q. Now, did you go there and state to him that your name was Harry Ford, 545 Maple Avenue, Woodbridge? A. Yes.

Q. That you were driving your car N. J. K-82600, north on Amboy Avenue near Thirst Haven, the intersection of Cleveland Avenue and Amboy Avenue, Woodbridge; that you struck Mrs. Elizabeth Kovacs of Inslee Street, Perth Amboy? A. No, sir. 30

Q. Who was walking on the right side of the road going north? A. No, sir.

Q. She was taken to Perth Amboy Hospital by Mr. Ford? A. Yes, sir.

Q. Treated for injuries and held there for further examination. Mr. Ford reported the accident to the police? A. Yes, sir.

Q. Mr. Ford, if you didn't strike this woman, why did you go to police headquarters and report it? A. I tried to comply with the rules and regu- 40

lations of the Motor Vehicle; it is a necessity for me to drive a car in my business, and I didn't want any trouble with the Motor Vehicle Department, and in law it is a necessity wherever there is an accident of any kind that you know anything about, it is up to you to report it rather than to have a  
10 hit-and-run case, I went right to the police department and reported that there was an accident on the highway, and that I took the lady to the Perth Amboy City Hospital.

Q. Well, didn't you go there, Mr. Ford, to report it because the Motor Vehicle Department requires you to report it when you have an accident?

A. Well, I went there for the purpose I just said.

Q. Was it because you had the accident you went there? A. No, sir.

20 Q. Do you know, Mr. Ford, whether you hit this woman or not? A. I do.

Q. How can you tell that you didn't hit the woman? A. Well, if I hit anybody I certainly am going to know it.

Q. Didn't you feel the bump? A. You can feel the same kind of bump by riding over a large cobblestone or brick.

30 Q. Will you tell me then how you distinguish between the bump you might get from riding over a large cobblestone or a brick and the bump you might get from breaking a woman's arm, I mean, from riding over her body? A. I have never had that experience.

Q. So you don't know then whether you would have the same bump or not? A. I would not say that.

40 Q. Well, if you never had the experience of hitting anybody, the same as this woman was, how can you say whether the bump was like the riding over a brick or stone? A. It may be similar. I

have no experience in that line at all. I have run over plenty of stones.

Q. What sort of bump was this that you got? A. If I had not of had a new car, I would not have stopped. This wire wheel equipment, ten feet would chew your shoe all to pieces, and that is the reason I stopped. 10

Q. You didn't hear any blowout, did you? A. You would not get a blowout. Naturally you would feel a little bump on your car.

Q. Well, now, how old is this car? A. I bought it on the ninth of September.

Q. Of that year, 1929? A. 1929.

Q. So that the rubber equipment on it was all good? A. Absolutely.

Q. If you had a blowout you would have felt it, is that true? A. Yes. 20

Q. I don't mean felt it; you would have heard it, is that correct? A. Yes.

Q. So you didn't have any blowout? A. No.

Q. That is, it didn't sound like a blowout, not that sort of a bank? A. No.

Q. Now, you travelled fifty or sixty feet after you felt that bump, is that true? A. Yes.

Q. Did you have the sensation of riding on a flat tire? A. No, I didn't.

Q. After the one bump you heard nothing else or felt nothing else? A. No. 30

Q. Where was the last place you stopped in Asbury Park? A. At the Hill Drug Store.

Q. Will you please fix the time as near as you can? A. It was before six o'clock. As a rule, I take the druggist home. He leaves at six o'clock. As a rule I take him home when I am down there. I only go down there once every two or three weeks. This night on account of the fog forming, I mentioned it to Mr. Hertzler, that we better get going 40

before the fog gets heavy, because driving is bad, and he said, "I think you are right," so I presume it was between 5.30 and 5.45.

Q. And you can't fix the time any closer than that? A. No.

Q. Did you stop on the way up? A. No.

10 Q. You made no stops? A. No.

Q. What is the mileage from the point where this accident happened to the point in Asbury Park which you left, do you know? A. I would say twenty-eight or twenty-nine miles.

Q. What time do you fix the happening of the accident? A. The accident or incident?

Q. Well, I won't quibble with you. Incident? A. I would say a quarter to eight.

Q. A quarter of eight? A. Yes.

20 Q. How fast were you able to drive between Asbury Park and Woodbridge? A. Approximately twenty to twenty-five miles an hour. Not any more than that.

Q. Was the visibility all the way up— A. Well, as we got further north, the visibility got worse.

Q. The visibility was such that you could only see about ten feet ahead of you? A. Just about.

Q. How were your lights? A. In first class condition.

30 Q. I mean, what sort of lights were you using at the time? A. The dimmers, they focus to the road. It is a dual system of lighting.

Q. Does your headlight, not the dim, go on with the cowl lights? A. No.

Q. You had them reflected down towards the road? A. Yes.

Q. Did you have your windshield up or down? A. I didn't.

40 Q. You were riding with your windshield down? A. Windshield down.

Q. Did you have a windshield wiper? A. Yes, sir, working.

Q. Was it working? A. Yes, sir.

Q. Was it raining so that it was necessary? A. No, but the mist as you are riding against it forms a dew on your windshield. It is almost impossible to ride in a fog without your windshield wiper going. 10

Q. And how fast were you going at the time you felt this bump? A. About fifteen miles an hour.

Q. Why fifteen? A. Well, I came to the intersection and stopped; threw it into second and crossed.

Q. Why did you stop at the intersection? A. Well, you will always find one or two wreckers there waiting for accidents.

Q. I am asking you why did you stop on this particular night? A. Well, for protection. 20

Q. Did you see anybody coming? A. There were cars coming and going both ways.

Q. You never saw Mrs. Kovacs at all until you got out of your car, did you? A. No, sir.

Q. Did you see the little girl that was with Mrs. Kovacs? A. I would not know her if I seen her.

Q. I know, but you remember that there was a little girl with her? A. Yes.

Q. Do you remember her asking you whether or not you were the man who had struck her mother? 30

Mr. Golenbock: I object to that, if your Honor please, there is no such testimony that this girl ever said that.

Mr. Toolan: I know there isn't. I will lay a foundation for it.

Mr. Golenbock: As a matter of fact, she said she didn't know an automobile had hit her mother. 40

Mr. Toolan: That is true, she said that.

The Court: I don't think that question is proper in the form in which it now is, but what you want to prove is proper. You can ask him if he said whatever you allege he did say to her.

10 By Mr. Toolan:

Q. Do you remember this conversation with the little girl that was with Mrs. Kovacs: Do you remember her saying to you, "Are you the man that struck my mother," and did you reply to her, "I am not sure whether I am or not?" A. No, sir.

Q. Now you went from the scene of the accident to the Perth Amboy City Hospital, is that correct? A. Yes, sir.

20 Q. How long did you remain there? A. I was in the hospital until possibly 11.30 that night.

Q. I mean, on the first occasion that you went there. A. With her?

Q. Yes. A. I stayed at the hospital until around eleven or eleven-thirty.

Q. That night? A. Yes.

Q. From the time you brought her there, you stayed until eleven or eleven-thirty? A. Yes.

30 Q. When did you go to police headquarters? A. I think it was when I went home after I left the hospital.

Q. Well, why did you stay at the hospital from shortly after eight o'clock until eleven or eleven-thirty that evening? A. Dr. McCormick requested me to—not until 11:30. That was my own time.

Q. I mean, what was the time you said you left the hospital? A. I left the hospital between eleven and eleven-thirty.

40 Q. What reason, if any, did Dr. McCormick give for requesting you to remain there? A. He didn't give me any reason at all. He said, "You are going to stick around for a little while." I said, "Yes."

Q. Then he put it up to you, did he not? A. They what?

Q. To remain there for a long or as short a period as you wanted? A. Yes.

Q. Well, as it was a matter of your own volition, why did you stay there until eleven or eleven-thirty? A. I am in the medical game. I have been for many years. I know the doctors in Perth Amboy very well, in fact, retail them. I was in the physicians' room and a general discussion on a number of our topics, and some of the stock exchange. 10

Q. That was the subject that everybody spoke about? A. It was quite a topic at that time.

Q. Then, you remained there because of the delightful company of the doctors and the discussion? A. More or less. 20

Q. Was it because you felt a degree of responsibility for having been the cause of this woman's condition that you remained there to find out what the outcome would be? A. No. I felt very sorry for this lady and the condition of her arm.

Q. It was in a horrible condition, wasn't it? A. It was in a horrible condition.

Mr. Toolan: That is all I have with this witness. 30

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JAMES H. SCARR, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Golenbock:

Q. Mr. Scarr, where do you live? A. Hasbrouck Heights, New Jersey. 40

Q. You are connected with the United States Government? A. I am in the employ of the United States Government, yes.

Q. In which department? A. The Department of Agriculture, United States Weather Bureau. I am in charge of the office of the United States  
10 Weather Bureau in New York City.

Q. Your official title is meteorologist, is it not? A. Yes.

Q. You say you have charge of the weather conditions in New York City covering what territory? A. I have charge of the Weather Bureau office.

Q. I mean, do you have charge of reporting weather conditions? A. Yes.

Q. And that takes in what territory? A. Well, it embraces New York City and vicinity.

20 Q. Between what points, will you tell us that, please? A. No, I can't tell you. There are no definite points. The nearest regular weather bureau stations around New York City are New Haven, Albany, Binghamton, Scranton, Trenton, Atlantic City, and Philadelphia, and I suppose we sort of divide distance with those other stations.

Q. Do you cover the territory between New York and Sandy Hook? A. Yes. Sandy Hook is a sub-station of the New York station, of which I am in  
30 charge.

Q. Have you a report of the weather condition of November 14, 1929? A. Yes.

Q. Can you tell us what the weather conditions were on the evening of November 14 in that territory? A. Yes.

Q. Will you tell us that, please? A. What was the last?

Q. Will you tell us that, please? A. Why, November 14, 1929, was Thursday. There were show-  
40 ers, in fact, there was rain in the early morning before daylight.

By Mr. Toolan:

Q. Of what area are you talking about? A. I am reading from the record of the New York Weather Bureau station.

Mr. Toolan: May we have the area fixed? 10

The Court: I don't know how you can fix it?

Mr. Toolan: May I examine him for just a minute in this regard?

By Mr. Toolan:

Q. You are reading now from what? A. From the daily local record of the Weather Bureau station, New York City, 17 Battery Place.

