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Notice and Ground of Appeal.

NOTICE AND GROUND OF APPEAL.

New Jersey Supreme Court

KATE M. DEMEREST, FLORENCE
MOORE, HELEN MOORE and
CATHERINE P. MOORE,

Plaintiffs,

vs.

EDITH GUILD and METROPOLITAN
LIFE INSURANCE COMPANY, a
corporation,

Defendants.

10

*Notice
of Appeal
Including
Ground of
Appeal.*

To Frederick A. Pope, Esquire, attorney of de- 20
fendant, Metropolitan Life Insurance Com-
pany:

TAKE NOTICE that the plaintiffs appeal to the
Court of Errors and Appeals from the whole of
the judgment entered in this cause on the follow-
ing ground:

1. The court directed a verdict in favor of
the defendant, Metropolitan Life Insurance Com- 30
pany and against plaintiffs.

WHITING & MOORE,
Attorneys of Appellants.

Service of the within notice of appeal includ-
ing ground of appeal is hereby acknowledged this
5th day of September, 1934.

FRED'K A. POPE,
Atty. Metropolitan Life Ins. Co. only.

40

*Judgment Record—Complaint.***JUDGMENT RECORD.**

NEW JERSEY SUPREME COURT.

| | | | |
|----|---|---|-----------------------------|
| 10 | KATE M. DEMEREST, FLORENCE MOORE, HELEN MOORE and CATHERINE P. MOORE, <div style="text-align: right;"><i>Plaintiffs,</i></div> | } | <i>Judgment Record.</i> |
| | <i>vs.</i> | | <i>Action at Law.</i> |
| | EDITH GUILD and METROPOLITAN LIFE INSURANCE COMPANY, a corporation, <div style="text-align: right;"><i>Defendants.</i></div> | | <i>On Postea.</i> |

20 Judgment for defendant, Metropolitan Life Insurance Company, a corporation.

The defendants in this cause were summoned to answer unto Kate M. Demerest, Florence Moore, Helen Moore and Catherine P. Moore, the plaintiffs therein, in an action at law, upon the following complaint (summons issued April 3rd, 1934):

Complaint.

30

Filed April 20, 1934.

Plaintiffs, Kate M. Demerest, of the Town of Newton, Sussex County, New Jersey and Florence Moore, Helen Moore and Catharine P. Moore, of the City of Perth Amboy, Middlesex County, New Jersey, say that:

40

Judgment Record—Complaint.

FIRST COUNT.

1. At the times herein stated and prior thereto, the defendant, Edith Guild, was employed by the defendant, Metropolitan Life Insurance Company, a corporation, as a nurse, and in the performance of her duties as such nurse, visited and attended persons at considerable distance from her home in Dunellen and at some distance from one another. 10

2. At the times herein stated and prior thereto, the defendant, Edith Guild, in the course of her said employment and in order to get from place to place more quickly and conveniently, operated an automobile.

3. On January 20th, 1934, the defendant, Edith Guild, as the servant, agent and employee of the defendant, Metropolitan Life Insurance Company, and within the scope of said employment, operated said automobile in a westerly direction along Summit avenue, at and near its intersection with Watchung avenue, public streets in the Borough of North Plainfield, Somerset County, New Jersey. 20

4. At the time and place aforesaid, the plaintiff, Helen Moore, was operating an automobile in a northerly direction along said Watchung avenue at and near its intersection with said Summit avenue. 30

5. At the time and place aforesaid, the automobile which was being operated by said plaintiff, Helen Moore, entered said intersection first and had reached a point beyond the center line of Summit avenue when the right rear part thereof was struck with great force and violence by the automobile which was then and there being 40

Judgment Record—Complaint.

operated by the defendant, Metropolitan Life Insurance Company, by its servant, agent and employee, Edith Guild and was overturned.

6. Said collision was caused by the careless, reckless and negligent manner in which the defendant, Metropolitan Life Insurance Company, by its servant, agent, and employee, Edith Guild, operated and managed the automobile which she was driving. Said defendant was negligent in that its said servant, agent and employee (a) operated said automobile at an excessive rate of speed; (b) failed to have brakes adequate to control the movement of and stop said vehicle; (c) failed to maintain brakes of said automobile in good working order; (d) operated said automobile at a rate of speed so rapid as to lose control thereof; (e) failed to give warning of the approach of said automobile by blowing a horn or otherwise; (f) failed to observe the conditions existing at said street intersection at said time and place; (g) failed to look in the direction in which said Edith Guild was proceeding; (h) failed to look for automobiles approaching said intersection from the left and to observe the automobile then and there being operated by the plaintiff, Helen Moore; (i) failed to yield the right of way to the vehicle operated by the plaintiff, Helen Moore, which had entered said intersection; (j) failed to steer said automobile so as to avoid hitting said other vehicle although the width and condition of the streets and the traffic upon them afforded ample space to pass in the rear of said other vehicle; (k) failed to have said automobile under proper control.

Judgment Record—Complaint.

7. At the time and place aforesaid, the defendant, Edith Guild, was negligent, in that she was guilty of the several acts of negligence set forth in paragraph 6 and plaintiffs repeat paragraph 6 as if same were herein fully and at length set forth.

10

8. At the time and place aforesaid, plaintiff, Kate M. Demerest, was a passenger in said automobile which was then and there being operated by the plaintiff, Helen Moore.

9. By reason of the negligence of the defendants aforesaid, and the collision caused thereby, plaintiff, Kate M. Demerest, was severely injured, wounded and bruised internally and externally and in particular her back and spine were seriously injured, and she was confined to the hospital for six weeks and has thereafter been confined to the house and has been and in the future will be required to wear a brace for her back and spine, and she has undergone great pain and suffering, mental anguish, torture and nervous shock and will undergo the same in the future and has been permanently injured and has been and in the future will be hindered and prevented from performing and transacting her household duties and her other lawful affairs.

20

30

10. By reason of the injuries sustained by the plaintiff, Kate M. Demerest, through the negligence of the defendants as aforesaid, the said plaintiff, Kate M. Demerest, was obliged to and did expend and in the future will be obliged to expend large sums of money for hospital, nursing and medical services, appliances, and care and otherwise in endeavoring to cure and relieve said injuries.

40

Judgment Record—Complaint.

Plaintiff, Kate M. Demerest, demands damages of the defendants, on this count, in the sum of \$25,000.00.

SECOND COUNT.

10 1. Plaintiff, Florence Moore, repeats the statements in paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count, as if the same were herein fully and at length set forth.

2. At the time and place aforesaid, plaintiff, Florence Moore, was a passenger in said automobile which was then and there being operated by the plaintiff, Helen Moore.

20 3. By reason of the negligence of the defendants aforesaid, and the collision caused thereby, plaintiff, Florence Moore, was severely injured, wounded, cut and bruised internally and externally and in particular she was cut and bruised about the face, limbs and body and sustained permanent scars, her collar bone was fractured and she was otherwise seriously injured, and she has undergone great pain and suffering, mental anguish, torture and nervous shock and will undergo the same in the future, her clothing was damaged and ruined, and she has been and
30 in the future will be hindered and prevented from transacting her household duties and her other lawful affairs.

4. By reason of the injuries sustained by the plaintiff, Florence Moore, through the negligence of the defendants as aforesaid, the said plaintiff, Florence Moore, was obliged to and did expend and in the future will be obliged to expend large sums of money for hospital, nursing and medical services and care and otherwise in
40 endeavoring to cure and relieve said injuries and

Judgment Record—Complaint.

was and in the future will be obliged to employ a woman to perform her usual household duties.

Plaintiff, Florence Moore, demands damages of the defendants, on this count, in the sum of \$15,000.00.

THIRD COUNT.

10

1. Plaintiff, Helen Moore, repeats the statements in paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count, as if the same were herein fully and at length set forth.

2. By reason of the negligence of the defendants aforesaid, and the collision caused thereby, plaintiff, Helen Moore, was severely injured, wounded, cut and bruised and in particular her left hand, wrist and arm were cut and severely bruised and she has undergone great pain and suffering, mental anguish, torture and nervous shock and she was hindered and prevented from attending to her usual employment and from transacting her lawful affairs.

20

3. By reason of the injuries sustained by the plaintiff, Helen Moore, through the negligence of the defendants as aforesaid, the said plaintiff, Helen Moore, was obliged to and in the future will be obliged to expend large sums of money for medical services and care and otherwise in endeavoring to cure and relieve said injuries.

30

Plaintiff, Helen Moore, demands damages of the defendants, on this count, in the sum of \$1,000.00.

FOURTH COUNT.

1. Plaintiffs, Helen Moore and Catharine P. Moore, repeat the statements in paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count as if the same were herein fully and at length set forth.

40

Judgment Record—Answer.

2. At the time aforesaid, plaintiffs, Helen Moore and Catharine P. Moore, were and continue to be the owners of the said automobile which was then and there operated by the plaintiff, Helen Moore.

10 3. By reason of the negligence of the defendants aforesaid, and the collision caused thereby, plaintiffs' said automobile was severely damaged and wrecked and said plaintiffs were deprived of the use of the same for a period of time.

Plaintiffs, Helen Moore and Catharine P. Moore, demand damages of the defendants, on this count, in the sum of \$500.00.

Plaintiff, Kate M. Demerest, demands \$25,000.00 damages on the first count.

20 Plaintiff, Florence Moore, demands \$15,000.00 damages on the second count.

Plaintiff, Helen Moore, demands \$1,000.00 damages on the third count.

Plaintiffs, Helen Moore and Catharine P. Moore, demand \$500.00 damages on the fourth count.

30 WHITING & MOORE,
Attorneys for Plaintiffs.

Answer.

Filed May 5, 1934.

The defendant, Metropolitan Life Insurance Company, answered as follows:

40 The separate answer of the Metropolitan Life Insurance Company, this defendant answering, says that:

Judgment Record—Answer.

ANSWER TO THE FIRST COUNT.

1. It is admitted that at the time mentioned in the complaint, the defendant, Edith Guild, was temporarily employed as a substitute nurse by the defendant, Metropolitan Life Insurance Company, and as such nurse visited and attended persons at a distance from her home in Dunellen; all of the other allegations in paragraph 1 are denied. 10

2. Paragraph 2 is denied.

3. It is admitted that on January 20th, 1934, the defendant Edith Guild operated her automobile in a westerly direction along Summit avenue, a public street, in the Borough of North Plainfield, Somerset County; all of the other allegations in paragraph 3 are denied. 20

4. Paragraph 4 is admitted.

5. Paragraph 5 is denied.

6. Paragraph 6 is denied.

7. Paragraph 7 is denied.

8. Paragraph 8 is denied.

9. Paragraph 9 is denied.

10. Paragraph 10 is denied. 30

ANSWER TO SECOND COUNT.

1. This defendant repeats all of the statements in its answer to paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count, to the same extent as if the same were herein fully and at length set forth.

2. Paragraph 2 is denied.

3. Paragraph 3 is denied.

4. Paragraph 4 is denied. 40

Judgment Record—Answer.

ANSWER TO THIRD COUNT.

1. This defendant repeats all of the statements in its answer to paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count, to the same extent as if the same were herein fully and at length set forth.
- 10
2. Paragraph 2 is denied.
3. Paragraph 3 is denied.

ANSWER TO FOURTH COUNT.

1. This defendant repeats all of the statements in its answer to paragraphs 1, 2, 3, 4, 5, 6 and 7 of the first count, to the same extent as if the same were herein fully and at length set forth.
- 20
2. This defendant has not any knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2.
3. Paragraph 3 is denied.

