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Summons.

SUMMONS.

The State of New Jersey to Isadore Liebman:

(SEAL) You are summoned to answer the annexed Complaint of Julia Baunach and Frank Baunach, in an action at law in the Essex County Circuit Court. And Take Notice that unless you file your answer to said Complaint with the Clerk of said Court, at Newark, within twenty days after service upon you of this writ and the annexed Complaint, the plaintiffs may proceed in this suit and judgment may be entered against you. 10

Witness, Worrall F. Mountain, Judge of the Essex County Circuit Court, at Newark, this twenty-sixth day of February, 1921.

JOHN H. SCOTT, 20
Clerk.

JOHN W. MCGEEHAN, JR.,
Attorney.

30

40

Complaint.

COMPLAINT.

Essex County Circuit Court

10	JULIA BAUNACH and FRANK BAUNACH, <i>Plaintiffs,</i>	{ <i>Action at Law.</i> <i>Complaint.</i> }
	<i>vs.</i>	
	ISADORE LIEBMAN, <i>Defendant.</i>	

First Count: Plaintiff, Julia Baunach, residing in the City of Newark, in the County of Essex, and State of New Jersey, says:

20 1. On January 2, 1921, plaintiff was lawfully in and upon Central avenue, a public street and thoroughfare of and in the City of East Orange, in the County of Essex, and State of New Jersey, at or near the intersection of the same with South Eighteenth street.

30 2. On that day, the defendant drove and operated a certain automobile upon and along said public street and thoroughfare known as Central avenue, and so negligently, carelessly, and improperly drove and operated the same, and with such disregard for the rights of other persons, including the plaintiff, then and there lawfully upon and using said street, that he drove into, collided with, and ran over the plaintiff, causing her serious bodily injuries hereinafter more particularly described.

40 3. By reason and as a result of the defendant's negligence, as aforesaid, and the striking of the plaintiff resulting therefrom, the plaintiff was seriously injured upon and about the head, body and limbs, and sustained cuts, bruises, fractures, wounds, and injuries, including a fracture of the right arm, and suffered great shock, and was rendered sick, sore, lame and disordered, and suffered great pain

Complaint.

and inconvenience and nervousness, and in the future will be sick, sore, lame and disordered and will suffer great pain and inconvenience and nervousness, and has sustained a permanent deformity of the right arm and was prevented and will in the future be prevented from pursuing her usual household and other duties and business, all of which is to her damage.

10

4. By reason of the aforesaid injuries resulting from the negligence of the defendant, plaintiff was confined to her bed for a period of time, and was confined to her home for a period of time, and required and received medical and surgical aid, and will in the future require medical and surgical aid in the necessary and proper treatment of said injuries and condition.

Plaintiff demands as damages the sum of \$10,000.

Second Count: Plaintiff, Frank Baunach, residing in the City of Newark, in the County of Essex, and State of New Jersey, says:

20

1. That he is the husband of Julia Baunach, and was the husband of said plaintiff, Julia Baunach on January 2, 1921, and as such entitled to the household services, society, aid, and comfort of his said wife, and was also obligated to care for and attend to her needs and requirements, including the necessity for medical treatment resulting from the negligence of the defendant as hereinafter stated.

30

2. Plaintiff repeats paragraph 1 of the First Count.

3. Plaintiff repeats paragraph 2 of the First Count.

4. Plaintiff repeats paragraph 3 of the First Count.

5. Plaintiff repeats paragraph 4 of the First Count.

6. Plaintiff, Frank Baunach, was obliged to expend large sums of money in the necessary and proper medical and surgical treatment of the injuries sustained by his wife, as aforesaid, in endeavoring to cure his said wife of her injuries, and in the future he will be required

40

Answer.

to expend other large sums of money for said purpose, and by reason of the said happening he has been obliged in the past and in the future will be obliged to expend large sums of money to procure others to perform the services and duties which his wife has been accustomed theretofore to perform for him, and has lost and in the
 10 future will lose the comfort, and aid, and society of his said wife.

Plaintiff demands as damages the sum of \$2,000.

JOHN W. MCGEEHAN, JR.,
Attorney of Plaintiffs.

ANSWER.

Filed.

20

Defendant, residing in the City of Orange, Essex County, New Jersey, answering the complaint herein, says:

FIRST COUNT.

1. He denies paragraph one of the complaint.
2. Except as he admits that he operated an automobile on January 2, 1921, upon and along Central avenue, in the City of Newark, he denies paragraph two of the
 30 complaint.
3. He denies paragraph three of the complaint.
4. He denies paragraph four of the complaint.

SEPARATE DEFENSE TO FIRST COUNT.

For a further and separate defense defendant says that the injuries, if any, sustained by the plaintiff, Julia Baunach, were due solely to the negligence of the said plaintiff, Julia Baunach, and not to any negligence on the part
 40 of this defendant.

Answer.

SECOND COUNT.

1. He has no knowledge or information as to the statements contained in paragraph one of the second count sufficient to form a belief and puts the plaintiff, Frank Baunach to his proof.

2. He denies paragraph two of the second count.

3. Paragraph two of the answer to the first count is here repeated and made part of the answer to this count.

4. He denies paragraph four of the second count.

5. He denies paragraph five of the second count.

6. He denies paragraph six of the second count.

10

SEPARATE DEFENSE.

For a further and separate defense defendant says that the damages, if any, suffered by the plaintiff, Frank Baunach, were due solely to the negligence of the plaintiff, Julia Baunach, and not to any negligence on the part of this defendant.

20

CHARLES FRANKEL,
Attorney of Defendant.

Consent is hereby given to the filing of the within answer as of time.

JOHN W. MCGEEHAN, JR.,
Attorney of Plaintiffs.

30

40

Reply.

REPLY.

Filed.

The plaintiffs replying to the answer of the defendant filed herein says:

- 10 1. Plaintiffs deny the separate defense to the first count.
2. Plaintiffs deny the separate defense to the second count.

JOHN W. MCGEEHAN, JR., ..
Attorney of Plaintiffs.

SUBSTITUTION OF ATTORNEY.

- 20 It is hereby agreed that Jacob Schneider, Esq., shall be substituted in my place and stead as attorney for the defendant in this action.

CHARLES FRANKEL,
Attorney of Defendant.

30

40

Opening.

ESSEX CIRCUIT COURT.

Wednesday, November 23, 1921.

JULIA BAUNACH, *et al*,

vs.

ISADORE LIEBMAN,

10

Before Hon. Worrall F. Mountain, *J.*, and a jury.

For the plaintiffs appears John W. McGeehan.

For the defendant appears Jacob Schneider.

Mr. McGeehan. May it please your Honor, cases 832 and 833 involve the same state of facts, and Mr. Schneider has consented that we try 833 first.

20

The Court. Can't we try them together?

Mr. McGeehan. No, sir; there are certain facts that make that inadvisable.

The Court. Any objection.

Mr. Schneider. No, sir; none at all.

The Court. We will then try 833 first.

(During the examination of John A. Kellett, a talesman who was duly called):

30

Mr. McGeehan. Mr. Kellett, you say you are an insurance auditor?

The Talesman. Yes.

Mr. McGeehan. And in the performance of your duties as such, what kind of insurance companies do you come in contact with?

The Talesman. Just the New York Life, just one insurance company, auditing their books; their personal books.

40

John A. Shraft, direct.

Mr. McGeehan. And in the performance of your duties for the New York Life Insurance Company do you have anything to do with matters involving the insurance of automobiles against liability?

The Talesman. I do not.

10 *Mr. Schneider.* I would like to ask for a mistrial on that question, on the ground that it might tend to prejudice the jury.

The Court. I will overrule your objection.

Mr. Schneider. Excepts to this ruling of the Court. Exception noted as ground of appeal.

The jury is drawn and sworn.

20 *Mr. McGeehan.* By consent, the complaint is amended so as to make the demand of Frank Baunach five thousand instead of two thousand dollars. The amended complaint to be filed after the trial with the county clerk.

Mr. McGeehan opens on behalf of the plaintiff.

Mr. Schneider opens on behalf of the defendant.

JOHN A. SHRAFT, sworn on behalf of the plaintiff.

Direct examination by Mr. McGeehan.

30 Q Mr. Shraft, where do you live, please? A I live at 156 Camden street.

Q Where did you live on January 2nd of this year?
A 25 Stuyvesant avenue.

Q And near where is 25 Stuyvesant avenue? A Near South Orange avenue.

Q Did you, on January 2nd, run into or meet Mrs. Baunach, the plaintiff in this case? A Yes.

Q Where did you meet her? A South Orange avenue and Eighteenth street.

40 Q Was that an accidental meeting? A Yes.

John A. Shraft, direct.

Q When you say at Central avenue and Eighteenth street, just describe what corner, or near what corner you met? A On the northwest corner of Central avenue.

Q In which direction does Central avenue run? A East and west.

Q And in which direction does Eighteenth street run? A North and south. 10

Q So that, the northwest corner is the upper right-hand corner going up, going west? A Yes.

Q Did you leave that corner in company of Mrs. Baunach? A Yes.

Q And which-way did you proceed to go? A South.

Q Across what street would that be? A Central avenue, across Central avenue.

Q Where did you intend to cross to? A To the southwest corner.

Q And when you say you crossed south, just state what part of the northwest corner you left, where you left the corner to cross Central avenue? A Right on the cross-walk. 20

Q And what time of the day or night did this happen? A About 6:15, something like that.

Q And was it dark at that time? A Yes.

Q Were any street lamps lit in that vicinity at the time? A There were two gas lamps.

Q And where were these gas lamps located? A One at the northwest corner and one at the southwest corner. 30

Q Are those corners, one of which, you were leaving and the other to which you were crossing to? A Yes.

Q To cross from the northwest corner to the southwest corner, would that be a direct crossing of the street, or would you have to go at an angle? A Direct.

Q What kind of lights were these that were on these two corners? A Gas mantle lamps.

Q Gas lamps? A Gas lamps.

Q And how are they formed, and what are they made of? A Oval shaped. 40

John A. Shraft, direct.

Q What kind of flame have they, what kind of illumination? A Why, a bright light, a very bright light, a gas mantle are.

Q And is there any reflecting device in those lamps in East Orange there? A I think there is on the light.

Q What do they consist of? A Tin, I believe.

10 Q What color is it? A Light.

Q Were both of the lights the same on each side of the street? A Yes.

Q What effect do those lights have on the illumination of the street on those two corners? A A very bright light.

Q And it was between that that you started to cross? A Yes.

Q As you left the northwest corner to cross Central avenue, who was on the right and who was on the left, you or Mrs. Baunach? A Mrs. Baunach was on the right.

Q That is, she was towards the west from you? A Yes.

Q And you started to cross. As you started what, if any, observation did you make of automobiles or other vehicles coming along Central avenue? A As I started to cross Central avenue I looked in the direction of east to see if anything was going west, and there was nothing but I spied that there were two automobiles coming east.

30 Q And where were they coming from? A About two hundred feet away.

Q That is, when you left the curb? A Yes.

Q Now, how far could your vision extend—I will change that. Is there any hill or grade on Central avenue at or near the place where this accident happened? A There is a grade at Grove street, coming up.

Q The grade is at Grove street, coming up? A Yes.

Q And then, at Grove street, what happens to that grade? A It slopes down.

40 Q Were you able to see to Grove street? A Yes.

John A. Shraft, direct.

Q How many blocks away from Eighteenth street is Grove street, to the right? A Three.

Q At the time that you saw, that you looked to the right and saw these other two automobiles coming, did you or did you not, within those three blocks, see the third automobile? A Yes.

Q Well, where were you when you first saw the third automobile? A The third automobile, why, in the east-bound track. 10

Q When you were in the eastbound track. I am asking you where, before you left the curb and looked to your right and saw the two automobiles that you speak of, did you also see at that time the third automobile? A Yes, sir; about two blocks away.

Q And about how far would you say in feet, if you know? A About 400 feet, figuring 200 feet for a block.

Q Are those short blocks up there? A Yes. 20

Q How about the houses along there, are they on the average more or less than 100 feet apart in that section? A Less than 100 feet a part on one side of the street.

Q How close are they on that side of the street? A About three foot apart.

Q And on the block of Eighteenth and Nineteenth street, how many houses are there on that block, on the right-hand side? A About seven houses on the right-hand side, and one on the other side.

Q And how long a block is it? A About two hundred feet. 30

Q And it is in the City of East Orange that this happened? A Yes, sir.

Q Now, what did you do after you saw the two automobiles about a block away and the third automobile about two blocks away, what did you do, and what did Mrs. Baunach do in connection with crossing the street? A When I saw the two automobiles and we started to cross the street, and we got about to the eastbound track, about the second rail over the two tracks— 40

John A. Shraft, direct.

Q The eastbound track would be the right-hand track, wouldn't it? A Yes.

Q And was that the furthestest track away from you when you were crossing? A Yes.

Q And where were the two automobiles? A Just passing.

10 Q And at what rate of speed were they going? A I am not much of a guess in speed, but they were going pretty lively.

Q And they passed in front of you, did they? A Yes.

Q Did you come to a full stop on those car tracks? A Yes, to leave the second automobile pass, because it was following right up behind.

Q And about how far was the distance between those two automobiles that you let pass? A About forty feet.

20 Q Now, did Mrs. Baunach come to a full stop there? A Yes.

Q Then, what did you next see. What observation did you make then before proceeding to the curb? A Another automobile going east.

Q Going east? That would be coming from your left or right? A Coming from the right.

Q And how far away was that automobile, then? A I judge about 200 feet, probably less.

30 Q Where, with reference to the next street to your right? A To Nineteenth street, that is the lower part of Nineteenth street; the lower crossing.

Q And when that automobile was at the lower part of Nineteenth street, how far were you on those car tracks from the curb? A About the center of the car tracks, the eastbound track.

Q Have you paced the distance from the car tracks to the curb? A About twelve paces.

Q Have you paced the distance, yes or no? A Yes.

40 Q Now, have you paced the entire width of Central avenue? A Yes, sir.

John A. Shraft, direct.

Q How many paces is that entire width? A Twenty-one.

Q And how long is your pace, about? A About three feet.

Q And how many paces was it from the near rail of the car track to the curb on each side? A From the near rail to the curb? 10

Q Yes. A About twelve paces—I paced it, it was twenty-one paces—about eight.

Q About eight paces from the rail to the curb? A From the eastbound track to the curb.

Q You mean from where you stood when this automobile came along a block away? A Yes, sir.

Q What did you do then when you saw this automobile? A We started to cross.

Q And in what manner did you cross from the car track to the curb, then, who was on each side? A Mrs. Baunach was on my right-hand side. 20

Q At that time were you holding her arm or was she holding your arm? A No, sir.

Q Were you far apart or close together? A No, she was walking right alongside of me, we were right alongside of one another.

Q Then, did you continue to watch that automobile as it came along that street? A No, sir; because we had ample time to get across.

Q When did you next see the automobile, after you saw it a block away? A About forty feet away from us. 30

Q And when it was about forty feet away from you where were you? A About six feet from the curb.

Q And how close to the curb were you when you were struck? A About four or five feet.

Q Now, where was this other car when you were in the middle of the pavement, between the car track and the curb,—when you were half way from the curb to the car tracks? A About the mid-center of the street, that is, between— 40

John A. Shraft, direct.

Q I will repeat the question. Where was this automobile, if you know, at the time you and Mrs. Baunach had gotten half way from the car track to the curb? A About six feet from the curb.

Q Don't you understand my question. Not where you were, where was the automobile? A The distance?

10 Q Just let me repeat the question and listen. When you were half way from the car track, where you stood, to the curb, in the middle between those two, on your way to the curb, how far away, if you know, was the automobile then? A About forty feet away.

Q Is that the time that you say it was about forty feet away? A Yes.

Q You were about half way from the curb? A Yes.

Q Then, did you continue—what part of the street was this automobile running in, where was it with relation to the car tracks and the curb? A About mid-way in the street.

Q Now, was there any other vehicle, trolley car or automobile in front of it going in the same direction as this was going, and between you and it when it was forty feet away? A No, sir.

Q Was there anything in the way of that automobile on the car tracks? A No, sir.

Q Do you know how far away either automobiles were at that time? A I do not.

30 Q And was there anything in the way of it turning to the left to go along the car tracks? A There was nothing in his way.

Q Did he have his lights on? A Yes.

Q Were they bright or not? A Bright.

Q Did you see his automobile at the time,—I mean at the time of the accident—simultaneously with his striking you, just how did he hit you, and what did you see at that time? A The last I seen of the automobile was about forty feet away from me, and he was coming fast, and we were struck and that is all I can remember.

40

John A. Shraft, direct.

Q Well, before you were struck, just an instant before you were struck, did you know you were being struck? A Well, it looked as though his lights were shining to the right, to the curb, and it also looked as though he was turning in towards the curb.

Q His lights appeared that way? A Yes.

Q Do you mean the glare from his lights? A The glare from his lights. 10

Q Then, he struck you and Mrs. Baunach together? A Yes, sir.

Q Do you know what happened after that? A No, sir.

Q Do you know whether you went under the machine or not? A I was in under the machine, because I was pulled out of it.

Q Now, when you were struck, where were you with relation to the cross-walk, from the northwest and the southwest corner? A About ten paces away. 20

Q When you were struck, or when you were picked up? A When we were picked up.

Q I am not asking you where you were then, what we are talking about now is where were you with relation to the cross-walk when you were struck? A About five feet from the cross-walk.

Q From what cross-walk? A From the southwest corner.

Q Do you mean you were five feet from the corner, or five feet from the cross-walk? A We were on the cross-walk, on the crossing, about five feet from the curb. 30

Q I did not ask you how far you were from the curb, I asked you where were you with relation to the cross-walk. You said you were on the cross-walk. A When we were struck?

Q Yes. A No, sir;—we were on the cross-walk, yes, sir.

Q Now, where were you when you were picked up? A About ten paces from the cross-walk. 40

John A. Shraft, direct.

Q In what direction? A East.

Q That is, down Central avenue? A Yes.

Q Is that the direction in which this car was going?

A Yes.

Q Where were you when you became conscious after being struck? A Why, after I was pulled out of the car, pulled out from underneath the car—

10 Q Did you regain consciousness before they got the car off of you? A No, sir.

Q Do you remember being pulled out? A Yes, sir.

Q Do you remember being under it before you were pulled out? A No, sir.

Q You remember the fact of being pulled out? A Yes.

Q Now, at the time you were injured, what were your feelings at that time. I don't mean to describe what physical injuries you sustained, but what was your mental condition? A Dazed.

20 Q Was your head injured? A Yes, sir.

Q Were you injured elsewhere about the body? A Yes.

Q Where were you taken, to the hospital after that? A Yes.

Q Now, did you see Mrs. Baunach after the accident had occurred? A I couldn't see her because I was under the machine, I didn't know where she was.

30 Q You didn't know where she laid, or what had become of her? A No, sir.

Q Then, what happened—after the thing was over you say you went to the hospital? A Yes.

Q Who took you there? A Mr. Liebman.

Q The defendant in this case? A Yes.

Q And was Mrs. Baunach also taken to the hospital? A Yes.

Q In his car? A Yes, sir.

Q Now, on the way to the hospital did you have a conversation with Mr. Liebman or did he say anything with

John A. Shraft, direct.

reference as to how this accident happened? A Yes, sir.

Q What did he say? A Mr. Liebman said that he was sorry that it happened; that he was in a hurry, he was going to see a sick friend, and he was sorry that the accident happened. He also said that everything would be all right, and we would hear from him in a few days. He also helped me put on my coat in the hospital. 10

Q What, if anything, else did he say? Did he say anything about the rate of speed he was going? A Yes, he said he was going from eighteen to twenty miles.

Q Was there anything else he said? A He said he owned the machine, that he was insured, and he also owns his own home up in Orange, with a little butcher shop attached to it.

Mr. Schneider. If your Honor please, I will ask for a mistrial on the ground that the insurance company is again being injected into the case by this witness, for the reason stated, that it might tend to prejudice the jury. 20

The Court. No, I will overrule your objection.

Mr. Schneider. May I have an exception, your Honor?

Exception noted as ground of appeal.

Q Where were you treated at the City Hospital? A Yes. 30

Q Was Mrs. Baunach treated there? A Yes.

Q And after treatment at the hospital, who took you away from the hospital? A Mr. Liebman.

Q In his car? A Yes.

Q And where was Mrs. Baunach driven to, then, if you know? A The Fifth Precinct.

Q And from the Fifth Precinct where did you go? A Up to the East Orange Precinct to make a report.

Q And Mr. Liebman was there with you? A Yes. 40

John A. Shraft, cross.

Q And from the East Orange Precinct where did you go? A To the Seventh Precinct which I was assigned to.

Q Did you go on duty that night? A No, sir.

Q Were you scheduled to go on duty that night? A Yes.

Q Do you know where Mrs. Baunach was driven to?
10 A Yes, she stayed right in the car as far as her mother's house.

Q Whose mother? A Mrs. Baunach's.

Q Did you know that her mother lived there? A Yes.

Q You have known the family for a long time, Mr. Shraft? A Yes.

Cross examination by Mr. Schneider.

Q Mr. Shraft, Mr. Liebman took you to the hospital first and waited until your wounds were dressed? A
20 Yes.

Q And he helped you on with your coat? A Yes.

Q And did everything he could for you and Mrs. Baunach? A Yes.

Q And then he voluntarily went to report it to the Precinct? A I asked him that myself. I said, I have to go to work and I want to report.

Q I mean he voluntarily went to the Fifth Precinct to report the accident? A Yes.

30 Q And down there they told him it was in East Orange, and he would have to go to the East Orange Precinct, and he went there voluntarily? A Yes.

Q And then he took you to your place of business in the Seventh Precinct? A Yes.

Q Had you been on duty there during the day? A No, sir.

Q What was your regular time for duty? A 8:45.

Q 8:45 in the evening? A Yes.

Q Where had you been directly before the accident? A
40 I was in Nutley.

John A. Shraft, cross.

Q Did you come back on the Central avenue line? A I came back by Broad and came up on the Orange.

Q You came up on the Central avenue line? A On the Orange line.

Q Then, you walked across to Central avenue and so on? A Yes.

Q You could have taken a South Orange avenue line to get home more quickly? A Yes. 10

Q But you took the Orange line and got off at Warren street and Eighteenth street? A I got off at Fourteenth street in Orange, the Roseville car barn.

Q And you walked across to where? A I walked up to Eighteenth street and over Eighteenth street.

Q And you were on your way home? A Yes.

Q And just where was it that you met Mrs. Baunach? A Eighteenth street and Central avenue.

Q At the very corner there? A Yes, on the north-west corner. 20

Q And then you were walking home, and she started to walk with you? A We were walking over towards South Orange avenue.

Q Where did she live at that time? A Eighteenth avenue.

Q Eighteenth avenue and what? A Nineteenth street.

Q Eighteenth avenue and Nineteenth street? A Yes.

Q That is between South Orange avenue and Springfield, isn't it? A Yes. 30

Q And you, I believe, lived on what street? A I lived at Stuyvesant avenue, 25.

Q Is that beyond Springfield avenue? A No, sir; it starts at South Orange avenue and I live at 25.

Q And where is it with relation to Eighteenth street, west or east of it? A West of Eighteenth street.

Q How far west? A About a mile, I guess.

Q And you were going to walk all the way up there? A No, sir; I was to walk to South Orange avenue and get a car and then go up. 40

John A. Shraft, cross.

Q So, coming home from Nutley you got off at Fourteenth street and Warren— A Fourteenth and Orange.

Q And you were going to walk across to South Orange avenue, and at South Orange avenue you were going to take a car home? A Yes.

10 Q Where had you been in Nutley? A Up to a friend of mine, his house.

Q Do you remember his name? A Ridella.

Q Do you mind spelling it? A I don't know how to spell it, I worked with him.

Q Whereabouts does he live in Nutley? A I don't know the number, but I know the house.

Q In what street? A Washington avenue.

Q Now, what time did leave Mr. Ridella's home? A About four, half past four, something like that.

20 Q You say this accident happened at 6:15, wasn't it nearer to about quarter to six, wasn't it before six when it happened? A No, sir; about 6:15 around that.

Q You didn't make any special note of it? A No, sir.

Q What makes you think it was 6:15? A Why, in passing on Orange street I happened to notice a clock in a store window.

Q And what time was that? A That was about six o'clock.

Q On Orange street? A Yes.

30 Q Near where? A Near, right near Fourteenth street.

Q How long had you been in Mr. Ridella's home in Nutley? A He was not home, so I was up around there looking for him.

Q The house was closed, was it? A No, his wife was there.

Q And you came to his home directly from Newark? A Yes.

40 Q And when you didn't find him, did you go back to Newark? A I didn't find him and I came back. I looked around up there, but I couldn't find him.

John A. Shraft, cross.

Q This was New Year's Day? A It was the 2nd of January.

Q Was it a Sunday? A Yes.

Q It was the day after New Years? A Yes.

Q Did you and Mrs. Baunach cross that street immediately, or did you stop and talk first before you crossed? A Well, we just bid the time, and I said I was going home, and she said she was going over her way, and I said we would walk together. 10

Q You didn't assist her in anyway in crossing the street by holding her arm or otherwise? A No, sir.

Q Now, then, Central avenue is a street on which there is very much traffic, isn't there? A Well, at times there is.

Q And there is considerable traffic about that time of day, on a Sunday, isn't there?

Mr. McGeehan. I object to that question. 20

The Court. Objection sustained.

(Question withdrawn).

Q Was there much traffic on Central avenue at that particular time, about 6:15 on Sunday? A No, sir.

Q Was there any machines coming from an easterly direction at all? A No, sir.

Q Not a single one? A No, sir; I couldn't see any.

Q And no trolley cars coming from the east? A Not at that time. 30

Q No trolley cars coming from the west? A No, sir.

Q Now, when you first went off the curb at the northwest corner, on Central avenue and Eighteenth street, you say you saw two automobiles about one block to the west? A Yes.

Q Just where, with reference to that block, was the first automobile, at the westerly crossing or the easterly crossing? A The first one?

Q Yes. A At the easterly crossing. 40

John A. Shraft, cross.

Q Do you know the name of that block? A That is Nineteenth street.

Q And where was the second car with reference to that crossing? A Well, I said about forty feet behind it.

Q And these cars kept substantially the same distance all the way down the street? A Yes.

10 Q And then, when you got off that curb, you did see the third car, didn't you? A Yes.

Q And that you say was about two blocks up? A Yes.

Q Now, how were the first two cars going with regard to speed? A I can't tell you how fast they were going, but they were going at a pretty good gait.

Q You cannot tell us with reference to the mileage, can you? A They were going eighteen miles an hour, easy.

Q About eighteen miles an hour? A Yes.

20 Q And how did the third car seem to go? A It was going at a good rate of speed.

Q About the same as the other two? A Probably faster.

Q And when you say probably, what do you mean to say, was the third car going faster or slower? A It appeared to me it was going faster.

Q And when you got in the tracks there the other cars were passing by, weren't they? A Yes.

30 Q And the third car was one block away, wasn't it? A Yes.

Q So, that the third car had gone one block while the other two cars had also gone one block, hadn't they? A Yes.

Q Well, they were all three going about the same rate of speed, weren't they? A Yes, probably faster, I say, the third car.

Q I mean, according to the distance covered, as you have testified, they were going about the same rate of speed, weren't they? A Yes.

40 Q Were there lights on all of these cars? A Yes.

John A. Shraft, cross.

Q What kind of lights were they, dimmed lights, or glary lights? A Glary lights on Mr. Liebman's car.

Q How about the other two cars? A I couldn't say whether they were bright or not.

Q You don't know whether they were glary lights or dim? A It was stained glass.

Q You know something about automobiles? A Very little. 10

Q Have you ever driven an automobile? A No, sir.

Q You have ridden in them, haven't you? A Yes.

Q Sat alongside of the driver? A Yes.

Q Of course, you know the difference between glary lights and dim lights? A Yes.

Q Did these first two automobiles have glary or dimmed lights? A They had the stained glass on them, they were dim.

Q You say they had dim lights, and the lights on the last car, the third car were bright, glary lights? A Yes. 20

Q Now, then, just where in that eastbound track were you standing when these two cars went by, were you northerly, on the northerly trolley rail or the southerly rail? A Nearer to the northerly rail.

Q Nearer to the rail which you had to cross first? A Yes.

Q Were you standing on it, or past it? A Well, just about passed.

Q Where did these two cars pass with reference to the distance between the last rail and the curb, the southerly curb of Central avenue? A Where were these two cars that passed? 30

Q Yes, where were they going in that street, nearer to the car tracks or nearer to the curb? A About mid-way to the street.

Q And the third car was going about mid-way of the street, wasn't it? A Yes.

Q So, they were all three cars about in line, weren't they? A Yes, sir. 40

John A. Shraft, cross.

Q And about, going about the same rate of speed? A Yes.

Q Is that right? A Yes.

Q Now, when you first took your position on the north rail to let the other two cars come by, how far away from you was the first car? A What do you mean?

10 Q How far away from you was the first car that went by you? A How far the car was away?

Q Yes. A Well, we started from the curb, then.

Q No, I don't mean that, Mr. Shraft. When you took your position in the car tracks, past the third rail, after you passed, how far away to your west was the first car that passed you? A Why, about 200 feet, that was Mr. Liebman's car, the first car.

Q How far away was the first car of the three? A They had passed.

20 Q They had passed you before you stopped? A Yes.

Q Had the second car passed you? A Yes.

Q How far past you were they? A How far past?

Q Yes. A We stood there to let them pass.

Q When you first stood there they had not passed you yet, had they? A They were passing at the time.

Q Well, when you first took your position there, when you first stood there, you understand what I mean? A Yes.

30 Q You say you were walking across Central avenue, this is Central avenue (indicating), and you came to the rail, to that third rail and you passed it and stood still. Now, as you took your position there, how far to the west, about, was the first car? A I judge they were about forty feet below, the first passed and the second was coming.

Q And how far away from you was the second when you took your stand there? A Well, we stood to let that car pass us.

Q When you took your stand there how far to the west of you was the second car? A I say about forty feet.

40 Q Forty feet to the west of you? A Yes, sir.

John A. Shraft, cross.

Q And where was the first car at that time? A Passing me.

Q How far past you? A I said about forty feet distance between the two.

Q And the first car was right past you? A Yes.

Q Where was the third car at that time? A About 200 feet away. 10

Q Where was it with reference to the intersection of Nineteenth street? A On the east side of Nineteenth street.

Q Was it past the easterly intersection of Nineteenth street? A Yes.

Q How far past? A Well, just passing the corner, that is, the east side of Nineteenth street.

Q Just passing that, and you would say it was about 200 feet away? A Yes. 20

Q And you are a pretty good judge of distance, I suppose? A No, sir.

Q You have not any reason to exercise your judgment of distance in the course of your duties as a police officer? A Just about—

Q You have had opportunities and situations where you exercised your powers of observation as to distance? A Yes.