Q. And your report covers what physical area? 20

A. Standing alone it covers the point, 17 Battery Place.

Q. In other words, the observations that you have recorded and reported there indicate the weather conditions at 17 Battery Place, New York, is that correct? A. Yes.

Q. Is it authority for the weather conditions of Woodbridge or Perth Amboy? A. Not of itself, no. 30

Q. In other words, you might have one climatic or weather condition at 17 Battery Place, New York, and a different one at Woodbridge or Perth Amboy? A. It is possible. Frequently it is so; sometimes it is not.

Mr. Toolan: I submit then, if the Court please, that this is no evidence.

The Court: Well, I presume it will be connected up. He can only do one thing at a time. 40

Mr. Toolan: Yes, sir, if counsel expects to connect it up; if not, I reserve the right to move to strike it out.

10 The Witness: In the afternoon there were light showers at station 17 Battery Place between 1.05 P. M. and 2.20 P. M., and again between 5.20 P. M. and 7.10 P. M.

By Mr. Toolan:

Q Will you let us have this a little slower? 5.20 and 7.10, right? A. P. M., and again at 11.20 P. M., and it was continuing past midnight. The sky was cloudy. Fog prevailed during the entire day of twenty-four hours from midnight to midnight and beyond. The wind was from—well, it was from a westerly direction up to about 4.00 P. M., when  
20 it became southerly, ranging from southwest or southeast up to midnight. The wind was very light during most of the day, but freshened a little after 7.00 P. M., reaching sixteen, seventeen miles rate—at the rate of seventeen miles an hour from the south at 9.20 P. M. That was the highest that was recorded during that day. The fog was dense or nearly dense as shown by this record. I don't want to volunteer anything, but I have also the  
30 record of the Sandy Hook station.

By Mr. Golenbock:

Q. Will you let us have the record of the Sandy Hook station, in reference to fog on the evening of November 14? A. There was fog all day at Sandy Hook, and the rain at Sandy Hook was very similar in time to that at 17 Battery Place, New York.

40 Q. Now, how about the visibility as to the fog. I mean, to what extent was it foggy? A. Well,

a dense fog is a fog in which objects a thousand feet or less from the observer are obscured. Anything—any fog in which objects are distinguished or distinguishable beyond a thousand feet is recorded as a light fog. That is the only distinction we make, although we keep hourly or daily records of the extent of visibility, but they are not carried on into this completed record, but this fog was dense or nearly dense all day. 10

Q. As night came on was it thicker or less so?

A. Yes, it became thicker in the evening.

Q. Can you tell us to what extent? A. Being nearly dense from 8.20 P. M. to 11.00 P. M., at which the obscuration was aided to some extent by the light rain that was falling.

Q. Was there any moon that night? A. There was a moon, but there was no moonlight. That is, the moon was not visible on account of the clouds. There would have been moonshine if the sky had been clear. 20

Q. That probably— A. Pardon me. To fix it a little more distinctly, the moon sets at 4.57 A. M. on the fifteenth, so that the moon was somewhere near the fall, but obscured by clouds.

Q. Did the condition of the fog prevail generally throughout the territory that your report covers?

A. Yes. 30

Q. That is, between Sandy Hook and New York?

A. Yes, and over greater New York City, the five counties of New York, in which we have other substations.

Q. Was it also over Staten Island? A. Yes.

Q. Staten Island, as you know and we know, is right across from Perth Amboy, is it not? A. Yes.

Mr. Golenbock: That is all.

## Cross Examination by Mr. Toolan:

Q. Staten Island is opposite Bayonne too, isn't it? A. Well, yes, one end of it.

Q. You say there was nearly, as I understand it, a dense fog from 8.20 P. M. until 11.00 P. M., is that correct? A. Yes.

Q. Well, how do you distinguish between dense as you have defined it, and nearly dense? A. Well, the man who made this record was apparently not quite sure at night whether he could see objects, that is, whether the fog was thick enough to have obscured objects in the daylight beyond a thousand feet, and not wanting to make an absolute statement, he simply made it as dense or nearly dense.

Q. Do I understand that at the station they have objects placed at a thousand feet away so that you can determine whether or not you can see those objects? Is that the way they find out? A. No, we don't place objects, but we know objects, but at night we could not see the object anyway. We have to determine from a short distance by observing the lights, the electric lights to determine about the density of the fog at night.

Q. And your definition of a dense fog is a fog that obscures an object which is a thousand feet away from you? A. Yes, in the daytime.

Q. And if you can see beyond a thousand feet, then you call it a light fog? A. Yes.

Q. Now, prior to 8.20 P. M. on that evening, what was the condition of the fog, that is, say about 7.30 to eight? A. Well, it is carried simply as light fog. It was dense. To give you the whole story, it had been dense the night before, the night of the thirteenth, and the record picks up there, saying fog continued dense or nearly dense to 8.40 A. M., and it recites some conditions in the harbor

with reference to fog, and then says, in evening again fog increased somewhat, being nearly dense from 8.20 P. M. to 11.00 P. M. In that interim the fog was carried to light.

Q. As light fog? A. Yes.

Q. You could see objects at a greater distance than a thousand feet? A. Yes. 10

Mr. Toolan: That is all.

Re-direct Examination by Mr. Golenbock:

Q. Well, Mr. Scarr, you take observation of the fog on the water line or on the water, judging as to its density on land, do you not? A. Well, we observe it both from the water and from the land. From the point of observation at this particular station we have a clear view of the entire bay to the East and North Rivers, and also of the city at large, but we also gather some of this information from the employees of the station. There are sixteen—eighteen men in the station, and they live all over New York City and in Jersey. I live in Jersey myself and of course, part of these observations with reference to fog conditions are gathered from the experience and observation of the men in the office. 20

Q. The harbor condition of a fog is less than than it is on land? A. No, I would not say that. 30

Q. Now, it settles more so on land, does it not, Mr. Scarr? A. It what?

Q. Now, it settles more so on land, does it not? A. There are different kinds of fog, what is known as convection fog or lower ground fog may form to a depth of—only a depth of a few feet, fifty feet or a hundred feet from low level places. That is more prevalent over land than it is over water, 40

but general fog, sea fogs are densest that are generally drifted about by the wind. There is no difference between the fogs over the land and over the water. There is fog of that character.

10 Q. Assuming, Mr. Scarr, that near a place where an accident had happened, there is a sort of a valley, wouldn't that be subject to the creation of a situation where the fog would be denser than where the land is high? A. Yes, particularly under these conditions that are practically calm. Fog does settle in the low places, that is, that sort of fog.

Mr. Golenbock: That is all.

Re-cross Examination by Mr. Toolan:

20 Q. You are referring to hilly country now, are you not, that is, down in the valley you are likely to have a more dense fog than you will have farther up in the mountain? A. Not hilly country especially, but everywhere where there is a low place, and drainage fully running down through the land, atmosphere from which, that low ground especially at night it is always cooler, and the fog is more dense there except on rare occasions. We do have a fog that confines itself to the hilltops and the valleys are clear.

30 Q. They generally call that mountain mist, don't they? A. You might call it that.

Mr. Toolan: That is all.

Mr. Golenbock: That is all.

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NORMAN B. HERTZLER, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Golenbock:

40 Q. Mr. Hertzler, now, where do you live? A. Philadelphia.

Q. What is your business? A. Special representative for Park, Davis & Company.

Q. That is the same concern that Mr. Ford is connected with? A. Yes, sir.

Q. On November 14, 1929, were you with Mr. Ford? A. Yes, sir.

Q. And what territory did you cover that day? 10  
A. Asbury Park.

Q. How often did you accompany Mr. Ford on his route? A. Perhaps it was the second trip. Every ninth month.

Q. Were you with him all day? A. Yes, sir.

Q. Do you recall about what time you left Asbury Park on that evening or that day? A. Five thirty or a quarter to six, perhaps.

Q. That is your best recollection? A. Yes, sir.

Q. And in what direction were you going when you left Asbury Park? A. We were going Wood- 20  
bridge, his home.

Q. You were in this car on the way to Woodbridge? A. Yes, sir.

Q. And you were sitting alongside of him in the front? A. Yes, sir.

Q. You are not acquainted with the junction of the two roads at Amboy and Cleveland Avenue?  
A. No, sir.

Q. You have not been over it many times, have you? A. I don't recollect ever being there. 30

Q. That is, prior to the night of November 14 this particular night? A. That is right.

Q. And do you recall Mr. Ford stopping his car on that night right near Woodbridge? A. Yes, sir.

Q. And do you recall the occasion for it? What took place or what happened or was said prior to the stopping of the car either by you or Mr. Ford?

A. Well, I felt a bump, and I said, "Harry, I think we have a flat." 40

Q. Then what did he say? A. He says, "I hope not, not a night like this."

Q. Do you recall the conditions of the weather at that time? A. Yes, sir.

Q. What was it? A. Very foggy.

10 Q. Then after he said he hoped it wasn't on this night, what did he do? A. He stopped his car.

Q. Did he get out of his car? A. Yes, sir.

Q. Did you get out of the car? A. No, sir.

Q. Then after that what happened or what did you learn? A. I sat in the car.

Q. Until when? A. When he came and called me.

20 Q. When did he call you? A. He said, "Hertzler," so I opened the door and I saw him walking towards the car. He said, "Help me get a woman in the car."

Q. Did you get out of your car? A. Yes, sir.

Q. What did you see? Did you see this woman? A. Yes, sir.

Q. Who was with this woman? A. Another man.

Q. What was done after that? A. Well, this man was leading her toward another car.

Q. And what was said, if anything? A. Mr. Ford said, "I will take her to the Perth Amboy Hospital." That is what I heard.

30 Q. Did you take the woman into your car? A. Yes, sir.

Q. Were you in the car when she was taken to the hospital? A. Yes, sir.

Q. Did you stay in the hospital with Mr. Ford? A. Yes, sir.

Q. Until he went to Woodbridge? A. Yes, sir.

Q. You were closer to the right-hand edge of the curb—or right-hand edge of the highway than Mr. Ford was? A. Yes, sir.

40 Q. Did you notice any woman or girl as you

passed anywhere on that road prior to the time that he stopped? A. No, sir.

Q. And were you there when he went to the police station to report this matter? A. Yes.

Q. Did you go inside or did you stay out? A. I went inside.

Q. Did Mr. Ford say at that time to anybody in the police station that he struck this woman? A. No, sir. 10

Q. As far as you know and as far as you saw, sitting in the car alongside of Mr. Ford, did that car strike this woman or any other woman? A. No, sir.