SEPARATE DEFENSES.

For separate defenses to each and every count in the complaint this defendant pleads that:

- 30
1. Neither it nor any of its servants, agents or employees were guilty of any negligence.
2. This defendant denies that at the time and place, when, etc., the automobile alleged to have been operated by the defendant, Edith Guild, was being used or operated by the said defendant, Edith Guild, as the agent, servant or employee, or in the performance of any duty or for any use or purpose of the Metropolitan Life Insurance Company.
- 40

Judgment Record—Answer.

3. This defendant denies that at the time, when, etc., the defendant, Edith Guild, was acting as the agent, servant or employee of this defendant.

4. This defendant denies that at the time and place, when, etc., the defendant, Edith Guild, was guilty of any negligence. 10

5. This defendant avers that the accident described in the complaint was caused by the sole and exclusive negligence of the plaintiff, Helen Moore, who was then and there acting as the vice-principal, servant, agent and employee of the plaintiffs, Florence Moore, Kate M. Demerest and Catharine P. Moore.

6. This defendant avers that the accident described in the complaint was caused by the contributory negligence of the plaintiff, Helen Moore, who was then and there acting as the vice-principal, servant, agent and employee of the plaintiffs, Florence Moore, Kate M. Demerest and Catharine P. Moore, in that said Helen Moore failed and neglected to exercise due care in the operation of the said automobile and in that the plaintiffs, Kate M. Demerest, Florence Moore and Catharine P. Moore, failed and neglected to exercise due care for their own safety and protection. 20 30

7. That at the time and place, when, etc., the said Kate M. Demerest, Florence Moore and Catharine P. Moore were the vice-principals of the plaintiff and the operator of the automobile of Helen Moore, and were then and there engaged in a joint and common enterprise and jointly and severally directing and controlling the operation of said automobile. 40

Judgment Record—Reply.

8. This defendant denies that either or any of the plaintiffs suffered any injury or damage by reason of the actings and doings of this defendant, or any of its servants or agents and that the damages sustained by the plaintiffs, if any, were due to and the result of the actings and doings of an independent agency over whom and over which this defendant exercised and had no control.

FREDERICK A. POPE,
Attorney of Defendant.
Metropolitan Life Insurance Company.

Reply.

Filed May 8, 1934.

Plaintiffs replied as follows:

Plaintiffs replying to the answer of the defendant, Metropolitan Life Insurance Company, say that:

1. They deny the allegations of each and every of the separate defenses.

WHITING & MOORE,
Attorneys for Plaintiffs.

*Postea.***POSTEA.**

Filed June 18, 1934.

NEW JERSEY SUPREME COURT.

SOMERSET COUNTY.

10

KATE M. DEMEREST, FLORENCE
MOORE, HELEN MOORE and
CATHERINE P. MOORE,

*Plaintiffs,**vs.*

EDITH GUILD and METROPOLITAN
LIFE INSURANCE COMPANY, a
corporation,

*Defendants.**Action
at Law.**Postea.*

20

The defendant, Edith Guild, having filed no answer, this case against the defendant, Metropolitan Life Insurance Company, was tried before Rulif V. Lawrence, Esquire, Circuit Judge, with a jury at the Somerset County Circuit on June 13, 1934.

By direction of the Court the jury rendered a general verdict against the plaintiffs and in favor of the defendant, the Metropolitan Life Insurance Company, of no cause for action.

30

RULIF V. LAWRENCE,
Judge.

40

*Judgment.***JUDGMENT.**

NEW JERSEY SUPREME COURT.

| | | | |
|----|---|---|------------------------------|
| 10 | KATE M. DEMEREST, FLORENCE MOORE, HELEN MOORE and CATHERINE P. MOORE, <div style="text-align: right;"><i>Plaintiffs,</i></div> | } | <i>Action at Law.</i> |
| | <i>vs.</i> | | <i>On Postea.</i> |
| | METROPOLITAN LIFE INSURANCE COMPANY, a corporation, <div style="text-align: right;"><i>Defendant.</i></div> | | <i>Judgt. for Defts.</i> |

Frederick A. Pope, attorney.

20 Judgment entered this eighteenth day of June,
 A. D. nineteen hundred and thirty-four in favor
 of defendant and against the plaintiffs for the
 sum of costs.
 Costs \$

THOMAS J. BROGAN,
 Chief Justice.

30 I, FRED L. BLOODGOOD, Clerk of the Supreme
 Court of the State of New Jersey, do certify that
 the foregoing is a true copy of the Judgment
 entered in above-stated cause, which said Judg-
 ment is recorded in this office in Vol. 50 of Judg-
 ments, page 499.

In testimony whereof I have set my
 hand and the seal of said Court at
 (SEAL) Trenton, this ninth day of August,
 A. D. nineteen hundred and thirty-
 four.

FRED L. BLOODGOOD,
 Clerk.

Motion for a Non-suit.

TESTIMONY.

NEW JERSEY SUPREME COURT.

SOMERSET COUNTY.

| | | |
|--|---|---|
| <p>KATE M. DEMEREST, <i>et als.</i>, <i>Plaintiffs,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>EDITH GUILD and METROPOLITAN INSURANCE COMPANY, <i>Defendants.</i></p> | } | <p>10</p> <p><i>Action at Law.</i></p> |
|--|---|---|

Somerville, N. J., June 13, 1934.

Before Hon. Rulif V. Lawrence, Judge, and a jury. 20

Appearances:

Whiting & Moore, by Ira C. Moore, Jr., Esq.,
and William S. Gnichtel, Esq., for the plaintiffs.

Frederick A. Pope, Esq., for the defendants.

A jury having been found satisfactory were
duly sworn.

Mr. Gnichtel: As to the defendant, Edith Guild, she did not answer this action and I did not notice the case for trial against her. 30

Thereupon Mr. Pope opened the case to the jury in behalf of the plaintiffs.

Thereupon Mr. Pope moved for a non-suit on the plaintiffs' opening, in favor of the defendant, Metropolitan Insurance Company, which after argument the Court denied and an exception was allowed.

Helen Moore, for Plaintiffs, Direct.

Thereupon Mr. Pope opened the case to the jury in behalf of the defendant, Metropolitan Insurance Company.

HELEN MOORE, sworn on her own behalf as a plaintiff, testifies as follows:

10

Direct examination by Mr. Gnichtel.

Q You are one of the plaintiffs? A Yes.

Q Where do you live? A Perth Amboy, New Jersey.

Q And are you part owner of an automobile? A I am.

Q What kind of an automobile is that? A A Chevrolet Sedan.

20

Q And who was the other owner of your automobile? A My sister, Catharine Price Moore.

Q On January 20th of this year, were you proceeding in a northerly direction along Watchung avenue? A I was.

Q And did an accident occur as you approached Summit avenue, North Plainfield? A It did, after I passed the intersection.

30

Q And will you describe to the Court and jury just what occurred at that intersection?

A I was driving along Watchung avenue toward Watchung on a pleasure drive, taking my aunt and sister with me. They were in the back seat and I was in the front. As I neared the intersection of Summit avenue, I put my foot on the brake a little to see if the way was clear and looked up the street and I saw a car a good distance up the street, which I thought was a perfectly safe distance, and then I went on across.

40

I got almost across the intersection when all of

Helen Moore, for Plaintiffs, Direct.

a sudden with a big bang, the car went over, and I had no idea that there was any danger of being hit. I didn't see the car hit. I simply heard it hit in the back. The right rear wheel of my car was hit and the car was turned over, not right over, but turned and then again half way around and then over and I was still on the seat with my hand tightly grasping the steering wheel, and then some men came out and tried to get out the occupants and some workmen came and opened the door and tried to help me out but I didn't know what to step on and finally I stepped on the side of the door and they helped me out. My aunt and sister were still in the back of the car. 10

Q Now, how fast were you going? A I should think around twenty miles an hour. I couldn't have been going over that because just a couple of streets before I had stopped dead and as I came along I put my foot on the brake to see if anything was coming and I couldn't have been going very fast because I am very sure I didn't. 20

Q Were you able to judge the speed of the car coming out of Summit avenue? A Well, no, because it was so far up the street when I started to cross that I thought it was perfectly safe. I just saw there was some one driving the car. I saw it was a woman but I didn't consider I was in danger of being hit. 30

Q You say your car was struck in the right rear? A Yes.

Q Did you strike the other car with your right front at all? A I did not. My right front was not harmed.

Q Now, what happened after the accident? A Then we were taken out; some one took me 40

Helen Moore, for Plaintiffs, Direct.

out and some ladies came up and finally a very nice policeman came up and talked to me and asked me who had hit me and I told him—

Mr. Pope: Never mind that, what the conversation was.

10

Q Just what happened and what you did and where you went? A Well, I just stood there until they got my aunt out and after a time the policeman took us to the Muhlenberg Hospital in the police car.

20

Q And were you injured? A I was injured, my left hand was—the skin was scraped off, that hand on the wheel, and that wrist had puffed up and was very lame for eight or nine weeks. My fingers were like this and I could hardly straighten them out. They are a little stiff yet.

Q Are you right or left handed? A Left handed.

Q And did the injury interfere with your regular work? A Yes, it did; I couldn't use it to write.

Q What do you do, Miss Moore? A I am a teacher.

30

Q And how long did the injury interfere with your work? A Well, for that length of time. At times I was able to use my hand but I was away from school a week altogether out of school and I imagine five or six weeks I wasn't able to write on the blackboard.

40

Q What was your salary at that time? A Why, I have a salary of \$2,700.00 but I had to give \$500.00 back to the City and it was the last four months to the present time I hadn't been paid in four months and at that time they owed use \$400.00, so my salary was nil just about that time.

Helen Moore, for Plaintiffs, Direct.

Q Your salary would average \$200.00 a month? A I think it's \$2,100.00, the contract salary \$2,700.00 and you gave this back to the City, it must be \$2,100.00.

Q And you were out a week, you say? A Yes.

Q And were you treated at the Muhlenberg Hospital? A I went with the others to Muhlenberg and the doctor looked at me but he didn't give me any treatment at all. It was after I got home that I just had to have treatment to get the swelling out of my hand.

Q And did you call any physician after you got home? A Yes.

Q And who was that? A Dr. G. W. Fithian.

Q And how long did he treat you? A Well, he treated me off and on for six weeks; about eight weeks after the accident I went back to him and he had an X-ray taken because my little finger couldn't straighten out. It was very much swollen and he thought it had been broken.

Q You had an X-ray taken of your finger? A Yes, there was no break.

Q Has your hand entirely recovered now? A Well, it's a little stiff; otherwise I can use it.

Q What damages were there to the car, Miss Moore? A Well, the car was damaged on the right rear wheel; very badly damaged. On the front and right side of it there was no other damage, but the car went over on its left side and of course it was dented and bent and they put a new axle in and a lot of minor injuries to the car.

Q And did you pay for these repairs? A Yes.

Q And how much did you pay?

Helen Moore, for Plaintiffs, Direct.

Mr. Pope: I object to that, that is no way to prove damages.

Mr. Gnichtel: Withdraw the question.

Q Now, you say this was a Chevrolet Coach?

A Sedan.

10 Q What year was it? A 1931.

Q Do you remember how much you paid for it? A Well, I think—no, I don't remember exactly. Seven hundred and something. It was the regular price of that and there were additions, I think it came a little over eight hundred.

Q Over eight hundred dollars? A Yes.

20 Q What was its condition at the time of the accident? A Excellent condition. I just brought it from the garage about two days ago and it had been gone over, the bolts and everything all in fine shape.