Q And you would say that the third car at that time was about 200 feet away? A About. 30

Q And running in the middle of the roadway, right behind the other two cars? A Yes.

Q Can you give us some idea, approximately, of course, not mathematically, how long you stood there to let these two cars pass? A Just to let that second car pass.

Q And that second car to pass you had to go forty or fifty feet? A Yes.

Q And after the second car passed you, did you look again to see where the third car was? A Yes. 40

John A. Shraft, cross.

Q And you saw it coming at a good rate of speed? A It was coming at a good rate of speed, I can't say how fast.

Q You would not say it was going very fast, would you? A It was going fast.

Q You would not say it was going very fast, would
10 you? A I can't say he was going fifty miles an hour.

Q You would not say it was going very fast, would you? A He was going fast.

Q Would you call it very fast? A Well, he was going twenty miles an hour.

Q You would not say he was going twenty miles an hour, would you? A No, I am a poor judge of speed.

Q And how far from you was he at that time, after the second car passed you? A I say about 200 feet.

Q Well, you told us he was 200 feet away from you and
20 the second car was forty feet away from you, now, which was going faster, the second car or the third car? A They all looked as though they were going at the same rate of speed.

Q You did say that when you first saw them at the curb the first car was going faster than the other two, you did say that, was that right? A Going pretty fast, it was going fast.

Q Well, was the third car, Mr. Liebman's car, going
30 faster than the second or first, when you stood on the tracks there? A No; it looked as though they were going the same rate of speed.

Q When you got off the curb, how were they going relatively, was the third car going faster than the second or first? A It looked as though it was going pretty fast.

Q Was it going faster than the other two as you looked at it from the curb? A I think so.

Q But, when you were on the tracks they were going at about the same rate of speed? A I said, I was a poor
40 judge of speed.

John A. Shraft, cross.

Q No, I asked you if, when you were on the tracks were the three cars going about the same speed? A The first two seemed to be going about the same.

Q How about the third? A The third seemed to be going faster.

Q Faster than the other two? A Yes.

Q Much faster? A He was going faster, you could see that. 10

Q Now, I asked you that, you understand my question don't you? A I don't know how fast the first two were going.

Q Pardon me a minute, Mr. Shraft. If you don't know, please say so. I don't want to confuse you. Was the third car going much faster than the first two? A Yes.

Q About how much faster? A It was going faster because you could see him gain on them. 20

Q Was he gaining much? A Well, I don't know how much he gained. You could see he was gaining on them, and he was going faster, yes.

Q Was he gaining on them all the way from the time you started from the curb? A Yes.

Q You were about a block away from him when you started from the curb? A Yes.

Q Now, how far away was he from the second car when you reached the track, if he was going as you say? A I was watching his car coming down. I don't know how far away he was from the other two cars. 30

Q As you were crossing over the street, you say, he was gaining on the other two cars. Now, then, when you first saw him before you started to cross that intersection, he was a block behind the other two cars, you said? A Yes.

Q How much did he gain on them before you crossed that intersection? A He gained on them considerably. I don't know how much he gained. 40

John A. Shraft, cross.

Q Well, this second car was past you and going about forty or fifty feet, how far did you say? A The second car?

Q Well, the second car was passing you and you said the second car was about forty feet, going past you. Now, when you stood in the track there how far was the third car, Mr. Liebman's car— A When I started to cross?

Q Let me repeat that, you say you stood there in that track? A Yes.

Q And the first car was just passing you as you stood there? A Yes.

Q And the second car was about forty feet away? A Yes.

Q And as you stood there that second car went that distance for forty feet or so, to pass you? A Yes.

Q And while that second car was going that forty or fifty feet past you, about how far did the other car go, the third car? A Well, about the same distance, about fifty feet, but it was gaining, I could see that.

Q He gained ten feet? A Yes.

Q That would not be exact, would it, that would be approximate? A About.

Q But, he was gaining perceptibly, that is, you could tell he was gaining? A Yes.

Q And he kept on gaining all the time? A Yes.

Q So that Mr. Liebman's car was about 150 feet away from you when the second car was passing you? A Yes.

Q And while the second car was passing you Mr. Liebman's car was gaining and approaching you, wasn't it? A Yes.

Q And you didn't start to cross immediately after the second car passed you, did you? A Yes.

Q Did you start to cross quickly or slowly? A At an average walk.

Q Did you make some remarks to Mrs. Baunach before you started to cross? A No, we had lots of time to get across.

John A. Shraft, cross.

Q You told her that? A No, I started to walk and she followed.

Q She started behind you or alongside of you? A Well, right alongside.

Q You didn't have hold of her arm? A No, sir.

Q It was a clear day? A Yes.

Q And she was walking right alongside of you? A 10
Yes.

Q Now, when you got to the fourth rail, you know the one I mean? A Yes.

Q Did you make another observation, did you look to see that car again? A Yes.

Q And where was it then? A Then, it was at least 130 feet away or more.

Q About 130 feet away? A Yes.

Q And it was in the middle of the street, was it? A 20
Yes.

Q And did you stop when you made that observation? A Yes, sir; directly across—

Q You walked when you made the observation? A Yes.

Q And then you continued to walk straight across? A Yes.

Q How many feet is there from this last rail to the curb? A About twenty or twenty-two feet.

Q And just how far were you from the curb when you were struck? A About four or five feet. 30

Q From the curb? A Yes.

Q There weren't any trolley cars in the vicinity at the time? A No, sir.

Q And there weren't any other vehicles? A No, sir.

Q And you saw Mr. Liebman's car drive into the curb? A No, sir; I did not.

Q What then did you say with reference to that? A I was still about four or five feet from the curb—

Q You said something about Mr. Liebman's car going to the curb, didn't you? A The glare of his lights. 40

John A. Shraft, cross.

Q What did you say about that? A While we were walking directly across it looked as though the light was going into the curb.

Q Just where were you in that street when you saw the glare of the lights going into the curb? A About eight feet away.

10 Q Eight feet away from the curb? A Yes.

Q And that was the time that he was forty feet away from you? A Yes.

Q And you were walking slowly across the street? A A moderate gait.

Q Alongside of each other? A Yes.

Q When you saw him forty feet away from you and the lights shining into the curb, did you say anything or make any exclamation? A I said, "Look," to Mrs. Baunach, and that is all I can remember, and then we were
20 hit. It was on top of us then.

Q When you said that? A Yes.

Q Now, while crossing that street did you walk in the same gait or change your gait any? A About the same.

Q Were you talking to each other when you were crossing the street? A No, sir; just going across.

Q Were you talking to each other? A No, sir.

Q Not a word was said? A No, sir.

Q From the time you left the north curb on Central
30 avenue, to the time you got to the south curb, did you talk to each other at all? A No, only to cross the street.

Q Were you talking to each other? A No, sir.

Q Not a word said? A No, sir.

Q Just walking slowly across the street? A No, sir.

Q You are suing Mr. Liebman for your injuries, aren't you? A Yes.

Q Your case is pending in this court? A Yes.

Q Didn't you make a remark in the East Orange Police Court, in the presence of Mr. Liebman, that it was
40 not Mr. Liebman's fault? A No, sir.

John A. Shraft, re-direct—re-cross.

Q You didn't say anything of that kind at all? A No, sir.

Q Weren't you very friendly with him on that journey to the hospital and to the precinct and so on? A Yes, sir.

Q You parted on good terms with him? A Yes.

Q You were very friendly throughout that whole journey when he took you to the hospital and to the precinct? A Yes. 10

Q And you didn't accuse him of speed or negligence or anything, did you? A No, sir.

Q And you say he told you it was his fault? A Yes.

Q You say also that he told you he was going at a fast rate of speed, is that right? A Yes.

Q Without your asking him? A Yes.

Re-direct examination by Mr. McGeehan. 20

Q When you parted very friendly with him what was the last thing he said to you about what he would do in connection with this matter? A Why, he said everything would be all right, and we would hear from him very shortly; that he would fix up things with us, that's what he said.

Q And is that why you parted friendly? A Yes.

Q Did you hear from him? A No, sir. 30

Re-cross examination by Mr. Schneider.

Q Mr. Shraft, you are not a policeman, now, are you? A No, sir.

Q When did you cease being a policeman? A June 1st.

Q This year? A Yes.

Re-direct examination by Mr. McGeehan.

Q What is your business now? A Truckman, now. 40

Emil Mautner, direct.

Q Whom are you employed by? A William H. Weber Co.

Q Where is their place of business? A Irvington, New Jersey.

Q What business are they in? A Trucking.

10 *Mr. McGeehan.* I would like to call the doctor out of turn.

The Court. You may.

EMIL MAUTNER, sworn on behalf of the plaintiff.

Direct examination by Mr. McGeehan.

Q Dr. Mautner, you are a practising physician of this State? A Yes.

Q How long have you been practising here? A Eighteen years.

20 Q You are engaged in a general practice? A Yes—

Mr. Schneider. I will admit the doctor's qualifications.

Q Are you connected with any institutions, doctor? A With the Newark Private Hospital.

Q Did you treat Mrs. Baunach on January 2nd or January 3rd for injuries sustained by her on January 2nd? A Yes.

30 Q When were you called, doctor? A The day after the injury.

Q Do you know whether you were communicated with that evening or that morning that you came? A I don't remember any more than to say that the day after the injuries I was called.

Q You don't know whether you were requested the night before to come the next day or not? A No, sir.

Q Where did you treat Mrs. Baunach? A Up at her house.

40

Emil Mautner, direct.

Q Where was her house? A At 624 Eighteenth avenue.

Q Do you know near what street that is? A That is near Twentieth street, between Twentieth and Nineteenth street.

Q Now, doctor, when you arrived there you made an examination of her, did you? A Yes. 10

Q And did you make an examination, a general examination of her entire body? A Yes.

Q What were the injuries that you found at that time? A The injuries were several bruises and contusions.

Q Where were they? A That I can't say any more, exactly, but I think her shoulder and her head and arms, and probably her hips, and there was some on the body. I don't remember.

Q What else? A Both bones of the forearm were broken. 20

Q Was there any injury to her leg where the skin was off? A There were several, but I can't recall just which they were. There were several contusions and bruises on the body.

Q What was the serious injury, doctor? A The serious injury was the fracture of both bones of the forearm, the right forearm.

Q What kind of a fracture was there, doctor, of these bones? A Both bones were broken about the middle of the bone. 30

Q Were they completely fractured? A Yes, sir.

Q A complete fracture? A A complete fracture.

Q Did either of these bones protrude through the arm? A No.

Q But at the time that you made the examination, could you tell whether it was a comminuted fracture or not? A Well, a comminuted fracture is a fracture that is broken in the long direction of the bone, but these were just simply broken through. 40

Emil Mautner, direct.

Q Broken straight through? A Yes.

Q Now, doctor, what did you do in the treatment of that arm at the time, on your first visit? A I took an X-ray of it first, and the next day we set the arm and took another X-ray.

10 Q You took an X-ray first, doctor, did you? A Yes.

Q Have you with you the X-ray that you took first? A I think there is one of them.

Q Now, doctor, what have you there? A The first X-ray taken.

Q Doctor, after taking that X-ray, did you examine it to see what it showed? A Yes, sir.

20 Q And taking that into consideration with the physical examination of Mrs. Baunach, what did you find to be the condition of the bones of that arm? A Well, one of the bones, both bones, were overriding; both bones, in fact were on top of each other; that is, instead of being in direct communication they were on top of each other.

Q And does that show in the X-ray, doctor? A Yes, sir.

Q Did you take that X-ray yourself? A Yes.

Mr. McGeehan. I offer that X-ray in evidence.
(Exhibit P. 1.)

30 Q Now, doctor, what did you then do to treat the condition that you found in her arm? A Well, we set the bone, under ether.

Q You say ether was administered to her? A Yes.

Q At her home? A At her home.

Q Who set the arm, when you say we set it? A I did. Of course, we had another physician to administer the ether.

40 Q Who was the other physician who administered the ether? A Doctor Commando.

Emil Mautner, direct.

Q And who did the actual work of setting the arm?

A I did.

Q Now, doctor, in setting it, did you put it in splints?

A Yes.

Q And how long did you have her arm in splints? A Six weeks.

Q Is that the usual time to allow? A That is the usual time. 10

Q During the period that the arm was in splints, did you take any X-ray during that time? A No—yes, I took a picture after the arm was set, and one of the bones was in good position, but the other bone, the ulna was still over-riding.

Q And did they after set? A Yes.

Q Have you the X-ray picture there? A I don't see it here, but I took it and I have it home.

Q You haven't got that one here? A Yes. 20

Q Did you do anything, doctor, to bring that arm in apposition while it was in the splints? A No; I thought the arm would be a good useful arm, even with the over-riding, provided she would throw out some callus, that she would get a union. It is very rarely that you can get the exact position there, in those bones of the forearm. And I thought, if she got this union, that would give her a good useful arm, which very often occurs in the majority of cases. 30

Q In the knitting of bones that are broken, just describe how the callus is thrown out, and causes them to unite, how nature heals a broken bone of that kind? A There is a substance thrown out from the end of both broken bones, called callus, that is, it is a soft pliable mass, which has probably the consistency of putty, which afterwards becomes hardened by absorption, and then becomes as hard as a bone; it unites and gives a good result.

Q Now, in this case was that callus thrown out; did the bones knit? A In one of the bones it did, and in 10

Emil Mautner, direct.

the other there was no callus thrown out and the bones did not unite. We gave her several chances to do so, and then finally decided to operate on this to bring the two bones in apposition.

Q Did you then remove the splints at the end of six weeks? A Yes.

10 Q So, for the six weeks she was unable to do anything, she was under your treatment all the time? A She was very nervous for three weeks, but after the three weeks she was up and about.

Q Was she able to use that arm during the six weeks? A No, sir.

Q You say she was very, very nervous? A Yes.

Q Did you treat that condition? A Yes, sir.

Q Did you ever treat her prior to the accident? A Well, she had, some time ago, several minor ailments, sore throat.

20 Q Did she ever exhibit a nervous condition prior to the accident? A No; not to the extent as after the injury.

Q Now, doctor, when these splints were removed, what did you do in the way of treating the arm up to that period, up to the time of the second operation? A I put another splint on, thinking there was a possibility of its uniting a little later, giving it all the possible chance.

30 Q How long did that second splint remain on? A I think until around May; I just don't recall the exact date, or month, but it was sometime, four or five months later.

Q Four or five months later it was taken off? A The second splints; yes.

Q During that time was she able to use her arm? A It was taken off once a week and looked at.

Q During that period was she able to use the arm with splints on? A What I mean is, this arm was looked at every week, it was looked at and re-bandaged about once
40 a week.

Emil Mautner, direct.

Q Would that broken arm cause her pain? A It would cause her some discomfort and pain, yes.

Q And after the arm was broken, while it was in splints, was that a painful condition to be in? A Not all the time. Of course, it is very uncomfortable, and somewhat painful, but not after awhile.

Q Now, doctor, you did a second operation, did you? 10
A Yes.

Q When was that performed? A I don't know the exact date; it was during the summer months, I believe, the early summer months.

Q Doctor, do you know whether it was in March that this operation occurred at the Newark Private Hospital?
A About then.

Q Now, doctor, what operation was performed and why was it necessary to perform that operation the second time? A I thought that the reason the bones would not 20
unite was because they were still over-riding. Therefore, we freshened up the end of the bones, took some of the ends off and sewed them together with a kangaroo tendon.

Q You sewed the ends of the bones so that they would not over-ride, and you put this kangaroo tendon in? A Yes; brought them together, in other words.

Q How long was she in the hospital for that operation? A I believe a week or five days. 30

Q And during that time, doctor, was she under ether at any time the operation was performed? A Yes.

Q And did her arm have to be cut open to perform that? A Yes, sir.

Q How large an incision had to be made to do that?
A About a three-inch incision.

Q And has she a scar remaining from that operation, now? A Yes.

Q Just prior to the performance of that operation, what was the outward appearance of that arm; was it 40

Emil Mautner, direct.

deformed or mass shaped? A It showed a little deformity.

Q What kind of deformity? A A little hump.

Q Did it show a curve? A Yes.

Q Was she able to use the hand just prior to the time you performed that operation? A No, sir.

10 Q What was the result of that operation performed at the Newark Private Hospital? A It was not good; unsatisfactory.

Q And since March, 1921, up to the present time, what has been her condition, the condition of her arm? A I sent her to New York to have a physician give her some violet ray treatments, some electrical treatments.

Q That is an electrical treatment? A Yes, sir; sometimes it works and unites these bones to bring on the callus. I then sent her to Dr. Haussling for advice, and he thought it ought to be opened and another operation performed.

Q Is that your opinion also, doctor? A Yes.

Q And Doctor Haussling concurs in that opinion? A Yes, sir.

Q And was there another doctor who also concurred in that opinion? A No.

Q Now, doctor, what is it in the present condition of the arm that makes you think such an operation would be necessary? A Why, the arm is not very useful.

Q Well, describe, doctor, the condition of it, will you? A She cannot invert her arm.

Q She cannot put her arm upwards, can she? A No; and she cannot do her housework with it.

Q Can she bring her hand up to her shoulder? A Yes; she can do that.

Q Are you sure of that? A There is no reason why she should not.

Q Have you manipulated her arm, doctor? A Yes; that is, her elbow.

40

Emil Mautner, direct.

Q Can she turn her wrist so that she can bring her hand to her shoulder with the forearm? A Her wrist, she can give it a turn, but she cannot turn her arm.

Q Is it possible for anyone, doctor, to bring their hand to their shoulder without turning the wrist or forearm? A Again, please.

Q Is it possible for a human being to bring their hand to their shoulder without turning their wrist? A No. 10

Q So, that, if she cannot turn her wrist she cannot bring her hand to her shoulder, can she?

Mr. Schneider. I object to that; he didn't say so.

(Question withdrawn.)

Q When you say she can bring her arm to her shoulder, do you mean she has every motion to do it at her elbow? A She has not the motion at her elbow. 20

Q But, you mean she can use the wrist to turn her hand and bring it down? A The only motion she cannot perform is the inverting of her arm.

Q Now, has she a grip in her hand? A Only about fifty per cent.

Q About fifty per cent. of a normal grip? A Yes.

Q Do you know whether she is capable of eating with that hand? A I believe she ought to be. 30

Q Can she turn her hand to use eating utensils? A Well, she can pick up a fork and stick it in her mouth.

Q Well, can she turn her hand to stick it in her mouth? A She don't have to.

Q But, if she has to turn her hand to use a spoon, she cannot do that, can she?

Mr. Schneider. I object to that as leading.

The Court. I will admit it. 40

Emil Mautner, direct.

Q Can she turn her hand to hold a spoon in the normal way of holding a spoon? A Yes; there is no necessity for that.

Q For the holding of the spoon, doctor? A Well, the holding of a spoon is not turning the arm.

10 Q Well, if one holds a spoon in this manner (illustrating) the hand has to turn it? A One does not hold a spoon that way.

Q You can hold a spoon that way? A Yes.

Q But, she cannot hold it in this manner, can she (illustrating)? A No.

Q Now, doctor, what kind—does Mrs. Baunach suffer pain through the condition in which her bone is now, in your opinion? A She suffers discomfort, not having all the movements, all the motion that a normal arm has, but actual pain, I don't think there is, just now.

20 Q The bones are loose in her arm, doctor, are they? A Yes.

Q The ends are loose? A Yes.

Q Is it possible to move that bone with your fingers? A Yes.

Q And does that produce any pain, doctor? A It might.

Q Any pain in the nerves or the flesh? A It might.

30 Q And do the loose bones press upon any of the nerves or any of the flesh? A Maybe.

Q Well, if it does, it would cause pain? A If it presses on a nerve, yes.

Q Do you know if it presses on any nerves or not? A There are a lot of nerves there; you can't just say it.

Q And if Mrs. Baunach says she suffers pain, you would not doubt her word, would you? A Oh, no.

40 Q Now, doctor, just what kind of an operation is going to be necessary to help this arm? A She will very

Emil Mautner, direct.

likely have to have this opened again, the old scar opened, and the ends of the bones scraped, and either the bones brought together or a silver wire or a plate, or a plate screw put in there, or a piece of bone taken somewhere from the body and transposed with these bones.

Q Have you recommended to her that she have the latter kind of operation performed, the method of removing a piece of bone from her leg and putting it in her arm? A Yes. 10

Q Was this the kind of operation you intended to put her through? A Yes.

Q And that is acquiesced in by Dr. Haussling? A Yes, sir.

Q Will she ever regain, will her arm ever improve in condition unless such an operation is performed? A No, and then the operation is, at the very best, itself, uncertain. 20

Q Even the operation is uncertain? A Yes.

Q Is there any danger, is it one of danger? A As to life?

Q Yes. A There is a certain amount in these cases, when bones are operated on, due to embolism. Embolism is a little piece of scraping of the bone, or some other substance or tissue, which gets into the large arteries and into the brain, and sometimes produces death.

Q So, the danger of death would be rather remote? A Yes; the possibility is very small, but it happens. 30

Q After the last operation was there pus formed, and was her arm swollen? A There was a little discharge of serum in her arm, but no pus, after that operation.

Q How long did she remain in bed after her last operation? A She was about five days in the hospital.

Q And how long was she in bed after the operation? A About a week.

Q Sure of that? A About that; there was no reason for staying in bed any longer. 40

Emil Mautner, direct.

Q Did you visit her; did you treat her after that operation at all, at her home? A Yes.

Q Are you sure that she was only in bed a week after that? A Fairly sure. Of course, she was very, very nervous.

Q Did you direct Mrs. Baunach to carry her arm in a horizontal position? A In a sling; yes.

Q Do you remember that for a number of weeks you treated her every day after that operation? A I came to her house for a number of days and a number of weeks, and she was also very, very nervous; and her husband would call me at eight or nine o'clock at night and say she could not sleep. Of course, it was not due to the operation, it was simply due to the condition of the patient. Another man could probably walk about with any operation of that sort, a day or two afterwards, but she was probably shocked, and shook up, and she was high strung, excited and nervous.

Q Assuming that she was struck on January 2, by an automobile, and that her arm was broken in that accident, and that she was not in that nervous condition, from your observation, prior to the accident, what would you ascribe this nervous condition to? A The accident.

Q So that the thing that rendered her different from other people was the accident itself? A Yes, sir.

Q Now, doctor, you don't remember what injury there was to her leg, do you? A There was some bruises and contusions on the body, I believe; but it is a year ago and I cannot truthfully say just where they were.

Q Now, doctor, do you know why Mrs. Baunach did not have this operation since March, this third operation? A Well, I sent her to a physician in New York who does this; I tried everything else first before I would advise another operation. I sent her to a physician in New York to have this electrical treatment, and that was without results, and I sent her down to Dr. Haussling

Emil Mautner, cross.

to corroborate or ask for advice, and he advised, and we both agreed that would be the best thing to do for her, and then, of course, even these operations do not always give the best results, and for some reason or other they do not unite, for some reason or other.

Q Now, doctor, did you advise her as to the desirability of having such an operation during the summer months? A Yes; she is going to have it done after the holidays. 10

Q Do you know why she is going to wait until after the holidays? A I don't know why, she must have some reason of her own.

Q But you told her not to have it done until the summer? A Well, I want to try everything else first.

Cross examination by Mr. Schneider.

Q Now, doctor, the main injury was to the forearm? A Yes. 20

Q And of the two bones there, the radius and the ulna, the radius is normal now? A Yes; it is a good useful bone. It is not normal, because it has been broken.

Q The radius is the long bone? A It is the shorter of the two.

Q But, it is the larger bone of the forearm, the main bone? A They are both about the same.

Q They are both the same? A No; the ulna is a little bit longer. 30

Q But, the radius is in substantially normal condition? A As normal as it can be after a fracture. It is never the same, there is a lump there now, probably the size of a fair sized mark.

Q That is callus, isn't it? A Yes.

Q It is as normal a recovery as can be had in any fracture case? A Yes; it is good and useful.

Q Fracture, in fact, strengthens the bone? A I wouldn't say that. It doesn't do much harm, but again, not much good. 40

Emil Mautner, cross.

Q Those ends are in apposition now? A Yes.

Q And you would call that practically normal? A Yes.

Q And the trouble is now with the ulna? A Yes.

Q And all the other contusions and bruises were of a minor character? A Yes, sir.

10 Q They healed up in about how long? A About two or three weeks.

Q In two or three weeks the injuries to the leg and the contusions and bruises healed up? A Yes.

Q And there was a nervous condition there? A What do you mean?

Q She had nervousness? A Yes, and she has that today, I believe.

20 Q Would you say the nervousness was of such a character that it disappeared five or six days after the accident? A Longer than that. She is nervous today, but she was much more nervous immediately after the accident.

Q The nervousness is gradually subsiding? A Yes, sir.

Q And do you think in time it will entirely disappear and she become entirely normal? A Yes, sir.

Q And there is no actual permanency in the nervous condition? A Oh, no.

30 Q There is no neurosis there? A Neurosis is a brain condition. Taking the nervousness which she had last year, she is gradually improving and I think she will get much better.

Q You think there will be an entire recovery as far as the nervousness is concerned? A Yes.

Q Now, this embolism, is that possible in any operation at all? A In any operation.

Q And it very rarely happens that embolism occurs to a patient in an operation? A Very rarely.

Emil Mautner, cross.

Q What is the percentage? A I don't know the percentage.

Q Well, if you have the proper surgical care, with good doctors like yourself, and good hospital treatment, it will not occur? A Yes, it will occur, too.

Q About how often? A I don't know.

Q Once in a hundred thousand times? A Yes. 10

Q Or oftener than that? A I think yes, probably, maybe; once in ten thousand.

Q Once in ten thousand? A Maybe; I don't know.

Q And it is likely to occur no matter what care you give to a patient and who the surgeons are that do the operating? A No.

Q That is, if you have a doctor who has good, ordinary knowledge and does a good job, and not a botch job, there will be no danger? A Well, it might happen to the very best of men. 20

Q Now, embolism is when a piece of that marrow or fat gets loose and travels through the system? A It travels through the system and gets into the large artery and attacks either the heart or the brain.

Q And it is most always fatal? A It depends where it gets; if it gets into the lung it will not be fatal.

Q I mean, in the vast majority of cases, it is? A Well, it gives some trouble before it is discovered.

Q That is, you mean to say every time you put a person under gas or ether there is always some chance of a fatality? A Yes, sir. 30

Q It is that general chance that surgeons always take? A Yes.

Q That is what you are referring to? A Yes, sir.

Q But it did not happen in the last operation, did it? A No, sir.

Q You say you cut off the ends of the bone when you operated the last time? A A good part of the bone.

Q Did you cut them or scrape them off? A Cut them. 40

Emil Mautner, cross.

Q About how much? A Oh, about one-eighth of an inch.

Q Her elbow is all right? A Yes.

Q And her wrist is all right? A Yes.

Q Just this part of the forearm is the one involved?

A Yes, and it might be that part of the muscle is torn
10 away.

Q Your X-ray does not show it? A It cannot show it.

Q There is nothing that will absolutely show that?

A No, sir.

Q That would be only conjecture? A That would be only due to her inability to move the arm.

Q Have you been attending her lately, doctor? A Yes.

Q And has she been showing any objective evidences
20 of pain, or is it just what she tells you that leads you to believe she has pain? A Just what she tells me.

Q But there isn't anything specific there that would cause pain, that is, it would cause discomfort rather than pain? A Inability of using a limb, of course, in an active young woman would cause discomfort.

Q But there is nothing specific there to cause pain, particularly? A Not just now, no. Of course, if she would attempt to use her arm in doing washing it would give pain, if she would wash or sweep.

30 Q Can she do any kind of light work? A That I don't know.

Q From your observation and your knowledge, as a medical man in these cases, can she do any light work?

A Not when I went to the house, she had a woman there.

Q Well, could she? A Probably she could use her left hand to do something.

Q Could she use her right hand any? A Yes.

Q You say she could grip with her right hand, a fifty per cent. grip? A When she does her washing she
40 does not shake hands while washing.

Emil Mautner, cross.

Q I am not trying to be facetious, I am very serious about this, doctor. From your knowledge as a medical man, you said something about her gripping power of the right hand, and you said she has about fifty per cent. gripping power? A Yes, about that.

Q And I guess you tested that? A Yes.

Q And you found about fifty per cent. gripping power there? A Yes. 10

Q And the wrist is all right? A Yes.

Q And the elbow is all right? A Yes.

Q This operation that you are thinking of performing is one known as a bone graft? A Yes.

Q And there have been many successful cases on record lately of that, during the war, and in the treatment of soldiers after the war? A Yes.

Q In fact, Doctor Albee of New York has had very great success with it? A Some have had and some have not, they are all uncertain. 20

Q But they are using it more and more in cases of this kind? A Yes.

Q In fact, it is getting to be a generally accepted operation, isn't it, doctor? A Lately.

Q You only removed an eighth of an inch of that bone, you say, doctor? A About.

Q Of the ulna? A Yes, sir; about.

Q So your graft would be inserting a bone of about an eighth of an inch? A Oh, more than that. 30

Q How would that be, doctor; just explain that? A Taking a piece of bone from the shin, the tibia, and inserting it in the ulna, grafting between the two ends.

Q How large a piece of bone? A Oh, that would be about two inches, three inches.

Q Why would it be necessary to put in a two-inch bone where you removed only one-eighth of an inch? A Well, you have to fasten it on the two other bones, to fasten them together. 40

Emil Mautner, cross.

Q On which two other bones? A On the ulna, the two ends of the ulna.

Q Are they two inches apart? A Well, you have to fasten it on the others.

Q How far apart are these two fragments of the ulna now? A Oh, about half an inch.

10 Q Then, why would you need a two-inch bone to put in between a half-inch space? A You have to fasten it on the other two bones, on the end.

Q You mean to override it? A Yes, override the two bones and bring them together.

Q Why would you have to override it, doctor? A In order to secure the apposition.

Q Now, this muscle involvement, doctor, if there is any in that, that would improve with the baking treatments, would it not, the baking and electrical treatments? A No, it will not.

20 Q Do you know whether there is any muscle involvement there? A There very likely is.

Q What is there that you think, what objective symptoms has she which makes you think that? A Her inability to move her arm, to turn her arm there.

Q Isn't that caused by lack of union in the ulna? A No, the ulna is not used in that, it is a muscle force, a muscular force.

30 Q Would massaging of the muscle help that so she could get better motion? A No, I don't think so.

Q Don't you use treatment of that kind to improve it? A If the muscles are stiff.

Q Don't you use massaging to improve that? A Massaging will not replace a detached muscle, one of the muscles; a piece of muscle may be drawn from its bone, but massaging does not improve that, but if the muscle is muscle bound and stiff, that can be improved by massage.

40 Q Of course, you don't exactly know what the condition of the muscle is, that is simply conjecture? A Yes, I do. I think the muscle is torn off from its position.

Emil Mautner, re-direct.