Mr. Golenbock: That is all.

Cross Examination by Mr. Toolan:

Q. What did Mr. Ford say at police headquarters? A. He reported that he had taken this woman to the Perth Amboy Hospital. 20

Q. Yes, what else? A. I don't remember anything else.

Q. You don't remember anything else that he said or did there? A. No, sir.

Q. So that he might have said a lot of other things and you not heard him? A. I don't think he said anything else. 30

Q. Is that all you heard? A. That is all I recollect.

Q. Were you with him constantly? A. I was.

Q. How close were you to him? A. As close as I am to this gentleman.

Q. So that anything he said you were in a position to hear it? A. Yes.

Q. Did you hear him give his name and address? A. Yes.

Q. Did you hear him give his automobile license number? A. Yes. 40

Q. Did you hear him tell the sergeant at the desk that he struck the woman? A. No, sir.

Q. You heard him say all the other things, but not hear him say that he struck her? A. No, sir.

10 Q. Did you think it unusual that he was giving his automobile license number and reporting an accident that somebody else had? A. No, sir.

Q. Can you think of any reason why he ought to give his automobile license number if he was not involved in the case? A. Operating a car, that is the logical thing to do.

Q. Why give your own license number if you were not involved in the case? A. Because he transported the woman to the hospital.

20 Q. Does it make any difference what number car it was, as long as she got there? A. Since he was reporting his name, why shouldn't he report his number?

Q. I don't know why he should do either, if you are asking me. You don't know whether he hit this woman or not, do you? A. He did not hit the woman.

Q. I said, do you know whether or not your car or the car in which you were riding struck this woman or not? A. I know that it did not strike the woman.

30 Q. All right, now, how do you know that? A. Well, there is no reason why I should. I felt that bump just the same as Mr. Ford did.

Q. And you don't know right now what that bump was, do you? A. It is probably—

Q. Never mind probabilities. Do you know what that bump was? A. No, sir.

Q. All right. How can you say then that it was not this woman's arm? (After a pause) Can you answer? A. It was not the woman's arm.

40 Q. You don't know what it was, do you, the bump? A. No.

Q. Well, then, how can you say it was not the woman's arm?

Mr. Golenbock: I submit, if your Honor please, the witness has already answered.

The Court: Are you objecting?

Mr. Golenbock: Yes, sir.

10

The Court: Objection sustained.

By Mr. Toolan:

Q. All right. Let me ask you this: What did you think it was?

Mr. Golenbock: I object to that.

The Court: Objection sustained.

Mr. Toolan: All right, that is all.

Mr. Golenbock: That is all.

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We rest.

(The Defendant Rested.)

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JOHN EGAN, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith:

Direct Examination by Mr. Toolan:

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Q. You are a sergeant of police in Woodbridge Township? And you were on the fourteenth of November, 1929? A. Yes, sir.

Q. Were you on duty at the desk in headquarters on that night? A. Yes, sir.

Q. Do you know the defendant, Harry Ford? A. I do.

Q. Did Mr. Ford come to police headquarters on that evening? A. He did.

40

Q. Did he speak to you? A. Yes, sir.

Q. Did you make any written report of the substance of his conversation with you? A. I wrote a report as he gave it to me.

Q. Have you that report with you? A. Yes, sir.

10 Q. Will you give it to us? A. November 14, 8.00 P. M. Harry Ford, 545 Maple Avenue, Woodbridge, New Jersey, driver's license 950131, driving car 82600 N. J. north on Amboy Avenue near Thirst Haven, struck Mrs. Elizabeth Kovacs, Inslee Street, Perth Amboy, who was walking on right side of road going north. She was taken to Perth Amboy City Hospital by Mr. Ford and is being treated for her injuries and is being held there for further examination. Mr. Ford reported the accident to police.

20 Q. Is that the report he gave you? A. That is the report he gave me.

Q. Did you write it down as he gave it to you? A. I wrote it down as he gave it to me.

Q. What was the license number? Will you give it to me. A. The driver's license number was 950131.

Mr. Toolan: That is all. Cross examine.

Cross Examination by Mr. Golenbock:

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Q. Were you subpoenaed, Officer? A. Well, I was called.

Q. How long ago? A. About two hours ago I was notified at the house. I was not notified myself, but they were trying to get in touch with me.

Q. What were you told? A. I was told I was wanted here at New Brunswick, and bring the report book. That is all I know.

40 Q. You were told you were wanted by whom? A. Well, I called officer in charge at police head-

quarters, so I went down to police headquarters, and he told me I was wanted at New Brunswick, that there was a civil matter up there or something, he said, or something going on, and I don't know just what it was, so he told me to take the report book and somebody would meet me up here. I don't know who it was. I don't know who the party was that met me out there in the hall. 10

Q. Now you say you put it down exactly in your book as Mr. Ford told you? A. That is what we always do, just as they tell it to us, we write it down.

Mr. Golenbock: That is all.

Mr. Toolan: We rest, if the Court please.

Mr. Golenbock: I ask your Honor for a direction of a verdict on the same grounds as I stated for a motion for a nonsuit. 20

The Court: Motion denied.

Mr. Golenbock: I pray an exception.

(Mr. Golenbock made a closing address to the jury on behalf of the defendant.)

(Mr. Toolan made a closing address to the jury on behalf of the plaintiffs.)

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and none has been called to my attention by counsel either for the plaintiff or for the defendant.

The circumstances under which Mrs. Kovacs received the injuries that she now complains of are somewhat unusual. She does not know, that is, she did not here testify, who was the driver of the automobile by which she was struck. She simply knew that a car struck her and that she received the injuries that she now complains of. 10

It was at night, and there was some fog. It had been raining sometime during the day, and Mrs. Kovacs testified that it was not raining at the time when she received her injuries. As I recollect her testimony, there was not much fog. Other witnesses testified that the fog was substantial.

Now, there is a question as to who struck Mrs. Kovacs. The defendant, Harry Ford, denies that it was his automobile which struck her. In that he is substantiated by the testimony of a witness who was riding in the car with him at the time. 20

Mr. Ford admits that he felt a bump as his car went along the highway; that he stopped and got out to see whether he had a flat tire; that he discovered this woman screaming or crying along the highway, being assisted by some other person; that thereafter he took Mrs. Kovacs to the hospital; and that he stayed there until eleven or eleven-thirty in conversation with certain medical friends of his, talking about things of mutual interest to them. 30

There is testimony by Dr. Meinzer, by attorney Dubrow, and by the sergeant at the police station, that during that evening and at a subsequent date Mr. Ford made certain admissions which were testified hereto, concerning striking this woman.

You will find that the first issue which you have to determine is this: Did this defendant drive the 40

automobile by which Mrs. Kovacs received the hurts that she now complains of? Since that question of fact is controverted or disputed, the burden of proof rests upon the plaintiff to prove by a fair preponderance of the evidence that the automobile responsible for the hurts received by the plaintiff  
10 was the automobile of the defendant and was driven by him or in his behalf.

The preponderance of the evidence means by a greater weight of the evidence. It does not mean by a greater number of witnesses, but does mean that the plaintiff must prove by testimony which is more convincing, more credible, and of greater weight, the facts which he is required to prove; so this plaintiff must first show you by a fair preponderance of the evidence that the automobile  
20 that injured her was driven by this defendant.

Now, if she shows you that the automobile that injured her was driven by this defendant, then you come to a consideration of the question of negligence.

Negligence consists in the doing of that which a reasonably prudent man would not have done, or in the failure to do that which a reasonably prudent man would have done in the operation of a motor vehicle, the particular circumstances surrounding the time and place of the happening of the event being taken into consideration in determining what a reasonably prudent man would have done or would not have done; and so in this case, if you find that the defendant's car struck Mrs. Kovacs, the test is: Did he operate his automobile that night at that place, all of the surroundings and circumstances being taken into consideration, character of pavements, fog, illumination, visibility—all of those matters being taken into consid-  
30 eration—did he operate his car as an ordinarily  
40

prudent man would have operated it that night? If he did, obviously, your answer to this suit would be no cause for action.

If you find that the evidence indicated that he did not use the care which a reasonably prudent man would have used, then, of course, you have one further matter to consider, which I will touch on later. 10

There is very little evidence in the case, as I recollect it, concerning the manner in which the automobile was operated. About the only thing that you have here, so far as I recollect it, concerning the operation of the automobile, is the testimony of the defendant himself, because neither Mrs. Kovacs nor any other witness for her, so far as I recollect the testimony, has testified as to how the automobile was operated. Of course, the question which you will naturally address to yourselves is: Why didn't the defendant see Mrs. Kovacs if his car was the car that struck her? 20

If you come to the conclusion that Mr. Ford's car was negligently operated and that Mrs. Kovacs received her injuries as a result of that negligent operation, then you have one further matter to consider, and that is this: Was Mrs. Kovacs herself using the care which the law required her to use for her own safety? 30

The care which the law requires a person to use for his or her own safety is the care which a reasonably prudent man would have used for his safety, and that is what the law required Mrs. Kovacs to do. Was she using the care which an ordinarily prudent person would have used in walking along the edge of the highway in the darkness and in the fog? If she was not, and her own failure to use care for herself contributed in any degree to the happening of the event in which she was injured, she may not recover. 40

If she was using the care which an ordinarily prudent person would have used, and she received the injuries which she now complains of from this defendant, then this defendant is responsible to her in such an amount as will represent, as nearly as it can be represented in dollars and cents, the fair value of the pain that she has suffered as a result of the injuries that she has sustained, and such pain as she may in the future suffer as a result of this permanent injury to her arm. She is also entitled to such a further sum as will represent, as nearly as dollars and cents can be made to represent that, her inability to enjoy the ordinary comforts and pleasures of life throughout such time as the injury which she now complains of may exist. She is also entitled to such an amount as may represent compensation for the disfigurement, if there is disfigurement, in having the sort of arm and hand which has been left to her by this injury that she received.