Q Now, Miss Moore, I show you a photograph and ask you what that represents? A That represents the right rear wheel of my car after the accident. This was taken in the garage.

Mr. Gnichtel: I offer it in evidence.

30 Mr. Pope: Was this taken before anything was done to the car?

The Witness: It was.

(Marked as Exhibit P. 1.)

Q I show you another photograph and ask you what that represents? A That represents the side of the car that was bent and dented after the car went over on its side.

40 Q It was taken when? A The same time in the garage.

Helen Moore, for Plaintiffs, Direct.

Q Had anything been done to the car before that time? A No.

Mr. Gnichtel: I offer it in evidence.

(Marked as Exhibit P. 2.)

Q What is this? A This is the right rear wheel of the car. 10

Mr. Gnichtel: I offer this.

(Marked as Exhibit P. 3.)

Q Now, you say that your aunt, Mrs. Kate M. Demerest and your sister, Miss Florence Moore were with you at the time? A Yes.

Q And what was their condition as you observed it after the accident? A Well, they were very much banged up. My sister, the blood was streaming from her face; cut and torn; very, very pale and kept complaining about her head. I thought perhaps she had a fractured skull because she complained so about her head. My aunt, when she first got out of the car, appeared to be all right. After they helped her out, she walked a way and then she was put in the police car and taken to the Muhlenberg Hospital. 20

Q And you left your aunt at the hospital? A Yes. 30

Q And your sister, too? A Yes.

Q Do you recall the officer who came up to you after the accident? A I would know him if I saw him.

Q Do you see him here in court? A I do.

Q And do you know Mrs. Guild when you see her? A I do.

Q Did she come up to you after the accident? A She didn't come up to me until after 40

Helen Moore, for Plaintiffs, Cross.

the officer asked me who hit me. I couldn't tell him because I really couldn't pick the woman out then. I didn't get close enough up to her to see what she looked like and I walked over a little way and she said she was the one who
 10 hit us. He asked if it was a hit and run driver and I said didn't know because I couldn't pick her out and then she stepped up and said she was the one.

Q Is she in court? A She is.

Q Would you mind identifying Mrs. Guild?

(Mrs. Guild rises in the court room.)

The Court: Is that the lady?

The Witness: Yes.

20 Mr. Gnichtel: Cross examine.

Cross examination by Mr. Pope.

Q You were incapacitated for a week? A I was at home a week.

Q And your salary is payable by the month, is it, when you get it? A Yes.

Q And no deduction was made from your salary by reason of this week? A No, because
 30 I was allowed a certain amount. I have a certain number of months from the past year.

Q So you lost no salary? A Not that week, no.

Q The car that Mrs. Guild was driving was going in a westerly direction over Summit avenue? A It was coming down Summit avenue when I saw it.

Q Well, it was coming from the direction of Elizabeth or New York? A Yes, going toward
 40 the west.

Helen Moore, for Plaintiffs, Cross.

Q Then she was approaching you from your right? A Yes.

Q As you approached the intersection? A Yes, but she was very far away from the intersection.

Q Yes, I know.

10

The Court: She was coming faster than you thought for?

The Witness: Right; she was coming fast, yes.

Q You thought you had time to get across the intersection? A Thought I had plenty of time.

Q But you were mistaken, were you? A Because she came so very, very fast. I expected her to stop.

20

Q Well, did she come so very, very fast, or was she so very, very near? A She wasn't near, not when I started to cross.

The Court: She was far enough away to have seen you?

The Witness: Certainly; I had a black car with red wheels and it was a most beautiful sunny day you could imagine.

30

Q Why did you expect her to stop? A Because Summit avenue, I would call it, Watchung avenue was called the thoroughfare. It's a wider street that Summit avenue and below on the cross streets coming out in Watchung avenue, a great many of them have stop signs.

Q And you saw this car coming? A I certainly did.

40

Helen Moore, for Plaintiffs, Cross.

Q But you thought that since you were on a thoroughfare, on the main street, that the other car would stop? A I certainly did.

Q And did you depend on the other car stopping? A Well, didn't expect the other car —as I told you, I could see into the street, I
10 didn't realize I was in any danger whatever of being hit.

Q You really didn't give very much consideration to the approach of the other car, depending that the car would stop? A Because it was so far away.

Q Now, you say it was quite a distance away; how far was it? A Well, it was—when I first noticed it, I didn't even notice whether it was a woman or man in the car.

Q About how far away was it when you did
20 first notice it? A I can't give you the distance absolutely.

Q Well, did you pay any further attention to it or did you go on with your driving? A Well, I was just hit and knocked over; there wasn't anything I could do.

Q Well, did you see it again after looking the first time? A I was crossing the street; just I started across, I saw this car coming.

Q Then you noticed it was a woman? A I
30 was almost across and then all of a sudden—

Q As you crossed the street, you looked again and saw it was a woman? A Yes.

Q Were you in the middle of the intersection or beyond the middle when you looked the second time? A Well, I might have been in the middle of the intersection.

Q About out in the middle of the intersection when you looked the second time? A I
40 might have been; I won't say positively.

Helen Moore, for Plaintiffs, Cross.

Q Well, what do you mean, "might have been." You were there, I was not? A I was perfectly unconscious of being in any danger of being hit with that car until we went over.

The Court: How far away do you think it was at the time; when you came out into Watchung avenue, how far do you think the Guild car was? 10

The Witness: Well, I thought it was a good distance up the street.

The Court: What do you mean by that; the length of this court room, from where you are sitting to the door?

The Witness: I should think it was farther than that.

The Court: Farther? 20

The Witness: Yes; it was so far that when I looked at the car I didn't know whether there was a woman or man in it.

Q Well, you didn't look, did you; you didn't care; you didn't look to see? A Yes.

The Court: What time of day?

The Witness: 2:45 in the afternoon. 30

The Court: Pretty clear day?

The Witness: Beautiful day.

The Court: Black car and red wheels?

The Witness: It was so nice and warm I had my window open on the side to let the air come through.

Q Now, when you saw the car quite a distance away, you just looked at it and then turned and looked at your road, didn't you, and didn't 40

Helen Moore, for Plaintiffs, Cross.

pay any further attention to it? A I didn't think it was necessary.

The Court: No.

10 Q You didn't pay any further attention to it; after you looked at the car and saw it at what you thought was a safe distance away, you didn't pay any further attention to it? A I went on across the road.

Q And you really didn't look at the car to see whether it was going fast or slow? A It was so far away I didn't look to see whether it was going fast or slow.

Q And you don't know? A I know now.

20 The Court: Had you gotten over the center of Watchung avenue?

The Witness: Yes.

The Court: Your rear wheels?

The Witness: Yes.

The Court: Then the car came along and hit you in the right rear wheel?

The Witness: Yes.

30 Q You were in Watchung avenue; you were going over Watchung avenue? A Yes.

Q And you were several feet beyond the intersection, were you not, before the cars came together? A No, I don't think so. I think the car was just practically crossing the street. When it went over, I think about ten or fifteen feet from the intersection.

40 Q And you are talking about where your car turned over, and I am talking when your two cars came together. Were you not beyond the intersection? A No.

Helen Moore, for Plaintiffs, Cross.

Q Did you see Mrs. Guild pull to your road to go with you? A No, I don't believe—

Q At any rate, it was the rear hind end of your car which came in contact with some part of the Guild car, wasn't it? A Her car came in contact with mine.

Q Either way you please, the two cars came together? A They came together. 10

Q And when they came together, it was the rear hind portion of your car that came in contact or was hit, as you say, by the Guild car? A Yes, it was.

Q Now, you just look at this photograph which is marked P. 1, and I see there that the left rear fender—right rear fender just about where it joins the running board and a few inches above it is badly damaged. Was that the point of contact? A I don't know where the point of contact was except from the picture. I didn't see it hit. 20

The Court: Where did you feel it; what was your impression?

The Witness: Banged from the back.

The Court: From the rear, the right rear?

The Witness: Yes. 30

Q This photograph shows the only injury to your car on the right-hand side? A Yes.

Q That's the only injury there was, on the right-hand side? A (No answer.)

Mr. Pope: That's all.

(Witness excused.)

Ernest Pallocce, for Plaintiffs, Direct.

ERNEST PALLOCCE, sworn on behalf of the plaintiffs, testifies as follows:

Direct examination by Mr. Gnichtel.

10 Q You are the officer connected with the North Plainfield Police Department? A That's right.

Q On January 20th of this year, Officer Pallocce, did you have occasion to visit the scene of an accident at Watchung and Summit avenues? A Yes, sir, I did.

Q Will you describe what you found when you arrived there? A Well, if you want to know the position of the automobiles—

20 The Court: Yes, the position of the cars. What did you find when you got there?

The Witness: Found two cars.

The Court: Describe them.

A One car was laying on its left-hand side; that is turned over on its left-hand side.

The Court: What kind of a car was that?

30 The Witness: Chevrolet sedan; four door sedan.

A (Continued.) And the other car was directly in back of it. It was on its four wheels, with the bumper pulled off the left-hand side.

The Court: What kind of a car was that?

The Witness: Chevrolet coach; two-door sedan.

40 The Court: Where were these cars with reference to the roadway?

Ernest Palloce, for Plaintiffs, Direct.

The Witness: Both cars were across the intersection of Summit avenue on Watchung avenue; the first car, the sedan, laying on its side, was about fifteen feet from the intersection, that is, the crosswalk, and this other coach was directly behind it.

The Court: How about the center of Watchung avenue; with reference to the center of Watchung avenue? 10

The Witness: They were on the right-hand strip of concrete going north.

The Court: Both cars?

The Witness: Both cars.

Q Did you assist the occupants in any of the cars? A Yes.

Q Which car did you go to? A When I first got there, one of the ladies was out of this car that was turned over and two more in there, so I got in through the window of the door. They couldn't open it, the door was jammed, and I lifted these two ladies on my shoulder and with the help of other people—my chief was also there—we lifted them out of the car, and from there we took them to Muhlenberg Hospital. 20

Q And from your observation, what was the condition of the occupants of that car? A Well, they were pretty badly injured. There was quite an old woman there, if I recall her name, Mrs. Demerest, she was complaining of her back very much— 30

Mr. Pope: I think I shall object to any further testimony on the part of the officer.

The Court: He may say there was an elderly woman there, Mrs. Demerest, and these two others. 40

Ernest Palloce, for Plaintiffs, Direct.

The Witness: That's right.

The Court: Three women, all told, including the driver, Miss Moore, was it?

The Witness: Yes, sir.

10 The Court: Miss Demerest and this Miss Moore and another Miss Moore?

The Witness: There was two Miss Moores there.

The Court: Were the injuries so you could see any cuts and bruises?

The Witness: The driver, whom I found out was Miss Helen Moore, she was injured on one hand. I can't say left or right hand, but she complained about it, the hand and arm.

20 The Court: You are not permitted to say what they said; only what you saw.

The Witness: I saw her holding her hand.

The Court: And did the elderly lady walk around with her hands to her back?

The Witness: She couldn't walk much, we had to assist her.

The Court: You did assist her?

30 The Witness: Yes and the other lady was cut about the head and I could see blood on her face and she complained of her shoulder.

Mr. Pope: Not what they complained of.

The Court: They were taken to the hospital?

The Witness: Yes.

Q You took them all yourself? A Yes, I did.

40 Q And did you see Mrs. Guild there at the scene of the accident? A Yes.

Ernest Palloce, for Plaintiffs, Cross.