Q Does the X-ray show that? A No, sir.

Q The X-ray does not show muscles? A No, sir.

Re-direct examination by Mr. McGeehan.

Q Doctor, I have not asked you the amount of your bill for the operation and the treatment of her? A It amounts to somewhere around \$700 now. 10

Q Does that include, doctor, such operation as would have to be performed in the future, this grafting operation? A No.

Q What is the usual cost, or what do you estimate to be the usual cost of an operation such as you have decided upon, under proper conditions and care in a hospital? A You mean the surgeon's fees or the hospital charges?

Q Well, what would be the surgeon's fees in connection with an operation of this kind? A About \$250. 20

Q And this bill of \$700, is that up to date, doctor? A Yes.

Q And that includes both of the previous operations? A Yes.

Q And all the treatments in the interim? A Yes.

Q Doctor, there are other X-rays that you have. Will you state what the one that you have in your hand now is, and when that was taken with relation to the operation? A That was after. 30

Q After the operation? A No, wait a minute, that was before.

Q Was this before the operation in the Newark Private Hospital? A No, after the operation.

Mr. McGeehan. I offer the X-ray plate in evidence.

(Exhibit P. 2.)

Q What other X-rays have you, doctor? A I think I have at home before the operation, I will bring that. 40

Emil Mautner, re-direct.

Q What X-ray have you there, doctor? A That was after the operation, too.

Q After the second operation? A Yes.

Q And that was taken by you also? A Yes.

Mr. McGeehan. I offer that in evidence.

(Exhibit P. 3.)

10

Q Now, doctor, you were asked by Mr. Schneider the size of the bone that will have to be removed from her leg and will have to be connected with the ends of that fractured bone, that two-inch bone would cover more than the space between the bones, it would go up over the ends of the fractured arm? A Yes.

Q And how would that be placed? A The two ends would be covered and it would be fastened with a pin, and sometimes a screw.

20 Q Silver screws? A Yes.

Q That is, you bore into this piece of bone, into the bone? A Yes.

Q And if that operation is successful, doctor, should the presence of that pin in her arm and the screws, or such things that are used to connect it, cause her pain in the future? A No, I don't think so.

Q Will the torn muscles continue to cause her pain? A No.

30 Q Is this operation likely to be successful in Mrs. Baunach's case, as it would be in the case of a person who is not of her constitution? A Well, the operation may be successful. They are about seventy-five per cent. successful, and twenty-five per cent. unsuccessful.

Q And in that percentage, that is based upon normal persons, persons whose bones would ordinarily heal after an accident of this kind? A Ordinarily heal from four to six weeks.

40 Q And Mrs. Baunach does not possess in her bone structure—

Emil Mautner, re-direct.

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

Mr. McGeehan. I will withdraw that.

Q Why is it that Mrs. Baunach's bones do not knit in the ordinary time, and why was not the callus thrown out?

A Sometimes there is a piece of tissue between the two bones that prevents it from healing, and sometimes there is no cause that we can tell and place our fingers on it and say, "This is the cause." We have so many methods of treating these things that we cannot tell.

10

Q Was callus thrown out from the end of that bone?

A On one of them, the radius, yes.

Q And was it from the other, the ulna? A No.

Q Would the fact that the other bone threw out callus render it unlikely, to any extent, that the operation that you propose would be less likely of success than in a person whose bones had thrown out callus? A No; sometimes after two or three attempts they heal up very nicely, but, of course, callus is necessary.

20

Q If this operation is performed, and is not successful, doctor, do you think that the condition of her arm will ever improve? A Well, she might try a fourth one.

Q And have some more bones removed from her leg? A Yes; sometimes there are three or four attempts made to do that.

Q And would the fourth operation of that kind be certain of success? A No operation is certain of success.

30

Q And if these operations do not change the condition of her arm will she go through life with her arm in that condition? A Yes.

Q Is she now able to do housework with her arm? A With her right arm she cannot do a thing; with her left arm she can do things, I believe; she told me she learned how to write with her left hand.

Q She cannot write with the right arm? A Not very well.

40

Emil Mautner, re-cross.

Q Doctor, Mrs. Baunach has not testified to it, but if she has pain in her arm you ascribe it to the pressure on the nerves and the muscles, do you, the nerves of the arm?

Mr. Schneider. I object to that, your Honor, as needless repetition and not proper re-direct.

10

(Question withdrawn.)

Re-cross examination by Mr. Schneider.

Q Mrs. Baunach outside of the injury to her forearm and the nervousness is the ordinary average person? A Yes.

Q She is not what you would call of the sub-normal type, she is of a normal type, outside of that? A Yes, sir.

Q And would go through this bone graft operation like an ordinary normal type? A Yes.

Q You performed one operation, didn't you? A Yes.

Q What was your charge for that operation? A About \$200.

Q A bone graft operation is a much more serious operation, isn't it? A Well, for the amount of risk that is involved, if you do not get results—

Q (Interrupting.) Have you an itemized bill with you? A No.

Q Do you know how many visits you made? A No; I know I was there three or four times a day when she was hysterical.

Q Have you got any list of your visits? A No.

Q Do you keep books? A No.

Q So you cannot give an itemized bill? A No, sir.

Q It is simply a lump sum? A Yes.

Q Have you rendered her a bill? A No, sir.

Q Hasn't she paid anything? A No, sir; but she paid the hospital bill and the other doctor.

Q When you say \$700, you mean \$200 for the operation and \$500 for the visits? A Yes, sir.

40

Emil Mautner, re-direct.

Q And how much do you get for a visit in the office?
A \$3.00.

Re-direct examination by Mr. McGeehan.

Q You say she paid the other doctors, what other doctors did she pay? A Doctor Rohn.

Q How much did she pay him? A \$20.

Q And how much did she pay to Dr. Commando? A \$20.

Q That is \$40 to these doctors? A Yes, sir.

Q Do you know what she paid, did she pay the hospital bill through you? A No; she paid it herself.

Mr. Schneider. You can put that in evidence, Mr. McGeehan; I won't object to that.

Q You say you went there three or four times a day, doctor? A Not very often, I was there about three times a day, sometimes.

Q For how long? A For about two weeks, and some days, possibly once, and the next day they would call me up two or three times and they even called me at night, ten or eleven o'clock at night, and said she could not sleep, and she was up and around in the room.

Q In the past period, of a year, since the accident, would you say how many visits you made in this case, exclusive of the time she spent in the hospital? A No, sir; that is impossible. Now, in the last few months I have not seen her as often as I did the first few months when she could not sleep at night, and had these spells, and could not eat.

Q Does this charge that you have estimated at \$700 include all the visits? A Yes, surely, and six or seven X-rays taken.

Q Is that also included in it? A Yes.

10

20

30

40

Lillian Honeychurch, direct.

LILLIAN HONEYCHURCH, sworn on behalf of the plaintiff.

Direct examination by Mr. McGeehan.

Q Where do you live now? A At 25 Seventeenth avenue.

10 Q Where are you employed now? A At the Kinney Building.

Q Did you work since January 2, 1921, at any time for Mrs. Baunach? A Yes, sir.

Q Where did you work for her? A I did her housework.

Q From what day to what day? A From the 3rd of January, for three weeks after that.

Q What did you charge for the work that you did? A \$2.50 a day.

20 Q And you continued there for three weeks? A Yes, sir.

Q Did you do all the housework during that period? A Yes.

Q Who lives in the household with Mrs. Baunach, or who are members of her family? A Two children and her husband.

Q How old are those children, do you know? A One is six, and I guess the other is nine or ten.

30 Q And in the doing of the work around the house, the housework, did Mrs. Baunach help you during that time? A No.

Q Where was she? A She was in bed part of the time, she was in bed the whole of the first week.

Q And after that what did she do? A Well, she walked around, but she was helpless.

Q Did you notice what her general condition was, how did she act? A Oh, she was nervous all the time. She would lay down, and she was nervous all the time.

40 Q She would lay down while she was nervous? A Yes.

Alice Nelson, direct.

Q And what condition was her arm in during the time that you were working for her? A It was in splints, why, you couldn't even hardly dress her or touch her, she was in such pain.

Q How would she manifest that pain? A She would cry or lay down, she really didn't know what to do, and would walk the floor.

10

Q Cried, you say? A Yes.

Q Who dressed her during that period? A I dressed her while I was there.

Q And you waited on the children also? A Yes.

Q Did you do the house cleaning? A Yes.

Q Who did the cooking? A I did.

Q And did you work at night as well as during the day? A At times I would.

Q But no one else helped you in doing the housework? A There was someone always coming in, the lady next door came in every day.

20

Q And when were you paid this \$2.50 per day? A After each week.

Q Was that price agreed upon in advance? A Yes.

Q And you were paid for three weeks? A Yes.

No cross examination.

ALICE NELSON, sworn in behalf of the plaintiff.

Direct examination by Mr. McGeehan.

30

Q Mrs. Nelson, where do you live? A 50 Whitney street, Newark.

Q And what is your business or occupation? A Housework.

Q And did you at any time work for Mrs. Baunach, in doing work in her house? A I worked for her nine or ten weeks.

Q And what time, when did you begin the work for her? A Well, I cannot exactly tell you, but the best I remember is nine or ten weeks.

40

Alice Nelson, direct.

Q Do you know how you came to get the position there? A I advertised.

Q Advertised where? A For work, in the News, for housework.

Q No, what did you advertise? A I advertised for housework in a private family for a few days a week.

10 Q And did you put that advertisement in a newspaper? A Yes.

Q What paper? A The News.

Q Had you ever known Mrs. Baunach before you went to work for her or her husband? A No, sir.

Q Do you know about what month you started to work for her? A The first I remember, it must have been around in February.

Q And how much did you charge for your work there? A \$3 a day.

20 Q And how many days a week? A Three days a week.

Q So, that you received \$9 each week that you worked there for her? A Yes.

Q And that continued, you say, for how many weeks? A Nine or ten weeks.

Q Now, while you were working there, did you see Mrs. Baunach? A Yes.

30 Q What was she doing during the time you were there? A Well, she was mostly in bed, and up and around, and crying with pain.

Q And was her arm in splints at that time, or not? A Yes, sir.

Q Was it in splints all of the time? A Well, not all, the last few weeks I worked for her it came out of splints, but still she couldn't use it.

Q Did she try to help with any of the housework? A Yes, but she couldn't.

Q Who dressed the children? A Well, I dressed them part of the time.

40 Q Did she try to dress them? A Yes.

Alice Nelson, cross—re-direct.

Q Was she able to? A No.

Q Who put up her hair? A I did.

Q Did anyone else assist in the work? A Well, if there was anybody in the house, a friend, and if I was doing something else, yes.

Q Who did the housework on the days of the week that you were not there? A That I don't know, sir. 10

Q What days of the week did you come in to do the work? A I can't remember exactly; I think I came on Mondays, Friday and Thursdays, something like that.

Q And what did you do, any of the washing for the family? A Yes; I helped in all of the housework.

Q But the week's wash, the family wash, who did that, you? A Yes.

Q And it was one of the days you charged \$3 for? A Yes, sir.

Cross examination by Mr. Schneider. 20

Q Do you know what month you were there, Mrs. Nelson? A I think to the best of my memory, it must have been in February.

Q And you were there in February or March or thereabouts? A Yes; I was there nine or ten weeks anyway.

Q Continuously? A For three days a week, yes.

Q You were there nine or ten weeks straight? A Yes.

Re-direct examination by Mr. McGeehan. 30

Q Why did you give up your position there, Mrs. Nelson? A Her mother came in one afternoon and I think the mother must have taken my place, and I was asked not to come after that.

Q Did you hear the conversation between Mrs. Baunach and her mother about the housework? Do you know what arrangement they made? A No, sir.

Q Had the mother been helping there previously to that time when she came? A No, sir; not that I know of. 40

Q She had not been living there? A No, sir.

Julia Baunach, direct.

JULIA BAUNACH, the plaintiff, sworn in her own behalf.

Direct examination by Mr. McGeehan.

Q Mrs. Baunach, where do you live now? A 625 Eighteenth avenue.

10 Q Is that where you lived in January of this year?
A Yes.

Q The same place? A Yes.

Q And who composes your family, how many children in your family? A My husband, and I have a girl nine and a baby five.

Q And where is that number on Eighteenth avenue, between what streets? A Between Nineteenth and Twentieth streets.

20 Q Mrs. Baunach, on January 2nd, 1921, were you injured in an accident which took place on Central avenue in East Orange? A Yes.

Q What time of the day was that, when you arrived in the vicinity of the accident, about what time? A About six, six-fifteen.

Q In the evening? A I can't say exactly.

Q Where had you been that afternoon before going over there, to this place? A I had been at my mother's.

30 Q And where is your mother's house? A Ashland street and South Orange avenue.

Q Ashland and opposite what other street, what numbered street it is? A Twelfth street.

Q Did you leave anyone at your mother's house that afternoon? A My two children.

Q And how far is Ashland street and South Orange avenue from Central avenue? A I believe, I am not sure, about three blocks.

40 Q When you left your mother's house to go over Central avenue, where were you going on Central avenue, what was your purpose in going to Central avenue? A

Julia Baunach, direct.

My intentions were to see a little store, a shop, the corner of Thirteenth street, that carried ladies' clothing.

Q What were you interested in? A To see about a lady's corset which they displayed there in the window.

Q What day of the week was this that this accident happened? A Sunday.

Q Was that store opened or not, do you remember? 10
A I don't remember.

Q Did you make any purchase, at any rate did you buy any corset or not on that day? A No, sir; I don't remember.

Q You say that this was at Thirteenth street and Central avenue? A Yes.

Q And when you left, what direction did you go, up what street? A Straight up Central avenue.

At one o'clock the Court took a recess for hour.

20

AFTER RECESS.

JULIA BAUNACH, resumes the stand.

Direct examination by Mr. McGeehan (continued).

Q Now, Mrs. Baunach, you say you went up Central avenue, you mean from what street toward what street?

A Why, Central avenue, as far as Eighteenth street. 30

Q From what street did you walk up that way? A I don't know the block below the cemetery—the cemetery is in between, I don't know, does it cross?

Q Where did you start to walk up Central avenue?
A From Twelfth street.

Q Then, you walked up to Eighteenth street? A Yes.

Q When you got to Eighteenth street which way did you intend to go from there? A Toward my home.

Q And which direction was that? A What do you mean?

40

Julia Baunach, direct.

Q I mean, along what street would you go? A Through Eighteenth street to Eighteenth avenue.

Q In order to go that way would you go to the left or the right of Eighteenth street, from where you were walking, from Central avenue, going up, would you have to go to the left of Eighteenth street or to the right of
10 Eighteenth street to go to your home? A I get mixed up by left and right.

Q You were on the right-hand side of Central avenue, that is, going to Newark, and you wanted to go—from there to where you wanted to go would you have to cross Central avenue? A Oh, yes.

Q Did you meet anybody at the corner of Central avenue and Eighteenth street? A Yes.

Q Who? A Mr. Shraft.

Q Is that the man who testified in this case as a witness?
20 ness? A Yes, sir.

Q Did you have an appointment to meet him, or was that meeting accidental? A Why, accidental.

Q How long have you known Mr. Shraft? A I have known him fourteen years.

Q And has your husband known him during that time? A My husband has known him about eight years.

Q Does he go to your house frequently? A Occasionally.

Q And who would bring him to your house? A My husband has brought him.
30

Q When you met him at Eighteenth street on which corner did you meet Mr. Shraft? A On that corner (indicating).

Q Do you know the direction up there, do you know which is north, east, west and south? A I hardly do know it.

Q Then was it the side of Eighteenth street towards East Orange or towards Newark? A Toward East Orange.
40

Julia Baunach, direct.

Q And was it the side of Central Avenue that you had been walking on, on the side of Central avenue that you had walked up to the time that you met him? A I met him at the corner before I crossed.

Q Then, it was the upper right-hand corner of Eighteenth street and Central avenue, is that right? A Yes.

Q What did you say to Mr. Shraft as to where you were going? A I said to Mr. Shraft I was going home, I have to prepare supper, and from there I was going back to my mother's to spend the evening with my two children. 10

Q And where did Mr. Shraft say he was going? A Mr. Shraft said he was going home to prepare for work.

Q And at that time he was a policeman of the City of Newark? A At that time he was a policeman.

Q Was there anything said by either of you as to walking any distance together? A Mr. Shraft said it was his way, that he was going. 20

Q Over towards where? A He was going as far as South Orange avenue, that was my way over.

Q And was anything said about walking together? A We decided we would walk over together.

Q And along what street did you intend to walk? A Through Eighteenth street.

Q Did you at any time cross or start to cross Central avenue? A I started to cross Central avenue and before I looked up and down. 30

Q Now, one minute. I will ask you that. You did cross Central avenue, then, did you? A I wanted to cross.

Q Well, did you start to cross Central avenue? A Yes.

Q Now, when you started to cross, what if anything did you do before you went into the street? A Looked up and down.

Q And when you looked up and down, did you see anything coming from the left? A Nothing. 10

Julia Baunach, direct.

Q Did you see anything coming from the right? A Two automobiles.

Q How far do you think they were away when you saw them from the curb? A Well, judging about a block away.

10 Q And were those automobiles behind each other, one behind the other? A A little distance apart, they were together.

Q Did you then start to cross the street? A Yes, sir.

Q How far had you crossed, how far did you get across when you began to walk across before you came to any stop? A By the car track.

Q And where are the car tracks in that street? A Middle of the street.

Q And when you got to the car tracks what did you do? A I let those two cars go by.

20 Q What did you do to let them go by? A I stood.

Q Did you come to a complete stop? A Yes.

Q Now, did you then let the cars go by? A Yes.

Q In walking across the street, who was on the right and who was on the left of each other? A I was on the right.

Q Of whom? A Mr. Shraft.

Q Were you walking together or one in front of the other? A We were walking together.

30 Q By the side of each other? A The side of each other.

Q Do you remember whether or not in crossing the street you took his arm, or he took your arm? A No, sir; no such thing.

Q How close were you walking together, how close together would you say? A Well, as anyone would walk, if you were walking along the street.

Q Now, when you stood in the car tracks to let these other cars go by, what did you do then to observe other vehicles on the street before crossing toward the curb?

40 A I looked.

Julia Baunach, direct.

Q Which way did you look? A Up.

Q That was to your left or right? A To my right.

Q And in looking up to your right, what if anything did you see coming along? A An automobile.

Q And what automobile was it, what automobile did you later learn it was? A Mr. Liebman's.

Q How far away was Mr. Liebman's automobile when you saw it from the car tracks? A About a block. 10

Q What is the next street up from Eighteenth street? A Nineteenth street.

Q Do you know how far away that is from Eighteenth street, are you any judge of feet? A No, sir; I am no judge.

Q Was it a short block or a long block? A It was not short nor it was not long.

Q Well, now, it was a block away, this automobile? A It was a block away. 20

Q Then what did you do when you saw this automobile a block away? A I started to cross.

Q And did Mr. Shraft cross with you, then? A Yes.

Q What did you do about observing this automobile after you saw it up at the corner? A Halfway between the car track and the curb I looked, and then Mr. Liebman's car was about forty, fifty feet away; I can't say how much.

Q Can you show some object in this room, or indicate in any way how far it seemed to you at the time, when you were halfway between the car track and the curb? A Say, the length of the court room. 30

Q About the length of this court room from you? A Yes.

(The witness indicates about forty-eight feet.)

Q When you saw the automobile there, where was it in the street, with reference to the car tracks and the curb? A Midway.

Q About midway? A About midway. 40

Julia Baunach, direct.

Q And you were also about midway between the car tracks and the curb? A Yes.

Q Did it have its lights lit? A Yes.

Q Did it sound any horn at that time? A No, sir.

Q Did it sound any horn at any time up to the time it struck you? A No, sir.

10 Q Were you walking or standing still at the time it was that distance away, forty-eight feet away? A I was walking.

Q And did you stop or continue walking then? A I continued walking.

Q Now, how near did you get to the curb before something happened? A About four, five steps from the curb.

20 Q Can you indicate from where you sit how far you were from the curb when you were struck, just think and show some object that shows the distance you were away from the curb when it hit you, how close to the curb were you? A About from here to the bar.

Q To the end of the rail? A Right there (indicating).

(Witness indicates about five feet.)

30 Q Now, just describe how the automobile came into you, just how were you struck, what did you first feel? A Why, I saw the lights kind of come to me and that's all that I know.

Q When you say you saw the lights kind of come to you— A The flash of the lights.

Q In what direction was that flash when you saw it? A Towards the curb.

Q And then you were struck? A I was struck.

Q And what did you feel as you were struck? A I thought it would never get through hitting me, bumping me, that's all.

40 Q Did it bump you more than once? A To my idea, I thought it would never get through bumping.

Julia Baunach, direct.

Q Did you lose consciousness at any time? A Yes.

Q When did you lose consciousness? A Immediately.

Q While that bumping was going on? A Yes, sir.

Q And when did you regain consciousness, then? A In the meantime while Mr. Liebman was pushing the car back to pull out Mr. Shraft. 10

Q Did you see that when you came to? A I sat up in the street and looked to see.

Q What were you doing or saying when you sat up in the street? A Hollering "Help."

Q Was anyone near you then? A There was a car, I don't know whether it was coming up or down, but there was a car coming from some direction as I was there.

Q What kind of a car? A A trolley car.

Q Was that trolley car near the point of the accident at the time the accident occurred? A No, sir. 20

Q Do you know just where you were sitting or lying in the street? A I do not.

Q What was the condition of your mind at that time, how did you feel, how did your head feel? A I didn't know where I was, I was all weakened and dazed.

Q Who picked you up? A Somebody came from the back, there was a crowd gathered around there, and somebody picked me up as I hollered for help.

Q Where were you placed, where were you put? A 30 Someone suggested—

Q I did not ask you what someone suggested? A In Mr. Liebman's car.

Q Was Mr. Shraft also put in that car? A Yes.

Q Where were you taken from there? A City Hospital.

Q And were your injuries treated there? A Yes.

Q Was Mr. Shraft treated there also? A Yes.

Q And Mr. Liebman accompanied you to the hospital? A Yes. 40

Julia Baunach, direct.

Q And he waited for you while you were there? A Yes.

Q And he waited for you while you were there? A Yes.

Q Then, where did you go from there? A To the Fifth Precinct.

10 Q And from there where did you go? A To the Orange Precinct.

Q And from there where? A To the Seventh Precinct.

Q And from there, where did you go? A As far as my mother's.

Q And during this time Mr. Liebman was driving his car along? A Yes.

Q Now, after the accident happened—did you notice anything about Mr. Liebman's car, any part of it in particular that your attention was called to? A The
20 iron in the front of the car, he picked it up and placed it in the car.

Q He picked up the iron in front of the car? A The bumper, I believe.

Q Is that what it was, the bumper? A Yes.

Q And he put it into the car? A Yes.

Q Was that in the car while you were riding with him? A Yes.

Q Do you know what part of his car struck you? A
30 I do not.

Q Do you know what direction the force came from as it struck you, from which side, or where? A From which side of the car?

Q From which side of the car? A From the right.

Q And is that the direction in which Mr. Liebman's car was going? A Yes.

Q Who picked up this bumper and put it in his car? A Mr. Liebman.

Q Did he say anything then, when he did that? A He
40 said, if it had not come off it would have killed me.

Julia Baunach, direct.

Q Who said that? A Mr. Liebman.

Q Now, in going from the scene of the accident to these various places, where were you finally brought, where did you go? A To my mother's, to get my two children.

Q Your two children were at her house? A Yes.

Q What happened to your clothes in this accident? A My clothes were torn. 10

Q How badly torn were they? A I have my dress in a package, my coat was torn, my hat was cut, and my shoes were torn.

Q What did your mother do for you with reference to clothes before you left? A My mother loaned me her dress and coat and put a shawl on my head.

Q During the time that you were going from the accident, and around finally to your mother's home, what, if anything, happened to you, or what occurred with reference to your physical condition? A Right after the accident? 20

Q (Last question read.) A Well, I was going to my home.

Q Yes, while you were in the car, or getting in or out of it at any time, did anything happen to you or did anything occur? A Why, I fainted.

Q How many times did you faint? A Why, they helped me to get into the Fifth Precinct, and then they gave me water in the Orange Precinct.

Q Both of those places? A Yes. 30

Q Did you faint in both of those places? A I fainted outside of one and the man took me in the back room in the other.

Q How long did you remain at your mother's house after being taken there? A Long enough to get the blood washed off and get my mother's clothes changed, to go home.

Q Where was the blood on your limbs? A It ran down and my stockings were torn.

Q Were your legs cut? A Yes. 40

Julia Baunach, direct.

Q And where did you feel pain at that time, where were you hurt? A My whole right side.

Q What was the matter with your right side? A Bruised, black and blue; my head was cut and my arm.

Q How did you get from your mother's home with your children that night? A I helped myself along the
10 street with my two little girls.

Q And then, you got home? A Yes.

Q And what happened when you got home? A I got home and my husband called the doctor.

Q And what did the doctor do when he came, what did he do? A Dr. Mautner carried me to bed.

Q Did anything happen at your house after you got there to cause you to be carried to bed? A I was unable to get up.

Q Where were you when he came? A Sitting by the
20 stove in a rocker.

Q Did Dr. Mautner come that night or the next day? A The very same night, my husband called him.

Q Then, what did he do, did he set your arm, or treat your arm? A The next morning, about nine o'clock, nine or ten o'clock.

Q Were you given ether at that time? A Yes.

Q And when you came out of the ether had your arm been set? A My arm had been set.

Q Then, after that time, following the accident, when your arm was dressed how long did your arm remain in splints? A Six weeks.
30

Q During that time were the splints removed, during that six weeks period? A Off and on.

Q Off and on? A Yes.

Q During that six weeks period what part of that time was spent by you entirely in bed? A Of the first six weeks?

Q Yes, A Well, about two, three weeks.

Q Two or three weeks? A Yes.
40

Julia Baunach, direct.

Q During those two or three weeks did you get out of bed at times? A I would get out of bed at times.

Q Did you leave the house at all? A No, sir.

Q How often did the doctor call during that time?

A Each day, sometimes two or three times a day, and in the night, all hours.

Q Beg pardon? A In the night, all hours.

10

Q What was your nervous condition, what was your general condition and health after the accident and during that period? A Very nervous.

Q You would call the doctor every day two or three times, and sometimes at night? A The pain at night was so severe, I can't tell you.

Q I didn't hear that. A The pain at night was so bad that I cannot explain it.

Q Would the doctor help relieve the pain? A The doctor gave me the needle, you understand, he injected something in my arm.

20

Q Do you know what that was? A No, sir.

Q And he would have to inject in your arm to relieve the pain? A Yes, that would put me to sleep in a short while.

Q And how often did he do that? A Say during the first weeks that the arm was set.

Q That was when he was doing it? A That was the first week when the arm was set, the first time.

Q Now, Mrs. Baunach, were you able to do any housework at that time? A No, sir.

30

Q Were you at any time while the splints were on, up to the end of six weeks? A While they were on?

Q Yes. A No, sir.

Q At the end of six weeks when the splints were finally taken off, what did the doctor tell you about your arm? A The doctor told me to wait a week or so and see how the arm would be.

Q How was it, how did it feel to you, or look to you at the end when the splints were taken off? A Very bad.

40

Julia Baunach, direct.

Q In what way? A The arm was very bad and at no time could I press my hand, or to push it up even with the elbow. I could not stand the pain all the time.

Q How long did that continue? A I will say two weeks, maybe a little longer, I can't remember.

Q Do you remember what month it was that you had the operation performed at the Newark Private Hospital?
10 A I think the end of February or the beginning of March.

Q Now, before you had that operation performed, did you have some photographs taken of your arm to compare them? A Yes, sir.

Q And they were taken by what photographer? A Mr. Cohen.

Q I show you three photographs and ask you if they are photographs of your arm before the second operation? A Yes, sir.

Q And how long before that operation did you have those taken? A The photographs I had taken the day
20 before.

Q Who suggested that you have them taken, Mrs. Baunach? A Why, I did.

Q Yes, and who told you to go to Mr. Cohen? A The doctor.

Q The doctor suggested Mr. Cohen? A Yes.

Q And do those photographs show the condition of your arm, or the appearance of the arm at the time, the day
30 before the operation was performed? A Yes.

Mr. McGeehan. I offer those in evidence.

Mr. Schneider. I consent that they go in without proof by the photographer.

(Exhibits P. 4, P. 5, P. 6.)

Q Now, Mrs. Baunach, six weeks after the accident happened, was somewhere around the middle of February, wasn't it? A Yes.

Q Was it then after the splints were taken off? A
40 Yes.

Julia Baunach, direct.

Q And how long after that was it that you went to the hospital? A Why, three weeks.

Q And at the hospital, who was the doctor that treated you or operated upon? A Doctor Mautner.

Q And who was he assisted by? A Doctor Commando and Doctor Rohn.

Q Do you know which one of those doctors administered the ether? A Why, Miss Simcare administered the ether. 10

Q Is she connected with the hospital? A Yes.

Q And Dr. Mautner performed the operation himself, did he, with the assistance of Dr. Commando? A And Dr. Rohn.

Q How long were you in that hospital? A Well, I believe four, five days; I think four or five days.

Q And during that period, while you were in the hospital, did you suffer any pain? A Very much. 20

Q Then, when you left the hospital, how were you removed to your home from the hospital? A In Doctor Mautner's automobile.

Q And when you got home, were you confined to your bed? A Yes.

Q How long were you confined to your bed after you got home after the operation at the Newark Private Hospital? A I was in bed most of the whole six weeks.

Q After that? A Yes.

Q During that time what was the condition of your arm; I mean, how did it feel and how did it look? A My arm was pretty bad in those six weeks. 30

Q How did it look, just describe its appearance? A Why, when the doctor opened it it was pushed up to here (indicating). I suffered so that he did not know really what was the trouble, as he thought it was all right until he opened it.

Q Was the arm opened after the operation, after you came home from the hospital? A The doctor did open it, I couldn't stand the pain. 40

Julia Baunach, direct.

Q When it was opened, were you given ether then? A No, sir.

Q Did you see it opened? A Yes.

Q And you saw pus come out? A Yes.

Q Had the arm been swollen before that? A That I can't tell you, I don't know.

10 Q After the doctor lanced it, how did the arm feel then? A The doctor did not have to lance it, a stitch broke.

Q Did a stitch break? A Yes.

Q Is that when the pus came out? A Yes, the stitch broke, and I had pain one night and the next morning when the doctor came I begged him to open it and then he found the pus was there.

Q And in opening it did he simply spread it apart? A He pressed on it.

20 Q And did that cause you pain? A Very bad.

Q After that was done, during that six weeks that you were most of the time in bed, did you suffer pain from that time, did your arm hurt you during that time? A Yes.

Q And by that time had your leg bothered you, or your other injuries, were they hurting you, too? A Why, that was all healed by that time.