Her husband is legally responsible for the payment of the bills contracted in and about an attempt to cure her, and he is entitled to be repaid the amount of those bills. That is, he is entitled to be repaid all those bills if Mrs. Kovacs is entitled to recover from the defendant. Of course, if Mrs. Kovacs is not entitled to recover from the defendant, her husband is not entitled to recover from the defendant either, but if she is entitled to recover, then Mr. Kovacs is entitled to recover the amount of Dr. Meinzer's bill, \$500, the amount of the masseur's bill, \$300, the amount that he paid for medicines, \$28, and the amount that he paid for a housekeeper up to this time, if you find that he actually did engage and actually did pay a housekeeper, and, as I recollect the testimony, that amount up to this time is \$425. In addition to

that, there is a hospital bill which has been introduced in evidence here and the amount of which, I think, is somewhere around \$600, which may be added to those amounts. He is also to be compensated, if you find that the evidence indicates that he will have to expend anything in the future for the attention of Mrs. Kovacs, in such an amount as he may have to pay in the future for the care of the injuries which Mrs. Kovacs received as a result of being struck by this automobile. I think that is all for the element of damages for the husband. 10

Counsel for the defendant has asked me to say to you that the rulings which the Court has made upon the motions for a nonsuit and a directed verdict, being adverse to the defendant's contention on the propositions of law, are not in any manner an indication of the Court's opinion as to what your finding should be, and that is the situation. 20

The fact that the Court has ruled against the defendant on those propositions of law does not in any way indicate that the Court has any opinion as to how you should resolve the questions of fact. The adverse decisions on the motions for nonsuit and directed verdict merely mean that the case as presented is such that it should be passed upon by a jury, and not by a court, and does not in any way reflect the Court's opinion as to how the questions of fact should be resolved. 30

I have several requests to charge on behalf of the defendant. They are all good law and all supported by the decisions of the higher courts of this state, but, frankly, I do not believe many of them apply to the present situation.

Defendant's counsel has asked me to charge you as follows:

"The plaintiff was required to exercise greater caution while walking along this particular high- 40

way than is ordinarily required of one using a sidewalk, where motor vehicles are not expected."

That I charge you.

"Plaintiff in using the highway was obliged to have had regard to the rights of others and to the customs of the road," and that I charge you.

- 10 "If plaintiff failed to have done such things as reason and instinct of self-preservation suggest themselves for her own protection, she was guilty of contributory negligence."

- 20 That I will charge you with this modification: If plaintiff failed to have done, for her own self-protection, such things as would have suggested themselves to a person ordinarily prudent for his or her own safety, and if her failure to do those things contributed in any degree whatever to the happening in which she received her hurts, then she is guilty of contributory negligence, and cannot recover from the defendant.

"It is the accepted rule of law that a person is required to be on his or her guard against such perils as a reasonable person would apprehend in like circumstances," and that I charge you, having already so charged you.

- 30 "The law does not require a person using the highway to insure himself against dangers from the possible negligence of others. A duty was imposed upon the plaintiff that he exercise reasonable care for his own safety, and where looking and listening for danger are called for, the law only requires of him to exercise reasonable care to select the time when and the position from which the observation shall be made."

- 40 "If the defendant did exercise such caution and care as an ordinary prudent person would have exercised under the given time, place, and weather conditions, as existed that night, the defendant is

*Defendant's Requests to Charge.*

not guilty of negligence, even though the jury believe that the defendant's automobile struck the plaintiff."

That I so charge you, having already so charged you.

If you come to the conclusion, of course, that the plaintiffs are entitled to recover, you will render separate verdicts in the amounts which you think are proper, under the rules which I have given you. 10

If you come to the conclusion that neither plaintiff is entitled to recover, and you will come to that conclusion if you find that the female plaintiff is not entitled to recover, then you will render a general verdict for no cause for action.

Mr. Golenbock: I desire to take exception to your Honor's refusal to charge numbers one, three, four, five, eight, and twelve of the defendant's requests to charge. 20

**Defendant's Requests to Charge.**

(1)

"The plaintiff was obliged to walk near the edge of the road, in order to be able to give way to an approaching vehicle, so as to permit its passage by stepping off the road." 30

(2)

"The plaintiff was required to exercise greater caution while walking along this particular highway, than is ordinarily required of one using a sidewalk, where motor vehicles are not expected."

(3)

"The degree of care required of the plaintiff was much greater on this night on account of the con- 40

The law does not require a person to be a party to a crime in order to be liable for it. It is the general rule of law that a person is required to be a party to a crime in order to be liable for it. The law does not require a person to be a party to a crime in order to be liable for it.

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## New Jersey Court of Errors and Appeals

JOHN KOVACS and ELIZABETH KOVACS, Plaintiffs-Respondents,  <i>v.</i> HARRY FORD, Defendant-Appellant.
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Action at Law Appeal from New Jersey Supreme Court, Middlesex County.
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### BRIEF OF DEFENDANT-APPELLANT.

This case was tried before the Honorable John P. Kirkpatrick, Judge of the Middlesex County Court of Common Pleas, sitting in the Circuit, on the 9th day of October, 1930, and resulted in a verdict in favor of both plaintiffs and against the defendant.

The judgment rendered on such verdict is the basis of this appeal, the grounds of which are more particularly set forth in State of Case, pages 2, 3 and 4.

#### Facts.

The plaintiff, Elizabeth Kovacs, was walking in a northerly direction along the right side of a public highway in the Township of Woodbridge, known as Amboy Avenue, on a night that was foggy, and the defendant was driving his car in the same direction along said highway. Concerning the accident, the plaintiff testified (C., p. 22, ll. 1 to 18, p. 24) :

Q. Now, where were you walking at that time?

A. I was walking on the side of the dirt.

Q. On the side of the dirt?

A. Yes.

Q. What sort of a road is it there where the new highway is?

A. That is concrete.

Q. Concrete? Had you walked up to the point where the concrete road starts?

A. Yes, yes.

Q. And where were you walking with reference to the edge of the concrete? How close to the edge of the concrete?

A. About a foot.

Q. About a foot from it?

A. Yes.

Q. Well, which way a foot?

A. Like this. This is the road, and I was about like that (indicating).

Q. I mean, were you walking on the concrete?

A. No, we was walking on the dirt.

Q. On the dirt?

A. Yes.

Q. And do you know, with reference to direction, whether you were walking north or south?

A. I was walking towards Woodbridge.

Q. Towards Woodbridge from Perth Amboy?

A. Yes.

Q. Now, as you walked along there did you hear anything? Was your attention attracted by anything?

A. No, I didn't hear nothing.

Q. You didn't hear nothing. Did you see anything?

- A. No, I didn't see nothing in back of me.
- Q. Well, what, if anything, happened?
- A. Well, I don't know what happened. All I know when I got up, I don't have no arm.
- Q. Did you know what struck you?
- A. No, I didn't.
- Q. Did you see what struck you?
- A. No.
- Q. Did you hear any automobile horn blown?
- A. No, there was not hardly any automobiles on the road then.
- Q. There weren't any automobiles on the road then?
- A. No.
- Q. Did you see any automobiles go by you?
- A. No.
- Q. What did you say a minute ago? What happened to you?
- A. I got knocked down.
- Q. You got knocked down?
- A. Yes.
- Q. Well, did you get up by yourself?
- A. No.
- Q. How did you get up?
- A. I don't know who picked me up.
- Q. Well, what did they do with you when they picked you up?
- A. When they picked me up, they put me in an automobile.
- Q. Then what?
- A. And they took me to the hospital.
- Q. Well, how many automobiles were you in altogether, more than one?
- A. Only one, one.
- Q. Is the man who picked you up the same man who took you to the hospital?
- A. I don't know.

Mr. Golenbock: I object.

The Witness: I don't know that either.

By Mr. Toolan:

Q. You don't know that either?

A. No.

Q. What I want to know is this: whether more than one automobile was there after you got hit.

A. I could not tell you how many was there, because I was sick and unconscious, see.

Q. Well, you walked in the hospital by yourself, didn't you?

A. No, they took me in. There were two men there; they took me in.

Q. I mean, you walked in?

A. Yes, they had me on the arm and took me like that (indicating).

Q. And you don't know who the man was who took you to the hospital?

A. I don't know who the man was at that time, and I don't know the man yet.

Q. And where were you walking at the time you got hit?

A. On Cleveland Avenue.

Q. Yes. Going towards Woodbridge?

A. Yes, sir.

Q. How close to the concrete?

A. How close to the concrete?

Q. Yes. How close to the edge of the concrete?

A. About a foot.

Q. A foot which way? On the concrete or off?

A. On the concrete.

Q. That is, were you on the concrete when you were hit?

A. No, I was on the sand side when I got hit.

Q. On the sand side?

A. Yes, it is nice and sandy there.

Q. Do you mean on the dirt side?

A. Yes.

Q. You weren't on the concrete?

A. Yes."

In this testimony the plaintiff was corroborated by her step-daughter who accompanied her at the time (C., p. 30, ll. 10 to 24).

"Q. You were not struck, Miss?

A. No.

Q. Did you actually see your step-mother struck?

A. No.

Q. What was the first that you knew that she was struck?

A. I had the habit of looking back if she was coming after me, so I happened to look back, and so I saw her lying on the ground, so I wanted to pick her up, but I could not dress her up.

Q. Well, did you hear her struck or anything?

A. No.

Q. You just turned around and saw her lying there? When you looked around and saw her lying there on the ground how far away from her were you?

A. Well, not so very far, about fifteen or eighteen feet."

And, further (C., p. 33, ll. 39 to 41) :

"Q. What was the first thing you heard?

A. I didn't hear anything. I just looked back, and I saw her lying on the ground."

The posture of the case, after the plaintiff and her step-daughter who accompanied her on the night in question testified, was that the plaintiff was struck by a car but which car or who drove the same, they were unable to say.

The entire case of the plaintiff depended upon the testimony of the witness, Isidore Dubrow, who was attorney of record for the plaintiff (C., p. 39, ll. 19 and 20). This witness testified, concerning the liability of the defendant as follows (C., p. 36, ll. 23 to 37) :

“Q. What conversation did you have with Mr. Ford respecting the accident?

A. I had a general conversation with Mr. Ford. I did not attempt to find out whether he drove the car or not. I was not interested in it, but during the course of the conversation he told me he had driven the car. He did not see the plaintiff in this case, Mrs. Kovacs, until after he had struck. He told me that he had felt a bump on his bumper, and then he had stopped his car after that, and he came back and he found out that somebody—Mrs. Kovacs had been struck. He never told me at that time or at any subsequent time that he intended to deny the fact that he struck the woman.”

It will be particularly noted that the statement of this witness, whereon the liability of the defendant is predicated, was one of the witness' own making and not a statement made to him by the defendant. The only conversation outlined between this witness and the defendant was that “he told me that he felt a bump on his bumper and then he had stopped his car and came back and found out that somebody—Mrs. Kovacs, had been struck.” When

questioned on cross-examination concerning the admission of liability alleged to have been made by the defendant, his response was:

"A. I don't remember his exact words"  
(C., p. 38, l. 10).