Q Do you know her; can you identify her?

A Yes.

Q And that's Mrs. Guild there?

Mr. Pope: No dispute about that.

Q And did you have any conversation with her about the accident? A Yes, I did afterwards; after I came from the hospital. 10

Q What was that conversation? A Well, I asked her how she came to get in contact with this car; how she came to hit it, because from my viewpoint—

Mr. Pope: No.

The Court: Don't try to react the accident. 20

The Witness: I had to ask her in order to have her answer.

The Court: All right, what did you ask her?

The Witness: I asked her how she came to hit this car.

The Court: What did she say?

The Witness: She said she didn't know, it happened so quick that she must have struck the rear of this car. 30

Mr. Gnichtel: That's all.

Cross examination by Mr. Pope.

Q You examined Mrs. Guild's car, didn't you? A Yes, I did.

Q And that was a Ford? A No, it was a Chevrolet coach.

Q Oh, both of them Chevrolets? A Both Chevrolets, one a sedan and the other a coach. 40

Interrogatories and Answers.

Q When you examined Mrs. Guild's car, you found the left front bumper was pulled loose and bent forward, didn't you? A That's right. The left fender was also dented inward.

10 Q But the bumper was pulled forward? A The bumper itself—well, I can say it snapped off and then the cars went loose.

Q But it was bent forward, wasn't it? A Not bent; it was just broken.

Q Well, I am asking you, did you observe whether it bent forward before it broke or not? A Well, that I don't know.

20 Q And the injury to the Moore car was as shown in this photograph marked P. 3, at the right rear fender? A Right in between the running board and the right-hand side and the right rear wheel.

Q Well, does that look about like it as you saw it there that day? A Yes, I guess it was.

Mr. Pope: That's all.

(Witness excused.)

30 Mr. Gnichtel: At this time I would like to offer in evidence the interrogatories propounded to the Metropolitan Life Insurance Company. Mr. Pope, the original questions, have you them?

Mr. Pope: No, I have not; I sent you the originals. I reserve the right to object to such of these interrogatories as are incompetent, irrelevant and immaterial.

Mr. Gnichtel: Now, I will read the interrogatories and the answers.

40 1. On January 20, 1934, was defendant, Edith Guild, employed by you? A Yes.

Interrogatories and Answers.

2. If so, in what capacity? A Substitute nurse.

3. How long had she been so employed?
A Since January 15, 1934.

4. What were her duties? A Visiting nurse in Union City, N. J. district.

10

5. From whom did she take her instructions? Give name and official position held by such person? A Miss Pedrick, head nurse of nursing service for Union City, N. J. district.

6. Who supervised her work? Give name and official position held by such person? A Miss Elsie Pedrick, head nurse of nursing service for Union City, N. J. district.

7. To whom did she report? Give name and official position held by said person.
A See No. 6.

20

8. How often did she report? A Two or three times a day.

9. Did she report in person, by mail, or by telephone? A In person and by telephone.

10. How often was she paid? A Nurses are paid once a month.

11. By whom was she paid? A Nurses office of defendant Metropolitan Life Insurance Co.

30

12. Was she paid by the week, the day, or otherwise?

Mr. Pope: I object to the question as incompetent, irrelevant and immaterial; it doesn't make any difference.

Mr. Gnichtel: I think it will make a difference.

40

Interrogatories and Answers.

The Court: I will allow it.

Mr. Pope: Exception.

A On monthly basis.

10 13. Whom and where was she nursing on January 20, 1934? A Policy holders of this defendant in Union City, N. J. and North Bergen, N. J.

14. For how long a time prior thereto had she been attending each of such persons?

Mr. Pope: I object to that as incompetent, irrelevant and immaterial. It makes no difference what she had been doing prior thereto. The question of what she was doing on that day may be material.

20 Mr. Gnichtel: This is to determine relationship.

The Court: Whether the employment was temporary or not; I will allow it.

Mr. Pope: Exception.

A One policy holder had first been treated on January 15, 1934, two on January 18, 1934 and the remaining policy holders on January 20, 1934.

30 15. What was the nature of the service she rendered to each of such persons? A Nursing.

16. Did she subsequently continue to attend such persons, or any of them, and for how long a time?

Mr. Pope: I object to the question as incompetent, irrelevant and immaterial.

The Court: I will allow it.

40 Mr. Pope: Exception.

Interrogatories and Answers.

A She continued to treat one of these policy holders until February 24, 1934. Two of them were treated again on January 22, 1934.

17. In the course of her employment was it her custom to visit the same person or persons from day to day or to make only one visit to a person? A It depended on the requirements of each case. 10

18. If she was once assigned to a case was it your custom to keep her on that case until her services were no longer needed there? A Yes.

19. How was her work connected with the business in which you are engaged? A Part of the service rendered to industrial policy holders. 20

20. Did you furnish her with her nursing supplies or pay for them, or make her an allowance for them? A Her nursing supplies were furnished by this defendant. 20

21. Did you furnish her with uniforms or pay for them, or make allowance for them? A. No.

22. Did you give her any means of identifying herself as one of your nurses? If so, what? A No. 30

23. Did you make any allowance to her for transportation? If so, specify in detail. A \$20.00 per month was allowed to her to defray the cost of her transportation from the defendant's office in Union City, N. J. to the homes of the policy holders in the Union City district and back to the office.

The Court: In Union City?

Mr. Pope: Yes. 40

Interrogatories and Answers.

10 24. In determining her compensation, did you make any allowance for, or taken into consideration, the time spent by her in going to and from her home? If so, specify in detail. A This defendant had nothing to do with her going to and coming from her home.

25. Did she go directly from her patients to her home, or did she always report at one of your offices before going home? Please state the facts in detail. A If her nursing work were completed before or at the end of the regular working day, she always reported back to the Union City, N. J. office of this defendant.

20 26. At the time of the accident referred to in the complaint, from what place and to what place was she going? A Do not know.

27. What had she been doing at the place from which she was coming? A Do not know.

28. For what purpose had she gone there? A Do not know.

30 29. Had she been performing her duties as one of your nurses at that place until she left it? State the facts in detail. A Do not know.

30 30. At the time of the accident, was she going directly home from the place where she had been performing her duties as one of your nurses? A Do not know.

Edith Guild, for Plaintiffs, Direct.

EDITH GUILD, sworn on behalf of the plaintiffs, testifies as follows:

Direct examination by Mr. Gnichtel.

Q Where do you live, Mrs. Guild? A Front street, Dunellen.

10

Q And do you recall the accident which occurred on January 20, 1934? A Yes.

Q Where were you coming from on that day? A I was coming from work at Union City.

Q Will you describe that more specifically; just where had you been in Union City? A Well, had been visiting these cases through the day and had finished my work and I was on my way home.

Q Did you report to the Metropolitan Life Insurance Company? A No, we don't report on Saturday.

20

Q Do you report always during the week? A Most always.

Q Do you report in the morning when you go there? A Yes.

Q And what happens when you get there in the morning? A Our work is given out to us and we do any record work that we have to do and then we go out on the district.

30

Q And who supervises your work? A Miss Perdick.

Q Does she tell you where to go? A Yes.

Q And what to do? A Well, she didn't tell us what to do; she told us where to go.

The Court: What was your territory?

The Witness: Union City at that time. I was substitute nurse.

The Court: In Union City?

40

Edith Guild, for Plaintiffs, Direct.

The Witness: In Union City.

The Court: You were not doing any work outside of Union City?

The Witness: No.

10 Q Now, what arrangement was there, if any, between you and the Metropolitan Life Insurance Company as to the terms of your employment? A You mean my salary?

Q Your salary and—

The Court: How did you travel about in doing your work?

The Witness: Why, I used a car.

The Court: Your car?

The Witness: My car.

20 The Court: You owned it?

The Witness: Yes.

The Court: And did the company pay you anything for that use?

The Witness: They allowed me \$20.00 a month toward the upkeep of it in the district.

The Court: In the district?

The Witness: Yes.

30 The Court: In other words, for the business of the company in Union City?

The Witness: In that district, Union City.

The Court: You used your car?

The Witness: Yes.

The Court: And you were given an allowance of \$20.00 for upkeep?

The Witness: Yes, in the district.

40 The Court: It made no difference to them how you got there and how you got home?

Edith Guild, for Plaintiffs, Direct.

The Witness: That was the agreement.

The Court: In other words, you were to get there the best way you could?

The Witness: You have to get to any job the best way you can.

Q Mrs. Guild, who told you that the \$20.00 a month was to be used for expenses of your automobile in the district? A Why, I don't remember who told me that. I know we understood that when I went on the district. 10

The Court: Did some one tell you in the office?

The Witness: I don't believe anybody told me, but it has always been done. I have relieved a great many times and I was on the staff for nine years so I knew the rules. 20

The Court: And that was it, that an allowance was made of \$20.00 for the district?

The Witness: Yes.

Q Now, was an automobile necessary for a nurse in that district? A Yes.

Mr. Pope: I object to the question. 30

The Court: She has answered it.

Q Can you tell us whether there are districts known as automobile districts by the Metropolitan Life Insurance Company?

Mr. Pope: I object to that.

A There are automobile districts. 40

Edith Guild, for Plaintiffs, Direct.

Q Just what does that mean? A It means that there is a district that cannot be reached by bus or car.

10 Q And by car, you mean trolley? A Yes, street car. If the distance in between the cases are so far that you would lose too much time in travel, you are to use an automobile and they call that a car district.

Q And Union City was a car district? A Yes.

Q And did your supervisor know you were using your car? A Yes.

Mr. Pope: I object to that and ask the answer be stricken out.

20 Q Well, did you ever tell your supervisor that you were using your car? A No.

Q You never told her that? A I never told her, no, that was the understanding.

The Court: Did she know that? I will allow that question.

The Witness: Yes.

The Court: How do you know she knew it?

30 The Witness: Well, I don't know, but she would know I couldn't go around the district without using the car.

The Court: She knew you got around some way?

The Witness: She knew I followed the cases. She knew there was no transportation there.

40 The Court: So you worked out in your mind she must have known you had an automobile.

Edith Guild, for Plaintiffs, Direct.

The Witness: Yes, I think that's it.

The Court: Well, there was transportation there; street car lines?

The Witness: There are street car lines and bus lines, but the district is so large and cases so far apart it would have taken too much time. 10

Q And Miss Pedrick would give you an allowance for the use of your automobile? A Miss Pedrick didn't give it to me; it was included in the salary.

Q And it was \$20.00 a month? A Yes.

The Court: How would that be done?

The Witness: Automobile upkeep. 20

Q Just how did you receive that salary, Mrs. Guild? A Once a month by check.

Q And was there a separate check for the \$20.00? A No.

Q Was it all in one check? A Yes.

Q And what did that check say on it?

The Court: Was it stated on it salary so much? 30

The Witness: No.

The Court: Just one lump sum?

The Witness: Yes.

Q How did you know about \$20.00 being separate money for the automobile? A Well, I knew how much salary I got and I know that was the understanding.

Q And your company knew that you lived in Dunellen, did they not? 40

Edith Guild, for Plaintiffs, Direct.

Mr. Pope: I object; this witness cannot testify what the company knew.

The Court: Well, did you ever have a conversation with the supervisor as to where you lived?

10 The Witness: Yes.

The Court: Did the company write you letters, communicate with you by mail?

The Witness: No.

The Court: Did they communicate with you by telephone?

The Witness: To the office always. They always got me at the Union City office.

The Court: They never talked to you through your own home?