Q And how was your nervous condition at this time? 30 A Very bad.

Q Now, since that time, Mrs. Baunach, since the operation sometime in March what has been the condition of your arm with respect to your ability to use it and with respect to the pain, if any, it gives you? A I have pain a good part of the time in my arm and I cannot use it.

Q Have you a short sleeved waist on? A Yes.

Q Will you roll up the sleeve of your coat? A (Witness does as requested).

Q Now, Mrs. Baunach, just hold up your right arm?

40 A (Witness does as requested).

Julia Baunach, direct.

Q Hold up your left arm also. A (Witness does as requested).

Q Will you turn the arm to the jury where the scar is?

A (Witness does as requested).

Q Can you, with your left hand, reach the arm where that scar appears? A Why, it is in here.

Q What caused that scar which is upon your arm? 10

A Why, when the doctor sewed the bones together.

Q And what caused the lump that appears upon your arm? A This side or that side (indicating)?

Q Your right arm. A Why, I believe the bones are not together.

Q Can you move that bone as it is there, now? A Yes.

Q Can you touch it with your hand and show the movement of it? A Yes, the bones are loose.

Q Can you feel that there? A Yes.

Q Will you move your arm, can you move it? A Yes. 20

Q Does that hurt? A Yes, it does hurt where the bones are not together, this part (indicating) of the arm hurts me in here (indicating).

Q And when you feel those bones, do they hurt you when you move them? A Yes, those bones grate.

Q Now, Mrs. Baunach, can you turn your hand with the palm upwards? A No, sir.

Q Will you show how far you can turn it? A (Witness turns arm). 30

Q Can you turn your wrist so as to bring it to your shoulder? A I can't do that.

Q What happens when you move it as you did then, upwards to the shoulder? A It is very painful in here (indicating).

Q Can you bring your hand to your hair? A I cannot bring my hand this way, but I can bring it this way (indicating).

Q You cannot behind your head, you mean? A No, sir; I cannot bring it this way, but I can bring it that way (indicating). 40

Julia Baunach, direct.

Q Are you able to do up your hair, Mrs. Baunach? A My little girl helps me.

Q How old is your little girl? A Ten years.

Q She helps you each day? A Yes.

Q Do you eat with your right hand? A No, sir.

10 Q Can you eat with it? A I cannot hold anything this way to eat, but I can this way (indicating).

Q Can you bring it to your mouth? A This way (indicating).

Q With your hand turned down, you mean? A This way, not this way (indicating).

Q Are you able to write with that hand? A Well, I can write with it, but not the way I could write before.

Q Can you hold the pen with your hand turned up? A I have never tried a pen.

20 Q Well, a pencil? A A pencil, I believe I could, not saying how.

Q Before the accident happened, were you able to do your housework? A Yes, everything.

Q Did you do your own washing? A Yes.

Q Did you do the family sewing? A Yes, sir.

Q Are you able to sew now? A Hardly.

Q Have you tried to sew? A No, sir; on the sewing machine—I cannot hold anything to sew by hand; I cannot because I cannot turn my hand this way (indicating.)

30 Q Can you sew by hand? A No, sir.

Q But you can sew on the sewing machine in some way? A Anything that is flat I can run, but I cannot turn my hand to hold up anything else.

Q Did you do your own cooking before this accident happened? A Yes, sir.

Q Did you do all your housework? A Everything.

40 Q Since the accident happened what has been your ability to do your housework, just describe as quickly as possible what work you could do shortly after the accident and what you can do now, and what you could do

Julia Baunach, direct.

immediately before the accident? A After the accident I couldn't do anything.

Q For how long a period couldn't you do anything?
A I guess away until April or May.

Q Did you hire people to do that work for you during that time? A Yes, sir.

Q Whom did you hire right after you were injured? 10
A Mrs. Honeychurch.

Q Is that the lady who testified here this morning?
A Yes.

Q How long did she work for you? A About three weeks.

Q How much did you pay her a day? A \$2.50.

Q How many days a week did she work for you? A Seven.

Q And she worked all during that time? A Yes.

Q She worked twenty-one days for you? A Yes. 20

Q Why did she stop working? A Why, she took sick.

Q Did you get someone else? A Yes.

Q Whom did you get? A Mrs. Nelson.

Q And how did you get Mrs. Nelson? A By an advertisement in the paper.

Q And is that the lady who testified here? A Yes.

Q How many days a week did she work? A Three days a week. 30

Q Did she do the washing as well as the housework?
A Yes.

Q How many days? A Three days.

Q And on the days that she would not come there who did the housework and helped you with the children?
A My husband and my girl.

Q How many weeks did Mrs. Nelson continue to do anything for you? A I am sure she was there from seven to nine weeks.

Q But, it was at least seven weeks? A Yes; surely. 40

Julia Baunach, direct.

Q And it might have been nine? A Yes; it might have been nine.

Q And you paid her \$9 for each one of these weeks?
A Yes, sir.

Q Now, Mrs. Nelson, who worked for you after Mrs. Nelson? A My mother.

Q Is your father living? A No, sir.

10 Q Your mother is a widow? A Yes.

Q Did she live with you? A No, sir.

Q Was she employed before she came to work for you? A Yes.

Q Where? A Westinghouse.

Q Did she give up her position to come with you? A Yes.

Q How long did she continue to work for you? A My mother stayed with me about five or six weeks.

Q Did she say anything when she came to work for
20 you about paying her, was anything said? A I told mother as she gave up her position, I couldn't pay her each time, but I said she should help me and I told her, altogether, I would give her about \$100; I would give her that when I was well; I would try.

Q And she worked for you about how many weeks?
A About six weeks.

Q After her who worked for you? A Mr. and Mrs. Rossnagel.

Q Who is she, what relation? A My sister-in-
30 law.

Q They came to live with you then, there? A They came to stay with me.

Q Why did they come to stay with you? A Well, they thought it was a great deal of trouble to come back and forth, and I thought it would be best for my brother to stay with his wife.

Q And why did you want your sister-in-law at your house? A Well, I couldn't afford to pay anybody any
40 more.

Julia Baunach, direct.

Q And did your sister-in-law come to help you then?

A Yes.

Q And was anything said to your sister-in-law about paying her? A Yes; I told her I would try to make things good with her.

Q But no definite arrangement was made? A No.

Q And you have not paid her? A No.

10

Q About how long did she help you do you work? A She stayed with me, oh, for a long time, she stayed about five weeks.

Q And then who came after her? A Then, the lady next door would help, and my husband.

Q When would your husband help you? A Well, at night when he came home, after he would come from work.

Q What work would he do? A General house-

20

work. Q And he worked all day, did he? A Yes.

Q Has he been doing that since? A Yes.

Q How often does he help with the work? A I have a woman now.

Q How long have you had this woman that you have now? A Well, say, after my sister-in-law had gone home, I had that same woman for about two weeks, and a lady around the corner came in for two or three days a week.

Q And how long has she been doing that for you? A I can't tell exactly the date, but she is with me now.

30

Q Do you know, was it in the summer time, or when it was when she started in? A In the summer months.

Q Don't you know when it was, was it before or after the Fourth of July? A That is hard to tell, you see, there were so many and all that, and I was sick and I don't remember.

Q Is she here in court? A Yes.

Q How much money are you paying that woman? A \$3 a day.

40

Julia Baunach, direct.

Q How many days a week does she come in? A Two, sometimes three.

Q What is her name? A Mrs. Wendoling.

Q You pay her \$3 a day and she works two or three days a week? A Yes.

Q What does she do in those two or three days a week?

10 A She does my washing.

Q Every week? A Every week.

Q And on the other day or the other two days a week, what does she do? A Why, cleaning the windows and sweeping.

Q And does she do the cooking on the days she is there? A Well, some things, and then sometimes I do.

Q Can you do some work with your left hand? A I can do all the light things with this hand, but if it is sweeping or anything like that, I can't do that.

20 Q Can you set the table with your hand? A Yes, with this hand.

Q And can you cook any meals when you get around, can you get lunches with your left hand? A I cannot cut any bread or anything like that with this hand.

Q On the days that you have no one there, do you take care of your husband and your children? A My little girl helps me.

Q Your little girl? A Yes.

Q She is how old, you say? A Ten years.

30 Q And your husband works night? A My husband helps at night.

Q Now, Mrs Baunach, after your second operation did your arm get any better after that? A No, sir.

Q What did your doctor tell you would be necessary—did he advise you to take any treatments in New York? A Yes.

Q What did he advise you to take? A He advised me to go to Dr. Hart's.

40 Q Where is Dr. Hart's? A I think 89th street, I have the address home.

Julia Baunach, direct.

Q And in going to Dr. Hart's what treatment did you get for your arm? A He had a sort of electric baker.

Q And how often were you supposed to go for treatments, and did you go for treatments to him? A Three times a week.

Q What did he charge per visit? A \$5.

Q That would be \$15 a week? A Yes. 10

Q How long did you continue that treatment? A I guess about two weeks.

Q Did you during those two weeks go to him six times? A Yes.

Q How much did you pay him for a visit? A \$5.

Q Did you spend \$30 there for treatments? A I am not sure that I went five or six times exactly.

Q You are sure you went at least five times? A Yes.

Q What did that treatment consist of, what did they do with your arm there? A Why, they put an electric baker part on this side, and part on that side, and I had to sit there about half an hour. 20

Q Did that pain you? A No, sir.

Q Did you continue that treatment any longer than the two weeks? A No, sir.

Q Why not? A I did not have the \$5 to take there each time, unless I thought it was sure; they did not tell me it was a sure cure and I could not afford the \$5 any longer.

Q Did it improve you any? A No, sir. 30

Q Did you feel better after that treatment? A No, sir; he put my arm in a splint.

Q Then what did Dr. Mautner tell you it was necessary to try to improve your arm? A He asked me to go to Dr. Haussling.

Q Dr. Haussling's office is where? A High street.

Q Did you go to Dr. Haussling's office? A Yes.

Q Did he make an examination? A Yes.

Q And then what did Dr. Mautner tell you would be necessary to try to improve the condition of your arm? 40

Julia Baunach, direct.

A Dr. Mautner told me it would be necessary to take a piece of bone from my leg and put it in my arm.

Q And did he tell you they would remove that bone from your leg and put it in your arm? A Dr. Mautner didn't tell me, but Dr. Haussling did.

Q What did he tell you?

10

Objected to.

Objection sustained.

Q Was anything said as to where you would have to go to have that done or where you would have to go to do that? A Dr. Haussling suggested—

Q No, did Dr. Mautner tell you if they removed this bone and put it in your arm, I mean whether you would have to go to the hospital, or what they would do, how would they do it? A In the hospital.

20

Q And did he tell you what the operation would consist of?

Objected to.

Objection sustained.

Q When did he tell you that he would advise to have that operation performed?

Objected to.

Objection sustained.

30

(Argument.)

(Question withdrawn.)

Q Now, Mrs. Baunach, what money did you pay to doctors in addition to this \$5 for a visit for five times to this New York doctor? A \$20 to Dr. Rohn and \$20 to Dr. Commando.

Q Now, whose money paid such bills as you did pay? A My husband's.

Q Will you receive that from him? A Yes.

40 Q Did you pay anything to the hospital when your second operation was performed? A Yes.

Julia Baunach, direct.

Q How much did you pay to that hospital, do you know? A I don't remember. I have my bill, that shows.

Mr. Schneider. If you have the bill, Mr. McGeehan, I will consent that it go in without the formal proof.

Q Now, Mrs. Baunach, did you have any other expenses outside of the doctors' bills, and for objects purchased by you, such as your bandage for your arm or the leather support that you use now? A Alcohol, witch hazel— 10

Q How much did you expend for liniment and medicines? A I have my bills.

Q Did you make a memorandum at the time you purchased those things? A Yes.

Q Showing what you expended? A Yes, sir.

Mr. Schneider. If you will let me see it, Mr. McGeehan, I may let it go in to save time. 20

Q Was this memorandum made by you at the time you expended these moneys, or have you figured it out since then? A I figured it out since.

Q Can you figure it up now and state what moneys you have expended for medicines or liniment, or alcohol, or gauze and such things? A Can I figure that out?

Q Yes. A My husband paid, bought the alcohol by the quart.

Q How often did he buy alcohol? A Two or three times a week. 30

Q How much each time? A A large bottle.

Q Do you know what he paid for it? A \$1.50, I believe.

Q Did he buy it, did he go to the drug store himself? A He went to the drug store himself.

Q What expenditure did you make yourself out of your husband's money, for medicines or liniments. Did you make any directly yourself? A Well, I did have 40

Julia Baunach, direct.

prescriptions made, as the doctor ordered medicine to be taken at night to kill the pain.

Q How much did you spend on those, if you know. How much a month would you spend on those, do you know? A Well, I will say \$5.

Q About \$5 each month? A Yes.

10 Q For how many months? A For two months, say.

The Court. \$5 a week?

The Witness. \$5 a month.

Q Did you have besides the woman that you spoke of, any wash woman who would do the washing at any time in addition to your mother or sister being there? A At the same time that they were there?

Q Yes. A No, sir; they done it.

20 Q Well, has there been any payments made by you for wash women to do your washing? A Yes.

Q Outside of the help that you had two or three days a week? A Yes.

Q Now, from what period of time, from when to when, did you have to have your washing done by a separate wash woman? A From about May to this very week.

Q At the present time, is Mrs. Wendoling doing the washing? A Yes.

30 Q That is included in that two or three days a week that she spends at your home? A Yes.

Q I show you what purports to be a hospital bill.

Mr. Schneider. There is no objection to that going in.

Q Is that the bill that was paid at the Newark Private Hospital? A Yes.

Q \$122.90? A Yes.

Mr. McGeehan. I offer it in evidence.

(Exhibit P. 7.)

Julia Baunach, cross.

Q In this bill, which has been referred to, do you know whether or not that includes the charge for administering, at that operation, the anesthetic? A This bill—

Q Is that a separate bill? A Yes.

Q I show you a bill receipted by R. Simcare, nurse, is that it? A Yes.

Q Did you pay that bill of \$5? A Yes.

10

Mr. McGeehan. I offer it in evidence.

(Exhibit P. 8.)

Q Now, Mrs. Baunach, did you at any time visit Dr. Gray in connection with the examination of your bones, and blood, to determine why they would not unite? A Yes.

Q Just what did you go to Dr. Gray for? A Why, to see if I was in condition, and to know why the bones would not heal.

Q And did he make an examination of your blood? A Yes.

20

Q And what did he tell you about your condition? A He told me my condition was all right.

Q What did he charge for that examination? A He said it should be about \$27, but he done it for me for \$20.

Q I show you a receipted bill from Dr. Gray for \$20. Is that the receipt for the \$20 which you paid him? A Yes, sir.

Mr. McGeehan. I offer this in evidence.

30

(Exhibit P. 9.)

Q Have you paid Dr. Mautner's bill as yet? A No, sir.

Q Is Dr. Mautner treating you at the present time? A Yes.

Cross examination by Mr. Schneider.

Q Dr. Gray made a complete examination of you? A Yes.

40

Julia Baunach, cross.

Q A complete examination? A Yes.

Q And found you all right in that respect? A Yes.

Q That is, he found you normal, is that what he told you? A Yes, he said, that I was all right, that a piece of bone would have to be placed in, that was all.

10 Q Now, what you told us about pus coming out of your arm, didn't Dr. Mautner tell you that was serum? A Why, I think, I know it is pus.

Q Well, he said it was serum, didn't he? A Well, Dr. Mautner has had so many cases since mine, that I know it was pus.

Q You think his memory may be wrong on that? A Well, it is almost a year, and Dr. Mautner handled a good deal of cases since mine.

Q You heard him say on the witness stand that it was serum and not pus? A Yes.

20 Q And you think he may have been mistaken about that? A Yes, sir.

Q You never have been a nurse at any time, a trained nurse? A No.

Q And in your opinion that was pus? A It was pus. My husband knows, because he saw it.

Q Didn't the doctor tell you that it was serum at the time? A No, sir.

30 Q When you came to, after you were struck by the machine, weren't you sitting on the tracks? A I can't tell you that.

Q You cannot tell us? A No, I cannot tell, because I was dazed and had to be held up as it was.

Q You did say that you saw Mr. Liebman dragging Mr. Shraft from under the car? A I said I saw Mr. Liebman pushing the car back.

Q Taking Mr. Shraft from under the car? A Yes.

Q And you did see Mr. Liebman pick the bumper up and put it in his car? A Yes, sir.

40 Q And you saw other things connected with the accident? A In regard to what do you mean?

Julia Baunach, cross.

Q Right after the accident, you say you saw Mr. Shraft taken from under the car? A Well, I saw Mr. Liebman push the car and help Mr. Shraft up, and I saw him pick up the bumper.

Q Can't you tell us, if you try hard, if you were sitting on the tracks after the accident? A I cannot tell you, to be sure.

Q Can't you give us any idea of it at all? A No, sir.

Q Then, you were put in the machine by Mr. Liebman?

A I was not put in Mr. Liebman's machine by him, I know someone else did.

Q Did Mr. Liebman help put you in? A No, I told you that.

Q Did you see Mr. Shraft assisted into the machine?

A I knew Mr. Shraft, but I don't know who helped him in.

Q And then, you were taken to the City Hospital? A Yes.

Q And there you were treated, your arm was dressed?

A Yes.

Q Was anything else done there to you? A No, sir.

Q Just your arm dressed? A Just my arm.

Q Did they take your clothes off at all at the hospital? A No, sir; they did not, they helped me put my hair up.

Q They took that part of your clothes off that covered your arm? A No, sir; they just pushed my sleeve up, because my mother had to help me when I came there.

Q They just gave you first aid there? A Yes.

Q Then, Mr. Liebman took you to the First Precinct?

A Yes, sir.

Q And reported the accident? A Yes.

Q Were you there when he reported? A Yes.

Q You left the automobile and went into the precinct?

A Yes.

Q And then you went into the automobile again? A Yes, Mr. Liebman and Mr. Shraft helped me in.

Julia Baunach, cross.

Q And drove to the East Orange Police Court? A Yes, sir.

Q That is about three blocks above the D. L. & W. Railroad? A I can't tell you.

Q And did you get out of the automobile there? A Yes.

10 Q And you went into the precinct? A Yes.

Q And then you went down to the Seventh Precinct? A Yes.

Q Where is that, on Orange street? A On South Orange avenue.

Q South Orange avenue, near what? A I can't tell you, it is in the Vailsburg section.

Q Is it above Eighteenth street or below? A Above.

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

Q Then, you were taken to your mother's home? A Yes.

20 Q And your mother took care of you then? A Yes.

Q When did you go to your own home? A Just as soon as my mother had my clothes off and hers on.

Q How were you taken to your own home? A I managed to get there with my two little girls.

Q Walking or by trolley? A No, sir; I walked.

Q About how far is it? A Well, I can't say, about six blocks, I think.

Q About six blocks up? A Yes.

30 Q Did you tell us that Dr. Mautner came the same evening? A Yes.

Q He said he came the next morning? A Oh, we had to call him, I believe, three or four times and couldn't get him, but he came.

Q Now, what time had you gone to your mother's home that afternoon, before the accident? A Well, in the afternoon, early in the afternoon.

Q About what time? A About 2.30.

40 Q Was your husband home that day? A My husband was home.

Julia Baunach, cross.

Q And you went over to your mother's home with your two children? A Yes.

Q One is a little girl aged ten and how old is the other? A Five.

Q You lived on Eighteenth street, did you say? A No, sir; Eighteenth avenue.

Q Between Eighteenth and Nineteenth street? A Between Nineteenth and Twentieth street. 10

Q And your mother lived where? A Ashland street and South Orange avenue.

Q Ashland street is opposite what, is it Twelfth street? A Yes, sir.

Q Does she live north of South Orange avenue? A South.

Q That is towards Central or towards Springfield avenue? A Towards Central avenue, towards South Orange avenue. 20

Q How near Central avenue is it, is it nearer Central avenue or nearer South Orange avenue? A Nearer South Orange avenue, between South Orange and Springfield, only a couple of doors in from South Orange avenue.

Q How far from South Orange avenue is Central avenue at that point on Ashland street? A Repeat that again please.

Q How far over is Central avenue from South Orange avenue? A Judging three or four blocks. 30

Q Four blocks? A About three or four.

Q Long blocks or short blocks? A I don't know.

Q That is where the cemetery extends, isn't it? A Yes.

Q It is a very long distance isn't it? A From South Orange avenue?

Q Yes. A Well, it is a little.

Q Where is that little store that you were going to, to buy the corset? A Thirteenth street and Central avenue. 40

Julia Baunach, cross.

Q Thirteenth street, on Thirteenth street or Central avenue? A Right on the corner.

Q Which corner, north or south? A I can't tell you that.

Q Well, is it on the side of Central avenue in the direction of South Orange or the other direction? A
10 Why, going up Central avenue, it is on the corner, before you cross.

Q That is, it would be on the left-hand side of Central avenue going up? A No, sir; the right-hand side, going up.

Q Then, it is on the north side of Central avenue? A Well, the store is on—see here is Thirteenth street (indicating), here is the store (indicating), and there is the other corner to go up.

Q Supposing you are going to the store from South Orange avenue, and you came through Central avenue?
20 A Yes.

Q Would you have to cross the street to get to the store? A Across the car track?

Q Yes. A Yes.

Q Is it on the side nearest to Newark, or away from that side? A Nearest Newark.

Q Then, it is on the Northeast corner? A I don't know that way, counsellor.

Q You walked over and across to that street, didn't
30 you? A Yes.

Q You didn't make the purchase? A No, sir.

Q Is the store closed on Sunday? A No, those little stores are open, I have been buying there for sometime.

Q Then, you walked up Central avenue? A Yes.

Q Were you going home first, or going to your mother's? A I was going home to prepare my husband's supper.

Q Was he working that day? A No, sir.

Q Where was he, do you know? A He was out with
40 some friends of his.

Julia Baumach, cross.

Q The children were not going home to eat supper home? A No, the children were at mother's and I was going to take them after his supper.

Q Then, you met Mr. Shraft at the corner of Central avenue and Eighteenth street? A Yes.

Q Which corner? A Northwest corner.

Q Is that right? A On the East Orange side. 10

Q Northwest corner, is that right? A You know, I can't tell much about northeast or northwest.

Q You know it is on the northwest corner, is that it? A I know it is the upper corner on the right-hand side.

Q Northwest is right, and from which direction was he coming when you first saw him? A From Orange street direction, from my street, one of those streets over that way.

Q On which side was he walking on Central avenue? A On Eighteenth street. 20

Q When did you first see him? A When I got to the corner.

Q Did you stop on the corner at all to talk? A One minute.

Q And then you started to cross over? A I said I had to go home to make my husband's supper.

Q What time was that? A A little after six.

Q Then, as you crossed the street did you converse any or talk? A No, sir. 30

Q Not a word was said? A No, sir.

Q Not a single word all the way across? A No, sir.

Q Did he help you or assist you in any way across the street? A No, sir.

Q Not in any way? A No, sir.

Q Now, then, as you stepped off the curb, you were on the side towards Orange, weren't you, on the westerly side? A Yes.

Q And Mr. Shraft was on your left-hand side? A Yes. 40

Julia Baunach, cross.

Q And at that time you made your first observation?

A Yes.

Q Were there any trolley cars there at all on that street? A No, sir.

Q Either up or down? A No, sir.

10 Q Did you notice any automobiles or vehicles of any kind coming from the direction of Newark, from the east?

A Coming from down?

Q Yes. A No, sir.

Q None at all? A No, sir.

Q Were there any coming through Eighteenth street?

A No, sir.

Q Or crossing Central avenue at that point? A No, sir.

20 Q And you saw the first two machines that you spoke about, they passed you a little later on at that time? A Yes, sir.

Q Did you also see Mr. Liebman's car, the third car coming? A No, sir. There is a sort of hill at Nineteenth or Twentieth street.

Q That is, Nineteenth and Twentieth street, and what is the next block after that? A I can't tell you.

Q Is the next block Grove street? A I believe either Twenty-first or Grove.

Q And that is the top of the hill? A Yes.

30 Q The road is slightly graded to Grove street? A Yes, sir.

Q And then, it goes down again? A Yes.

Q So, the cars would be about three blocks away from you? A About two or three.

Q Was it a nice, clear night? A Yes.

Q Cold? A Is wasn't so cold.

Q Was it a dark night? A It was dark, the lights were on.

40 Q Just the ordinary, average night, nothing out of the ordinary at all? A It was a nice evening.

Julia Baunach, cross.

Q You didn't see the third car, Mr. Liebman's car, when you stepped off the curb? A No, sir.

Q You didn't see it at all, when you stepped off the curb, did you? A No, sir.

Q Did you notice whether Mr. Shraft looked up and down the street? A I guess he did; I know he did.

Q Who stepped off the curb first, you or Mr. Shraft? 10
A That I can't tell you.

Q Then, you walked to the track and stopped? A Yes.

Q At just which of those four rails did you stop? A
The last one.

Q Where were you standing with reference to this last rail before you got to it, or on it, or just where? A
Just a little bit over it.

Q That is over towards Springfield avenue? A Yes.

Q So, when you stopped you were over the four rails?
A Yes. 20

Q About how far over were you when you stopped?

A A step.

Q About how many feet would you say you were over?

A I can't tell you.

Q Can you indicate some object here, you did it before, to show us? A Just made a step, and stood.

Q About how far is that from where you are now? A
That would be my step.

Q One of your steps? A From here to about there
(indicating). 30

(Witness indicates one or one and one-half feet.)

Q Did you notice where Mr. Shraft stood with reference to where you stood? A Alongside of me.

Q And he was also beyond this last rail? A Yes;
alongside of me.

Q Was he in front of you or behind you? A No, sir;
just alongside of me.

Q And he did not have hold of your arm at all? A
No, sir. 40

Julia Baunach, cross.

Q About how far away from him were you at the time, if at all? A Well, as you would stand near anyone that you were walking along with.

Q Were there any remarks made at that time either by you or by him? A No, sir.

10 Q Now, as you stood there what happened with reference to the first of those automobiles? A Well, it stopped by.

Q Did it go by before you took your stand there or after? A Why, we stood and let it go by, it was right by there.

Q What I want to ask you is this, Mrs. Baunach, you say you came to that stop there, haven't you told us about a stop? A Yes.

Q Now, at the time you stopped there had that first car already gone by you? A It was just passing by.

20 Q And the front of the car had just about reached you, is that about right? A I can't tell you that, it was just passing me by.

Q Did you notice where the second car was at that time? A A little ways in back.

Q About how far back? A Now, I can't say.

Q Well, can you indicate some object in the court room, you did so before, and show us how far in back of the first car was the second car? A Well, say, here to about there (indicating).

30 Q To this (indicating)? A No; about there (indicating).

(The witness indicates about ten or twelve feet.)

Q How was this first car going, was it going fast or slow? A I believe he was going fast.

Q The first car? A The first car.

Q You don't know anything about how many miles an hour it was going? A Beg pardon?

40 Q Could you tell us how many miles an hour it was going? A I don't understand that.

Julia Baunach, cross.

Q You do not drive a car and cannot tell? A No, sir.

Q And how was the second car going? A I guess about the same.

Q About the same as the first? A Yes.

Q And you let them go by? A Yes.

Q When you stood there did you see the third car? A Yes.

10

Q Where was that? A About a block away.

Q Taking the intersection of Nineteenth street, where would you say that car was when you stopped with reference to that intersection? A Where would I say that car was?

Q Yes. A About a block away, at the beginning of Nineteenth street.

Q Was it past the intersection of Nineteenth street, past the easterly crossing or didn't it get that far? A No, sir; just about passing.

Q How did that come, fast or slow? A To tell the truth, I can't tell you, I know he was coming, riding, and I believe he was riding fast, but to be sure and tell you, I won't be sure.

20

Q You won't be sure about that? A I won't be sure, I believe he was riding pretty fast.

Q Was he going about the same as the other two cars? A That I don't know. The other two cars passed me and this one didn't.

Q And using your best judgment, if you can, would you say he was going about the same speed as the other two cars? A I would not like to say unless I am sure, and I am not sure.

30

Q You wouldn't say he was going faster than the other two cars? A I can't tell you that, I am not sure.

Q Did the first two cars have lights? A Yes.

Q Bright lights? A Well, they were lights, I believe they had stained glass.

Q How about the lights on the first car, did you notice them at all? A Yes.

40

Julia Baunach, cross.

Q What kind of lights were they? A Bright lights.

Q Did any of these cars blow a horn? A The two that passed?

Q Yes. A No, sir.

Q Of course, you saw all these cars without hearing the horn? A I saw the cars.

10 Q So, the horn wouldn't make any difference to you so far as you know, they were in the road? A No; I saw the cars.

Q How long after the second car passed you did you start to cross the street? A I started and got between the car track and the curb.

Q Did you start immediately after the second car passed you? A Yes.

Q And where was Mr. Shraft? A Alongside of me.

Q He didn't have you by the arm? A No, sir.

20 Q Was he behind you or in front of you? A Alongside of me.

Q Were you talking? A No, sir.

Q Absolutely silent? A Silent.

Q When you saw this car, when you were in the middle of the roadway, you say it was about the length of the court room from you? A Yes, sir.

Q About forty-eight feet from you? A Yes.

Q You were in the middle of the roadway at that time?

30 A Between the curb and the car track.

Q About how near to the curb? A About midway.

Q Can you indicate the distance here in the court room, can you point to any object here? A Well, Central avenue—

• Q Suppose you tell me to stop when I come to the same distance as that which you described when you were near to the curb? Is this about where you were when you were near to the curb, or closer? A When I noticed the car?

40 Q Yes. A I guess about there, but I am not sure.

Julia Baunach, cross.

Q Was the car going fast at that time? A Mr. Liebman's car?

Q Yes. A I can't tell you that, as I said before, I don't know.

Q Was it going about the same speed as it had been going before? A I don't know, I can't tell you that.

Q Did you make any remark at that time to Mr. Shraft? A No, sir. 10

Q Did Mr. Shraft make any remark to you? A No, sir.

Q He didn't make any exclamation at all, or didn't you? A No, sir.

Q Just continued to walk across the same way as before, side by side? A Yes.

Q And he did not have hold of your arm? A No, sir.

Q Where were you, with reference to the curb, when you were struck? A About four or five feet away from the curb. 20

Q Did you notice where the automobile stopped after the collision? A No, sir, I did not.

Q Now, if you search your mind, isn't it a fact that when you came to, and everything was over, you were sitting in the car track? A I can't tell you that exactly, because I don't know, I was dazed.

Q You don't know where you were sitting? A No, sir. I couldn't get up by myself, unless someone helped me. 30

Q As a matter of fact, wasn't the automobile of Mr. Liebman standing right close to the last, southerly rail of the car track? A I can't tell you that, I don't know; I was dazed.

Q You did see, however, Mr. Shraft being pulled out from under the automobile? A I hollered help.