The court's attention is again directed to that statement made by this witness when he said: "He (referring to the defendant), did not see the plaintiff in this case, Mrs. Kovacs, until after he had struck." The testimony of this witness does not show that he was reiterating an admission made to him by the defendant, but, on the other hand, it does indicate that the witness of his own accord was setting forth his version of the case without any justification for such statement.

The plaintiff, to further sustain her case, called Dr. Meinzer who was at the hospital at the time the defendant brought the plaintiff there for treatment. The purpose of swearing this witness was to show that the defendant admitted liability but this attempt resulted in a signal failure. This witness was asked (C., p. 41, ll. 6 to 12):

"Q. But he did not admit that he struck the woman, did he?

A. He said that he did not see her or he did not know that he had struck her. The only thing was that he felt this thud against the side of the car.

Q. Did he say that he struck this woman, Doctor?

A. No."

Such are the fact of this case and such was the proof when the plaintiff rested, after which a motion for non-suit was made by the attorney for the

defendant on the grounds that no testimony had been adduced showing any negligence on the part of the defendant and, from the plaintiff's own case, evidence of contributory negligence had been clearly indicated.

### POINT 1.

**The trial court erred in refusing to non-suit the plaintiff on the grounds that there was no proof of negligence on the defendant's part that would make him liable, and there was proof of contributory negligence on the part of the plaintiff.**

In the case of

*Suburban Electric Co.*, plaintiff in error,  
v. *Edward Nugent, Administrator*, defendant in error, 58 New Jersey Law, 658,

the following rule of law was propounded by the Court of Errors and Appeals, to this effect: Syllabus 1—"In an action for personal injury, the plaintiff in order to recover damages must do more than show the possible responsibility of the defendant for the injury."

At the close of the plaintiff's case at bar, the testimony only indicated that she was lying on the road and did not know by what she was hit. It happened, however, as the testimony indicates, that the car of the defendant was in the vicinity, as were other cars, and the conclusion of the plaintiff was that she was struck by this defendant's car. The testimony, however, only indicates the possible responsibility of the defendant for the injury, and

there were no facts or circumstances as would justify the inference that the injury was caused by the wrongful act of the defendant. The statement of the attorney of record for the plaintiff that the defendant did not see the plaintiff in this case was not a reiteration of a conversation held between him and the defendant, but was the product of his own mind.

It is submitted that there were additional facts in the Suburban Electric Company case, supra, which were not present in the case at bar, which justified the trial court therein in submitting the question to the jury. The weakness of the plaintiff's case herein, especially in showing the negligence of the defendant, is so manifest that the trial court should have granted the motion for non-suit at the close of the plaintiff's case.

It will be further noted that the plaintiff contradicted herself at various times concerning the part of the highway she traversed in going from her home to her destination, and it will also be noted that the case is entirely devoid of any testimony showing just where the plaintiff was walking at or shortly before the accident happened. The only testimony brought out by the plaintiff was that she was walking one foot from the edge of the concrete, but whether she occupied this position at the time of the accident or not was a matter of mere conjecture, no positive proof having been submitted concerning that very important point.

For these reasons, it is respectfully submitted that the trial court committed judicial error in failing to grant the motion for non-suit at the close of the plaintiff's case.

**POINT 2.****The court below should have directed a verdict for the defendant.**

The evidence adduced in behalf of the defendant supports our contention that a verdict should have been directed at the close of the defendant's case. A disinterested witness testified that it was quite foggy and misty and was rather hard to see very much (C., p. 48, ll. 25 to 28).

“Q. Do you recall the condition of the weather that night?

A. It was misty and foggy.

Q. To what extent?

A. Well, it rained a little and it was quite foggy and misty.

Q. How was the visibility of other cars?

A. It was rather hard to see very much. I know that.”

This witness further gave some very material testimony concerning the point where the accident in question happened (C., p. 51, ll. 20 to 31).

“Q. Is that a pretty busy highway there?

A. Pretty busy. It is a main highway all the way through.

Q. Heavily travelled?

A. Well, it is the main highway from New York to Woodbridge.

Q. Can you show on the map where Mrs. Kovacs, at the time when you saw the two men taking her to the car?

A. Where she was?

Q. Yes.

A. Well, I don't just know how the map lays. I can tell you—where she was struck was on the busy part of the highway, there is no question about that.”

The defendant testified concerning the position his car occupied in the road and the condition of the night as follows (C., p. 53, ll. 20 to 31) :

“Q. To what extent would you say it was foggy? Was it mild, dense or what?

A. I would say that it was a dense fog.

Q. Could you see far ahead of you at the point or near the point where this occurrence took place that night?

A. Well, I would say to that, you could see possibly ten feet in front of your car and not any further.

Q. What part of the roadway were you traveling at about that place?

A. What part of the roadway?

Q. Yes.

A. Well, I was hogging the black line in the center of the road, the only way that you can travel.”

Concerning the weather conditions of the evening, James H. Scarr, in charge of the office of the United States Weather Bureau, in New York City, testified that that particular evening the fog became thicker, so that between the hours of 8:20 P. M. to 11:00 P. M., it was nearly dense. At that time the obscuration was somewhat aided by the light rain that was falling (C., p. 73, ll. 13 to 18).

Another witness, Hertzler, testified concerning the accident, as follows (C., p. 77, ll. 34 to 16, p. 79) :

“Q. And do you recall Mr. Ford stopping his car on that night right near Woodbridge?

A. Yes, sir.

Q. And do you recall the occasion for it? What took place or what happened or was said prior to the stopping of the car either by you or Mr. Ford?

A. Well, I felt a bump, and I said, ‘Harry, I think we have a flat’.

Q. Then what did he say?

A. He says, ‘I hope not, not a night like this.’

Q. Do you recall the conditions of the weather at that time?

A. Yes, sir.

Q. What was it?

A. Very foggy.

Q. Then after he said he hoped it wasn’t on this night, what did he do?

A. He stopped his car.

Q. Did he get out of his car?

A. Yes, sir.

Q. Did you get out of the car?

A. No, sir.

Q. Then after that what happened or what did you learn?

A. I sat in the car.

Q. Until when?

A. When he came and called me.

Q. When did he call you?

A. He said, ‘Hertzler’, so I opened the door and I saw him walking towards the car. He said, ‘Help me get a woman in the car.’

Q. Did you get out of your car?

A. Yes, sir.

Q. What did you see? Did you see this woman?

- A. Yes, sir.
- Q. Who was with this woman?
- A. Another man.
- Q. What was done after that?
- A. Well, this man was leading her toward another car.
- Q. And what was said, if anything?
- A. Mr. Ford said, 'I will take her to the Perth Amboy Hospital.' That is what I heard.
- Q. Did you take the woman into your car?
- A. Yes, sir.
- Q. Were you in the car when she was taken to the hospital?
- A. Yes, sir.
- Q. Did you stay in the hospital with Mr. Ford?
- A. Yes, sir.
- Q. Until he went to Woodbridge?
- A. Yes, sir.
- Q. You were closer to the right-hand edge of the curb—or right-hand edge of the highway than Mr. Ford was?
- A. Yes, sir.
- Q. Did you notice any woman or girl as you passed anywheres on that road prior to the time that he stopped?
- A. No, sir.
- Q. And were you there when he went to the police station to report this matter?
- A. Yes.
- Q. Did you go inside or did you stay out?
- A. I went inside.
- Q. Did Mr. Ford say at that time to anybody in the police station that he struck this woman?
- A. No, sir.
- Q. As far as you know and as far as you saw, sitting in the car alongside of Mr. Ford,

Q. Did that car strike this woman or any other woman?

A. No, sir."

It is respectfully submitted that the testimony of the entire case at its close was:

(a) The plaintiff testified that she was walking one foot from the edge of the concrete. Testimony concerning the position she occupied at the time of the accident was not adduced in behalf of the plaintiff. On the other hand, the defendant testified that he was driving along the center line of the road, and the disinterested witness, Coyne, testified that "where she was struck was on the busy part of the highway, there is no question about that."

(b) Neither the plaintiff, nor her step-daughter who accompanied her that evening, were able to say that the defendant caused the injuries sustained.

(c) The introduction of the admissions alleged to have been made by the defendant after the accident occurred were so ambiguous and uncertain that to have submitted them to the jury was to have permitted the latter to base an inference upon an inference, which procedure has often been condemned by our appellate courts. The witness, Dubrow, who testified concerning the admission made to him by the defendant, drew an inference from the defendant's conversation that the latter struck the plaintiff, and from this inference the jury further inferred that the defendant was guilty of negligence in this case, which, we submit, was improper.

(d) All the witnesses agreed that the evening in question was foggy, and the plaintiff, herself, testified (C., p. 44, ll. 16 to 20) :

“Q. Mrs. Kovacs, as you were walking on this road, you were looking right in front of you, weren't you?

A. Yes, sir.

Q. You were not looking backwards at any time?

A. No.”

If the plaintiff did not look back at any time, as she admitted, there is no question but that the evidence of contributory negligence was so manifest, that the trial court would have been correct in declaring as a matter of law that her contributory negligence barred her from recovery.

It is respectfully submitted that the testimony adduced in behalf of the defendant in conjunction with that adduced in behalf of the plaintiff clearly indicates that there was no question whatsoever concerning the negligence of the defendant to submit to the jury and there were admissions by the plaintiff that she was, herself, contributorily negligent, and the court's failure to direct a verdict was judicial error and in contravention of the principles propounded by the Court of Errors and Appeals in the Suburban Electric Company case, *supra*.

## POINT 3.

The trial court erred in refusing to charge the jury the requests made by the defendant (more particularly set forth in C., pp. 3 and 4).

In view of the fact that all these requests are more or less similar, the purpose of which was to direct the attention of the jury to the contributory negligence of the defendant, all will be argued under this one heading.

The error of the trial court in failing to charge the requests of the defendant is evident after considering an exposition of the law relative to similar facts, as set forth in the case of

*McGrath v. North Jersey Street Railway Company*, 66 New Jersey Law, 312.

In that case, the plaintiff was crossing Market Street, in the City of Newark, and while doing so was injured by a car of the defendant. At the conclusion of the case, the trial court directed a verdict in favor of the defendant on the ground that the plaintiff admitted in his testimony that he didn't look for a car on the track, except as he left the sidewalk.