20 The Witness: No.

The Court: Communications were always received at the office?

The Witness: Oh, yes.

Q How did you know whether you were to report at the office? A Well, I got a telegram to come to work.

Q And that was to your home? A Yes.

30 Q Who was that telegram from? A That came from Union City.

Q And how was it signed? A I don't remember.

Q In any event, you knew it was from the Metropolitan Life Insurance Company?

Mr. Pope: I object.

The Court: As the result of the receipt of that telegram, where did you go?

40 The Witness: Union City.

Edith Guild, for Plaintiffs, Direct.

The Court: And where in Union City?

The Witness: 32nd street, the Metropolitan office.

The Court: In other words, you reported for duty on advice of the telegram?

The Witness: Yes.

10

Q Did Miss Pedrick ever speak to you about the fact you lived in Dunellen? A Why, I don't remember any conversation we ever had about it.

Q Well, she had a record of your home?

A Oh, yes.

Q Did the Metropolitan Life Insurance Company provide any method for garaging your car in Union City? A No; the car didn't need to be garaged; I used it during the day.

20

Q Well, at the end of the day, was any provision made for keeping your car in Union City?

A Oh, no.

Q Was there anything you could do with that car except take it home? A Why, I don't know what else to do with it.

Q Did Miss Pedrick know you went home in your automobile?

Mr. Pope: I object to that. Miss Pedrick can testify what she knew for herself.

30

The Court: Yes, that would be so. You may reframe that question and get what you want.

Q Did you have any conversation with Miss Pedrick with respect to going to and from work in your automobile?

Mr. Pope: I object as leading.

40

Edith Guild, for Plaintiffs, Direct.

The Court: I will allow it.

A No.

The Court: What did you use the \$20.00 for.

10 The Witness: Well, I used it right along.

The Court: What did you use it for?

The Witness: I put it right in with my salary and used it.

The Court: I know, but what did you use it for?

The Witness: Well, I didn't keep a budget.

The Court: Didn't budget your income?

The Witness: No.

20 The Court: You bought gas and oil for your car?

The Witness: As I needed gas and oil, I bought it.

The Court: In Union City?

The Witness: Wherever I was.

The Court: How much did that come to a month?

30 The Witness: Well, it came to about \$30.00.

The Court: Oh, you were out then?

The Witness: Yes.

The Court: \$10.00 out?

The Witness: Of course that would include my going home.

The Court: Including going home?

The Witness: Yes.

40 The Court: In other words, you figured that would cover Union City?

Edith Guild, for Plaintiffs, Direct.

The Witness: Cover Union City, yes.

The Court: It really cost \$30.00 for gas and oil?

The Witness: Yes, because I got gas every day.

Q Mrs. Guild, is it your opinion, then, that you had twice the mileage in Union City that you had going to and from work? A I never figured it up; I don't know.

10

Q So that when you say \$20.00 will cover Union City, that's just a mere guess, is it not? A Well, I don't know; I couldn't say positively, no.

Q Well, you know that Union City is—well, how large is Union City? A I don't know.

20

The Court: Forty or fifty thousand, would it be?

The Witness: I think so.

Q And how far is Dunellen from Union City?

A About thirty-five miles, forty miles.

Q So that would be seventy miles a day?

A Yes.

The Court: Would it?

30

The Witness: Yes.

Q And would your total work in Union City involve seventy miles of travel in your automobile? A Yes, I think it would.

Q You would travel one hundred and forty miles a day? A Oh, I didn't travel a hundred and forty miles a day.

Q Were you required by the company to render any account of your gas and oil? A No.

40

Edith Guild, for Plaintiffs, Cross.

Mr. Pope: I object to the question, leading. I think the Court has been very liberal with counsel in allowing leading questions of this witness and there ought to be some limit—

10

Mr. Gnichtel: I don't think that's leading.

Mr. Pope: Well, it has been answered any way, so go on with the next question.

Mr. Gnichtel: That's all.

The Court: Cross examine.

Cross examination by Mr. Pope.

20 Q When you were employed by the Metropolitan Insurance Company, the arrangement was that you was to have \$20.00 per month included in your salary to pay your transportation around the district, wasn't it? A Yes.

Q And that was confined to transportation in the district, was it not? A In the district.

Q That had nothing whatever to do with your transportation to your district or from your district morning and night? A No.

30 Q And there was no arrangement or no suggested arrangement that the company would pay the expense of your transportation to and from your home? A Nothing said about it.

Q Now, when you were in your district, you reported to Miss Pedrick? A Yes.

Q And from Miss Pedrick you received directions where to go? A Yes.

Q And that was usually, I suppose, to see a sick patient? A Yes.

40 Q Did Miss Pedrick have any direction or control over the method of your doing your work? A No.

Edith Guild, for Plaintiffs, Cross.

Q After receiving directions where to go, when you arrived at that patient's house, under whose direction and control were you then? A The doctor, if there was a doctor, on the case.

The Court: If there was a doctor on the case?

10

The Witness: Yes, and if there wasn't and the patient needed a doctor, I advised one and I would go back the next day and see if they had a doctor. If they didn't have a doctor we couldn't go any more. If they did have, we got right in touch with that doctor.

The Court: In other words, you did nothing unless under the doctor's advice or supervision?

20

The Witness: No.

The Court: If there was no doctor, you could not go back?

The Witness: We could not take the case; I did if there was a doctor.

The Court: Then you reported to the office?

The Witness: Yes.

Q And so far as you were concerned, the case was closed? A Yes. 30

Q Now, on the day in question, you had completely finished your work, had you not? A Yes.

Q And after your work hours were up, were you privileged to go wherever you pleased and do whatever you pleased? A Yes.

Q If you wanted to go to Radio City, you could go there instead of going home? A Yes.

Mr. Pope: That's all.

40

Edith Guild, for Plaintiffs, Re-direct.

Re-direct examination by Mr. Gnichtel.

Q When you had visited a patient, did you then go back to Miss Pedrick and talk the matter over with her? A Well, we always discussed our cases with her.

10 Q And would she prescribe a treatment? A Oh, no.

Q Would she recommend a doctor? A No, we couldn't do that either. The doctor had to be chosen by the family; we couldn't even suggest a certain doctor.

Q You would recommend a doctor to be called in? A If we have received a call, we went out, and if the patient was sick enough to get a doctor we told the family they must get the family doctor.

20 Q And then did you talk that over with Miss Pedrick when you returned? A Oh, yes.

Q Did you consult Miss Pedrick as to whether or not a doctor should be called? A No.

Q What did you talk to Miss Pedrick about when you go back, Mrs. Guild? A Well, we talked about our different cases.

Q And why did you talk it over with her? A Because she is the supervisor.

30 Q What did she do? Does she advise you at all in these matters? A Well, she can't advise us unless she would say, oh, well, I think you better see the doctor again on that case. If the temperature is very high and I am certain something got the matter, she would say, you better see the doctor and talk to him about the case.

Q And then you would do that? A Oh, yes.

Mr. Gnichtel: That's all.

Edith Guild, for Plaintiffs, Re-cross—Re-direct.

Re-cross examination by Mr. Pope.

Q Miss Pedrick has absolutely nothing to do with the treatment of the patients? A No, Miss Pedrick would have nothing to do with the patients.

Q And neither did you? A No. 10

Q So if you did tell Miss Pedrick that a patient's temperature was running pretty high, even then, that's nothing more than womanly gossip between Miss Pedrick and yourself?

Mr. Gnichtel: I object.

A Miss Pedrick is supposed to know.

Q She is supposed to know if a patient has a temperature and if they are a very sick patient, she is supposed to know that? A Yes. She can't tell us what to do. She can advise to talk to the doctor and the doctor must tell us what to do. 20

Q So the entire control of the case is under the family physician? A Yes.

Mr. Pope: That's all.

Re-direct examination by Mr. Gnichtel. 30

Q Now, when there is no doctor on the case and you discuss it with Miss Pedrick, what did Miss Pedrick do? A Well, if there was no doctor in the case, we dismissed the case; it didn't need any discussing.

Q Why did you feel that you have to tell Miss Pedrick when you found a patient with a high temperature? A Because Miss Pedrick is the supervisor and she should know all these things. 40

George W. Fithian, for Plaintiffs, direct.

Q And you feel responsible to Miss Pedrick?

A Well, I don't know. I think she should know this case.

Q As a matter of fact, you are instructed to tell her these things, are you not? A I have never received any written instructions.

10 Q Well, orally? A No, orally either.

Mr. Gnichtel: That's all.

(Witness excused.)

GEORGE W. FITHIAN, sworn on behalf of the plaintiffs, testifies as follows:

20 *Direct examination by Mr. Gnichtel.*

Q Where do you live? A Perth Amboy, New Jersey.

Q You are a duly licensed and practicing physician of the State of New Jersey? A Yes, I am.

Q And have been for how many years? A Since 1899.

Q And are you acquainted with Miss Helen Moore, Miss Florence Moore? A Yes, I am.

30 Q And also Kate Demerest? A Yes, sir.

Q Now, have you since January 20, 1934, treated Miss Helen Moore for any injuries? A Yes, I have.

Q Will you describe the injuries and the treatment, please? A Helen Moore had a very badly bruised left hand and was black and blue and very much swollen, and there was a question whether or not she had any broken bone, but the X-ray picture did not show any; and she had
40 more or less general bruises all over her body.

George W. Fithian, for Plaintiffs, direct.

Nothing very severe, and she was very nervous and shocked from the accident.

Q How long did you treat her, doctor? A I think she was sick for about two months.

Q And do you say, from the nature of the injuries, they were or were not painful? A Yes, sir, they were. 10

Q Now, with respect to Miss Florence Moore; this is subject to being connected; did you treat Miss Florence Moore for any injury? A Miss Florence Moore was injured on the 20th of January and if my memory serves me correct, I took care of her from the following day on.

Q What were her injuries? A She had a fracture of the collar bone on the left side; had some bruises in her left arm and shoulder; she had a small laceration on her head; I forget where that was. 20

Q How long did you treat Miss Florence Moore? A She was confined to the house for six weeks. She had a very painful shoulder and it was rather slow healing and there were two more weeks that she was practically incapacitated, two months altogether.

Q Can you tell us the amount of your bill for your services rendered in these two cases? A Miss Florence Moore had a broken collar bone and she paid me \$35.00. Miss Helen Moore, I have never sent her a bill; \$10.00. 30

Q \$10.00? A Yes.

Q And are \$10.00 and \$35.00 respectively reasonable charges for your services? A Yes.

Mr. Pope: I would think so.

Q You are the family physician? A Yes. School teachers don't get paid much these days so I don't send them big bills. 40

George W. Fithian, for Plaintiffs, Cross.

Q Did you examine Mrs. Kate Demerest? A I examined her last night in my office.

Q What did you find as the result of that examination? A I found she was wearing a brace. I can only tell you she said she had a fracture.

10

Mr. Pope: Perhaps you better not tell us that.

A (Continued.) She is wearing a brace and complained of pain around the small of her back.

Q Were there any objective symptoms which you could observe? A I didn't see any objective symptoms. She complained of the brace being very uncomfortable.

20

Mr. Gnichtel: That's all.

Cross examination by Mr. Pope.

Q Speaking about Miss Florence Moore, the results of your treatment to that broken clavicle was perfectly satisfactory, was it not?

The Court: Good recovery?

30

The Witness: Her left shoulder is swollen considerably still.

Q I am speaking about the broken bone? A The bone is pretty well healed.

Q And it was a perfect recovery? A As far as the bone is concerned.