Q And wasn't he, as a matter of fact, being pulled out right close to the track? A I can't tell you that. 40

Julia Baunach, cross.

Q You can't help us on that point at all? A I can't tell you, as I said, I did not know where I was, I was not capable of standing up or doing anything.

Q When did you see Mr. Liebman pick the bumper up from the street? A Why, he picked it up and put it in the car after we were sitting in the car.

10 Q And that was, of course, after Mr. Shraft was pulled out? A Yes, sir.

Q Where were you sitting in the car, back or front? A In the back.

Q And Mr. Liebman, of course, was driving? A Yes.

Q Did Mr. Shraft make any remarks at all on the way to the hospital, in your presence? A Did Mr. Shraft make any remarks?

Q Yes. A No, sir.

20 *Mr. McGeehan.* I object to that.

The Court. I sustain the objection.

Q Or, at the precinct or on the way to the precincts? A No, sir.

Q Did you hear him say to Mr. Liebman it was not Mr. Liebman's fault and that accidents will happen? A No, sir.

30 Q As a matter of fact, didn't Mr. Liebman say that to you on the way to the hospital, "Accidents will happen"? A No, sir.

Mr. McGeehan. I object to that.

(Question withdrawn.)

Q He didn't say anything of the kind to you? A No, sir.

Q Now, Mrs. Baunach, I don't want to pry into your private matters, but haven't you been separated since this accident, for a time, from your husband? A I have not been separated from my husband.

40

Julia Baunach, cross.

Q Have you? A No, sir.

Q Not at all? A Not that I know of.

Q I think you are the best person in the world to know, and you don't know, and you say no? A No, of course not.

Q On January 8th, Mrs. Baunach, Dr. Lowenstein examined you at the request of the defendant? A Dr. Lowenstein examined my arm, yes. 10

Q Who was present, anybody? A Yes.

Q Who was present? A At the last minute, I think the lady next door.

Q You answered the door bell, didn't you? A Yes.

Q And showed him into the house? A Yes.

Q You were up and around at that time, you were not in bed? A Up and in bed.

Q How often does Dr. Mautner treat you nowadays, Mrs. Baunach? A Dr. Mautner has not really treated my arm for a long while until about the day before yesterday I went back to him. 20

Q Did he examine it the day before yesterday? A Yes.

Q That was for the purpose of testifying in court? A No, sir.

Q When did he treat you before that? A Say about two months ago, and it may have been a little longer.

Q Two months ago or longer? A It might have been. 30

Q What did he do for you, then, at that time? A Why, it was opened.

Q And it had to be treated for you at that time? A It had to, he put clean gauze on it.

Q And when did he see you before that time? A When did he see me before that time?

Q Yes, he saw you once two months ago, you said, now, when did he see you before that time? A I think once a week, once a week every other week. 40

Julia Baunach, re-direct.

Q After the accident, you say, he saw you sometimes two or three times a day, and at night, and so on?

A Yes.

Q For how long a period did that last? A Well, after the second operation, Dr. Mautner came every day, and sometimes two or three times a day, as long as six
10 weeks, say five weeks.

Q For five weeks he saw you every day? A Yes.

Q And after those five weeks about how often did he see you? A In the five weeks?

Q No, after the five weeks. A Well, perhaps every other day.

Q For how long a period did that last? A Well, I can't exactly tell you the time, until he took the bandage off my arm.

Q Now, say within the last four or five months, about
20 how often had you seen him? A I can't tell you that, either.

Q Has it been very frequently or occasionally? A Occasionally.

Re-direct examination by Mr. McGeehan.

Q Mr. Schneider has asked you what was said in the car on your way from the accident. What was said by Mr. Liebman in your presence before he left you after
30 the accident? A Mr. Liebman turned and said he was sorry, he was riding very fast, he was going to see a sick friend, and for me not to worry, that he would do what is right for me. That it was his own car, besides he has insurance and has his own residence and is in the butcher business, and then he took my left hand, "Nearest your heart," he said, "don't worry, you will hear from me within a day or two."

Q Did you hear from him? A Never.

Q Your husband and children are in court with you?
40 A Yes, sir.

Harry Lowenstein, direct.

Re-cross examination by Mr. Schneider.

Q Did he tell you he had a house of his own, and a business? A Yes, sir.

Mr. Schneider. May I put Dr. Lowenstein on out of turn, your Honor, if Mr. McGeehan consents?

10

The Court. You may.

HARRY LOWENSTEIN, sworn on behalf of the defendant.

Direct examination by Mr. Schneider.

Q Doctor, you are a practicing physician of this county and state? A I am.

Q And connected with any institutions? A The Beth Israel Hospital and the Clinton Private Hospital.

20

Q Did you examine Mrs. Julia Baunach? A Yes, sir.

Q When did you make your first examination? A First at her home on January 8th, 1921, and again today.

Q Today, this noon time? A Yes.

Q Did you call at her home on January 8th, 1921? A I did.

Q Will you kindly tell us just what happened? A I rang the bell, she opened the door and let me in, and we walked to a little room and I then examined her. I found her right forearm was done up in splints. I did not remove the splints, but I examined her for bruises which she claimed, and she claimed her right shoulder pained her, but nothing was found in the shoulder. She had bruises on the left side of her head and bruises on the left thigh, and a bruise and an abrasion on the left leg.

30

Q Will you describe those bruises and abrasions, were they serious or minor? A They were minor.

10

Harry Lowenstein, direct.

Q How long would they ordinarily take to clear up?

A They would be painful for about ten days, and she had a scraping of the skin, that would take about two weeks to heal.

Q I see, in about two or three weeks all those bruises would heal? A Yes, sir.

10 Q What was the major injury, doctor? A The major injury was an injury to her right forearm. I did not remove the splints, because Dr. Mautner told me to go ahead and examine her, and he told me she had splints on her arm—

Mr. McGeehan. I object to that.

Q Did you or did you not remove the splints? A No, sir, I did not.

20 Q Were you afraid you might injure her in doing it? A Well, no, but sometimes in making an examination like that the position of the bone may change, and I did not want to take any chances.

Q So you cannot tell us anything about that injury? A No, nothing about the forearm.

Q What seemed to be her condition as to nervousness? A I asked her to tell me all the injuries she claimed as a result of the accident, and she told me about the pains in the various parts of the body, but she made no complaints to me about any nervous condition, and by examination and observation there were no signs of nervousness.

Q The second examination was made today? A Yes.

Q Here in the Court House? A Yes.

Q On this floor? A In the jury room.

Q With the permission of Mr. McGeehan? A Yes.

40 Q And will you tell the Court and jury what you found at this time? A I did not examine her for the bruises and so forth, I just examined the right forearm, on the right, upper extremity, I found a scar three inches long on the inner side, that looked as though it was due

Harry Lowenstein, direct.

to an incision, an incision that had healed by primary union. I examined her arm generally. The elbow joint was normal, the wrist joint was normal, the wrist and the elbow did not show any evidences of any injury, and the only loss of function was in the forearm.

Q And what was the condition there? A The lost function consisted of fifty per cent. loss of what we call 10
supernation, turning the forearm up like that (indicating). She could only do it like that (indicating).

Q What are the other functions called, doctor? A There is flexion (indicating) doing this.

Q Can she do that? A Yes.

Q What else? A There is extension, this way, moving it from side to side, and supernation, that is this (indicating) with the palm up; and pronation is with the palm down, turning it this way (indicating). In taking her arm for supernation she was able to get 20
fifty per cent. of this motion in the forearm, and then the wrist, if she wanted to get complete supernation, she would have to take her left arm and push it down like this (indicating). When the arm was in this position it showed she had perfect use of the power of pronation, in other words, turning her hand, the palm this way (indicating). The motions, supernation and pronation, have nothing to do with the forearm, if you hold it this way (indicating), but the wrist, naturally grips with 30
supernation or pronation.

Q Is the wrist all right? A Yes.

Q And the elbow joints? A Yes, and I also measured the forearm. There is no shortening. The union of the radius is well and strong.

Q That is the one Dr. Mautner set under ether? A Yes, sir, there is a good strong union there, but there is no union in the ulna.

Q That is the bone that did not come together? A The bones do come together, there is no loss of continuity, they are in apposition. 10

Harry Lowenstein, direct.

Q By apposition you mean they are both together, opposite? A Yes, but you can push it in, showing there is no union.

Q Is there any callus there? A You cannot feel any callus; if there is no union there is no callus.

Q So, the only function she has is supination? A
10 Fifty percent loss of supination.

Q You mentioned pronation, that is turning the hand down? A Yes.

Q Has she that? A Yes.

Q Doctor, can you tell us whether she can touch her head with that arm? A There is nothing in the injury which would prevent her from placing her hand on her head, because touching the head is raising the arm, and she can do that, the only thing she cannot do is to make a grip, that is what we call the fifty per cent. loss of supination. She cannot get her hand to do this (indicating),
20 but nothing is there that would prevent her from turning the hand fifty per cent.

Q How is the grip of the hand? A The grip of the right hand is just the least bit less than that of the left hand.

Q What has caused that? A Muscle injury.

Q What would you say of the future of this ulna bone?
A Very often, no union occurs for reasons we don't know and if you freshen up the edges of the wound, sometimes
30 union will not occur even after you do that, and then you have to try it a second time, and in a great percentage of these cases unions will occur eventually.

Q What do you mean by freshening up the edges of the bone? A In a break of such long standing the edges are not very healthy and if you scrape away the old edges of the bone and produce the fresh surface very often the bone will again throw out callus and union will occur.

Q Did you speak to Dr. Mautner about this? A Did I see Dr. Mautner?

Q Yes. A I did.
40

Harry Lowenstein, direct.

Q When? A This afternoon.

Q After the examination? A Yes.

Q You gave him your idea of it?

Objected to.

Objection sustained.

Q Did he reply to you? A He did.

10

Q And what did he say?

Objected to.

Objection sustained.

Defendant's counsel excepts to this ruling of the Court.

Exception noted as ground of appeal.

The Court. If Dr. Mautner was a party to the suit this testimony would be admissible.

Mr. Schneider. As an admission against interest, I suppose. 20

The Court. No, in contradiction of a material fact, but Dr. Mautner is not a party to the suit.

(Argument).

The Court. If you find a case to sustain your position I would like to see it.

Mr. Schneider. All right, I will reserve that then, your Honor rather than have you rule on it now.

Mr. McGeehan. Then, for the record I will ask that the question be withdrawn. 30

Mr. Schneider. His Honor is reserving decision on it and I will not press it until later.

Q What would you say, doctor, as to the bone grafting operation which has been spoken about by Doctor Mautner? A I don't think it will be necessary. They bone graft where there is a loss of bone, and a marked shortening. Where there is no shortening of the bone and they are in apposition before we try a bone graft, we should

40

Harry Lowenstein, direct.

try freshening the edges of the wound, of the fracture. That should be done first.

Q You would not do that first? A No, sir.

Q You heard the testimony of Dr. Mautner? A Yes.

Q And you heard him testify that the two sections of the ulna are about an eighth of an inch apart? A I did.

10 Q Is that so? A I cannot feel it now. There is no loss of continuity. Now, there is no separation in the bone, you can run your finger along the bone, and it is apparently in a perfect line.

Q And the only time you can find any separation is when you push one bone back? A Yes. There is no union, you can push the bone back.

Q And it is your idea that that would be no place to insert a bone graft? A There is no place, and there is no reason for inserting it. If the edges of the wound
20 are freshened, they would not retain the bone graft, and that is the reason it should not be attempted.

Q It was attempted once? A Yes, but very often when it is attempted once it fails, and at the second time, after the second time the union usually takes place.

Q You think the union might take place if they attempted it another time? A I think so. I have seen a number of cases where a union takes place when freshening is attempted the second time, except in the case of
30 a very old person, but I have seen a great many where union has taken place.

Q Doctor, have you heard Mrs. Baunach testify that she had an examination made by Dr. Gray and he found her all right as far as blood is concerned? A Yes.

Q How about her case, then? A That would make it all the more reason to believe the union would take place and another reason is that her general condition has not shown that her bones will not be strong enough to give a union, because if her condition is such that the bones would not unite, the other bones would not have united.
40

Harry Lowenstein, direct.

Q You say that the other bone, the radius has united?

A Yes, she has some thickening there, some callus.

Q What would be the nature of this operation you suggest, doctor? A To make an incision through the old one and get down to the bone and scrape away the edges of the bone, and the amount of scraping depends on how the edges look when the bone is reached.

10

Q Why would you scrape the edges away? A I would scrape to get rid of the old tissue that is on the edge and get down to the fresh bone.

Q Then, what would you do? A Probably wire the bone, kangaroo tendons is not as strong as wire.

Q What kind of a wire would you use in that case? A Why, they use the ordinary wire, the wire is removed in about four weeks.

Q Would you take X-rays afterwards? A Yes, it is always safe to check up with X-rays to make sure that we have it in position.

20

Q And then, would you have to open it again to take out the wire? A Then, you look at the union, and if the X-ray shows callus, you remove the wire.

Q Can't you tell from the outside, without opening it, as to whether the union is there? A You can tell by feeling it, but the better way is to take the X-ray the X-ray will show.

Q You mean, the X-ray would show it safely? A Yes, sir.

30

Q And after union has taken place, you would open it and take the wire out? A Pull the wire out.

Q Of course, there would be no certainty of union taking place? A No, no absolute certainty.

Q And in cases of that kind how many times do you generally make a trial of that kind? A As a rule, after two or three times, union does occur. I have never seen a case where it did not occur after three times.

Q What would you say about Mrs. Baunach's general condition? A Her weight seems to be about the same

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Harry Lowenstein, direct.

as when I first examined her. There are no signs of nervousness, and her appetite is improving she says, and she is able to sleep better, all of that is improving.

Q Would that be a favorable indication to her as far as the union of the bone is concerned? A It does make her general condition better.

10 Q That is, her general health has a bearing on the success or failure of the thing? A Not always, of course, the chances are better if they are in good health.

Q Is there anything about her that would make her below the normal or sub-normal type? A No, sir.

Q And you say that in a second operation union has always ensued in such a case?

Objected to.

Objection sustained.

20 Q What would you say as to union ensuing in a case of this kind after three times? A If you fail once the greater chance is union will occur the second time, but, of course, we are not absolutely certain about that, but I don't remember any case where two times have been tried and failure followed.

Q Now, in opening up the arm that way and making an insertion of the wire, I suppose, ether or some general anesthetic must be given? A A general anesthetic must be given.

30 Q Would electrical treatment or massage or baking be beneficial in her case? A If there is union of the bone?

Q What would be the treatment of it if there was union? A The forearm would immobilize.

Q What do you mean by that? A It would be put in splints or a plaster cast, with an opening, so we could watch the wound, and her arm would be left that way for about six weeks or eight weeks, and at the end of probably eight weeks there would be massage and electric treatment of the muscles.

Harry Lowenstein, cross.

Q To what degree would there be a cure after union ensued? A Well, she would improve, whether there would be a perfect improvement that I can't state.

Q As to percentage of the utility of that arm, what would be the condition? A Well, with a union it would improve at least twenty-five per cent. The reason there is no perfect motion in supination now is that the muscles that supinate are caught by that bone, and the bone being broken there is no force in that muscle, and for that reason she is only able to get a limited amount, but if the forearm should be—if it should be corrected, she ought to get at least twenty-five per cent. more motion in supination. 10

Q And could she then use her arm, in that case, in ordinary things, such as housekeeping? A Yes.

Q Housework, light work? A If there is twenty-five per cent. increase in motion, she would do everything that would not entail a greater supination than seventy-five per cent. 20

Cross examination by Mr. McGeehan.

Q Dr. Lowenstein, when did you make your first examination? A January 8, 1921.

Q For what purposes did you go there to make that examination? A To examine her for injuries.

Q And for what purpose were you to make that examination? A For the examination of the injuries. 30

Q So, that, the reason for making the examination of her injuries was not to treat her, but to testify in court when the case would come up? A Why, to testify if the case came up, yes.

Q You were employed by someone to do this for the defendant? A I was.

Q And you are accustomed to testify in cases involving injuries, are you not? A I am.

Q And when you made the examination on January 8, you couldn't tell anything about what kind of a fracture 40

Harry Lowenstein, cross.

it was, or anything about the injury, with the exception of the minor injuries? A No.

Q And during the ten months that have gone by since that time, have you seen this woman again? A I have not.

Q Until today? A Until today.

10 Q You made no effort to see her, did you, to make an examination? A I was not asked to see her.

Q Well, at any rate, you saw her at no time during the operations that were performed, or after the operations, up until today, is that right? A I did not.

Q And today you made an examination after the recess of this court at one o'clock, and before the resumption of court at 2 o'clock, didn't you? A Yes.

Q You did that with my permission, did you not? A I did.

20 Q You took Mrs. Baunach in the jury room and in the presence of her husband examined her? A I did.

Q How long did you take for this examination? A About ten minutes.

Q So that during the early part of this case you knew nothing about it? A Nothing at all.

Q Your whole testimony is based upon a ten-minute examination made of her at this noontime? A It is.

30 Q Now, doctor, you are acquainted with Dr. Mautner, are you? A I know him very well.

Q You are both in the same hospital, are you not, the Newark Private Hospital? A No, I do most of my work in the Clinton Private, and he does most of his in the Newark.

Q And you have known him for a long time? A I have.

Q Pretty good friends? A We are.

Q And you knew of the progress of this case during the last year and the operations? A No, I didn't know anything about her being operated upon except today

Harry Lowenstein, cross.

Q Didn't you know in the Baunach case, doctor, that she had to have another operation? A I did not.

Q Didn't I tell you that in this Court House in the last three months, in talking about the Baunach case? A I didn't know whether you was kidding me about it or not.

Q I told you? A You told me a lot of things about it, and I didn't know whether you were joking or not. 10

Q Was there any reason for my joking about it? A I thought so, I thought you told me there were a lot of things she couldn't do, and I thought it was in a joke, a joke being played upon me. We were having lunch at the time.

Q I didn't say it to you in a joking way, at the time, did I, doctor? A It seemed so to me.

Q But, I did tell you that Mrs. Baunach had been operated on again and her arm had not changed, and another operation included the taking of the bone, a piece of bone off, according to Doctor Mautner, would have to be done? A You didn't give me any particulars. You told me you were going to try a case in which I will appear, and you gave a very harrowing description of the arm, and for that reason I thought you were joking, because I didn't remember having examined her, whether I had examined a woman with a broken forearm as harrowing as you described. 20

Q Was that description any more harrowing than I described, according to this testimony? A It is a bad arm, and from the information Dr. Mautner gave me, in the first examination, I had no reason to suspect that it would not be an ordinary fracture. I did not expect it would entail the loss of the use of that arm, and of course, I did not remove the splints. I telephoned him and asked him what the injury was, and he stated it was a fracture of both bones in the arm. 30

Q I didn't ask you that. I asked you the question whether I had made it any more serious than the testi- 40

Harry Lowenstein, cross.

mony. Doctor, you say you were not told to make another examination? A No.

Q Do you think from the ten-minute examination that you made of the exterior of her arm today that you know more about this injury than Dr. Mautner who treated her and operated on her? A From my examination and
10 the testimony, and my talk with Dr. Mautner, I certainly do.

Q Do you know more? A I won't say more, I know pretty much about it.

Q Do you say that the operation that was performed upon her in the month of March was not necessary? A I do not.

Q Was that the ordinary operation that would follow the non-union of bones in a fracture? A Yes.

Q Do you know from the history that you say you received that this woman's bones would not unite after
20 they had been in a cast or a splint for six weeks? A The ulna did not unite.

Q And did you know whether the radius had united? A The radius did unite.

Q Was that prior to that, or after the second operation? A There was union in the radius, but absolutely no union in the ulna.

Q That you gained from talking with somebody else? A I did.

Q When you say she should have a couple of attempts made by the scraping of the bone, have you in mind that two attempts were made to join these bones by placing them in splints? A I only know of one.

Q You know as to the setting of the bones in splints? A We don't call that an operation.

Q You know they were set together to put them in such position as close as possible—you know that the first action of placing these bones together in splints is to place the ends in such position that the throwing out of
40 callus, through the processes of nature, would make them

Harry Lowenstein, cross.

come together, don't you? A That we call a reduction, not an operation.

Q You know that, don't you? A Yes.

Q And that usually results in union? A Yes.

Q In most cases? A Yes.

Q And it fails in those cases that do not? A Yes.

Q And then do you know that an operation was performed in which the bones were scraped and they were placed together with this substance that both you and Doctor Mautner referred to, between them, and that that operation failed, you know that don't you? A Yes. 10

Q Now, doesn't that indicate to you that the ordinary operation of scraping the bone, or of placing them together, will not be successful here? A It showed that no union had taken place, it shows that the operation is not successful.

Q In view of that is there any reason to believe that a repetition of this operation that she had performed will result favorably? A No one can state with certainty what is going to result in another operation. 20

Q What is there which would be as likely to correct the condition of her arm as the operation of a bone graft would? A I don't see where a bone graft would produce a better result than another attempt at freshening or scraping.

Q I am not asking you that, I am asking you which is more likely to succeed a bone graft operation or the repetition of what she has already had? A I don't see any necessity for a bone graft. 30

Q Now, I didn't ask you whether you saw any necessity for it, I am asking you whether a bone graft operation is more or less likely to succeed than a repetition of what has already been done? A No, I do not.

Q Is it more likely to succeed? A No, I don't think so.

Q Now, in the grafting of the bone, the throwing out of callus is not necessary to make it a successful operation, 40

Harry Lowenstein, cross.

is it? A It is absolutely necessary to keep the graft in place.

Q Do you understand that this bone is to be placed between the two ends of the fracture? A I have heard Dr. Mautner say so.

10 Q Didn't you hear Dr. Mautner say it would be two inches long and be placed on the outside of the bone? A I did.

Q And did you hear him say it is connected with screws, a silver screw, and that it over-rides and is held together? A I heard him say so, but that is not the way it is done.

Q If that is done that way, then the callus is not needed? A It is not done that way. We do not leave the screw in a bone. If they do leave the screw in the graft it ultimately is always removed as soon as union
20 takes place. A piece of bone is inserted, and then the freshened ends will throw out callus again, and enough, and that eventually becomes one piece.

Q Haven't you seen operations, doctor, where a screw or a metal similar to a needle in appearance has been placed within a bone to hold the fragments together--when that is done, is that union obtained through callus? A Eventually those screws are removed.

Q If no callus is thrown out and the bones are incapable of throwing out callus, there is no way of joining those bones except by a permanent fastening, is there? A
30 We can fasten them with screws, but it will not make a strong enough union.

Q I am not asking you that, doctor. I am asking you whether, if it is impossible for these bones to throw out callus, whether there is any way to unite those bones of Mrs. Baunach, except by a fastening of some sort? A If no union occurs with callus, no union can take place, but we may do another operation to freshen the ends of the bones.

Harry Lowenstein, cross.

Q Doctor, I have not asked you that. I am asking you if no callus is thrown out of these bones can there be any union through anything else except by using some foreign fastening? A It cannot be done, no.

Q So that, if Mrs. Baunach bones continue to refuse to throw out callus she will either always be in her present condition or have to have such a fastening, isn't that so? A That is true. 10

Q Now doctor, assuming that the operation such as might be performed upon her is successful and a perfect union shall result, she will always have a permanent, partial disability of that arm, will she not? A She will.

Q And that will continue through her lifetime? A It will.

Q And that is due to what? A That could be due, then, to some injury or tearing of the muscle.

Q And that tearing of the muscle you cannot find by feeling the arm and seeing the motion of it? A Well, we cannot always feel it. 20

Q How do you know it is there? A If the function does not return to normal, we know.

Q And from your examination of her in this accident, you ascribe it to the tearing of the muscles, don't you, the limitation of motion? A Yes.

Q And no operation can correct that? A Massage will improve it, but if a complete union does take place, I cannot state definitely just how much will return, that can only be seen later on. 30

Q Doctor, you can feel the ends of her bone in her arm with your fingers? A Yes.

Q Does raising her arm or moving her arm cause these bones to move about? A Slightly.

Q It does, some? A Yes.

Q Could that cause her pain by pressure upon the nerves? A There are no signs of any nerve pressure, but it can cause the pain. 40

Harry Lowenstein, cross.

Q What signs would there be if there were any? A There would be a partial paralysis.

Q And you know all these things you say, from the ten-minute examination you made? A Yes.

10 Q Would the pressure of the nerves on this arm be an objective symptom? A If there was a pressure against the nerve of the ulna nerve lying close to the bone, she would have a paralysis and some pain, if there was a rubbing against the muscle.

Q Well, you think she has pain? A She has reason to have pain.

Q And if this bone should strike the ulna nerve that might cause paralysis, might it not? A There is no reason why it should strike.

20 Q I didn't ask that, I said if it strikes it would be likely to cause paralysis? A If it strikes and strikes hard enough to strike a nerve, it would produce a constant irritation on the nerves.

Q Now, as time goes on, is it likely to cause paralysis? A If it would, it would have done so after three or six months.

Q Have you ever had such a case where an injury like this has caused paralysis to the hand? A Yes, I have seen lots of them at the City Hospital.

The Court thereupon took a recess until Friday, November 25, at 10 A. M.

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40

Harry Lowenstein, re-direct—re-cross.

SECOND DAY.

Friday, November 25, 1921.

Continued pursuant to adjournment.

Present, counsel as before stated.

HARRY LOWENSTEIN, resumes the stand.

10

Re-direct examination by Mr. Schneider.

Q Doctor, Mr. McGeehan asked you some questions about why you didn't make a second examination before yesterday, or the day before yesterday? A Yes.

Q Can you explain that answer? A Yes, when I called up Dr. Mautner for permission to make an examination in January, I told him I would not remove the splints, and he told me it was complete fracture of both bones of the forearm with over-riding, and that while he might have trouble in setting it, he expected it to heal with a good result, and I gave the ordinary time for the union of a fracture of that sort. 20

Q That is why you did not make your second examination? A Of course, I couldn't tell until I got to court if there was any other difficulty in the case.

Q And, if you had known it you would have stated your experiences with the case in greater detail than you have recounted on the witness stand? A Yes, sir.

30

Re-cross examination by Mr. McGeehan.

Q You stated yesterday in explanation about seeing the plaintiff again, that no one told you to see her? A Yes

Q Did you see the complaint filed in this case on the 26th of February, 1921? A I did not.

Q You knew what injuries were described and alleged in this complaint? A No.

Q And no one told you about them after this suit was started? A No, sir; I didn't hear anything about this case or about the cause of action until yesterday morning. 40

Frank Baunach, direct.

FRANK BAUNACH, sworn on behalf of the plaintiff.

Direct examination by Mr. McGeehan.

Q Mr. Baunach, you are one of the plaintiff's in this case? A Yes, sir.

Q And the husband of Mrs. Baunach, who was injured?
10 A Yes.

Q Where do you live? A 625 Eighteenth avenue.

Q Where did you live on January 2nd of this year?
A 625 Eighteenth avenue.

Q And with whom did you, and have you lived at that address? A My wife and two children.

Q How old are your children? A Ten and five.

Q And since the accident, to your wife, can you tell us, briefly, what has been the effect of the injury upon her doing her household work? A What I have been
20 doing?

Q What has she been unable to do, and what have you been doing? A Well, she cannot do her regular housework; she cannot hardly do anything. I was doing it myself after I came home from work and before I went to work, getting the children ready to school before the woman would come in the morning, some would come seven or half past seven, and I swept rooms,—some of them stayed until nine at night, and I would get the children
30 ready for school, wash the dishes, and so forth, and go to work, and by that time, probably a woman would come in.

Q And have you been doing that ever since the time of the accident? A Yes.

Q Are you still doing it now? A Yes.

Q Such money as your wife has paid to help herself, for household help, and for doctor bills, where does that money come from? A From what I earn.

Q And what do you earn a week? A \$45 a week.

Cross examination waived.

Minnie Wendoling, direct.

MINNIE WENDOLING, sworn on behalf of the plaintiff.

Direct examination by Mr. McGeehan.

Q Mrs. Wendoling, where do you live, please? A South Nineteenth street.

Q What do you do for a living? A I do washing and cleaning.

Q And has Mrs. Baunach hired you at any time to do work for her? A Yes. 10

Q How long have you been doing work for her? A Well, I am doing it until now.

Q From when till now? A About May.

Q From about May? A Yes, but what date I cannot tell you, but I know I started in in May.

Q Since the month of May? A Yes.

Q And since that time how many days a week have you done washing and cleaning for her? A Twice a week. 20

Q How much do you charge a day? A \$3 a day.

Q That is \$6 each week you get from her since the month of May? A Yes.

Q Are you still doing that work for her? A Yes, I am doing it until now, yes.

Q Do you get the meals when you are there? A Yes.

Q What days of the week do you come in to her house? A Well, Mondays or either Tuesdays, if it is nice, and on Saturdays or Fridays.

Q One day at the beginning and one day at the end of the week? A Yes, sir. 30

Plaintiff rests.

Mr. McGeehan. Mr. Schneider admits the ownership and operation of the car, I don't know whether we had that on the records.

Mr. Schneider. Yes, I do. The car at the time it was in this accident it was being operated by the defendant himself. I move for a non-suit, your 40

Isadore Liebman, direct.

Honor, on the ground that no negligence has been shown on the part of the defendant, and that contributory negligence has been affirmatively shown on the part of the plaintiff, Julia Baunach.

The Court. I will deny your motion, I think it is a question for the jury.

10 Defendant's counsel excepts to this ruling of the Court.

Exception noted as ground of appeal.

ISADORE LIEBMAN, defendant, sworn in his own behalf.

Direct examination by Mr. Schneider.

Q Mr. Liebman, you are the defendant in this case?

A Yes.

20 Q Where do you reside at the present time? A 121 Parrow street, Orange.

Q How long have you resided at that address? A 17 years.

Q Are you in business there? A Yes, sir.

Q In what business? A Butcher and grocer.

Q How long have you been in business there? A 17 years.

Q Do you drive an automobile? A Yes, sir.

30 Q What kind of an automobile is it? A Hupmobile.

Q How long have you driven automobiles? A Nine years.

Q How long have you driven this Hupmobile? A Three years.

Q You are a regularly licensed chauffeur of this State? A Yes.

Q Now, on January 2nd of this year, early in the evening, were you driving down Central avenue in that car? A Yes.

40 Q Was anybody with you? A No, sir.

Isadore Liebman, direct.

Q Where were you coming from? A I turned in from Oakwood into Central avenue and proceeded east.

Q Oakwood avenue is up in Orange, isn't it? A Yes.

Q It is right in line with that Orange Park above Horton street? A Yes, sir.

Q And about how far is that from the scene of the accident, a mile or so? A A little more than a mile. 10

Q And, you drove east from Oakwood down to Central avenue, and up to the point of the accident? A Yes.

Q What kind of a day was it? A Why, the weather was fair.

Q Was it raining or snowing? A No, sir; it was not exactly clear, somewhat cloudy.