The conclusion of the trial court in the above case is, of itself, dispositive of the question herein submitted, when it said:

"I think that in a crowded condition of the street as it was at that time with the car where it must have been, as described by the witnesses who saw him, it was the duty of the plaintiff to look after he left the sidewalk. He must be assumed to know (the testimony does

not show) that cars run frequently on Market Street, and, of course, he must know the danger in a crowd of that kind."

The trial court concluded:

"If he (meaning the plaintiff) had used the precaution that a reasonable man would use, this accident would have been avoided."

The conclusion of the trial court was affirmed in this manner (p. 313):

"The trial judge took a correct view of the legal rule. A pedestrian while walking in the highway is bound to be careful."

In the McGrath case, *supra*, the case of Newark Passenger Railway Company v. Block, 26 Vroom, 605, was cited, and the rule therein set forth was reiterated with approval by the Court of Errors and Appeals when it said (p. 314):

"We must recur to the general rule which requires one, in exercising his lawful rights in a place where the exercise of like rights by others may put him in peril, to use such precaution and care for his safety as a reasonably prudent man would use under the circumstances. **From this rule it may be said in general that one who passes on foot along a sidewalk or path of a highway must use his powers of observation in respect to other passers thereon, and a reasonable judgment to avoid collision.** In crossing the roadway a foot passenger must likewise use his powers of observation to discover approaching vehicles, and a like judgment when and how to cross without

collision. In the latter case doubtless the degree of care required exceeds that required in the former case, not because the right of the foot passenger and the right of the driver of a vehicle differ, but because of the circumstances. The vehicle usually travels at a greater speed—it cannot be so quickly stopped or diverted from its course; a street car cannot deviate from its track; while the passer on foot may quickly stop, turn aside, or even retrace his steps.’

The rule thus stated governs the relation of a pedestrian to all vehicles.”

As was said in the McGrath case, *supra*, the duty was thrust upon the plaintiff to look in all directions before crossing the street and to assume that cars ran frequently on the street that he was traversing and that there was danger in a crowd which was present at that particular time and place. In the Newark Passenger Railway Company case, the court expressly propounded the rule that :

“In crossing a roadway, the degree of care required exceeds that required of one who passes on foot along a sidewalk or path of a highway.” \* \* \*

A prudent person would exercise more care on a foggy night, regardless of the extent of the fog, than he or she would on a night that was clear, especially knowing the fact that this highway was a heavily traveled one, as was testified to by one of the witnesses.

The trial court in charging the jury concerning the care to be exercised by the plaintiff submitted the question to them in language entirely insufficient, as follows (C., p. 87, ll. 31 to 37) :

“The care which the law requires a person to use for his or her own safety is the care which a reasonably prudent man would have used for his safety, and that is what the law required Mrs. Kovacs to do. Was she using the care which an ordinarily prudent person would have used in walking along the edge of the highway in the darkness and in the fog?”

It is well settled law that negligence or contributory negligence depends upon the circumstances of each individual case, and the facts of the case being evident to the court, as is indicated from its charge, it was error to refuse to charge the jury as follows (C., p. 91, Request 3) :

“The degree of care required of the plaintiff was much greater on this night on account of the condition of the weather, than it would have been on a clear night.”

It is the contention of the defendant that the jury should have been specifically instructed concerning the duty that the plaintiff owed to others lawfully using the highway on that particular foggy evening, all of which specific instructions are contained in the requests to charge which were refused by the court.

The fourth request to charge falls within the same category and in view of the fact that the plaintiff herself testified that she did not look to the rear at any time made such request all the more appropriate, under the circumstances of this particular case.

All the law above set forth is relevant to the other requests which were refused, and it is respectfully submitted that the trial court erred in refusing to charge the jury each and every request.

The third, fourth and fifth grounds of appeal are abandoned.

It is respectfully submitted that the judgment in the above entitled cause should be reversed for the reasons hereinabove set forth.

HENRY K. GOLENBOCK,  
Attorney of Defendant.

**New Jersey Court of Errors and Appeals**

JOHN KOVACS and ELIZABETH  
KOVACS,  
Plaintiffs-Respondents,

*vs.*

HARRY FORD,  
Defendant-Appellant.

Action at Law.  
On Appeal.

**BRIEF OF PLAINTIFFS-RESPONDENTS.**

This matter is before the Court on an appeal from the verdict rendered in favor of the plaintiffs and against the defendant at a jury trial at the Middlesex County Circuit.

Appellant presents his argument under three headings:

- (a) defendant was entitled to a non-suit;
- (b) defendant was entitled to a direction;
- (c) because of certain alleged errors in the Court's charge.

We will present our argument under the same three headings presented by defendant-appellant in his brief.

**POINT I.**

**The Trial Court committed no error in denying the non-suit of defendant.**

In the case of *New Jersey Railroad & Transportation Co. vs. West*, 33 N. J. L. 430, at the bottom of page 432, the Court said:

“It must be a plain case that will justify reversal for refusal to non-suit.”

In order to justify a non-suit the facts must be clear and undisputed and show want of ordinary care on the part of the plaintiff.

“A motion for a non-suit or a direction admits the truth of evidence and every inference of fact that can be legitimately drawn therefrom.”

*Barry vs. Borden Farm Products*, 125  
Atl. 37.

If we apply the test enunciated by these two cases, it is impossible to question the wisdom of the Court in declining to non-suit. A reading of the brief of the appellant clearly indicates that the Court was compelled to submit the matter to the jury on plaintiffs' case. The appellant in his brief sets forth the testimony of the witness, Isidor Bubrow, and then argued that all of the testimony of this witness should be rejected. It is elemental that this Court will not consider the weight of evidence on appeal but will consider and review only errors in law committed by the Court below.

We will briefly outline plaintiffs' evidence.

The plaintiff, Elizabeth Kovacs, was walking in a northerly direction from Perth Amboy towards Woodbridge (p. 22, l. 20) along a public highway known as Cleveland Avenue (also referred to as Amboy Avenue in the testimony) (p. 23, l. 40). It was shortly after seven o'clock in the evening (p. 20, l. 32). It had been raining during the afternoon (p. 26, ll. 20-30), but at the time of the accident it was clear enough to see the sky (p. 26, l. 40, p. 27, ll. 1-5). The witness did not wear a raincoat, have an umbrella or have rubbers on (p. 21, ll. 10-20). Cleveland Avenue is a state

highway paved with concrete. Plaintiff was walking on the dirt shoulder on the right side of the highway, as she was traveling, about a foot off the concrete (p. 22, ll. 10-20). There were no sidewalks at the point where the accident happened (p. 28, ll. 20-30). The testimony of the plaintiff was corroborated in this regard by the testimony of one John H. Coyne, a witness called for the defendant (p. 49, ll. 35-40):

“Q. Are there any sidewalks at the point where the accident happened? A. No, I don't believe there are.

Q. So that people traveling along there must go on the highway? A. Yes.”

The plaintiff (p. 22, ll. 20-40) did not see or hear any vehicle approaching. She was struck and seriously injured.

The next witness produced by the plaintiff was Ida Kovacs, fifteen years of age, a stepdaughter of plaintiff (p. 28, l. 40, p. 29, l. 1). This witness testified that she and her stepmother were on their way to church. That it was “a little foggy. Very little though. It was raining during the day.” It was not raining, however, at the time that she and her stepmother were walking along the highway. The witness did not have a raincoat, umbrella or use rubbers. She testified that her coat was not wet. The witness and plaintiff were walking along the edge of the highway in single file, this witness being about eight or nine feet (p. 29, l. 35) in front of her stepmother. Miss Kovacs said that she was walking on the dirt shoulder about three feet off the concrete pavement (p. 30, ll. 1-10). Miss Kovacs did not actually see her stepmother struck. She turned around (p. 30, ll. 15-20) and saw her stepmother lying on the ground. She was then about fifteen or eighteen feet away from her. While the witness did not see the automobile strike

her stepmother, she did see an automobile go by about the time she was struck (p. 31, ll. 20-30).

Dr. Martin S. Meinzer, who testified for the plaintiff, testified (p. 15) respecting Mrs. Kovacs' injuries. His testimony indicates that the left arm was struck at about the elbow and was almost torn from Mrs. Kovacs' body (p. 15, l. 35):

“All that held the arm was some muscles down the back. It just dangled around, absolutely loose, like a piece of ribbon. It did not seem possible that the arm could be saved. . . .”

The injury was such as might result from coming in contact with a projecting portion of a fast moving object such as an automobile.

The only evidence produced in plaintiff's case connecting the defendant with the accident was that of Dr. Martin S. Meinzer, who testified (p. 40, ll. 20-30) that he spoke to the defendant, Ford, at the hospital:

“Q. Will you please tell us what Mr. Ford said to you? A. I had a conversation with Mr. Ford in the hospital, and he said that he did not see Mrs. Kovacs, but he heard a thud or a knock against the side of his car, and he stopped, and he got out, and she was by the roadway.

Q. He then picked her up and brought her to the hospital? A. Yes.”

On cross-examination the Doctor was asked (p. 41, ll. 1-10):

“Q. But he did not admit that he struck the woman, did he? A. He said that he did not see her or he did not know that he had struck her. The only thing was that he felt this thud against the side of the car.”

The plaintiff also produced one Isidor Dubrow, an attorney-at-law of this State, who had been the

attorney of record in this cause. The author of this brief, however, was substituted as counsel prior to the date of trial. Mr. Dubrow testified (p. 36) to a conversation with the defendant, Ford, as follows:

“Q. What conversation did you have with Mr. Ford respecting the accident? A. I had a general conversation with Mr. Ford. I did not attempt to find out whether he drove the car or not. I was not interested in it, but during the course of the conversation he told me he had driven the car. He did not see the plaintiff in this case, Mrs. Kovacs, until after he had struck. He told me that he had felt a bump on his bumper, and then he had stopped his car after that, and he came back and he found out that somebody—Mrs. Kovacs—had been struck. He never told me at that time or at any subsequent time that he intended to deny the fact that he struck the woman.”

Again on page 37:

“Q. Did he say anything to you in that conversation? A. Yes, he said he didn't see the woman until after he had struck her.”

Counsel for the appellant argues vociferously in his brief that this Court should entirely disregard the testimony of this witness. The probative forces of this testimony might be subject to attack on a rule to show cause. This Court, however, will not weigh the testimony on appeal.

“A court of law can review only errors of law and cannot determine whether it was contrary to the evidence.”