Q And she has perfect functional results? A Her left shoulder is still swollen.

Q Still swollen? A Yes, from bruises to the muscles, the left side of the neck.

40

Florence Moore, for Plaintiffs, Direct.

Q But there is no restriction in the use of the arm? A Well, it still bothers her.

Q Is there any restricted motion? A No, I won't say that.

Mr. Pope: That's all.

The Court: This accident happened in 10
January of this year?

Mr. Pope: Yes.

(Witness excused.)

FLORENCE MOORE, sworn on her own behalf
as a plaintiff, testifies as follows:

Direct examination by Mr. Gnichtel.

Q Where do you live, Miss Moore? A At 20
Perth Amboy, New Jersey.

Q You were a teacher there? A No, I am not; I keep house for my sister.

Q And were you riding with your sister on January 20th, the time of the accident? A I was.

Q Will you tell us what you observed? A Well, as we were riding along Watchung avenue, we reached the intersection of Summit avenue and I saw this car coming quite a ways down Summit avenue, very, very fast. And all of a sudden it hit us in the back, and I got the full force of the shock because I sat in the back seat and was hit there on the right side and the car turned right over on the left. 30

Q And were you injured in the accident? A Yes, I was.

Q What were your injuries, how were you injured? A I had a fracture of the collar bone 40

Florence Moore, for Plaintiffs, Direct.

and I had a bad cut on my head and my ribs was all bruised and my hand was all cut with glass and I still have scars; I was badly bruised on the left side.

10 Q And what happened after the accident; where were you taken? A Well, after the accident, they took me out of the car and I was badly in pain and they took me over and put me in the police car and then they drove me to the hospital.

Q Did you stay at the hospital? A I stayed at the hospital twenty-four hours.

Q Then where did you go? A I went to my home, Perth Amboy.

20 Q And did you have any services of a physician there? A Yes, as soon as I arrived there, Sunday night, why, I called my doctor and he came. I had him that evening.

Q Who was that doctor? A Dr. Fithian.

Q And how long were you treated by Dr. Fithian? A I was treated six weeks.

Q During that time were you confined to bed or what were you doing? A I was confined to my bed.

Q For six weeks? A Yes.

30 Q And was it necessary for you to employ some one to do your household work? A Sure, I was unable to attend to the household duties; we employed a woman for eight weeks.

Q How much did you pay her? A Two dollars a day.

Q For eight weeks? A Yes.

Q For seven days a week? A Seven days a week.

40 Q How long were your injuries painful? A Well, they have been painful ever since the accident.

Florence Moore, for Plaintiffs, Cross.

Q Do you still have any pain at all from them? A Yes, my left shoulder, the muscles are still swollen.

Q Do you have the full use of your arm today? A Yes, I can use my arm.

Q Now, your aunt, Mrs. Kate Demerest, was also a passenger in the automobile? A She was. 10

Q And did she remain at the Muhlenberg Hospital when you left? A Yes, she remained there six weeks.

Q How fast were you going at the time of the accident, about? A We were going about twenty miles an hour.

Q Did the right front of your car strike Mrs. Guild's car at any point? A I can't answer that.

Q Where was the point of impact, in your impression of the accident? A We had almost gotten over the intersection. 20

Q And just where was your car struck? A In the back.

Q On which side of the car were you seated? A I was sitting on the right side of the car.

Q And was that the side on which it was struck? A Yes.

Mr. Gnichtel: That's all. 30

Cross examination by Mr. Pope.

Q You were sitting on the right side of the rear seat? A I was in the back seat.

Q Then the contact was near where you were sitting? A Yes.

Q And now, are you familiar with Watchung avenue? A Well, no, not so very.

Q It runs north and south? A Yes. 40

Florence Moore, for Plaintiffs, Cross.

Q And Summit avenue runs east and west?
A Yes.

Q So as you were going up Watchung avenue, Mrs. Guild was coming toward Watchung avenue from your right? A Yes.

10 Q And your sister was driving the car? A Yes, my sister.

Q Now, some part of Mrs. Guild's car and your car came together near the back fender, didn't it? A Yes.

Q Do you know what part of the Guild car came in contact with your car? A The front part.

Q Was it the left front part, if you know? A Yes, I think it was.

20 Q So that when the cars came together, the Guild car had come to the intersection and was turning in the street with you and going in the same direction with you, wasn't it? A I can't answer that.

The Court: If you don't know, madam, you better say so.

Q You didn't see that? A I was so badly injured, I can't tell you. I was almost unconscious.

30 Q But you wasn't injured until after the cars came in contact with each other? A Oh, no.

Q And do you remember the cars coming together? A Yes.

Q Now, I am asking you before that time; before the cars came together, had any of the Guild car turned into Watchung avenue and was then going the same direction you were, or were the two cars going like that before they struck? (Indicating). A That I can't answer, because
40 they were hitting right in back.

Florence Moore, for Plaintiffs, Cross.

Q Can you say whether it was the left front of Mrs. Guild's car which came in contact with your car? A I don't know.

Q Did you see Mrs. Guild's car coming over Summit avenue? A Yes, I did. I saw her coming down Summit avenue very fast.

Q Why do you say you saw her coming very fast? A Because we was riding along and there were no leaves on the trees. It was winter time and I couldn't help but see it.

Q How far away was the car when you first saw it? A It was quite aways—

Q What do you mean by quite aways?

The Court: Twice the length of the court room from where you are sitting to the rear door?

The Witness: Yes, I would say—

The Court: Twice?

The Witness: About the distance from that back door to where I am sitting.

The Court: When you first saw it?

The Witness: Yes.

The Court: And did you watch it?

The Witness: Yes, I saw her coming.

Q Well, did you see her coming all the way up to the corner? A Well, she came so quickly—

Q Well, did you see how she came? A Yes, I did.

Q Well, did you watch her car run for any distance at all; did you watch it as it was running? A Well, she got on top of us very quickly.

Florence Moore, for Plaintiffs, Cross.

Q Now, the real fact is this, isn't it; that when you approached this corner you looked up Summit avenue, you saw Mrs. Guild's car at what you believed to be quite a distance away?

A Yes.

10 Q And then you paid no further attention to it? A I wasn't the driver.

Q Of course you wasn't. You paid no further attention to it and because the car hit you, you assume she must have been coming fast?

A I know she was coming fast.

Q Well, did you see how she was driving or are you— A No, I saw how she was driving very fast.

20 Q Very well; you saw how she was coming? A Yes.

Q And then did you watch her for any length of time? A No, I didn't.

Q Did you tell the driver that the car was coming fast? A Well, we hit; of course we were hit very quickly; I didn't have much chance to tell.

30 Q In other words, you didn't have a chance to get across the intersection, did you, before the other car was on you? A No, because it was coming so quickly.

Q That was because it was so close to the intersection too, wasn't it? A It wasn't so close.

Q How fast was the other car coming? A I should think about—well, I don't know.

Q Fifty miles an hour? A Fifty or sixty miles an hour.

40 The Court: What did you say; the Guild car was going how fast?

Kate M. Demerest, for Plaintiffs, Direct.

The Witness: Of course I wasn't driving the car; I should think it was going fifty miles an hour.

The Court: That's what you said?

The Witness: Yes.

Q And your car was going about twenty miles an hour? A Yes, I should judge. I wasn't in the front seat; I wasn't riding— 10

Q Were you going twenty miles an hour all the time that day? A Well, not at the intersection. On the highway you go faster.

Mr. Pope: I guess that's all.

(Witness excused.)

20

KATE M. DEMEREST, sworn on her own behalf as a plaintiff, testifies as follows:

Direct examination by Mr. Gnichtel.

Q You are one of the plaintiffs in this case, Mrs. Demerest? A Yes, I am.

Q Where do you live? A In Newton, New Jersey, Sussex County. 30

Q And on January 20th of this year were you riding with your niece on Watchung avenue? A Yes.

Q And were you in the car when the accident occurred? A Yes, I was.

Q And can you tell us what occurred? A Yes, I was in the back seat with my niece, and a car was coming the opposite direction very fast and just struck the back end of the car and knocked it over on the side, and of course 40

Kate M. Demerest, for Plaintiffs, Direct.

I was pushed over and my back was injured and also bruised here, and I was lifted out of the car and taken to the hospital. Immediately we were taken to the hospital with my niece. While we were at the hospital they gave me—my back hurt me so in the hospital that I thought it was
10 broke in two, and when I got there I had to have a nurse come out to help me up the steps to get in the hospital and then they had an X-ray taken of me while in the hospital, and I was there six weeks flat on my back. For four weeks I never turned right or left and my head was even a little lower than my body in the beginning. I was in the hospital six weeks in bed and the last two weeks Dr. Weigel got a brace which I now have on. He got me out of
20 bed and put this brace on me and I sat up an hour a day for two weeks with the brace on, and then I was there six weeks, and gradually I sat up a little longer and wore the brace all the time I was there and after I was out of the hospital I wore the brace steady about two months; all the time I didn't really at first get my foot on the floor, even at night I put this over me at night if I had to get up, I never stepped my foot on the floor without the brace on me.
30 Dr. Weigel wanted me to do that, to not walk—

Mr. Pope: No, just tell what you did.

A (Continued.) And then I, of course, went to Dr. Weigel's three times after I was out of the hospital over in Plainfield at his office, and he said—

Mr. Pope: Not what he said.

A (Continued.) A broken vertebra in my
40 back—

Kate M. Demerest, for Plaintiffs, Direct.

Mr. Pope: Object to that, and ask it be stricken out.

The Court: I will allow the lady to tell her story.

Mr. Pope: No objection to the lady telling any experience she had, but what Dr. Weigel said to her, of course, I object. 10

The Court: Yes, that is elementary.

Q Were your injuries painful? A Oh, yes.

Q For how long a time? A Well, it pains me yet. My back pains me yet. It aches terribly right down in here (indicating). I don't wear the brace all the time now. Dr. Weigel says to wear it part of the time.

The Court: How old a person are you? 20

The Witness: I am 73.

Q What were your expenses at the hospital?

A Why, my expenses at the hospital was \$15.00 for the X-ray, and—

Mr. Pope: I object, no way to prove it.

The Court: Of course there is a proper way. The best evidence would be the hospital authorities. 30

Mr. Gnichtel: I think she can testify to what she paid.

The Court: She may say what she paid but it would not be adequate if Mr. Pope objects. The lady says she paid \$15.00, that isn't adequate proof.

The Witness: I know what my expenses have been altogether.

Kate M. Demerest, for Plaintiffs, Direct.

The Court: I understand that. You had very considerable expense.

The Witness: Yes, terrible.

Q You were in the hospital six weeks? A Six weeks I was in the hospital.

10 Q And you went to Dr. Weigel three times after you left the hospital? A After I left the hospital I went to Perth Amboy; I wasn't able to go back to my home. Then I went three times over to his office in Plainfield.

Q Mrs. Demerest, where you live in Newton, do you have a house or apartment or what? A I live in my home, a house.

Q And who takes care of that house? A Well, I lived with sister for quite a while, my two sisters; my husband passed away and then they passed away and then I was left alone and I have had somebody with me in my home all the time; and I have a friend to stay with me all the time, though I do some things, but I hire a great deal done. I am not able to do it myself.

Q Prior to the accident, did you employ any one to do your work? A No, I did not, except I would weekly have a woman come in weekly to clean, but I did my own work then.

30

The Court: Since the accident have you been put to expense for your household work?

The Witness: Since the accident I have been put to a lot more expense.

The Court: Been obliged to employ—

The Witness: I have employed her.