Q It was not raining or snowing? A No, sir.

Q And how was the roadway in the street, dry or wet? A Why, towards the gutter it was wet.

Q How was it in the middle of the street? A Why, rather dry. 20

Q Now, will you please tell the court and jury just what happened prior to the occurrence of this accident, just tell us how it happened? A Driving east on Central avenue there was a car ahead of me, about a hundred feet, perhaps ten more, and nearing Munn avenue there was a car turned east from the right into Central.

Q How far from the scene of the accident is Munn avenue? A About five blocks. 30

Q And the car turned in from there? A From Munn into Central, that is, the second car, and I followed the second car at about a distance of about twenty-five feet, and we proceeded down Central in procession.

Q What part of the roadway were you driving in? A Two feet from the outside, eastbound track.

Q How about the other cars, do you know where they were? A About the same distance.

Q Go ahead. A Nearing Nineteenth street, I pressed the button of the Klaxon and also approaching Eighteenth 40

Isadore Liebman, direct.

street I done the same thing. I noticed a couple crossing the street.

Q When you say you pressed the button of the Klaxon, you refer to your horn? A That is the horn, yes, sir.

Q You did blow your horn? A Yes. I noticed a couple crossing the street not at the crossing, and I could
10 see by the lights of the second car, I could distinguish there was a man and woman.

Q Whereabouts were they with reference to the crossing of Eighteenth street? A Why, they were on the inside of the last, eastbound track, and in a direct line of the headlights.

Q Now, the eastbound track, you mean between the two rails? A Yes.

Q Where were they with reference to the easterly corner over Eighteenth street,—that is, they were crossing
20 the tracks? A They were coming from the north corner to the south side.

Q Well, were they west or east of the easterly corner? A Why, they were about thirty feet below the crossing and I could distinguish it was a man and a woman from the light from the car ahead of me. He held her arm and as the car passed I tooted my horn again and kept on going, and without expecting anything, the gentleman holding the lady by her left arm, darted in front of my car. I jammed on both brakes, the foot brake and the emergency
30 brake, but I could not avoid what followed. On seeing what had occurred I got out of the car.

Q Just a moment before we come to that. Did you have your lights on? A Yes.

Q What kind of lights is your car equipped with? A Why, they are equipped with King rims.

Q Do they throw a bright light? A They comply with the law.

Mr. McGeehan. I move to strike that out.

The Court. Strike it out.

Isadore Liebman, direct.

Q Are they the usual lights on cars? A Yes.

Q And were they on at that time? A Yes, sir.

Q About how far from the front of your car was this couple when they stepped in front of the car? A Five feet.

Q Were your brakes in good order? A Yes, sir.

Q And in about what distance did you stop? A I 10
stopped immediately.

Q Of course, you don't mean that you stopped as soon as you put your brakes on? A Why, perhaps a distance of two or three feet.

Q After you struck them? A Yes.

Q And what did you do then? A I got out of the car and seen the woman sitting in the car track, I went to look for the gentleman, and I guess he was partially under the car.

Q How far under the car was he? A Why, about to 20
his waist.

Q Were his legs under the car or his head? A Yes, sir; he was laying face downward.

Q And his head was towards the front of the car? A Yes.

Q And his body below the waist was under what part of the car? A Why, under the axle.

Q What did you do with him? A Just pulled him out and stood him up.

Q Did you have to back your car or push it off him? 30
A No, sir.

Q Did the car remain in the same place when you took him out? A Yes, sir.

Q What did you do with the gentleman then? A Why, I just asked him to lean towards the car—

Q What did you do with him eventually? A Why, he was able to walk.

Q Where did you put him? A Why, he helped himself.

Q Where did he go? A Towards the car. 40

Isadore Liebman, direct.

Q Did he go into the car? A Yes.

Q How about the lady? A Why, the lady was helped into the car by some stranger.

Q Just where was she sitting in the car track? A Why, on the east side.

Q Which side? A Off the eastbound track.

10 Q Did you help her into the car or did others? A No, sir; others helped her.

Q While you were helping Mr. Shraft? A Yes, I was helping Mr. Shaft, and others helped Mrs. Baunach.

Q Did you know who helped her? A I tried to get the names—

Mr. McGeehan. I object to that.

Q What did they do with her finally, put her in the car? A Yes.

20 Q In what part of the car? A In back of the car.

Q Where did the gentleman go? A In the back of the car.

Q And did you then drive to the hospital? A Yes, sir.

Q Now, before you got into the car and drove to the hospital was that car moved in anyway? A No, sir.

Q By you or anybody else? A No, sir.

30 Q Where was this car standing before you drove off with reference to the last rail, to the south? A Two feet.

Q And how was the car headed? A East.

Q That is, towards Newark? A Yes, sir.

Q Tell us what you did when you went to the hospital—you went to the hospital? A Why, I drove down Central avenue into Warren street and then headed to the hospital over Camden street.

Q The Newark City Hospital? A Yes.

40 Q What occurred there? A Why, we entered the hospital and the matron—

Isadore Liebman, direct.

Q Just say what happened there in a general way. A In the hospital?

Q Yes, what was done to Mrs. Baunach? A She had to wait until they got through with another patient and they told her to be seated, and one of the doctors started to dress her arm when he was called for supper, and another doctor took his place and they put her arm up in splints and she was told to return in the morning for an X-ray. 10

Q How about Mr. Shraft? A He had his finger bandaged, it was cut.

Q Then, where did you go? A Why, on our way to the precinct on Orange street we made a stop at a saloon on the corner of Cabinet and Mr. Shraft—

Mr. McGeehan. I object to that.

Mr. Schneider. I will not press that. 20

The Witness. Mr. Shraft wanted to get out and get a drink.

Q Omit, that, it seems to disturb Mr. McGeehan. And where did you go, to the precinct? A Well, I would like to tell what happened before we got to the precinct.

Q Go ahead. A Mr. Shraft wanted to get out and get a drink, and Mrs. Baunach said he had enough.

Mr. McGeehan. I object. It is irrelevant and the witness knows it, your Honor. 30

The Court. I sustain your objection.

Q She said something else, did she? A Mrs. Baunach?

Q What did she say? A She said he had enough, he had had enough.

Q Did he get out? A Yes, he got out.

Q Where did you go then? A Over to the precinct on Orange street. I don't know the name or number of the precinct. 40

Isadore Liebman, direct.

Q What precinct is that—oh, you don't know. What did you do, where did you go from there? A Why, to report the accident.

Q Did you report? A Yes.

Q Did they give you any instructions then? A They called up the East Orange station and referred us to the
10 East Orange station.

Q In other words, you found the accident happened in East Orange and you went to East Orange on account of the fact that that street was above the D. L. & W.? A Yes, sir.

Q And it was for that reason that they sent you up there? Yes, sir.

Q To report the accident? A Yes.

Q Was anything said by anybody in the presence of Mrs. Baunach? A Yes.
20

Q What was said? A The sergeant asked Mr. Shraft was I driving reckless or fast, and Mr. Shraft said, "No, I can't say he was driving reckless or fast." They got my address and my name and they asked Mr. Shraft if he wanted them to hold me.

Mr. McGeehan. May I have permission, your Honor, to inquire whether any of this was said in the presence of the plaintiff?

Mr. Schneider. I based my question on that, Mr. McGeehan, so as to make it proper, but if you want to ask any questions I have no objection.
30

The Court. Go ahead.

The Witness. This was answered in the presence of both Mr. Shraft and Mrs. Baunach. They were both there and the desk sergeant asked if he wanted me held and Mr. Shraft replied, I had been very good by taking them around, and he could trust me as far as making good, in other words, to appear if necessary, so I was let go. Then we came out—
40

Isadore Liebman, cross.

Q What did you do then? A We came out and we turned around and drove on Main street to Munn avenue, and all the way over Munn avenue to South Orange avenue to the precinct which Mr. Shraft was assigned to, and we waited out there fully three-quarters of an hour and Mrs. Baunach asked several officers that were reporting for duty to kindly call Mr. Shraft out, and they all came out and someone else came out, and I said he would be out in a few minutes. 10

Q What did you do finally? A Then, we turned around and pulled up in front of the Police Station, and finally Mr. Shraft came out and I drove all the way down Central avenue to Twelfth street, turned the corner of Twelfth street and they asked to get out, and said, "This is as far as we will go. We will be able to go home alone." I told them I was sorry what happened and Mr. Shraft said, "Well, accidents will happen." Of course, there was some conversation in the car going from one place to another. 20

Q Between whom was this conversation? A Between Mr. Shraft and Mrs. Baunach.

Q Did you hear any of that? A Yes.

Q What was it? A Why, Mr. Shraft said that they had been out visiting friends and that it was the end of a perfect day.

Q Anything else that you can remember, if you don't, say so? A Just minor, little things. 30

Q Did you say to them, or to either of them that you would pay them or make good? A No, sir.

Q Did you ever tell them that you had a butcher business and a house? A I told them I was in the butcher business, but I didn't mention anything about owning a house.

Cross examination by Mr. McGeehan.

Q You gave them a card before you left them, with your name and address on, didn't you? A Yes. 40

Isadore Liebman, cross.

Q And when you gave them that card, didn't you tell them, "This is my card, this is who I am, and I will make good to you for this?" A No, sir.

Q Before you came to court and gave the testimony that you just did, who did you talk this case over with? A Why, in reference to what?

10 Q In reference to your testimony? A With reference to my testimony?

Q Yes. A I talked it over with no one.

Q Did you talk it over with Mr. Kane? A No, sir.

Q You know Mr. Kane, don't you? A Do I know Mr. Kane, no, sir.

Q You don't know the white-haired gentleman that you came to court with yesterday, sitting right there? A I don't know him personally, I just met him, that's all.

20 Q How many times have you met him in the last week? A Just when I came to court the other day and this morning.

Q Well, then, you know him, don't you? A No, sir; I do not. Just know him from being introduced to him, that's all, but to know him, I don't know the gentleman.

Q You talked this case over with him, then? A No, sir.

Q Hasn't he talked with you about your testimony? A No, sir.

30 Q You talked it over with Mr. Schneider? A No, sir.

Q Before Mr. Schneider opened this case to the jury, didn't you tell him how this accident occurred? A No, sir.

Q You never told it to anybody? A I just told it to my four children at home, I have no wife.

Q You are sure of that, aren't you? A Positive.

Q Now, Mr. Liebman, what year Hupmobile do you drive? A 1917 model.

40 Q And you have driven that, you say, two years? A Yes.

Isadore Liebman, cross.

Q What are the ranges of speed of that car in high gear? A I have never tested it.

Q Were you in high gear at the time this accident occurred? A Yes.

Q And for how far before you struck Mrs. Baunach had you been running in high gear? A From Munn avenue.

10

Q How far is that away from the accident? A Five blocks.

Q And did you come along Central avenue in high speed all the way from Munn avenue? A No, sir.

Q What speed were you in? A I was in high gear.

Q That is also know as high speed, isn't it? A If you want to term it that way.

Q You have three speeds forward and one speed in reverse on your car? A Yes.

Q And you were in high? A Yes.

20

Q Now, as you came past Munn avenue, how fast were you driving that car? A About twelve miles an hour.

Q And between Munn avenue and the five blocks further up, where the accident occurred, did you at any time exceed twelve miles an hour? A No, sir.

Q Your car has a speedometer on it? A Yes.

Q Did you drive that car in excess of twelve miles an hour from the time you left your home up to the time of the accident? A No, sir.

Q You are sure of that? A Yes.

30

Q And these other cars that you followed down Central avenue, three of you were running in line, were all going about twelve miles an hour? A Yes.

Q Did you look at your speedometer at the time? A At the time I looked at the speedometer I was at Nineteenth street.

Q How fast were you going then? A Twelve miles an hour.

Q Why did you look at the speedometer at Nineteenth street? A It is a habit.

40

Isadore Liebman, cross.

Q You have a habit of looking at your speedometer?

A Yes, sir; force of habit, that's all.

Q Were you driving to pass these other cars? A No, sir.

Q How far were you away from these other cars when you passed Nineteenth street? A I can't say.

10 Q And you were driving then within two feet of the rail of the car-track? A Yes.

Q And you had your headlights on? A Yes.

Q How far can you see ahead, how far could you see ahead along Central avenue and along the car tracks? A Two hundred feet.

Q Now, how far were you from the scene of the accident when you first saw Mrs. Baunach and Mr. Shraft?

A About 100 feet.

20 Q Where were they then? A Why, they were then waiting for the second car to pass them, or the first car, I should say.

Q When you were a hundred feet away from them they were waiting for one of the cars to pass them, is that right? A Yes.

Q How far ahead of the second car was the first car? A I can't tell you, approximately about forty feet.

Q Then, they waited for the first car to go by, is that right? A Yes.

30 Q And they stood still, didn't they? A They stood still, yes, sir.

Q And they waited for the second car, forty feet behind that, to go by, didn't they? A Yes.

Q And you were twenty-five feet behind the second car? A Yes.

Q Now, you say you saw them start in front of your car? A Just a minute. When the first car passed them they were not standing; they were just crossing, and when the second car was passing them, that's when they stood still.

Isadore Liebman, cross.

Q And they let both of those go by? A The first car had passed them before they got to it; they only waited for the second car to pass them, don't forget that.

Q You just said when you saw them they were there letting the first car pass them? A The first car was passing when they were crossing the street. 10

Q You were a hundred feet away and they were standing still? A No, sir.

Q How far were you from them when they came to a stop? A About thirty feet.

Q You are sure of that, are you? A Positive; I was twenty-five feet behind the car ahead of me.

Q Now, they came to a complete stop, did they? A Yes, sir; apparently.

Q How long does it take you to stop your car at twelve miles an hour by the application of your foot brake? A How long? As a rule, we do not jam on brakes unless it is really necessary. 20

Q Answer the question. How long does it take you to stop your car by the application of the foot brake at twelve miles an hour? A You mean the distance?

Q Yes. A About two or three feet.

Q When you were five feet away, you say, they started in front of your car? A Yes.

Q Then, if you could have stopped your car within two or three feet why didn't you stop it to avoid hitting them? A I did. 30

Q But you hit them? A That's all right; but I had no idea they were going to run in front of the car; I seen them five feet ahead of me, and they seen me a hundred feet away, and I thought they would have common sense enough not to run in front of me.

Q Didn't you say to Mr. Schneider in your direct examination, that when you were five feet away they started in front of your car? A Yes; they started. 40

Isadore Liebman, cross.

Q And at that time you were only going twelve miles an hour? A It didn't take me long to go five feet, Mr. McGeehan, you can't ball me up. Don't forget that.

Q I didn't ask you— A (Interrupting) I am telling you, I am just telling the truth.

10 *Mr. McGeehan.* I would like to have the question read.

(Question read.) Is that true or isn't it true?

A Yes.

Q And is it also true that you can stop your car going at twelve miles an hour in two or three feet? A Yes.

Q And you didn't stop your car in two or three feet, did you? A Will you let me get something in, if you don't mind? You know they were waiting for the second car to pass them, and when I saw them, and I was
20 five feet from them, they started out, and it didn't take long to make up two or three feet and as they started in front of me, naturally my front bumper, like that (indicating) hit them.

Q Your bumper hit them? A Yes.

Q And when your bumper hit them it hit them so hard it came off? A No, it did not.

Q The bumper did not? A The bumper was loose.

30 Q The bumper was loose? A Yes; it had been loose.

Q You loosened it after the accident? A Why, I just took it off.

Q You took it off? A Yes.

Q You didn't pull it off? A Why, one side of it, I did.

Q And you hit Mrs. Baunach with the front of that car, with the fender? A No; not the fender.

Q Well, you knocked your bumper off? A The bumper did not hit Mrs. Baunach.
40

Isadore Liebman, cross.

Q Wasn't it necessary to take the bumper off from your car? A Yes; but it didn't hit her.

Q Doesn't your bumper extend around your car, wider than your wheels, even? A The bumper is about the same distance as the fender.

Q It is in front of your car? A It is in front of the lamps; yes. 10

Q Didn't the bumper hit Mrs. Baunach on the leg? A Possibly.

Q And the fender, and the rest of it struck her arm? A Possibly.

Q The force your collision with her threw her over on to the car tracks? A No; it simply pushed her sideways.

Q Did you run over the body of Mrs. Baunach with your wheel? A No, sir. 20

Q You threw her to the left, didn't you? A The car did.

Q And on to the car tracks you say? A Just to one side.

Q How far did you push her or drag her with your car, before she got clear of the car? A How is that?

Q How far did you push her or bump her or drag her before she got clear of your car? A I didn't drag her, it just only hit her and she fell to the side.

Q Now, when the accident was over, you say that Mr. Shraft was under your car? A Under the axle of my car; partly. 30

Q And in order to remove him from under there you pushed your car back, didn't you? A No, sir; positively not; I couldn't push that car.

Q You couldn't push that car? A No, sir.

Q Could you push it with the help of somebody? A With the help of somebody; yes.

Q Did someone help you? A No, sir; there wasn't anybody there at the time. 40

Isadore Liebman, cross.

Q By the time Mr. Shraft was being extricated from under the car where was Mrs. Baunach with relation to Mr. Shraft; how far away from him on the street? A Oh, I suppose it is about six or seven feet.

Q So, your car went between six and seven feet beyond Mrs. Baunach? A You got me wrong. They were
10 not that way apart, not lengthwise, understand. She was on the inside of the track and Mr. Shraft was in front of the car.

Q Well, there was six or seven feet between them in any distance? A Yes.

Q And Mr. Shraft was under the front axle? A Well, approximately so; just part of his body.

Q What part of his body? A Why, his legs, up to his waist.

Q Do you know how far you dragged or pushed him?
20 A I couldn't possibly drag or push him very far.

Q Why not? A It was impossible, because I had stopped the car immediately.

Q You didn't stop it before you knocked him under the front of it and Mrs. Baunach to the side? A That was natural after I hit them.

Q You say there was a conversation in your car on the way to the hospital? A Yes.

Q In that conversation did you state you were going
30 eighteen to twenty miles an hour? A No, sir; positive.

Q You are sure of that? A Yes.

Q Where were you going to that night? A Why, I was on the way to Miller street.

Q Who were you going to see at Miller street? A A friend of mine.

Q And who was that friend? A Why, Mr. Emanuel Herz, 124 Miller street.

Q Were you going out to him for the evening? A
40 No, sir.

Isadore Liebman, cross.

Q Have a business appointment with him? A No, sir; he is a fellow that has trouble with his eyes, and I intended to go down and pay him a visit.

Q And didn't you tell Mrs. Baunach you were in a hurry going down to see a sick friend? A No, sir; that is a lie.

Q You didn't tell her that? A Why should I tell her I was in a hurry to see a sick friend, because a sick friend is a sick friend and he can't go out no matter what time you get there. 10

Q Well, what did you tell her? A I told her I was on the way to see a sick friend; but, I didn't tell her I was in any particular hurry.

Q You say, you saw them a hundred feet away? A Yes.

Q This was a dark night, wasn't it? A No; not so very dark. 20

Q When you were a hundred feet from them just where were they in the street? A Why, they were just crossing.

Q Could you see them before they got to the tracks? A Yes.

Q Could you see them when they left the curb? A No, sir; I didn't pay any attention to anybody leaving the curb.

Q But, if anyone got off the curb to cross the street, you could see them? A Between the first and second car tracks I could see them crossing; I could see them from the lights of the first car. 30

Q Where are the lights that illuminate the street at or near the corner of 18th street; which side of 18th street are they on? A Why, there is one light on the corner of Steuben street, which is the continuation of 18th street; that is on the northwest corner and there happens to be a light on 18th street on the southwest corner. 10

Isadore Liebman, cross.

Q But there are no lights, nor were there any on the east side of 18th street? A What do you mean lights on the east side?

Q You have said there was a gas light on the northwest corner of 18th street and Central avenue and one on the southwest corner, and those are the only two lights
10 on that corner, aren't they? A At that corner; but there is one a little further down.

Q How far down? A Thirty-five feet.

Q Beyond 18th street? A Yes; towards Newark.

Q Which side is that on? A On the south side; that is the right going up.

Q And that is what kind of a light? A A gas lamp.

Q Does that throw a light across Central avenue? A Just half way.

20 Q But not far enough across to show people getting off the curb into the gutter? A No, sir.

Q And there is a light on the northwest corner that illuminates the north side of Central avenue? A Why, further than north.

Q At any rate, they were there, weren't they? A The lights from the automobile were the only lights I could see anything by; not from those lights.

Q Did the lights shine across Central avenue to show
30 them? A They didn't shine, no; but they have a radius of spreading lights out, so that a man that is driving the car can see, a man behind the car can surely see, and that is what the lights are for.

Q Have you seen Mrs. Baunach since she was injured up to the time you saw her in court? A No, sir.

Q Did you know what condition she was in after the accident, after you left her that night? A I knew her arm was broken; but I didn't know it was very serious.

Q Now, you say you drove them to South Orange
40 avenue and 12th street? A Yes.

Isadore Liebman, cross.

Q Didn't Mrs. Baunach tell you to drive her to the home of her mother, which was at South Orange avenue and Ashland street, which is the same block as 12th street at South Orange avenue? A She sure did not.

Q Didn't she tell you she would walk to her mother's home to get her children? A She did not say anything about her children. I was under the impression it was man and wife when I first met them, they acted that way. 10

Q Well, that impression would not exclude the idea of children, would it? A They didn't mention anything about children.

Q Well, did she tell you she wanted to go to her mother's home on South Orange avenue and 12th street? A They did not say anything.

Q Was it to her mother's home that she had you take her? A I can't tell you. 20

Q You won't say that she didn't say that? A I don't know anything about; it did not concern me. They just said, "This is far enough; we will get out here and go the rest of our way." Yes, sir; that's what they did.

Q Why didn't you turn to your right when you saw these people on the car tracks beginning to walk, as you say, in front of your car? A I was on the right of way, and no common sense man would think of going behind another car twenty-five feet away.

Q I don't want you to tell me what a common sense man will say. A I am just telling you. 30

Q Well, will you please tell us why you did not turn to the right when you saw them coming in front of you? A I did not have a chance, as apparently it looked as though they were going to stand still and let me pass the same as they did the second car; but darting in front of the car, why, it would not only take a second, and you cannot avoid anything like that.

Q You just said, in answering, or apparently answering my previous question that you had the right of way. 40

Isadore Liebman, cross.

Did you consider that you had the right of way? A I didn't say I had the right of way; I said I was on the right of way.

Q Isn't it true that you were going along with a heavy machine and struck them? A You know I never did; I did not run into them; they ran into me.

10 Q Before you struck them you say they were then two feet from the car tracks? A Mid-way; yes, sir.

Q So that during the time that you saw them starting to go in front of your car to the time of the accident, you didn't turn your car at all, did you? A Why, it was impossible.

Q I didn't ask you whether it was possible; you did not turn it anyway? A I certainly did not.

Q How far inside the tracks were they when they started to dart, as you say, in front of your car? A
20 How far they were standing; well, they were about a foot on the inside of the lamp, the eastbound track, which was just about one foot—

Q On the inside? A Yes; when I seen them.

Q You mean a foot from the inside or the outside rail? A From the inside.

Q And how far inside of the line of your car did they get when you struck them? A How far?

30 Q Yes; within the front of your car did they get past the front left wheel, or did they get in front of the radiator, or where? A Right in front of the fender and the lamp; they just darted in front, and they did not have much chance to get any further, because I hit them.

Q And how far in from the extreme left of your car is your lamps? A From the extreme left?

Q Yes. A Well, I never measured it.

Q How wide is your car? A The average car is
40 about five feet five.

Max Scorben, direct.

Q Yes; and how far inside the left side of your car are your lamps? A I suppose about twelve inches.

Q So, that they went at least one foot from where they stood on the rail, two feet towards your car, and one foot inside of that, or four feet altogether, before you struck them, didn't they? A Yes.

Q Now, during that time your car only went five feet; is that right? A During that time? 10

Q Yes. A You must remember, Counsellor—

Q I didn't ask you to argue with me, I asked you if during that time your car only went five feet? A Yes.

By the Court.

Q I understand that from the time they started to cross in front of you, as you say, you were going twelve miles an hour and the other automobile was twenty-five feet in front of you? A Yes. 20

Re-direct examination by Mr. Schneider.

Q Mr. Liebman, high gear is the usual method of running a car? A Yes.

MAX SCORBEN sworn on behalf of the defendant.

Direct examination by Mr. Schneider.

Q Mr. Scorben, where do you live at the present time? A 328 Amherst street, East Orange. 30

Q Where is that with reference to 18th street? A Why, that is about a half mile up.

Q Amherst street, you say? A Yes.

Q How long have you lived there? Nine years.

Q Where on Amherst street do you live with reference to Central avenue, north or south? A Why, it would be north, towards Elmwood avenue.

Q That is towards Main street Orange? A No, towards South Orange avenue. 40

Max Scorben, direct.

Q What is your business? A Superintendent for the American Food Company.

Q Where? A Headquarters, 241 Ridgewood avenue, Newark.

Q On January 2nd of this year, at about 6 o'clock, or so, were you in the vicinity of Central avenue and 18th street? A Yes; about six or a quarter past six.

Q What were you doing, walking or driving? A Driving; I happened to drive up to Central avenue, towards East Orange; I was just coming in from a show at 6 or quarter past 6.

Q Were you driving in a westerly direction? A Going towards East Orange.

Q That is west? A East, isn't it?

Q Did you see the accident at all? A No, sir.

Q You came up after it happened? A Yes.

Q Did you stop? A I saw the crowd and the machine and I stopped.

Q Where did you stop your machine? A Near Steuben street.

Q Is that the continuation of Eighteenth street? A Yes.

Q How does that strike across Central avenue, in a direct line, or indirect? A Directly; one side is 18th street and one side is Steuben street.

Q Steuben street and Eighteenth street are exactly parallel? A Yes.

Q One is the continuation of the other? A Yes.

Q Did you stop your car and get out? A I got out and I seen two gentlemen pick up a woman and put her in the car.

Q Where was she picked up from? A I couldn't say; they just carried her in.

Q Which side of the car did they carry her in? A On the left; that is, on the left going towards Newark.

Max Scorben, direct.

Q Did you see where this woman had been carried from? A No, sir; they carried her in when I got there, and her hair was hanging down and you could see she was hurt; that's all.

Q From what direction were they carrying her? A That would be in the center of the track.

Q Which track? A The track going down towards Newark, on the left-hand side going down. 10

Q The eastbound track? A Yes.

Q They were carrying her from the center of the eastbound track? A Yes.

Q Did you see the man with her? A No, sir.

Q Where did they put this woman? A In the back seat, on the left-hand side; that is, the east side, I believe.

Mr. McGeehan. The north side. 20

Q And the lady was seated there? A Right in the corner, and it happened to be a touring car; I don't know whose car it was.

Q Did you notice in which direction this car was headed? A Towards Newark, down Central avenue; that would be east.

Q Was it straight or at an angle? A Straight.

Q Did you notice where it was with reference to the track? A I imagine it was two or three feet away from the track, going east. 30

Q That is, was the automobile to the north or south of the track; or, to put it differently, pointing down Central avenue; would the automobile be to the right-hand of the left-hand side? A Towards the left-hand side of track, going down, about two or three feet from the track.

Q Going down? A Towards Newark; that is, west—east is going up; no, west is going up; east is going the other way. 40

Max Scorben, cross.

Q Supposing you are going down towards Newark, on which side of the track was this machine, towards South Orange or towards Main street? A The car?

Q The automobile? A It was headed towards Newark, towards South Orange avenue.

Q To the right of the tracks going down? A Yes.

10 Q And about how far was the left side of this car; that is, the nearest side of the car, from the last rail? A About two or three feet; I can't just say.

Cross examination by Mr. McGeehan.

Q I did not get your name? A Scorben.

Q Mr. Scorben, you were driving in the opposite direction from this car, weren't you? A Right.

Q And quite a crowd gathered there at the time? A Not when I got there; there was later.

20 Q And they were around some other machine? A Yes; beside the machine.

Q And they were behind this machine of the accident, or don't you know? A I cannot say; I don't remember.

Q When you got there you say they had actually picked her up? A No, sir.

Q But they were carrying her? A They were carrying her at the time.

30 Q Which way were they carrying her; down Central avenue, or in the other direction? A No; they were just putting her in the car.

Q How far did you see them carry her? A Right in front of the machine; alongside of the machine. They did not carry her at all; they lifted her into the car when I came there.

Q You didn't see them pick her up? A No, sir.

Q But you looked and saw that it was a woman they were carrying? A Yes.

40 Q And you don't know where they brought her from? A No, sir.

Max Scorben, cross.

Q Now, at that time, did you notice whether the car was exactly at right angles or parallel with the track, or whether it was pointing at an angle? A Straight; it was not pointed at all; not at an angle.

Q You didn't notice that it was pointing at an angle? A No.

Q And you don't know whether or not the car had been moved before you got there? A No, sir; I can't say. 10

Q Did you see the other man that was injured there? A No, sir.

Q Did you see the man being pulled out from underneath the car? A No, sir.

Q Was the car being pushed off from anybody? A No, sir.

Q Did you notice anybody under the car? A No, sir. 20

Q Do you think you would have seen them if there was anybody under there? A No; I can't say; I came there after the accident.

Q Just where was this car with reference to 18th street? A Why, about 10 or 15 feet, probably 20 feet below 18th street.

Q And about 10 or 20 feet, did you say? A 10 or 20 feet below Eighteenth street; it was not on the crossing.

Q Well, it was within 10 or 20 feet of it? A 10 or 15, possibly, from the walk. 30

Q Did you hear any remarks made there by the man who was driving the car? A No, sir.

Q Were you there when they drove off? A Yes; I saw them drive off.

Q Did you see a bumper being picked up and put into the car? A I don't remember.

Q Do you think that might have been put in the car before you got there? A I can't say.

Q You didn't notice any bumper lying in front of the car, did you? A No, sir. 40

Emma Hofmeister, direct.

Q You say you were there when they drove off? A Yes.

Q And from the time you got there to the time they drove off, you didn't see anyone pulled from under that car? A No, sir.

10 Q Did you notice or observe the road for marks of skidding or anything else? A No, sir.

Q What was the condition of the pavement? A It happened to be dry; it was a little cloudy, but it was not raining.

Q And the street was not wet, was it? A No, sir.

Q It was not wet near the curb and partly dry near the center of the street? A I can't say.

20 Q You say it was dry? A It was dry where I stopped.

DEFENDANT RESTS.

JULIA BAUNACH recalled, in rebuttal.

Direct examination by Mr. McGeehan.

Q Mrs. Baunach, did you at any time say to Mr. Shraft you thought he had enough, referring to intoxicating drinks? A No, sir; I did not.

30 Q When you got off at South Orange avenue and 12th street, where were you then? A At my mother's, which is only a few doors from the corner.

Cross examination waived.