*Churchill vs. Stephens*, 91 N. J. L. 195;  
*Davis vs. Tallon*, 91 N. J. L. 618.

“A court of law will not consider weight of evidence on appeal.”

*Savino vs. Goldberg*, 92 N. J. L. 617;  
*Byrne Co. vs. Snead & Co.*, 98 N. J. L.  
 257;  
*Smith vs. Brunswick Laundry Co.*, 93 N.  
 J. L. 436.

Under the evidence as outlined, it was clearly the duty of the court to deny the motion for a non-suit and require the defendant to put in his case.

“In an action for negligence a non-suit on the ground of contributory negligence should not be granted unless such negligence is clearly shown.”

*Berry vs. Pennsylvania R. R.*, 48 N. J. L. 141.

See also *Pennsylvania Railroad Company vs. Middleton*, 57 N. J. L. 154, at 158:

“On a motion to non-suit, in order to withdraw the case from the jury, the contributory negligence must appear clearly, as a conclusion of fact or by necessary exclusive inference, from the evidence which is adduced by the plaintiff.

“Whenever the question, whether a pedestrian using the highway has used ordinary care to avoid a collision with a vehicle, is one about which a difference of opinion may reasonably be entertained, the judgment of the jury thereon must upon error be a finality.”

*Consolidated Traction Co. vs. Isley*, 59 N. J. L. 224.

“Where at the close of the plaintiff’s case there is evidence upon which the jury might find for the plaintiff, the court should not direct a non-suit; nor should it, at the close of defendant’s case, direct a verdict for the defendant on the ground of plaintiff’s contributory negligence; both questions arising upon the facts and being solely for the jury to determine.”

*Walton vs. Ackerman*, 49 N. J. L. 234.

At the conclusion of plaintiff's case the testimony clearly established the following situation: Plaintiff was walking in a northerly direction along a public highway at a point where there were no sidewalks; where pedestrians were required to walk upon or along the edge of the highway. Plaintiff was walking on the dirt shoulder about one foot off the concrete on the right side of the highway as she was traveling. It had been raining, but it was sufficiently clear for plaintiff to see the sky. While in this position plaintiff was struck and seriously injured by a vehicle approaching from the rear and traveling in the same direction as plaintiff. Following the accident the defendant stated to one witness, Mr. Dubrow, that he struck the defendant; that he did not see her until he struck her. To another witness, Dr. Meinzer, he stated that he did not see the plaintiff but "he heard a thud or knock against the side of his car . . . stopped . . . got out and she was by the roadway."

Under this state of the proof we think that any jury would be justified in drawing the inference that the defendant was not operating his car with sufficient care; was not making a proper observation along the highway; did not operate his car with proper regard for other persons lawfully using the highway, and that as a result of his failure in this regard he was guilty of negligence.

"Where a trial judge is requested to nonsuit or direct a verdict in the trial of an action for negligence, his duty is to determine whether facts have been established from which negligence may be reasonably inferred, and if the real facts are in substantial dispute, the case cannot be taken from the jury."

*Newark Passenger R. R. Co. vs. Block,*  
55 N. J. L. 605;  
*Consolidated Traction Co. vs. Chenowith,*  
61 N. J. L. 554.

**POINT II.****The Court committed no error in refusing to direct a verdict.**

The first witness produced by the defendant was one John H. Coyne. On page ten of appellant's brief certain testimony of this witness (found on p. 51 of State of Case) was quoted to establish the fact that Mrs. Kovacs was struck "on the busy part of the highway". The testimony quoted is very misleading because this witness did not see the accident. The witness (p. 48, ll. 30-40) indicates that he arrived on the scene shortly after the accident:

"Q. When you pulled in what did you see?

A. I heard the woman screaming, and also I saw the two men taking her to the car, and one I happened to know, Harry Ford."

As we read this witness's testimony the only object of calling him was to establish that it was rather misty and foggy at the time of the happening of this accident (p. 48, ll. 20-40). The witness testified that at the bend of the road a short distance from where the accident happened you could see only fifteen or twenty feet and (p. 50) atmospheric conditions were such that it was inadvisable to go faster than fifteen or twenty miles an hour. The witness did testify, however (bottom p. 51, top p. 52), that it was possible to see fifty or sixty feet on a straight-a-way along the highway.

The next witness produced was the defendant Harry Ford. He testified (p. 53, ll. 20-30) that there was a dense fog and that he could only see about ten feet; that at the juncture of Amboy Avenue and Cleveland Avenue (the place where the accident happened) he stopped his car because

he felt a bump similar to a flat shoe (p. 53, ll. 30-40):

“Q. Did you stop your car at any time as you passed the junction of Amboy Avenue and Cleveland Avenue? A. Yes.

Q. Why? A. Well, I was—felt a bump similar to a flat shoe and I pulled off the road.”

This witness testified (p. 54) that he got out of his car and was attracted by a lady crying fifty or sixty feet away. He did not discover what caused the bump (p. 57, l. 40). The witness was unable to account for the bump or what caused it (p. 58, l. 1):

“Q. Can you account for the bump in any way? A. I cannot; whether there was a hole in the road or a brick or something there, I could not say. I did not bother when I heard the lady crying.”

The witness testified (p. 65, ll. 10-30), that he was driving a new car; that the rubber on the car was all in good condition; that he was sure he did not have a blowout. He felt only the one bump and did not have the sensation of riding on a flat tire:

“Q. Now, you travelled fifty or sixty feet after you felt that bump, is that true? A. Yes.

Q. Did you have the sensation of riding on a flat tire? A. No, I didn't.

Q. After the one bump you heard nothing else or felt nothing else? A. No.”

The witness testified (p. 54) that he had balloon tires. We respectfully submit that it would be difficult to confuse the sort of a thud, blow or bump that would result from striking the left arm at about the elbow of a pedestrian with the sensation that would result from a balloon tire going flat upon an automobile.

The defendant admits that he felt the bump; that he stopped promptly and found the plaintiff standing in the highway with her arm almost torn from her body; that he never saw the plaintiff, Mrs. Kovacs, until after he got out of his car (p. 67, l. 25). He vaguely endeavors to account for the bump by stating that he thought he had a flat tire; that the bump might have been caused by running over a stone or a hole in the road. At the point where the accident happened the State had recently laid a new concrete road. The defendant did not find any stone in the highway to account for the bump. Nevertheless he had the temerity to deny that he struck the plaintiff (p. 64, ll. 20-40):

“Q. Do you know, Mr. Ford, whether you hit this woman or not? A. I do.

Q. How can you tell that you didn't hit the woman? A. Well, if I hit anybody I certainly am going to know it.

Q. Didn't you feel the bump? A. You can feel the same kind of bump by riding over a large cobblestone or brick.

Q. Will you tell me then how you distinguish between the bump you might get from riding over a large cobblestone or a brick and the bump you might get from breaking a woman's arm, I mean, from riding over her body? A. I have never had that experience.

Q. So you don't know then whether you would have the same bump or not? A. I would not say that.”

The defendant testified (p. 66) that he drove from Asbury Park to Woodbridge—the scene of the accident—at twenty to twenty-five miles an hour; that he had a windshield wiper on his car and that it was working (p. 67, l. 12); that at the time of the accident he was going about fifteen miles an hour (p. 58, ll. 20-30); that there are no

sidewalks at about the point where the accident happened.

The examination of the defendant, Ford (beginning p. 60, l. 30 and continuing through p. 62), clearly indicates that no other car could possibly have struck the plaintiff. As heretofore indicated, the defendant felt the bump, stopped his car within fifty or sixty feet, got out, was immediately attracted by the screams of the plaintiff. At the time the defendant got out there were no other cars between defendant's car and the plaintiff. Several other cars apparently stopped about the same time. All of these cars, however, were south of and beyond the point or place where the plaintiff was standing. In other words, none of these cars had as yet passed the plaintiff. The only car in the vicinity that had passed the plaintiff was the defendant's car. Defendant took the plaintiff to the hospital and remained there until eleven-thirty that night (p. 68, l. 20). The defendant does not deny (p. 57, ll. 20-30), the conversation heretofore set forth with Dr. Meinzer. He does, however, deny (p. 63, ll. 10-20), that on the evening of the accident and shortly after its happening he reported at police headquarters in Woodbridge that he struck the plaintiff. The testimony of the Police Sergeant will hereafter be referred to. We feel that defendant's denial in this regard and the conflict of his testimony with that of the Police Sergeant made it impossible for the jury to give much credence to the defendant's denial that he struck the plaintiff.

The defendant produced one Norman B. Hertzler, who was riding with him at the time of the accident. This witness testified (p. 78) that it was very foggy; that he went to the hospital with Mr. Ford and remained at the hospital. This witness was sitting on the right-hand side of the car (p. 78, l. 38); that he did not see any one along the

highway and that Mr. Ford's car did not strike the plaintiff. That the witness did not know whether or not they struck the plaintiff is clearly indicated by his testimony on cross-examination (p. 80, ll. 20-40, p. 81), as follows:

“Q. You don't know whether he hit this woman or not, do you? A. He did not hit the woman.

Q. I said, do you know whether or not your car or the car in which you were riding struck this woman or not? A. I know that it did not strike the woman.

Q. All right, now, how do you know that? A. Well, there is no reason why I should. I felt that bump just the same as Mr. Ford did.

Q. And you don't know right now what that bump was, do you? A. It is probably—

Q. Never mind probabilities. Do you know what that bump was? A. No, sir.

Q. All right. How can you say then that it was not this woman's arm? (After a pause.) Can you answer? A. It was not the woman's arm.

Q. You don't know what it was, do you, the bump? A. No.

Q. Well, then, how can you say it was not the woman's arm?

Mr. Golenbock: I submit, if your Honor please, the witness has already answered.

The Court: Are you objecting?

Mr. Golenbock: Yes, sir.

The Court: Objection sustained.

By Mr. Toolan:

Q. All right. Let me ask you this: What did you think it was?

Mr. Golenbock: I object to that.

The Court: Objection sustained.

Mr. Toolan: All right, that is all.

Mr. Golenbock: That is all.