The Court: Household help?

40 The Witness: Yes. And in my yard, and to wash the windows.

Kate M. Demerest, for Plaintiffs, Direct.

The Court: Run the lawnmower and so on?

The Witness: Yes.

The Court: How much did it cost you?

The Witness: My expense cost altogether—

10

Mr. Pope: No.

Q How much did you expend for employment, for the extra work, since the accident? A I don't know as I can—extra work—well, since the accident, something like \$40.00; I don't know whether I can tell the exact amount. It's around there, if not more.

Mr. Gnichtel: That's all.

20

The Court: Any questions?

Mr. Pope: That's all.

(Witness excused.)

Mr. Gnichtel: If the Court please, Dr. Weigel is attending a meeting of the Medical Association and will be out of town all the week and we are unable to get him here. That is the plaintiffs' case.

The Court: The real question is whether a verdict should go, in the event of negligence being shown, against the Metropolitan Life Insurance Company. I have examined these cases here. Now, here, you haven't shown any relation whatever between Mrs. Guild and the Metropolitan Insurance Company. All you have shown is that she was through with her work over in Union City, that she was on her way home and the accident happened over here in North Plainfield, not within the territory at all of Union City. (Argument.)

40

Edith Guild, for Defendant, Direct.

10 The Court: I tell you what I am going to do; this plaintiff will never understand the duty of the Court on the question of law. I am going to let the defense be put in with reference to the employment of this woman so that every bit of testimony may be gotten on the record. I will deny the motion without prejudice to a motion for a direction.

EDITH GUILD, recalled on behalf of the defendant, testifies as follows:

Direct examination by Mr. Pope.

20 Mr. Pope: I offer as part of my defense the interrogatories and answers which are already in.

Q What is your occupation? A Just now I am not employed.

Q You are a professional nurse, are you not? A Yes, registered nurse.

Q And have you been regularly graduated? A Oh, yes.

30 Q Now, at the time of this accident were you employed by the Metropolitan Life Insurance Company as a substitute nurse? A Yes.

Q You were not a regular nurse? A No.

Q You were substituting for another nurse that was off duty at the time? A Yes.

Q Where was your territory? A In Union City.

Q Had you anything to do outside of Union City for the Metropolitan Insurance Company?

40 A No.

Edith Guild, for Defendant, Direct.

Q What did your duties consist of? A Visiting each case that I was given the address of in the morning and carrying out the orders that were left at the home.

Q And when you visited a case, from whom did you take your directions and orders as to your method of work? A From the doctor. 10

Q The doctor of the company or of the patient? A The patient's doctor.

Q Did your company have anything to do with employing physicians? A No, not for these patients.

Q Would your supervisor ever give you any instructions on the method and manner of doing your work? A The supervisors don't do that.

The Court: Well, then, she didn't? 20

The Witness: No.

Q Did you have discretionary rights of your own as to what you should do in a patient's house in the absence of the physician? A No.

Q Were you permitted by the company to do anything at all for a patient until a doctor was called there to take the case? A No.

Q In your agreement with the Metropolitan Insurance Company was any allowance made to you to cover or partially cover transportation charges in your district? A No. 30

Q Inside the district? A Oh, inside the district, yes.

Q And there was added to your salary how much? A \$20.00 a month.

Q Now, were you or were you not privileged to expend that \$20.00 a month in any way you saw fit? A Well, we were. 40

Edith Guild, for Defendant, Direct.

Q What, if any, control or direction did the company have or your supervisor have over your own territory? A None whatever.

Q Did the company have any direction or control over you after your day's work was finished? A No.

10 Q Was there anything in your arrangement or agreement between the company which related to the question as to how you could get from Dunellen to Union City or from Union City back to Dunellen? A No.

Mr. Gnichtel: I object.

The Court: I will allow it.

20 Q When did you finish your work for the Metropolitan Insurance Company on this Saturday in question? A Between two and two-thirty.

Q That was your last call? A Yes.

Q And where was that? A On Willow avenue in Union City.

Q Now, on Saturday was it their custom or necessary for you to report before going home? A No, we do not.

30 Q Your supervisor leaves the office on Saturday when? A The office closes at twelve o'clock.

Q So that after making your last call you were then able to go where you please? A Yes.

Q At the time that this accident occurred, were you doing anything at all for the Metropolitan Insurance Company?

Mr. Gnichtel: I object.

The Court: Overruled.

Mr. Gnichtel: Exception.

40 A No.

Edith Guild, for Defendant, Cross.

The Court: Where had you been?

The Witness: I was coming home.

The Court: From Union City?

The Witness: From the last case.

The Court: And when did you leave
Union City? 10

The Witness: Between two and two-
thirty.

Q The accident occurred about what time?

A About three-thirty.

Q About an hour after you left? A Yes.

The Court: Your work was through when
that day?

The Witness: Probably twenty minutes 20
after two.

Mr. Pope: Cross examine.

Cross examination by Mr. Gnichtel.

Q Just what do you do when you went to
visit a patient? A Whatever orders were left
by the doctor, we carried out.

Q Suppose there was no doctor? A We
couldn't take the case if there were no doctor. 30

Q You said sometimes you told the family to
get a doctor? A Yes, and went back the second
day, and if there was no doctor, we discharged
the case.

Q What did you do the first day? A If the
patient could be made comfortable, we made them
comfortable; washed their face and hands and
fixed the bed.

Q Now, you were not paid by the case? A
No. 40

Motion for Direction of Verdict

Q Are you positive about the time of the accident, Mrs. Guild? A Well, that was the time the officer put in and I looked at a clock in the North Plainfield Station and it was four o'clock.

10 The Court: How far away is Union City from where the accident happened?

The Witness: About thirty miles.

Mr. Gnichtel: That's all.

(Witness excused.)

Mr. Pope: That's our case.

The Court: What is your motion?

Mr. Pope: I ask for a direction of verdict in favor of the Metropolitan Insurance Company.

20 The Court: Now, I am going to permit counsel for the plaintiffs, if they see fit, to submit to a voluntary non-suit as against the Metropolitan Life Insurance Company to the end that if there is any possibility of other testimony in addition to the evidence that has been produced here, they may not be prejudiced against their right to renew the suit. This accident happened in January, 1934; the statute of limitation does not run. Of course, if they don't care to submit to a
30 voluntary non-suit, then I have already indicated my view. Is there anything more to be said on this motion?

Mr. Gnichtel: If the Court please, we have decided not to take a voluntary non-suit.

The Court: I am inclined to the view that the motion for a direction of verdict in this case should prevail on the ground that no agency has been disclosed under the proof in this case between Mrs. Guild, the driver of the car involved
40 in the accident in question and the defendant,

Motion for Direction of Verdict

Metropolitan Life Insurance Company. The proofs generally tend to indicate that at the time of the accident Mrs. Guild was on her way home and that the accident occurred not in the territory of her employment. It appears that she was employed by the defendant insurance company as a special nurse in the territory spoken of as Union City. While her duties apparently involved reporting to the offices of the company in Union City each day and there receive instructions as to where she would go within the city limits for the purpose of serving as a trained nurse in families of policy holders of the company, nevertheless the instructions were specific and apparently in the absence of an attending physician no services were rendered. It was her duty apparently in the course of the employment to get her instructions from the office of the company in Union City, carry them out and then return and report. The accident in question happened on a Saturday, the business upon which she was engaged had been terminated at noon of that day, or in any event, she had left Union City in her own automobile and was on her way home when the accident happened. I fail to see how the evidence in this case, as a matter of law, could justify any finding that at the time of the accident she was still within the scope of her employment or that any relation of employer and employee or principal and agent, so far as the automobile was concerned, existed whatever between Mrs. Guild and the defendant company. It does appear that the company allowed her \$20.00 in addition to her regular salary for transportation about Union City; in other words, within the territory where she was working in

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Motion for Direction of Verdict

the employ of the company. There is nothing in the case to show that the company was under any duty by reason of the employment to provide for her transportation from her home to this office in Union City or on her return at the end of the day's work to her home in Dunellen where she lived. At the time of the accident her day's work was done. She apparently was obliged to defray the expenses necessary to operating her car between Union City and her home, and in the circumstances, I am inclined to the view that the case of *Walter Dunbaden v. Castle Ice Cream* (103 Law, page 427), and the case of *Kathryn Swartz v. Sinclair Refining Co.*, (103 N. J. Law, page 372) also *Marie Lewis v. Nat. Cash Register Co.* (in 84 N. J. Law, page 598) do not apply.

It is of significance that in the two cases mentioned, the Marie Lewis against the National Cash Register Company and the Kathryn Swartz v. Sinclair Refining Co., that the accident giving rise to those suits occurred within the territory involved in the employment of the driver of the automobile and in the Dunbaden case that the car involved was actually owned by the Castle Ice Cream Company. I differentiate these cases from the case at hand and in the circumstances am obliged to hold, at least I am so constrained, that as a matter of law that no agency has been shown to have existed at the time of the accident giving rise to the present suit between Mrs. Guild and the Metropolitan Life Insurance Company. This ruling is made to the end, if counsel desire, the case may be taken to the Court of Errors for review.

The motion therefore for a direction will be granted and an exception may be had.

Motion for Direction of Verdict

Mr. Gnichtel: I ask for an exception.

The Court: You may have it.

The Court: The jury will therefore return a verdict of no cause of action against the Metropolitan Life Insurance Company.

(Directed verdict so returned.)

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New Jersey Court of Errors and Appeals

KATE M. DEMEREST, FLORENCE
MOORE, HELEN MOORE and
CATHERINE P. MOORE,
Plaintiffs-Appellants,

vs.

EDITH GUILD and METROPOLITAN
LIFE INSURANCE COMPANY, a
corporation,
Defendants-Respondents.

*Action
at Law.*

*On Appeal
from the
New Jersey
Supreme
Court.*

BRIEF ON BEHALF OF PLAINTIFFS-APPELLANTS.

Statement of Facts.

This case arises out of an automobile accident. The court below directed a verdict in favor of the defendant, Metropolitan Life Insurance Company, and plaintiffs are appealing.

The accident occurred in North Plainfield, on January 20th of this year. The plaintiffs were in a car proceeding in a northely direction on Watchung avenue and had passed the middle of the intersection of Summit avenue when the right rear of their car was struck by a car operated by the defendant, Edith Guild.

Mrs. Guild was an employee of the defendant, Metropolitan Life Insurance Company. The sole question to be decided on this appeal is whether there was evidence from which the jury could have concluded that Mrs. Guild was acting within the scope of her employment.

Mrs. Guild was employed as a visiting nurse in the Union City, N. J. district (p. 33). She was

designated as a "substitute nurse" (p. 33), but had been employed since January 15th, 1934 (p. 33), was paid on a monthly basis (pp. 33 and 34) was under the supervision of the head nurse of nursing service for Union City, N. J., district (p. 33), and of the patients treated by her on January 20th, the day of the accident, she continued to treat one until February 24th, 1934 (p. 35). She was employed to nurse policy holders of the Metropolitan Life Insurance Company in the Union City, N. J. district as a part of the service rendered to its industrial policy holders (p. 35). Her nursing supplies were furnished by the Company (p. 35). That she was an employee of the Company, can hardly be questioned.

The accident in question happened on a Saturday afternoon at about 3:30 P. M. Mrs. Guild lives in Dunellen, N. J., and was returning from work at the time, going directly from her patients to her home (pp. 37 and 67).