EMMA HOFMEISTER sworn on behalf of the plaintiff in rebuttal.

Direct examination by Mr. McGeehan.

40 Q Mrs. Hofmeister, you are the mother of Mrs. Baunach? A Yes.

Emma Hofmeister, direct.

Q And just tell us, please, where you lived on January 2nd, 1921? A 133 Ashland street.

Q What street is that near? A Well, near 14th avenue, but nearer towards 14th avenue.

Q But, it is at the beginning of South Orange avenue? A Yes.

Q 12th street is a continuation of Ashland street there? A Right next to it. 10

Q 12th street and Ashland street come out at South Orange avenue at the same point? A Yes.

Q And did your daughter come into your house on that night? A Why, I should say she was there; she came in an awful condition. I yelled and I screamed when I seen her.

Cross examination waived.

BOTH SIDES REST.

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Mr. Schneider sums up on behalf of the defendant

Mr. McGeehan sums up on behalf of the plaintiff.

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*Charge to Jury.***COURT'S CHARGE.**

The Court thereupon the jury as follows:

MOUNTAIN, J.:

Gentlemen of the jury, this is an action in which Julia Baunach and her husband are the plaintiffs and Isadore Liebman is the defendant. The action is brought by the plaintiffs against the defendant on the theory that the defendant's negligence in the driving and operation of his automobile, on January 2nd, of this year, at or near the intersection of North Eighteenth street and Central avenue, in the City of East Orange, was responsible for one of the plaintiff's injuries.

According to the plaintiff's story this accident happened shortly after six o'clock that evening. She and Mr. Shraft were crossing Central avenue, from the north side of Central avenue, near or at Eighteenth street to the south side of Central avenue. She alleges, and Mr. Shraft corroborates her, that he did not have her arm, that is, that they were walking independently. There is proof that at that point there is a gas lamp on the northwest corner of Eighteenth street and Central avenue, which takes the name of Steuben street, I think, at that point; that is, Steuben street is a continuation of North Eighteenth street, I think, and that there is another gas lamp on the southwest corner.

The plaintiff, Julia Baunach, alleges that she was crossing on the cross-walk. This is denied by the defendant. The peculiar feature in this case is that both the plaintiff, Julia Baunach, and the defendant, saw one another sometime before the accident took place. She testifies that three automobiles were coming down Central avenue in an easterly direction, towards Newark, and towards her. The first automobile passed them; that is, Mr. Shraft and Mrs. Baunach, when they were near the southerly rail of the eastbound track. They stopped, I think to let

Charge to Jury.

it pass, or else they were crossing as it passed. That is a question of fact. I think the testimony was that they stopped to permit the second automobile to pass. The third automobile was the one owned and operated by the defendant and the one which struck Mrs. Baunach and Mr. Shraft. As to that third automobile, Mr. Shraft testified that he and Mrs. Baunach were half way to the curb when this third automobile, owned by the defendant was forty feet away, and it was coming in the middle of the street, and then the glare of the defendant's automobile lights seemed to turn on the curb and they were struck when they were about five feet, from the curb. I understood Mr. Shraft to state that the defendant's car was 150 feet away when the second car passed him, and they started to cross the street at once at an average pace. Mrs. Banauch, who was on Mr. Shraft's right, testified that when she and Mr. Shraft were half way between the car track and the curb the defendant's automobile was forty or fifty feet away; that the defendant's automobile was in the middle of the road; that his lights were lit and he sounded no horn, and she walked and continued to walk, and was struck about five feet from the curb, and that just prior to being struck she saw the lights as she expressed it, "kind of come to me, and that's all that I know." She lost consciousness. It appears from the testimony of one of the witnesses that the houses in that part of the City of East Orange are less than one hundred feet apart on that side of the street. That roughly indicates the plaintiff's case.

Now, turning to the defendant's case, the defendant states that he was driving his automobile and was in the car alone, coming in an easterly direction on the southerly side of Central avenue, and that he was twenty-five feet behind an automobile, that was directly in front of him, and that in front of that car was still another one. That he noticed a couple crossing Central avenue, but

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Charge to Jury.

they were not crossing on the crosswalk, as I understood his testimony, but were, in fact, thirty feet below, or east of it, and that the man held the woman's arm. He says that he signalled. He alleges that the couple which he was watching were walking toward the southerly side of Central avenue as the first car was passing him, and they stopped to permit the second car to pass, and then he testified that they darted in front of his car, and at that time was twenty-five feet from the car directly ahead of him and going at a speed of twelve miles an hour. He jammed on his brakes and attempted to stop, but he struck both of them. He was contradicted to some extent, as to his speed by one of the witnesses for the plaintiff, who testified, as I recall it, that Mr. Liebman had admitted, after the accident, he was going eighteen to twenty miles an hour. He denies that, and he also denied saying that he was in a hurry.

As I said this action is brought by the plaintiff and her husband on the theory that the defendant was negligent on that day and at that time. It is your duty to consider the facts of this case, when you retire to the jury room, for the purpose of ascertaining whether the defendant was negligent in the operation of this car and omitted the duty which the law cast upon him in driving that car, and which he owed to the plaintiff. It is further your duty to examine the facts with the idea of ascertaining in your opinion, if Julia Baunach was negligent. She is the plaintiff, and if she was negligent in crossing the street, her negligence absolutely precludes her right of recovery.

Now, first, what degree of care should the defendant have exercised in driving the car on that day? He was negligent, if he did not drive that car under all existing circumstances, with reasonable care, and reasonable care has been defined to be such care as a reasonably careful and prudent man would have exercised under similar

Charge to Jury.

circumstances. The burden of proof is upon the plaintiff it show that the defendant was negligent.

If, as I have said, you find that the defendant was negligent, and in addition to that you find that the plaintiff contributed to her injury by her own negligence, then she cannot recover. In considering the question of negligence, and you naturally should consider the time of the day that the defendant was driving his car, the place where he was driving his car, the amount of illumination that was at that spot, the speed at which he was going, the control he had over his car, what observation he made, and what he did in making that observation. I say, you should consider those among other things. 10

You should also consider the actions of the plaintiff, Julia Baunach, because, while she had a right to cross either at the crosswalk or at any other part of the street, it was her duty to exercise reasonable care herself to avoid an accident. Now, if she did not exercise reasonable care in crossing the street, as I have said, then her right of action is foreclosed. 20

The traffic law of this State provides that in places where the houses are, on an average, less than 100 feet apart, pedestrians shall have the right of way over vehicles at any street crossing. While that gives pedestrians the right of way, that is not an arbitrary or exclusive right of way. It does not excuse them from using reasonable care when they observe that an automobile driver does not intend to yield to their right of way. The traffic law of the State further provides that a speed of one mile in five minutes which is twelve miles an hour, where a street or highway passes through the built up portions of the city, where houses are less than one hundred feet part, shall be maintained. 30

Now, assuming that you find that the plaintiff in this case is entitled to your judgment, in that case the other plaintiff, Frank Baunach, her husband, would be entitled to your judgment, because his action stands or falls with 40

Charge to Jury.

the success or failure of his wife's action. If she is entitled to recover, then it is your duty to measure in dollars and cents what you think the pain and suffering she had is worth. It is rather a difficult thing to do, but it is necessary that you should do it under those circumstances, because she is entitled to recover damages for the pain and suffering which she sustained, and for the

10 bodily injuries which she has had, and you may consider whether, in your opinion, that bodily injury is temporary or permanent, and if it is permanent, how permanent it is. I mean by that whether this injury can or cannot be cured. Her right arm was broken, both bones, the ulna and radius. One of the bones has healed. The other has not. One of her physicians suggests that the bone may be cured by grafting. It is further suggested that the end of the bone may be "freshened" and that after the

20 operation they may grow together. In any event, there is a suggestion implied that there will be future pain and suffering if either of these operations are undertaken; and if neither of the operations are undertaken it is alleged that the bone ends are loose in the arm and press upon the nerves to a certain extent, and that is followed naturally by pain. The plaintiff has indicated by her attempt to move her hand to her head, principally for the purpose of fixing her hair, for instance that there is a limitation of motion not only in the arm, but from

30 the forearm down to the wrist. In addition to that you may consider any nervous condition this lady has, which is the proximate result of this accident. Now, those damages would be assessed, if you find for the plaintiff, Julia Baunach against the defendant.

Now, I will turn to the husband's case, because his case hinges, as I say, upon his wife's right of recovery. If she can recover, then he can recover the loss of his wife's services, consortium, companionship and society. The marital relation contemplates naturally, that while the wage earner works the wife shall take care of the

Exceptions to Charge.

home. It is necessary, in the scheme of life, as we live it. What companionship, what consortium and what services have not been performed by the wife, because of this accident, can be considered by you in assessing damages. Furthermore, as the husband of this woman, it was his duty to alleviate her pain and suffering by medical assistance, and he is entitled to recover, under the conditions I have indicated, the reasonable value of the doctor's bill which he has paid or will have to pay for that purpose, medicine that he has purchased, and in addition, to that, he is entitled to recover the reasonable amount expended by him for hiring women to do the housework previously performed by his wife, provided you find the wife's inability to attend to these duties was the proximate result of the accident. I have been asked to charge— 10

Mr. Schneider. I will waive number 2.

The Court. I charge the first, "The burden of proof in this case is on the plaintiffs which means that they must establish by a preponderance of the evidence that the defendant Liebman was guilty of negligence that caused the injuries to Mrs. Baunach." 20

The second is waived.

I will charge the third. "if Mrs. Baunach was guilty of any negligence whatsoever that contributed proximately to the occurrence of the accident she cannot recover and the verdict should be for the defendant." 30

(The jury retires.)

Mr. Schneider. I take an exception to that portion of your Honor's charge wherein your Honor spoke of the right of way of the pedestrian at a crosswalk, on the ground that it was incorrectly stated, and on the ground that it was not sufficiently defined.

Defendant's Requests to Charge—Judgment.

Defendant's counsel requested the Court to charge the jury as follows:

1. The burden of proof in this case is on the plaintiffs which means that they must establish by a preponderance of the evidence that the defendant Liebman was guilty of negligence that caused the injuries to Mrs. Baunach.

2. (Waived.)

3. If Mrs. Baunach was guilty of any negligence whatsoever that contributed proximately to the occurrence of the accident she cannot recover and the verdict should be for the defendant.

Verdict and Judgment.

The jury retired and after deliberation returned a verdict in favor of the plaintiff, Julia Baunach, for Two Thousand Dollars and in favor of the plaintiff, Frank Baunach, for Fifteen Hundred Dollars.

Whereupon, it is ordered on this twenty-sixth day of November, in the year 1921, on motion of John W. McGeehan, Jr., attorney of the said plaintiffs, that judgment final be and it hereupon is entered in favor of the said Julia Baunach and against the said Isadore Liebman for Two Thousand Dollars and in favor of the said plaintiff, Frank Baunach, and against the said defendant, Isadore Liebman, for Fifteen Hundred Dollars, with costs of suit to be taxed.

Notice of Appeal.

NOTICE OF APPEAL.

Filed.

ESSEX COUNTY CIRCUIT COURT.

JULIA BAUNACH and FRANK BAUNACH, <i>Plaintiffs,</i>	}	<i>Action at Law.</i>	10
<i>vs.</i>		<i>Notice of</i>	
ISADORE LIEBMAN, <i>Defendant.</i>		<i>Appeal.</i>	

To John W. McGeehan, Jr., attorney of plaintiffs.

Please take notice that the defendant appeals to the
 New Jersey Supreme Court from the whole of the judg-
 ment entered in this case in the above-entitled cause.

JACOB SCHNEIDER.
Attorney of Defendant.

Grounds of Appeal.

GROUND S OF APPEAL.

Filed.

New Jersey Supreme Court

10

ESSEX COUNTY.

JULIA BAUNACH and FRANK BAUNACH,
Plaintiffs-Appellees,

vs.

ISADORE LIEBMAN,
Defendant-Appellant.

On Appeal.

*Grounds of
Appeal.*

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The defendant-appellant states the following grounds of appeal if this cause:

1. The Court denied defendant's application for the declaration of a mistrial on the ground of improper matter before the jury in the questioning of a juror by the plaintiff's attorney as follows:

“And in the performance of your duties for the New York Life Ins. Co., do you have anything to do with matters involving the insurance of automobiles against liability?”

30

2. The Court denied defendant's application for the declaration of a mistrial on the ground that the plaintiff, Julia, was questioned and made answer as follows:

“Q Was there anything else he said? A He said he owned the machine. That he was insured and he also owns his own home up in Orange with a little butcher shop attached to it.”

Counsel thereupon moved for a mistrial which application was denied.

40.

Grounds of Appeal.

3. The Court refused to grant the defendant's motion for a non-suit upon the evidence given at the trial.

JACOB SCHNEIDER,
Attorney of Defendant-Appellant.

I hereby consent to the filing of the within grounds of
appeal as of due time. 10

JOHN W. MCGEEHAN, JR.,
Attorney of Plaintiffs-Appellees.

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Opinion of Supreme Court.

OPINION OF SUPREME COURT.

Filed June 21, 1922.

NEW JERSEY SUPREME COURT.

February Term, 1922.

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JULIA BAUNACH, *et ux*,

vs.

ISADORE LIEBMAN.

Appeal from Essex Circuit.

Argued before Gummere, Chief Justice, and Justices Parker and Kalisch.

For appellant, Jacob Schneider.

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For respondents, John W. McGeehan, Jr.

Per Curiam:

The only ground upon which the appellant seeks a reversal of the judgment brought before us on his appeal is that the Court denied his application for the withdrawal of a juror and the declaration of a mistrial because of alleged improper matter which was brought out by plaintiffs' counsel in the presence of the jury.

30

It is enough to say in disposing of this ground of appeal that the general rule with relation to this subject is that the refusal to withdraw a juror, and thereby produce a mistrial, is a matter that rests in the discretion of the Trial Judge, and is not assignable as a ground for reversal. *Heiler v. Goodman's Motor, &c., Co.*, 92 N. J. L. 415. Whether exceptional circumstances might justify the removal of a case from the operation of this rule would seem, from the declaration of the Court of Errors and Appeals in the cited case, to be an open one; but, assuming that this is so, we find nothing in the case at bar to justify such a course.

40

The judgment under review will be affirmed.

Judgment of Affirmance.

NEW JERSEY SUPREME COURT.

10	JULIA BAUNACH and FRANK BAUNACH, <i>Plaintiffs-Respondents,</i> <i>vs.</i> ISADORE LIEBMAN, <i>Defendant-Appellant.</i>	}	<i>Action at Law.</i> <i>On Appeal from</i> <i>Essex Circuit</i> <i>Court.</i> <i>Judgment of</i> <i>Affirmance.</i>
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Damages & Costs below.....\$3,568.76

Costs Sup. Ct. 38.00

\$3,606.76

Int. on Damages and costs below from
November 26, 1921.

20 This case was heard before our Supreme Court at the February Term, 1922, and judgment of affirmance was rendered in favor of the plaintiffs-respondents at June Term, 1922.

Whereupon it is adjudged that the said plaintiffs-respondents, Julia Baunach and Frank Baunach, recover of the said defendant-appellant, Isadore Liebman, the sum of three thousand five hundred sixty-eight dollars and seventy-six cents, judgment and costs below, with interest thereon from November 26, 1921, and also the costs on
30 appeal.

Judgment entered June 28, 1922.

On motion of

JOHN W. McGEEHAN, JR.,
Attorney.

A true copy,

40 ENOCH L. JOHNSON,
 Clerk.

Notice of Appeal.

NOTICE OF APPEAL.

Filed July 7, 1922.

NEW JERSEY SUPREME COURT.

JULIA BAUNACH and FRANK BAUNACH,
Plaintiffs-Appellees,

vs.

ISADORE LIEBMAN,
Defendant-Appellant.

10

*Notice of
Appeal.*

Please take notice that Isadore Liebman, the defendant-appellant, hereby appeals to the Court of Errors and Appeals of last resort of the State of New Jersey, from the whole of the judgment rendered in the above-entitled case in the New Jersey Supreme Court. 20

JACOB SCHNEIDER,
Attorney of Defendant-Appellant.

To JOHN W. MCGEEHAN, JR.,
Attorney of Plaintiffs-Appellees.

Dated July 6, 1922.

Service of a true copy of the within notice of appeal is hereby acknowledged this sixth day of July, 1922. 30

JOHN W. MCGEEHAN, JR.,
Attorney of Plaintiffs-Appellees.

*Grounds of Appeal.***GROUND OF APPEAL.**

Filed July 29, 1922.

NEW JERSEY SUPREME COURT.

10 JULIA BAUNACH and FRANK BAUNACH,
Plaintiffs-Appellees,

vs.

ISADORE LIEBMAN,
Defendant-Appellant.

*Grounds of
 Appeal.*

The defendant-appellant states the following grounds of appeal in this cause:

20 1. The New Jersey Supreme Court affirmed the judgment rendered in this cause in the Essex County Circuit Court.

2. The New Jersey Supreme Court refused to reverse and set aside the judgment rendered in this cause in the Essex County Circuit Court.

30 3. The New Jersey Supreme Court sustained the Essex County Circuit Court in denying defendant's application for the declaration of a mistrial on the ground of improper matter placed before the jury in the questioning of a juror by the plaintiff's attorney as follows:

“And in the performance of your duties for the New York Life Ins. Co., do you have anything to do with matters involving the insurance of automobiles against liability?”

4. The New Jersey Supreme Court refused to reverse and set aside the judgment rendered by the Essex County Circuit Court on account of the error mentioned and set forth in the preceding paragraph.

40 5. The New Jersey Supreme Court sustained the Essex County Circuit Court in denying defendant's applica-

Grounds of Appeal.

tion for the declaration of a mistrial on the ground that the plaintiff, Julia, was questioned and made answer as follows:

“Q Was there anything else he said? A He said he owned the machine. That he was insured, and he also owns his own home up in Orange with a little butcher shop attached to it.”

10

6. The New Jersey Supreme Court refused to reverse and set aside a judgment rendered by the Essex County Circuit Court and sustained said Court in its refusal to grant the defendant's motion for a non-suit upon the evidence given at the trial.

JACOB SCHNEIDER,
Attorney of Defendant-Appellant.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

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Jacob Schneider, of full age, being sworn, says that on July 28, 1922, he served a true copy of within “Grounds” on John W. McGeehan, Esq., attorney of plaintiffs-appellees.

JACOB SCHNEIDER,

Sworn and subscribed to before
me July 28, 1922.

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GLADYS A. SAVAGE,
A Notary Public of N. J.

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New Jersey Court of Errors and Appeals

JULIA BAUNACH and FRANK BAUNACH,
Plaintiffs-Appellees,

vs.

ISADORE LIEBMAN,
Defendant-Appellant.

*On Appeal from
 Supreme Court.*

BRIEF OF PLAINTIFFS-APPELLEES, JULIA BAUNACH and FRANK BAUNACH.

The defendant-appellant in his present appeal from the judgment of the New Jersey Supreme Court affirming the judgment of the Essex County Circuit Court advances as his grounds of appeal the refusal of the Supreme Court to reverse and set aside the judgment rendered by the Essex County Circuit Court, and bases this ground precisely upon the two grounds which were advanced in his appeal to the Supreme Court, which he combines in his brief, both of them involving the refusal of the Trial Court to declare a mistrial for what counsel contends was the injection into the case of matters calculated to improperly influence the jury in its deliberations in the case.

The plaintiffs-appellees submit here, as below, that such refusal of such a motion is a matter that rests in the discretion of the Trial Judge, and is not assignable as a ground for reversal, and that even if exceptional circumstances might justify the removal of a case from the operation of this rule, that the situation in the trial of this case did not include such circumstances but was a reasonable exercise of the Trial Court's discretion and squarely in line with the policy declared in this state on the matters involved.

The Supreme Court in its opinion affirming the judgments below so decided in a *per curiam* opinion in this case, and affirmed the judgments. It is respectfully submitted that the affirmance of the judgment by the Supreme Court was correct in law and application to the facts, and did not constitute error.

The two motions for mistrial occur in the following excerpts from the case. Page 7, line 31:

“*Mr. McGeehan.* Mr. Kellett, you say you are an insurance auditor?”

The Talesman. Yes.

Mr. McGeehan. And in the performance of your duties as such, what kind of insurance companies do you come in contact with?

The Talesman. Just the New York Life, just one insurance company, auditing their books; their personal books.”

Page 8, line 1:

“*Mr. McGeehan.* And in the performance of your duties for the New York Life Insurance Company, do you have anything to do with matters involving the insurance of automobiles against liability?”

The Talesman. I do not.

Mr. Schneider. I would like to ask for a mistrial on that question, on the ground that it might tend to prejudice the jury.

The Court. I will overrule your objection.

Mr. Schneider. Excepts to this ruling of the Court.

Exception noted as ground of appeal.

The jury is drawn and sworn.”

The second episode occurred during the examination in chief of the first witness for the plaintiff, John A. Schraft, by plaintiff's counsel (see p. 16, l. 32):

“Q Then what happened—after the thing was over, you say you went to the hospital? A Yes.

Q Who took you there? A Mr. Liebman.

Q The defendant in this case? A Yes.

Q And, was Mrs. Baunach also taken to the hospital? A Yes.

Q In his car? A Yes, sir.

Q Now, on the way to the hospital, did you have a conversation with Mr. Liebman, or did he say anything with reference as to how this accident happened? A Yes, sir.

Q What did he say? A Mr. Liebman said that he was sorry that it happened; that he was in a hurry, he was going to see a sick friend, and he was sorry that the accident happened. He also said that everything would be all right, and we would hear from him in a few days. He also helped me put on my coat in the hospital.

Q What, if anything, else did he say? Did he say anything about the rate of speed he was going? A Yes, he said he was going from eighteen to twenty miles.

Q Was there anything else he said? A He said he owned the machine, that he was insured, and he also owns his own home up in Orange, with a little butcher shop attached to it.

Mr. Schneider. If your Honor please, I will ask for a mistrial on the ground that the insurance company is again being injected into the case by this witness, for the reason stated, that it might tend to prejudice the jury.

The Court. No, I will overrule your objection.

Mr. Schneider. May I have an exception, your Honor?

Exception noted as ground of appeal."

The defendant-appellant's brief is replete with the contention and argument that the situation presented were "inspired by the ulterior motive of conveying the information or intimating to the jurors in general that the case in hand was what the man on the street would call 'an insurance case' and arose from an unadulterated desire to convey to the jury the intimation that it was not Isadore Liebman with his little butcher shop who was the real defendant, but, in fact, a large corporation which according to popular opinion collects many premiums and is swollen with profits," and that the purpose was to say in

effect to the jury, "gentlemen, tip the balance rather in favor of the poor plaintiffs who have been injured and have suffered great pain as against the soulless and wealthy corporation."

The plaintiffs-appellees respectfully urge that such an accusation is not warranted or supported by an examination of the record.

The only question by counsel which is criticised is that put to a juror in his examination to elicit information, under the statute, upon which to determine whether or not to interpose a peremptory challenge. In so examining a talesman, subject to the discretion and control of the Court, counsel seeks to determine whether or not the prospective juror, through personal or business connections, may be prejudiced in his attitude toward matters involved in the case to be tried, that might warp his judgment or influence his verdict. This particular juror had stated he was an insurance auditor and then was asked:

"And in the performance of your duties as such, what kind of insurance companies do you come in contact with?"

He answered:

"Just the New York Life, just one insurance company, auditing their books, their personal books."

At this point in the examination, it could not be known whether or not the books of the company involved, for examination as an auditor by the juror, matters pertaining to liability claims on automobiles or not. Counsel contends the name of the company excluded this possibility. This is not at all necessarily so. It is a known fact that most large insurance companies have subsidiary companies which write other kinds of insurance in which the parent company's funds are invested and whose books are audited by the parent company and which might involve a familiarity with either accident liability settlements or employers' liability injury values which might warp or influence the judgment of the auditor familiar with such

matters, in the case at bar. Then, too, such companies own and operate numerous automobiles of their own, which might be concerned in accidents involving liability insurance. This, if so, while not a basis for a challenge for cause, would be a good reason for peremptory challenge. It was at this point that counsel asked:

“And in the performance of your duties for the New York Life Insurance Company, do you have anything to do with matters involving the insurance of automobiles against liability?”

To which the answer was:

“I do not.”

There was nothing in the question which suggests or intimates in any manner that the defendant in the case at bar was or was not insured. The interrogation being put in the course of a long list of questions part of which were printed, should not be presumed to have given that impression to the juror. It is a question going to the question of his business connections and it seems far fetched to assume that it would increase in any degree the general knowledge of all men that there is such a thing as automobile insurance. It was at this stage (no objection having been made by counsel to the question) that counsel moved for a mistrial, which was refused. We respectfully submit that a motion for mistrial is directed to the discretion of the Trial Court and that unless this discretion is palpably abused the Appellate Court will not review its action. The same thing applies to the same motion by defendant's attorney, which came later in the case, these two motions being the sole grounds of appeal.

As was said in the case of *Heiler v. Goodman's Motor Express, Van & Storage Co.* (E. & A.), in 105 Atl. Rep. 233:

“The general rule, as laid down recently by this court, is that the refusal to withdraw a juror and thereby produce a mistrial is a matter that rests in the discretion of the Trial Judge and is not assignable for error.”

Citing *Bradley v. Cleary Co.*, 86 N. J. L. 338, which arose out of a motion based on facts exactly similar to those in the case at bar. In the latter case, plaintiff's counsel in clearing up confusion in the testimony of a witness on the stand asked the direct question:

"Q At the time you say you refused to allow a physician to examine your father, wasn't it the insurance physician you refused to allow to examine your father?"

The question was objected to and the objection sustained. Defendant's counsel then moved for the withdrawal of a juror and to order a mistrial on the ground that, as he stated it, counsel for the plaintiff had improperly brought before the jury and interjected into the case the fact that the defendant company was insured against accidents such as the plaintiff was suing for. The request was refused by the Court under exception by the defendant. Immediately thereafter in answer to a question the witness testified:

"Why, a man came to me and said he was an adjuster for the Ocean Accident Insurance Company."

The Court ordered the answer to be stricken out. The defendant's counsel then renewed his motion for mistrial which was denied by the Court. The Court of Errors and Appeals in dismissing the appeal based on these grounds, said:

"The refusal of the Trial Judge to order a mistrial rested, we think, in his discretion, and was not assignable for error. After examination of the whole record we find no error which injuriously affected the substantial rights of the defendant and the judgment is affirmed."

This case appears to be decisive of the one at bar. Certainly the Trial Court could not have anticipated, in an answer to a proper question as to statements of the defendant, what a witness would include therein. The witness was obliged in his answer to testify whatever the defendant stated after the accident, and counsel for the de-

defendant could have moved to strike such portion out as was unresponsive or irrelevant. This he failed to do. Instead he moved for a mistrial which the Trial Court in his discretion refused, under the authority of the case of *Bradley v. Cleary Co.*, *supra*. The same thing applies to the motion made on the question to the talesman which, as above stated, contained no suggestion or intimation of their being any insurance company in the case at bar.

The rule that a motion for withdrawal of a juror and for a mistrial is directed to the Trial Court's discretion and is not the subject of appeal is again stated by the Supreme Court in *Price v. N. Y. Central R. Co.*, 110 Atl. Rep. 126, even on a Rule to Show Cause, the Court stating:

"It may be conceded that the address of plaintiff's counsel to the jury was such as to justify the adverse criticisms made upon it by his adversary. But whether the Trial Court will order the withdrawal of a juror and direct a mistrial for such misconduct is a matter addressed to the discretion of the Court and a refusal to take such action affords no basis for the reversal of a judgment on review. It was so expressly held by the Court of Errors and Appeals in the case of *Smith v. Brunswick Laundry Co.*, 108 Atl. 184."

The case of *Day v. Donahue* (E. & A.), 62 N. J. L. 380, was an appeal in a suit for negligence wherein one of the grounds of appeal was that the Trial Court permitted the plaintiff to ask the defendant upon cross examination whether he was insured against loss in case the verdict went against him. It will be noted that this was not an attempt to appeal upon the ground of the refusal of the Trial Court to grant a mistrial, and even in this case the Appellate Court refused to reverse, holding that questions of this sort arising upon cross examination are, as a class, addressed to the discretion of the Trial Court. In the case at bar, there was no question to which any objection was made in the trial of the case nor is the appeal based upon any overruling of an objection by

defendant's attorney, and while the decision in *Day v. Donahue* is not entirely applicable to the question before the Court in the case at bar, it does show that it is not the policy of this state to reverse a judgment merely because there has come into the case incidentally a reference to insurance. It is true that a plaintiff is not entitled,

"to an unqualified right to show that the defendant is insured against loss arising from personal injuries,"

but in the trial of the case at bar, the only reference made in the testimony to the subject is in the testimony of one of the witnesses for the plaintiff, John A. Schraft, who was present when the accident occurred and who went to the hospital with the plaintiff and defendant, and thereafter followed testimony as to statements made by the defendant which the plaintiff undoubtedly had the right to prove as admissions against interest by a party to the case. The question asked, after showing the foregoing was (p. 16, l. 38):

"Q Now, on the way to the hospital did you have a conversation with Mr. Liebman or did he say anything with reference as to how this accident happened? A Yes, sir."

"Q What did he say? A Mr. Liebman said that he was sorry that it happened; that he was in a hurry, he was going to see a sick friend, and he was sorry that the accident happened. He also said that everything would be all right, and we would hear from him in a few days. He also helped me put on my coat in the hospital."

This was followed by a question directed to the witness to determine whether there was any more conversation.

"Q What, if anything, else did he say? Did he say anything about the rate of speed he was going? A Yes, he said he was going from eighteen to twenty miles."

This answer to the last question having been omitted from the answer to the first question and being important mat-

ter of evidence, naturally led plaintiff's attorney to ask the additional question:

"Q Was there anything else he said? A He said he owned the machine, that he was insured, and he also owns his own home up in Orange, with a little butcher shop attached to it."

This answer taken in conjunction with his statement that he was sorry the accident happened and that he was in a hurry to see a sick friend, and that the injured parties would hear from him in a few days would have the effect of an admission of his negligence and responsibility for the accident, and of his ability and intention to rectify his wrong, and probably would have been entitled to remain on the record even if a motion to strike out the last answer had been made. In any event, had the motion to strike out been made by defendant's attorney a ground would have been laid that might have been entitled to consideration by this Court on an appeal from the refusal of the Trial Court to strike the same out, but instead of this, counsel moved for a mistrial and as has hereinbefore been submitted, this motion was directed to the discretion of the Trial Court and it would seem under the circumstances that said discretion was not abused by the failure to grant such a motion under the decisions above referred to.

In the case of *Lackenauer v. Lyon & Sons Brewing Co.* (E. & A.), 67 N. J. L. 677, an officer of the defendant company was asked:

"Did you do anything personally to work up this case?"

to which he answered,

"No, sir."

He was then asked,

"Who did?"