The defense also produced one James H. Scarr, an employee of the United States Weather Bureau. The witness records weather conditions that come within his own observation at Battery Place, New York (p. 71, ll. 20-30) and weather conditions found at Sandy Hook (p. 72, ll. 30-40) according to records in his possession. This witness testified (bottom p. 74, top p. 75), that at the time of this accident there was a light fog:

“Q. Now, prior to 8:20 P. M. on that evening, what was the condition of the fog, that is, say about 7:30 to eight? A. Well, it is carried simply as light fog. It was dense. To give you the whole story, it had been dense the night before, the night of the thirteenth, and the record picks up there, saying fog continued dense or nearly dense to 8:40 A. M., and it recites some conditions in the harbor with reference to fog, and then says, in evening again fog increased somewhat, being nearly dense from 8:20 P. M. to 11:00 P. M. In that interim the fog was carried to light.

Q. As light fog? A. Yes.

Q. You could see objects at a greater distance than a thousand feet? A. Yes.”

The witness defines (p. 74, ll. 25-30) what is meant by a dense and light fog:

“Q. And your definition of a dense fog is a fog that obscures an object which is a thousand feet away from you? A. Yes, in the daytime.

Q. And if you can see beyond a thousand feet, then you call it a light fog? A. Yes.”

According to defendant's own witness, therefore, the fog or mist at the time of the happening of this accident was such that an object could be seen at a greater distance than one thousand feet in the daytime.

Plaintiff's counsel was somewhat surprised at defendant's denial that he struck the plaintiff.

Having laid a foundation (p. 63) while defendant was on the witness stand we called in rebuttal one John Egan, a police sergeant in Woodbridge Township. Sergeant Egan was on desk duty at Police Headquarters on the evening of the accident. The defendant, Ford, called at Police Headquarters and reported the accident. The Sergeant immediately made a record in the police blotter of the report given him by Mr. Ford (p. 82, ll. 10-20):

“Q. Have you that report with you? A. Yes, sir.

Q. Will you give it to us? A. November 14, 8:00 P. M. Harry Ford, 545 Maple Avenue, Woodbridge, New Jersey, driver's license 950131, driving car 82600 N. J. north on Amboy Avenue near Thirst Haven, struck Mrs. Elizabeth Kovacs, Inslee Street, Perth Amboy, who was walking on right side of road going north. She was taken to Perth Amboy City Hospital by Mr. Ford and is being treated for her injuries and is being held there for further examination. Mr. Ford reported the accident to police.

Q. Is that the report he gave you? A. That is the report he gave me.

Q. Did you write it down as he gave it to you? A. I wrote it down as he gave it to me.”

In light of the conflict in testimony it was mandatory for the court to submit this case to the jury. Certainly it would have been reversible error if the court had taken the case from the jury.

“Where there is a substantial dispute as to the inferences to be drawn from the facts, it is for the jury to determine where the preponderance of the evidence lies.”

*Carroll vs. C. R. R. of N. J.*, 81 N. J. L. 567.

“Where, however, the testimony which proves the occurrence by which the plaintiff was injured discloses circumstances from

which the negligent conduct of the defendant is a reasonable inference, a case is presented which calls for a defense.”

*Bahr vs. Lombard &c. Co.*, 53 N. J. L. 233.

See also

*N. Y. R. Co. vs. N. J. Electric R. Co.*, 60 N. J. L. 52;

*Kelly vs. Consolidated Traction Co.*, 62 N. J. L. 514;

*N. Y. Telephone Co. vs. Bennett*, 62 N. J. L. 742.

We feel that the case of *Cordts vs. Vanderbilt*, 7 Misc. Reports 856, is directly in point. In that case a mother and her son were walking along the highway. There was about eighteen inches of snow upon the ground. Their attention was attracted by the lights of an automobile. The mother told her son to go upon the sidewalk as quickly as possible. They were both struck, however, before they got to the sidewalk. Defendant's story was that it was snowing hard. He could not see more than two feet ahead, although his windshield wiper was working and his headlights on; that he did not see the woman or her son and did not know they were there until he felt a jar. His estimate of his own speed was fifteen miles an hour. The Court said:

“We think that the verdict is not against the weight of evidence; and if not, the matter of non-suit requires no discussion. Counsel argues that, because the night was so stormy, the woman should have remained on the sidewalk; but the evidence justified the jury in finding that the sidewalk was impracticable because of snow. We agree with plaintiff's counsel that the defendant's own testimony convicts him of negligence; for if the physical condition prevented him from seeing what

was ahead of him, he was under a duty of greater care commensurate with the increased danger. *Ball v. Camden, &c., Railway Co.*, 76 N. J. L. 539, 541; *Anderson vs. Public Service Corp.*, 81 *id.* 700; *Minaresik vs. Blank*, 102 *id.* 231, 234; *Osburn vs. DeYoung*, 99 *id.* 204; *Hammond v. Morrison*, 90 *id.* 15; *Devine v. Chester*, 144 Atl. Rep. 322; 7 N. J. Mis. R. 131. As to contributory negligence, it was clearly a jury question, and we take no exception to their finding, as they must have found, that none had been satisfactorily shown."

See also

*Zeigler vs. Bonine*, 4 Misc. Rep. 1005.

### POINT III.

#### **There was no error in the Court's charge.**

We direct the Court's attention to the fact that no exception was taken to any part of the Court's charge. Reliance is made upon the Court's failure to charge the various propositions set forth in the grounds of appeal (found on pp. 3 and 4, State of Case). Since no exception was taken to the language used by the Court, we think it fair to assume that the Court accurately stated the principles of law applicable to the factual situation presented by the evidence. Nothing more can be asked of a Court in its charge. The requests (found on pp. 3 and 4, State of Case) under a, c, d, and e may be grouped together and classified as requiring the Court to charge the following propositions as matters of law:

(1) That a pedestrian on a highway is required to walk on the extreme right edge of the highway and to step aside and concede the right of way to all vehicles.

(2) That a pedestrian walking along the right side of the highway is required to continually make observations to the rear as well as maintain a constant observation for vehicles approaching from the front.

(3) That a failure in either regard makes a plaintiff guilty of contributory negligence as a matter of law.

Such propositions of law are obviously bad.

The Courts of this State have repeatedly held that a pedestrian has equal rights on the highway with vehicles; that each must conduct himself with deference for the rights of the other.

See

*Butelli vs. Jersey City*, 59 N. J. L. 302;  
*Work vs. Philadelphia Supply Co.*, 112  
Atl. 185.

Where a pedestrian occupies a position on a highway where he has a lawful right to be, the law imposes no obligation upon him to look to the rear or to anticipate and guard himself against unnatural, unreasonable and negligent conduct of other persons using the highway. See *Fox vs. Great Atlantic & Pacific Tea Co.*, 84 N. J. L. 726. The Court on page 729 said:

“The plaintiff was under no legal duty to anticipate any action on the part of the chauffeur that would imperil her safety. She had an equal right in the street. She was under no duty to look behind her or to anticipate without having received any warning that the vehicle was intending to pass her on that side of the street, as it apparently did.”

In the case at bar plaintiff had the right to assume that she was within the observation of persons operating vehicles approaching from the

rear; that these persons would have their vehicles under proper control; that they would give her a signal or warning of their approach; that they would respect her equal right to the highway. Until she received some signal or warning, ordinary prudence dictated that she look in the direction in which she was traveling and not behind her. The requests rejected by the Court are bad in law and bad as a matter of fundamental reasoning and counter to all human experiences.

The request to charge under f (p. 4, State of Case) required the Court to charge that the plaintiff was negligent because she did not use the left side of the highway so that she would be facing approaching traffic, and also required that she carry a lamp or light to indicate her location on the highway.

It will be observed that this request to charge is in direct conflict with the other requests to charge, which require the plaintiff to walk on the extreme right-hand side of the road. Counsel for the defendant does not direct our attention to any cases which will justify him in presenting to a court requests to charge which are in direct conflict. Surely an appellate court will not seriously consider exceptions to the refusal of the trial court to charge requests that require the plaintiff to be on both sides of the street at the same time? We have been unable to find authority in this State which requires a pedestrian to carry a light or lantern along the highway. With reference to this request we think it sufficient to say that the cases heretofore cited indicate that a pedestrian has a legal right to occupy any part of the highway and there are no cases which restrict a pedestrian to any particular portion of the highway. The pedestrian is merely under obligation to exercise proper care in the use of the highway in light of all surrounding circumstances.

Under the request to charge lettered b (p. 3) the defendant requested the Court to charge the jury that the degree of care required by the plaintiff on the night in question was "much greater" than on a clear night. The phrase "much greater" is indefinite, intangible and would certainly be no helpful guide to the jury. The Court properly charged the jury that the degree of care exacted was commensurate with the time, place and circumstances in which plaintiff found herself. The language of the Court is far more specific, exacting, and scientific than any request submitted by counsel for the defendant.

We respectfully submit that a reading of the entire charge will disclose that the Court submitted the case to the jury on principles of law that are supported by a long line of cases in this State. The subject of negligence and contributory negligence was clearly charged. No exception was taken to any part of the language used by the Court. Counsel, therefore, must have been satisfied. This Court has repeatedly held that a trial judge does not have to use the specific language of the request of counsel provided the Court in substance and effect has covered the same proposition of law. See *Cottrell vs. Fountain*, 80 N. J. L. 1:

"It is not error to refuse a request to charge which calls upon the court to give controlling force to a particular set of circumstances which at best furnish matter for argument before the jury."

See also *Danskin vs. P. R. R. Co.*, 83 N. J. L. 522:

"A refusal of a request to specifically affirm a proposition, which had already been affirmed in substance in the general charge, is no ground for reversal."

*Schreiner vs. N. Y. & N. J. Tel. Co.*, 82  
N. J. L. 743.

“When the trial judge in such an action has stated to the jury in concrete terms the legal principles applicable to the case, it is not error for him to refuse to charge the abstract principles.”

*Herbich vs. North Jersey St. R. Co.*, 67  
N. J. L. 574.

“The trial court in an action for negligent injuries is not obliged, though specially requested to do so, to apply a legal principle, which it clearly states to the jury, to conditions of fact postulated by the defendant’s counsel, particularly where such conditions do not include all the circumstances which should influence the conclusion of the jury.”

*Consolidated Traction Co. vs. Chenowith*,  
61 N. J. L. 554.

We respectfully submit that the evidence in this case made it mandatory for the Court to submit the matter to the jury. No exception was taken to any part of the language used by the Court in charging the jury. Exception was taken to the refusal of the Court to charge specific requests. The Court’s refusal in this regard was certainly justified as a matter of law and logic.

**It is respectfully submitted that the verdict below should be affirmed with costs.**

JOHN E. TOOLAN,  
Attorney of Plaintiffs-Respondents.