Objection was made to the question; the question was admitted and exception taken. He answered,

"I wrote a letter to the insurance company notifying them of the accident."

It will be noted that the appeal in this case was not from any refusal of a motion for mistrial but on an exception to the overruling of an exception to a question, and even in this case, although the Court of Errors and Appeals stated that the

“further examination of the witness leads me to think that the object of the question was to show that the brewing company had an employer’s liability insurance, and that it was indemnified from loss by this insurance,”

the Court held that the admission of the question was certainly harmless to the defendant and it cannot therefore take advantage of such admission on the appeal. The Court said further:

“the question belongs to a class of inquiries arising at almost every trial which may not be directly relevant to the issue, yet are, and must be, left to the discretion of the Trial Judge, and will not be deemed of sufficient importance to set aside the trial, unless it clearly appears that injury has been done by the admission.”

And in the case of *Kalker v. Hedden* (E. & A.), 72 N. J. L. 239, the question was asked of the defendant:

“Are you testifying in your own interest, or are you insured against the result of an adverse verdict in this case?”

The Trial Judge admitted the question and exception was sealed. The judgment was affirmed, the Court citing *Day v. Donahue*, *supra*, showing the question to be within the discretion of the Trial Court. It will be noted that the appeal in this case was not from a refusal of the Trial Court to grant a motion for mistrial.

A case in which the reference to an insurance company came out in the evidence on the plaintiff’s case is *Bradley v. Cleary Co.* (E. & A.), 86 N. J. L. 338, which is referred to hereinbefore and which involves all of the elements of the case at bar, even in a stronger degree than they appear in this case and where the Court reiterated a long established rule holding that motions for

mistrial are addressed to the discretion of the Court and are not assignable for error.

And in the case of *DeVicenzo v. John Sommer Faucet Co.* (E. & A.), 87 N. J. L. 645, the appeal arose from an exception taken to the adverse ruling of the Trial Court on an objection to a question by plaintiff's counsel on cross examination of defendant's physician witness:

"Q You are employed regularly as the physician of one or more indemnity insurance companies, are you not? A I am an employee of one accident insurance company."

The judgment for the plaintiff was affirmed, the Court holding that the admission of this testimony was not improper and it is manifest that its admission has not prejudiced the defendant.

In none of the cases arising in this State has the Appeal Court reversed any judgment on any appeal from a motion for mistrial when incidental reference is made, by a question or answer, to matters of insurance, nor has there been any reversal on appeal from refusal to grant mistrial even where the question was properly objected to or an answer moved to be stricken out. The rules of evidence that defendant-appellant's counsel in his brief refers to as supporting the decisions affirming judgment in such cases and by which he seeks to distinguish and justify them will be found to have been adverted to by the Appellate Court only where proper exception was taken on objection to specific questions or answers on the ground of their inadmissibility as evidence and not on appeals arising from a motion for mistrial.

The Supreme Court in its opinion (p. 155, State of Case) in treating of the combined grounds of the defendant-appellant decided as follows:

"It is enough to say in disposing of this ground of appeal that the general rule with relation to this subject is that the refusal to withdraw a juror, and thereby produce a mistrial, is a matter that

rests in the discretion of the Trial Judge, and is not assignable as a ground for reversal. *Heiler v. Goodman's Motor, &c., Co.*, 92 N. J. L. 415. Whether exceptional circumstances might justify the removal of a case from the operation of this rule would seem, from the declaration of the Court of Errors and Appeals in the cited case, to be an open one; but, assuming that this is so, we find nothing in the case at bar to justify such a course."

It will be observed that the Court not only applied the general rule which it stated, but also inquired into whether any exceptional circumstances existed that might justify the removal of this case from the operation of the well-established rule and held,

"We find nothing in the case at bar to justify such a course."

The defendant-appellant's counsel in his brief referred to the cited case of *Heiler v. Goodman's Motor, &c., Co.*, 92 N. J. L. 415, argues that the statement of the general rule therein was *obiter dictum*. An examination of the case will show that the appeal was taken by the plaintiff who advanced, first, the failure of the Trial Court to grant his motion to withdraw a juror and to declare a mistrial, and, second, because the Court granted defendant's motion to non-suit. The Court reversed the case because of the error in granting the non-suit, which as is stated was sufficient in itself, but it did also rule upon the ground of appeal based on the refusal to declare a mistrial and held, citing the case of *Bradley v. DeCleary Co.*, 90 Atl. Rept. 1015, that this was a matter of discretion with the Trial Court and not recognizable as a ground of appeal.

Counsel for defendant-appellant then seeks to distinguish the case of *Bradley v. DeCleary Co.* (*supra*), 90 Atl. Rept. 1015, which also enunciated the same rule, from the case at bar. As the *Bradley* case is already carefully reviewed in this brief, we will not repeat argument to show its direct analogy to the case at bar, and that counsel does not in his brief in any way differentiate it from the case at bar. Essentially the same matters of evidence

were involved, with the same ruling of the Trial Court, and the same decision of the Appellate Court as in the case at bar.

Defendant-appellant's counsel in his brief refers to no New Jersey cases to sustain his contentions, but limits himself to seeking to differentiate from the case at bar, the long line of cases which hold contrary to him; but cites several cases arising in other states, in answer to all of which it may be stated that none of these cases arose from an appeal from a motion for mistrial and so are therefore not in point. In reference to the cases of *Lassig v. Barsky*, 87 N. Y. Supp. 425, and *Marigold v. Black River Traction Co.*, 80 N. Y. Supp. 861, cited by the defendant, it may be said that these cases are directly in variance with the New Jersey cases of *DeVincenzo v. John Sommer Faucet Co.* (E. & A.), 87 N. J. L. 645, and the case of *Bradley v. Cleary Co.* (E. & A.), 85 N. J. L. 338, and so cannot control.

In the New York case cited of *Marigold v. Black River Traction Co.*, the judgment was set aside on account of the plaintiff's attorney asking a witness of the defendant whether a certain doctor who called on the plaintiff with him did not in fact represent an insurance company, specifically like the case of *Bradley v. Cleary Co.* (*supra*), and *DeVincenzo v. John Sommer Faucet Co.* (*supra*), wherein the courts of this state have held otherwise, and it may be added that the New York cases themselves have been virtually overruled in their own state in *Grant v. National R. Spring Co.*, 100 N. Y. App. Div. 234, 91 N. Y. Supp. 805, in which it is held that in an accident for personal injury a juror may be asked if he is a stockholder or interested in a casualty or accident insurance company, by which the defendant is indemnified in respect to the liability involved. There are numerous other cases so holding in various states which are cited in foot note 54, 24 Cyc. 342.

That there was no harmful error arising from the exercise of its discretion on the motions, by the Trial Court,

is very apparent from the extreme smallness of the verdicts in the case at bar which certainly bear no signs of having been influenced by any prejudice favoring the plaintiff, who while crossing a public street at a crosswalk, having crossed from the opposite side of the street, was struck with such force by the defendant's automobile that after the accident, according to plaintiff's witnesses, the bumper came off the car (p. 56, l. 24):

“Q He picked up the iron in front of the car?

A The bumper, I believe.

Q Is that what it was, the bumper? A Yes.”

(Line 39):

“Q Did he say anything then, when he did that? A He said, if it had not come off it would have killed me.”

And the defendant himself testified (p. 130, l. 26):

“Q Your bumper hit them? A Yes.

Q And when your bumper hit them, it hit them so hard it came off? A No, it did not.

Q The bumper did not? A The bumper was loose.

Q You loosened it after the accident? A Why, I just took it off.”

An examination of the plaintiff's and witnesses' testimony shows that the plaintiff stopped in the middle of Central avenue, which is a street about sixty-three feet wide, and that when the plaintiff was about six feet from the curb toward which she was going, the automobile of the defendant was then about forty feet away (p. 13) and that in striking the plaintiff, the automobile swerved in toward them and toward the curb (p. 15).

The evidence is replete with proof of extreme negligence on the part of the defendant, and the result of this striking under circumstances which the jury found to be negligent were extremely and unusually serious. Besides other injuries upon and about her limbs and body, the plaintiff sustained a fracture of both bones of the forearm (p. 33, l. 20). The bones were

set under ether (p. 34, l. 33). Her arm remained in splints for six weeks (p. 25, l. 6). After the arm was set, one of the bones knit and in the other there was no callus thrown out and the bones did not unite and the doctors finally decided to again operate on this to bring the two bones in apposition. In the interim other splints were put on, which remained there until four or five months after the accident (p. 36). Then the second operation was performed in the summer of 1921, at the Newark Private Hospital, where the doctors freshened up the ends of the bones, took some of the ends off and sewed them together with a kangaroo tendon, the patient then remaining in the hospital a week or ten days.

The operation involved the administering of ether to the patient and a three-inch incision in her forearm, from which a scar remains (p. 37). The result of this operation was also unsatisfactory and both before and after the operation the plaintiff went to New York to have a physician give her violet-ray treatments (p. 38). Her doctors after the second operation, agreed that another operation should be performed. At the time of trial this had not yet been done (p. 38). The plaintiff, at the time of the trial, which was eleven months after the accident, could not do her housework, and could not turn her arm (p. 39). The bones were, at the trial, still loose in her arm (p. 40). The operation still to be performed according to the doctor's testimony, was to have the old scar opened and the ends of the bones scraped, and either the bones brought together, or a silver wire or plate, or a plate screw put in there, or a piece of bone taken somewhere from the body and transposed with these bones. The specific recommendation of the doctor was (p. 41) that she have a piece of bone removed from her leg and put in her arm. Both the plaintiff's and defendant's physicians testified that the bone grafting operation is not at all certain of success and that if it fails as the previous operation failed, plaintiff would re-

main in her present condition throughout life (p. 51), and even if it succeeded, the defendant's physician admitted (p. 107) that it would only improve twenty-five per cent. For this injury, resulting in incapacity and pain, and deformity for the year up to trial, with a probability of its continuance throughout life, the jury awarded only \$2,000.00 to the plaintiff, Julia Baunach. To the husband, whose expenses included a doctor bill, already incurred, of \$700.00, and a prospective operation charge in the future of \$250.00, besides other fees of \$40.00 paid to other doctors, expenditures amounting to \$144.00 for servants for housework, and a hospital bill of \$122.90 (p. 82), making a total of approximately \$1,256.90, the jury allowed the extremely moderate sum of \$1,500.00, this being intended to include his allowance for loss of wife's services.

In view of the extremely low verdicts with relation to the nature of the injuries sustained and in view of the testimony of the defendant's negligence, it does not appear that the jury could have been in any way influenced by the question to the talesman as to the duties of his occupation or the single incidental reference in a witness' testimony to a statement of the defendant himself in conjunction with the remainder of his conversation, that he was insured.

We respectfully reiterate that the judgment of the Supreme Court in affirming the judgment of the Essex County Circuit Court was not error and that the record of the trial below shows no harmful error and no error whatever that is reviewable by this Court, but merely the proper exercise of judicial discretion on the part of the Trial Court in ruling upon motions which were addressed to its discretion, and for these reasons we respectfully urge that the judgments should be affirmed.

JOHN W. MCGEEHAN, JR.,
Attorney for and of Counsel
with Plaintiffs-Appellees.

New Jersey Court of Errors and Appeals

JULIA BAUNACH and FRANK BAUNACH, <i>Plaintiffs-Appellees,</i>	} <i>On Appeal from Supreme Court.</i>
<i>vs.</i>	
ISADORE LIEBMAN, <i>Defendant-Appellant.</i>	

BRIEF OF DEFENDANT-APPELLANT.

The defendant-appellant appealed to the New Jersey Supreme Court from the Essex County Circuit Court on three grounds, the third of which was expressly waived and the first two of which were combined. The first ground dealt with the Court's refusal to grant the defendant's application for a mistrial on account of the questioning of a juror on the *voir dire* which was intended to inject the element of insurance company into the case; the second ground dealt with the same refusal by the Court when the same element was introduced into the case by the plaintiff's witness John A. Schraft on direct examination by the plaintiff's attorney. The Supreme Court in a *per curiam* opinion affirmed the trial court.

Summary of Facts.

While the jury was being selected and the attorneys were questioning the members of the panel called by the sheriff, defendant's counsel desired to raise a question with the Court on certain questions propounded by plaintiffs' counsel and at the former's suggestion the Court directed the stenographer to spread upon the record the questioning of the juror involved.

Page 7, line 31.

Mr. McGeehan. Mr. Kellet, you say you are an insurance auditor?

The Talesman. Yes.

Mr. McGeehan. And in the performance of your duties as such, what kind of insurance companies do you come in contact with?

The Talesman. Just the New York Life, just one insurance company, auditing their books; their personal books.

Page 8, line 1.

Mr. McGeehan. And in the performance of your duties for the New York Life Insurance Company do you have anything to do with matters involving the insurance of automobiles against liability?

The Talesman. I do not.

Mr. Schneider. I would like to ask for a mistrial on that question, on the ground that it might tend to prejudice the jury.

The Court. I will overrule your objection.

Mr. Schneider. Excepts to this ruling of the Court.

Exception noted as ground of appeal.

The jury is drawn and sworn

The second episode occurred during the examination in chief of the first witness for the plaintiff, John A. Schraft, (also suing for injuries arising out of the same accident) by plaintiffs' counsel (see p. 16, l. 32).

Q Then, what happened—after the thing was over you say you went to the hospital? A Yes.

Q Who took you there? A Mr. Liebman.

Q The defendant in this case? A Yes.

Q And was Mrs. Baunach also taken to the hospital? A Yes.

Q In his car? A Yes.

Q Now, on the way to the hospital did you have a conversation with Mr. Liebman or did he say anything with reference as to how this accident happened? A Yes, sir.

Q What did he say? A Mr. Liebman said that he was sorry that it happened; that he was in a hurry, he was going to see a sick friend and he was sorry that the accident happened. He also said that everything would be all right, and we

would hear from him in a few days. He also helped me put on my coat in the hospital.

Q What, if anything, else did he say? Did he say anything about the rate of speed he was going?

A Yes, he said he was going from eighteen to twenty miles.

Q Was there anything else he said? A He said he owned the machine, that he was insured, and he also owns his own home up in Orange, with a little butcher shop attached to it.

Mr. Schneider. If your Honor please, I will ask for a mistrial on the ground that the insurance company is again being injected into the case by this witness, for the reason stated, that it might tend to prejudice the jury.

The Court. No, I will overrule your objection.

Mr. Schneider. May I have an exception, your Honor?

Exception noted as ground of appeal.

ARGUMENT.

The Supreme Court first disposes of defendant-appellant's contention by saying that "The general rule with relation to this subject is that the refusal to withdraw a juror, and thereby produce a mis-trial, is a matter that rests in the discretion of the trial judge, and is not assignable as a ground for reversal;" citing *Heiler v. Goodman's Motor &c. Co.*, 92 N. J. L. 415. The Supreme Court also says that "Whether exceptional circumstances might justify the removal of a case from the operation of this rule would seem from the declaration of the Court of Errors and Appeals in the Heiler case, to be an open one" and that at any rate the present case has nothing in it to justify such course.

In the Heiler case cited by the Supreme Court a motion was made by the defendant for a non-suit on the ground that the plaintiff was an alien enemy. The plaintiff asked for permission to withdraw a juror and declare a mistrial. The motion for a non-suit was granted by the

trial court and the Supreme Court reversed the same. Therefore, the ruling of the Court on the motion for permission to withdraw a juror was *obiter dictum*. In fact, the Heiler case cites the case of *Bradley v. De Cleary Co.*, 90 Atl. Rept. 1015. This is a case in the Court of Errors and Appeals where the very question involved was the injection of insurance company into the case and a motion for a mistrial on that point. The Court of Errors and Appeals sustained the trial court in refusing a mistrial, but nevertheless went into the merits of the matter carefully. This case cites the previous cases on this point and comes to the following conclusion:

"It is held that it was within the discretion vested in the trial judge to admit a class of evidence having only a remote bearing upon the issues in the cause, unless it clearly appeared that injury might be done by the admission." It will be noted that the Court used the words "might be done," and not "has been done."

It should be borne in mind that in cases of this kind, that is, where the element of insurance company is injected, the very mischief is caused very often by the question itself and not by the answer. A good illustration of this is the last question in the first episode in this case (p. 8, l. 1), "And in the performance of your duties in the New York Life Insurance Company do you have anything to do with matters involving the insurance of automobiles against liability?"

This question at once injects into the minds of the jurors the fact that the defendant is or may be insured against loss and that the real defendant is not Liebman the owner of a little grocery store, but possibly a wealthy insurance company. What good would counsel's objection and Court's striking out the question or refusing to permit an answer, do; the mischief is done, the seeds are sown, and the defendant is or may be deprived of his day in court, of a fair and unprejudiced hearing and a decision on the facts and nothing else.

There is a distinction in motions for a mistrial as to the reasons for the same and the Court should have absolute discretion in cases like the Heiler case, *supra*, where the reason for the motion for a mistrial does not go to the question as to whether the defendant is having his day in court, that is, a fair trial, but hinges simply on a matter of procedure. It is our contention that where the issue of insurance company is injected into the case, the defendant is or may be deprived of his day in court, that is, that the case may be decided by the jury on a point entirely extraneous to the issues involved.

Even adopting the dictum in the Heiler case as to exceptional circumstances, we contend that whenever the issue of insurance company is injected into the case, it creates exceptional circumstances which would remove the case from the operation of the ruling alleged to have been laid down in the Heiler case.

The defendant contends that questions of this kind create "Exceptional circumstances" which, in the language of the Heiler case "Might justify the removal of a case from the operation of this rule;" this follows the policy of *Bradley v. De Cleary Co.* (*supra*).

Our contention being, therefore, that this Court has the right under its practice to look into and investigate matters of this kind that is, where the issue of insurance company is injected into the case, we will proceed to argue the merits of the grounds of appeal in this case and attempt to show that the case at bar has *very* "Exceptional circumstances," and is clearly one that should be considered by this Court.

On the first episode—the questioning of the talesman—the contention of the defendant is that from the nature of the questions themselves it is evident that the purpose of the plaintiff in submitting the questions to the talesman was not really and sincerely to take advantage of the statute (P. L. 1911, Ch. 151, Sec. 3) which permits questioning of jurors "for the purpose of eliciting informa-

tion upon which he may determine whether or not to interpose a peremptory challenge" * * * or "for the purpose of disclosing whether or not the juror was impartial as between parties to the suit and without interest therein or in the result thereof," but, in fact, to illegally convey information or at least to intimate to the jurors in general that the defendant was insured against loss by some indemnity company and thus inject an issue into the case which might tend to prejudice or otherwise influence the talesman against the defendant or influence them to find a verdict on the ground that the defendant would not be injured thereby. In other words, the defendant contends that the questions were propounded to the juror with an ulterior and illegal motive.

The first question develops the fact that the juror is an insurance auditor. The second question develops most definitely and concretely and completely the exact kind of insurance work which the prospective juror is engaged in and the extent of it; that he works for the New York Life Insurance Company for only that company, that he audits their books, that is, their personal books. At this point plaintiff's counsel had full and ample information on which he could base a decision whether or not to peremptorily challenge the juror. He knew the kind of work the talesman was engaged in, the nature and extent of it and knew in fact, that he was not engaged in the indemnity or casualty insurance business because he definitely stated that he was working for the New York Life Insurance Company on their personal books.

The very next question, however, is strictly by way of addition and would seem ridiculous and foolish were it not for the fact that he who runs may read that it was inspired by the ulterior motive of conveying the information or intimating to the jurors in general that the case in hand was what the man on the street would call "an insurance case" and arose from an unadulterated desire to convey to the jury the intimation that it was not Isadore

Liebman with his little butcher shop who was the real defendant but, in fact, a large corporation which according to popular opinion collects many premiums and is swollen with profits. Why else would counsel ask "And in the performance of your duties for the New York Life Insurance Company do you have anything to do with the matters involving the insurance of automobiles against liability"? He might just as well say "Gentlemen of the jury, you need not worry about rendering a large verdict in this case as the defendant Liebman will not have to pay it since he is insured against loss by an insurance company. If after hearing the proof in this case you are in doubt as to which side should prevail, gentlemen, tip the balance rather in favor of the poor plaintiffs who have been injured and have suffered great pain as against the soulless and wealthy corporation."

Defendant's contention as will be shown more definitely hereinbelow in analyzing some of the cases is that such questioning is absolutely outside of the pale of that approved by any adjudicated case, as the precedents which do approve of questions that tend to concern insurance, do so on some definite ground which does not cover questioning of the kind developed in this case.

A similar stretching of legitimate questioning to the nth degree is apparent in the second episode and the same sinister motive is evident, *viz.*: to haul in "insurance company" at all events and at all costs. In judging this episode, it should be borne in mind that the answer of the defendant expressly admitted possession, operation and control of the automobile involved, by the defendant (see p. 4, l. 27.) "2. Except as he admits that he operated an automobile on January 2nd, 1921, upon and along Central avenue, in the City of Newark, he denies paragraph two of the complaint." It is elementary, of course, that statements by a defendant admitting or tending to admit liability or facts on that subject are admissible in evidence and so, conversations between a witness and the defendant containing such facts are admissible in evidence.

The most superficial examination of the conversation involved herein will show that the very last question was for the sole purpose of injecting the foreign issue of insurance company and that it contained nothing at all that had to be proved by this conversation excepting entirely extraneous and illegal matter. The first question and answer developed that Mr. Liebman stated that he was sorry, that he was in a hurry, that he was going to see a sick friend, etc. The second question was specific as to the rate of speed and developed that he was going from eighteen to twenty miles an hour. Then the omnibus question was asked for the second time, "Was there anything else he said"; and then the witness pulled the trigger and "shot the sympathy stuff" about the insurance company and defendant's home and his butcher shop. As one of the cases cited hereinbelow pointedly says, counsel must have questioned the witness beforehand, as is usual in cases, and must have warned the witness against the evil of injecting extraneous matters of this kind, and it can be assumed that the witness maliciously and willfully injected this illegal testimony, the more so, since he himself was a plaintiff in another action arising from this very accident. The only fragment of testimony in the last answer that might have been admissible is the fact that the defendant stated that he owned the machine and that, as stated above, was admitted in the answer.

Crystallizing the argument on both episodes, the defendant contends that the issue of "insurance company" was injected on both occasions without any legal excuse and for no legitimate purpose. On the second episode, it must be remembered that it was developed by plaintiffs' counsel on direct examination of plaintiffs' witness and not as occurred in the cases in New Jersey where the practice met with approval, on cross examination of plaintiffs or plaintiffs' witnesses or on examination of the defendant or his witnesses. This makes a great difference

in construing the animus, the motives of the questioner and the respondent and the hoped for results.

The most important cases in our State seem to be as follows:

Day v. Donohue (Court of Errors and Appeals 1898), 41. Atl. Rept. 934, 62 N. J. L. 380.

In this case the defendant was asked upon cross examination if it were really in his own interest that he was testifying or whether he was insured against the result of an adverse verdict. It was held that this question was relevant as it would tend to show whether the witness was interested in the outcome of the suit or not as a possible basis for impeaching his veracity. The Court expressly says:

"It is not necessary to maintain the broad proposition that a plaintiff who sues for personal injuries has an unqualified right to show that the defendant is insured against loss of that sort. The question here is a much narrower one, whether a party who is testifying in his own defense, apparently, may not be asked whether it is really in his own defense that he is testifying. * * * In the present instance this discretion was, as it seems to me, soundly exercised, whether the questions to the defendant were put for the purpose of eliciting affirmative evidence or with the object of laying the foundation for the subsequent impeachment of the witness."

This is far different from our case.

Lackenauer v. Lyon & Sons Brewing Co. (Court of Errors and Appeals, 1902), 52 Atl. Rept. 385, 67 N. J. L. 677.

In this case the witness of the defendant, the secretary of the brewery which was being sued, was asked: "Did you do anything personal to work up this case?" And he answered, "No, sir." He was then asked, "Who did?" and he answered, over objection, "I wrote a letter to the insurance company notifying them of the accident." The Court allowed the question and the answer on the ground

that when the question was put the purport was not apparent and could only be surmised.

Moreover, this case is not like ours, as the admission came from the mouth of the defendant's witness and in answer to an apparently harmless question which at the time was perfectly proper.

Kalker v. Hedden (Court of Errors and Appeals, 1905), 61 Atl. Rept. 395, 72 N. J. L. 239.

This case follows *Day v. Donohue* (*supra*);

Bradley v. D. E. Cleary Co. (Court of Errors and Appeals, 1914), 90 Atl. Rept. 1015, 86 N. J. L. 338.

In this case the plaintiff's son on cross examination developed the fact that he refused to allow an insurance adjuster to see the injured, his father. A reading of the opinion, however, will clearly disclose that it was not only proper but absolutely necessary and just to avoid a distortion of facts for the witness to make the statement that he did. Defendant's counsel interrupted him in the middle of a sentence and had it stood as it then appeared on the record it might have caused great injury to the plaintiff's case. This case is entirely different from ours.

Devicenzo v. John Sommer Faucet Co. (Court of Errors and Appeals, 1915), 94 Atl. Rept. 573, 87 N. J. L. 645.

In this case the defendant's physician was on the stand and the inquiry was as to who employed him with the object of bringing out the fact that an insurance company employed him to make a physical examination of the plaintiff. It was held that the questions were proper under the well-settled rule of evidence which concedes to the opposing party the right of cross examination for the purpose of showing the interest of a witness in the subject matter of the litigation.

It is thus evident that where the Court allowed "insurance company" to be brought into the case, it was permitted on some specific ground or rule of evidence and

not on the broad ground that the plaintiff is entitled to adduce proof that the defendant is insured or indemnified against loss. The latter is a point on which the Court in *Day v. Donohue* (*supra*), refused to pass and which it seems to me is the question in this present case.

In both episodes in the testimony of this case, the information or intimation that the defendant was insured was conveyed to the jury in a manner which cannot be justified by the specific reasoning of any of the New Jersey cases cited above nor by cases in any other jurisdiction which permitted questions and answers of this character, as they do so on some specific and certain ground and on some definite rule of evidence. The inference from the cases cited above are plain that the plaintiff cannot bring in this extraneous issue without a definite reason and the cases in other jurisdictions agree with this.

A case very much in point is

Lassig v. Barsky, 87 N. Y. Supp. 425 (1904),

in which the *per curiam* opinion is as follows:

"In view of the information conveyed by plaintiff's counsel to jurors under the guise of inquiring into their qualifications that the defendant was insured against loss in the event of a recovery against him and a repetition of the reprehensible practice in the course of the examination of one of defendant's witnesses, the judgment and order appealed from should be reversed and a new trial ordered, etc."

Manigold v. Black River Traction Co., 80 N. Y. Supp. 861 (1903).

This case held that (at page 862):

"The law is well settled that it is improper to show in an action of negligence that the defendant is insured against loss in case of a recovery against it on account of its negligence. It is not proper to inform the jury of this fact in any manner. * * * Certainly plaintiff's counsel ought not to be permitted to do indirectly what he would not be permitted to do directly."

This case also holds that the plaintiff should shoulder the burden of satisfying the Court that the improper statement did not influence the verdict rendered (see p. 863). The judgment was set aside in this case on account of the asking of the question concerning insurance—a witness of the defendant was asked whether a certain doctor who called on the plaintiff with him did not, in fact, represent an insurance company back of the defendant—although the Court had sustained the objection of the defendant's counsel and had not permitted the question to be answered. In other words, the Court held that the evil lay in the question itself and was not eradicated, although the Court did in fact instruct the jury to disregard the question and the inference arising from it.

An analogy may be drawn between our case and the case of *Purcell v. Degenhardt*, 202 Ill. App. 611, wherein the Court could see no reason for asking two prospective jurors who were respectively a farmer and a grocer whether they were interested in any insurance or casualty company. In our case, Mr. Kellett, the talesman, was asked a similar irrelevant question, after previous questions had definitely and fully established his business, its nature and extent.

Likewise, *Crowley v. Strasenruter*, 174 Ill. App. 538 (1912);

Carter v. Walker, 165 S. W. Rept. 482 (Court of Errors—Texas, 1914).

In this case the plaintiff while testifying was questioned as to statements made by the defendant and after giving certain statements he finally gave the following, alleged to have been made by the defendant, "He said he had insurance on the car." The Court held that the testimony was illegal and reversed the judgment. At page 486 occurs the following comment:

"In consulting with his attorney he must have told him about the conversation with appellant or he would not have been interrogated about it and we presume that his attorney informed him that

such testimony was not permissible. He must have appreciated the effect that it would have upon a jury trying a case between two citizens when it was made known that a corporation and not the defendant would have to discharge the judgment for damages. He must have known that the wavering balances would go down against the 'soulless corporation'; no amount of admonition to the jury could remove the effects of the testimony because it could not remove the knowledge that the suit was not one between citizens, but between a citizen and a corporation."

The majority opinion in *Grubaugh v. Murphy, et al.*, 177 N. W. Rept. 217, Mich. 1920, has this to say on the subject (p. 221). "In this jurisdiction cases are not infrequent where counsel, aware of the fact that juries are prone to be more liberal with the funds of the insurance companies than with those of private individuals, have successfully sought to place before the jury, the fact that the nominal defendant was insured and would not suffer by the rendition of a substantial or excessive verdict. This practice has met with the consistent disapproval of this court."

To sum up this matter, whether the defendant is insured against an adverse verdict in cases of this kind, is not one of the issues. If it crops out incidentally as illustrated by some of the cases cited above, it cannot be helped. For the plaintiff, however, to directly or indirectly on purpose inject this fact into the case so as to prejudice, sway or influence the jury, is unfair and wrong. Such conduct deprives the defendant of a fair trial. And it is urged that this is what has occurred in this case.

Counsel for the plaintiffs-appellees, in his brief in the Supreme Court argues that the jury could not have been influenced by the matters described above on account of what he calls the low verdicts. It is submitted, however, that a reading of all the medical testimony in the case will demonstrate that there was a substantial conflict of medical testimony and that the verdicts were not inadequate.

A reading of the testimony, moreover, will show that the testimony as to defendant's negligence was very close and border line. The defendant himself testified that the accident occurred a substantial distance from a crossing (p. 120, ll. 12-20), in which he was corroborated by at least one witness, who saw the positions of the automobile and the injured shortly after the accident (p. 141, ll. 20-30). Moreover, the defendant testified that the plaintiff, Julia Baunach and the witness Schrafft suddenly darted in front of his automobile (p. 120, ll. 20-30). His story of the accident was very clear and probable, while that of the plaintiff Julia Baunach and Schrafft, was at the best, only as good. The defendant was corroborated in some details as to position, etc., by the witness Scorben (pp. 137, etc.).

The defendant contends that the jury was or might have been influenced in such a close case of liability to render a sympathy verdict for the plaintiffs.

The defendant, therefore, prays that the judgment for the plaintiffs be set aside and a new trial granted.

Respectfully submitted,

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with Defendant-Appellant.