The Union City district was known to the Metropolitan Life Insurance Company as an "automobile district." Mrs. Guild testified with respect to this as follows (p. 39):

"Q Now, was an automobile necessary for a nurse in that district? A Yes.

Mr. Pope: I object to the question.

The Court: She has answered it.

Q Can you tell us whether there are districts known as automobile districts by the Metropolitan Life Insurance Company?

Mr. Pope: I object to that.

A There are automobile districts.

Q Just what does that mean? A It means that there is a district that cannot be reached by bus or car.

Q And by car, you mean trolley? A Yes, street car. If the distance in between

the cases are so far that you would lose too much time in travel, you are to use an automobile and they call that a car district.

Q And Union City was a car district? A Yes.

Q And did your supervisor know you were using your car? A Yes."

The use of an automobile by Mrs. Guild was a necessity in performing the duties for which she was employed. As she expressed it "I couldn't go around the district without using the car" (p. 40).

Mrs. Guild used her own car and the Company paid her \$20.00 a month toward the expense of running it. Mrs. Guild says that this \$20.00 was to be used for the expenses of the automobile in the Union City district (p. 38) although no one told her of such a limitation (p. 39) and she was paid a lump sum, including the \$20.00 item by her monthly salary check (p. 41).

It was necessary that Mrs. Guild use her automobile in her employment. But no provision was made for garaging it in Union City (p. 43). It was therefore necessary that she take it to Union City each day and return it to her home each night.

On the Saturday in question Mrs. Guild had been visiting her cases through the day and was taking her car home when the accident occurred.

The plaintiffs contend that the evidence established that the returning of her car to her home in Dunellen was incidental to Mrs. Guild's employment and that the Metropolitan Life Insurance Company is liable for her negligence under the doctrine of *respondeat superior*; that at least a jury question was raised. The court, however, ruled that the employment ended when Mrs.

Guild left her last patient and started for home and directed a verdict in favor of the Metropolitan Life Insurance Company. This is the error which the plaintiffs allege as their ground of appeal.

ARGUMENT.

POINT I.

Mrs. Guild was not an independent contractor but was an employee of the Metropolitan Life Insurance Company.

The general rule is a very clear one that the master is liable for any act of his servant done within the scope of his employment, and if the servant is acting in the execution of his master's orders and by his negligence causes injury to a third party, the master will be responsible, although the servant's act was not necessary for the proper performance of his duty to his master, or was even contrary to his master's orders.

McCann v. Consolidated Traction Co., 59 N. J. L., 481, 487;

Driscoll v. Carlin, 50 N. J. L., 28, 30.

To relieve a master from liability for an act of his servant done by the servant while engaged in his master's work, the act done by the servant must be entirely disconnected from the service.

Bedell v. Mandel, 108 N. J. L., 22;

Price v. Simon, 62 N. J. L., 153;

In the *Bedell* case the master was held liable where a servant injured a pedestrian in returning from an errand.

In *Cuff v. Newark & N. Y. R. R. Co.*, 35 N. J. L., 17, at page 23, aff'd. *Id.* page 574, Justice

Depue said that the liability which one man incurs for an act not done by himself "flows from the relation of master and servant, a relation incident to which is the power to select the servant, and direct him in the execution of the duties of his employment, and to discharge him when found to be incompetent; and also the duty to so control his acts that no injury may be done to third persons. In *Quarman v. Burnett*, 6 M. & W., 499, Parke, B., in delivering the opinion of the court (p. 509), says, that 'upon the principle that *qui facit per alium facit per se*, the master is responsible for the acts of his servant; and that person is undoubtedly liable who stood in the relation of master to the wrong-doer—he who had selected him as his servant, from the knowledge or belief in his skill and care, and who could remove him for misconduct, and whose orders he was bound to receive and obey.' "

To establish the relationship of master and servant, it is not necessary to show that the employer directed the work of the employee in all of its details. It is sufficient if the employer has general supervision and the employee is bound to receive and obey orders.

Redstrake v. Swayze, 52 N. J. L., 129, aff'd.

Id. 414;

And so a salesman, paid by commissions, using his own car and paying his own expenses, has been held to be the servant of the company employing him.

Lewis v. National Cash Register Co., 84 N. J. L., 598;

Foley v. Home Rubber Co., 89 N. J. L., 474; aff'd. 91 N. J. L., 323;

Auer v. Sinclair, 103 N. J. L., 372;

Dunbaden v. Castles Ice Cream Co., 103 N. J. L., 427;

See also *Brown v. Paterson Market*, 5 N. J. Misc., 1035.

In *Klitch v. Betts*, 89 N. J. L., 348, relation of master and servant was held to exist where a dentist employed another dentist as an assistant, and the employer was held liable for the negligence of the employee in extracting a tooth.

In *Tompkins v. Pacific Mutual Life Insurance Co.*, 53 W. Va., 479; 44 S. E., 439, 62 L. R. A., 489, a medical officer of an accident insurance company examining a person injured as provided by the terms of the accident policy, was held to be a servant of the company and the company was held liable for injuries resulting from his negligence or misconduct.

In the present case, Mrs. Guild was employed on a monthly basis to nurse policy holders of the Metropolitan Life Insurance Company as a part of the service rendered by that company to industrial policy holders. Her supplies were furnished by the company and she reported to and took her instructions from Miss Pedrick, the head nurse at Union City. In answer to interrogatories served upon the defendant company, replies were given as follows (p. 33):

“5. From whom did she take her instructions? Give name and official position held by such person.

A Miss Pedrick, head nurse of nursing service for Union City, N. J. district.

6. Who supervised her work? Give name and official position held by such person.

A Miss Elsie Pedrick, head nurse of nursing service for Union City, N. J. district.

7. To whom did she report? Give name and official position held by said person.

A See No. 6.

8. How often did she report?

A Two or three times a day.

9. Did she report in person, by mail, or by telephone?

A In person and by telephone."

We contend that there was ample evidence to submit to the jury that the relationship of master and servant existed.

POINT II.

The relation of master and servant continues during the carriage of the servant to and from his work, when done by the master or with his consent, where from the character of the service such transportation is beneficial both to the master and servant.

This rule was laid down in *Cicalese v. Lehigh Valley Railroad Co.*, 75 N. J. L., 897, 900, and has been repeatedly followed.

In *Depue v. Salmon Co.*, 92 N. J. L., 550, an employee was allowed to use a company automobile to take him to his home at night and from his home to business in the morning. The object was to enable him to reach his place of employment at an earlier hour than he otherwise could. The company was held liable for injuries sustained by children who were struck by the car while the employee was on his way home after the day's work was done.

In *Dunbaden v. Castles Ice Cream Co.*, 103 N. J. L., 427, an employee named Grundman, sold ice cream from a four-and-one-half-ton truck. At the end of his day's work, he would leave the truck at Perth Amboy. He would then take a Ford roadster which was owned by the Company and which he was permitted to use, and drive it

to Newark, where he lived. An accident occurred while he was driving the car to Newark.

The following quotation is taken from the opinion of the Court of Errors and Appeals in that case (at pp. 432 and 433):

“There was testimony that immediately after the accident Grundman told an occupant of the plaintiff’s car that he was on his way to the Newark plant of the appellant. Even if this were not so and he was en route home, we think the case is governed by the decision of this court in *Depue v. Salmon Co.*, 92 N. J. L. 550, which held that the relation of master and servant continues during the carriage of the servant to and from his work when done by the master, or with his consent, where from the character of the service such transportation is beneficial both to the master and servant. The appellant seeks to distinguish this case from the present case because in the *Depue* case the servant was permitted to use the automobile and take it to his home at night in order to reach his place of employment earlier in the morning than he otherwise would, while in the present case there is nothing which makes it appear that it was necessary for Grundman to reach his work earlier than the ordinary business hour. This, it is argued, did not make the transportation of Grundman beneficial to his employer. The transportation, it is insisted, only benefited Grundman. We are not impressed by this argument. It was beneficial to the appellant to have Grundman get to its Perth Amboy plant promptly for the service of his route. This could be better accomplished if Grundman had placed at his disposal an automobile with which to make the trip rather than be dependent upon the service of street railways and steam railroads with the delays incident to such travel. We see no difference in principle between the two cases.”

The case of *Central Railroad Co. v. Morgan*, 89 N. J. L., 165, is another Court of Errors and Appeals decision which is in point. In that case an express company had a written contract with the Central Railroad Company, whereby the express company was permitted to use the premises of the railroad company and assumed all risk of injuries to person or property, or damages resulting from the death of any employees exclusively in its service while upon the premises of the railroad company, and whereby the express company agreed to indemnify the railroad company from all claims which might be made against it by reason of any injury to person or property or by death of any such employees. In carrying on its business the express company employed a number of wagons. It was the practice of those employed at the express building, after finishing their work, to take charge of any team and empty wagon which had made its last trip for the day and happened to be standing at the platform of the building, and drive with the same to the express company's stable to avoid walking. One of the express employees, after finishing his work for the day, in accordance with this custom took one of the express company's empty wagons and drove it along a passageway of the railroad company toward defendant's stables and was injured at a grade crossing by being struck by one of the railroad company's trains. Suit was brought against the railroad company which resulted in verdicts aggregating \$6,000, and the railroad company sued the express company under its indemnity agreement. The express company claimed that at the time of the injury, the employee had finished his work for the day and was not in the discharge of his duties as an employee of the express company.

The court held that while it was not a part of the employee's regular duties to take the team and wagon to the stable, it was the practice of those employed by the express company to do this for the purpose of avoiding a long walk, and relying upon the Cicaese case above referred to, the court held that the relation of master and servant continues until the employee has reached the destination to which he is being carried by or with the consent of the company.

In *Soden v. Public Service Transportation Co.*, 4 N. J. Misc., 817; 134 Atl, 560, the Supreme Court held that where a bus driver was being driven by another employee to the garage to take charge of his bus, the Commissioner of Compensation properly brushed aside the contention that the employment had not begun. This decision was affirmed by the Court of Errors and Appeals. 103 N. J. L. 713.

The following is the syllabus of the Supreme Court in *Bolos v. Trenton Fire Clay and Porcelain Company*, 102 N. J. L., 479, affirmed 103 N. J. L., 483:

“At the regular noon lunch time the decedent left his employer's truck, on which he was a helper, at the brick shed on his employer's premises and ate his lunch at the barn, also on the premises. When the whistle blew for him to resume work at the termination of the noon recess, he started for his truck. Observing another of his employer's trucks starting from the vicinity of the barn and going to the brick shed, he jumped upon its running board. To get to the brick shed it was necessary for the truck to travel about six hundred feet, in part, over a public street abutting and paralleling a part of the premises. In turning back from the street into the premises the decedent was thrown from the truck and killed.

Held, that the accident arose out of and in the course of his employment.”

See also *Ben v. Eastern Motor Co.*, 94 N. J. L., 34.

The foregoing cases are on all fours with the present case except that in each of the cases above cited, the automobile involved belonged to the employer while in the present case Mrs. Guild furnished her own car.

POINT III.

The fact that Mrs. Guild used her own car did not relieve the employer of liability for its negligent use since it was used with the knowledge and acquiescence of the employer.

It will be noted that in the Cicalese and subsequent cases, the law is stated to be that the relation of master and servant continues during the carriage of the servant when done *with the consent* of the master, as well as by him.

As was said in *Brown v. Paterson Central Market Association*, 5 N. J. Misc., 1035, 1037—
“It frequently happens that under the terms of an employment, an employee pays his expenses or uses something belonging to him, as an automobile or conveyance, for the performance of his work.”

In *Auer v. Sinclair Refining Co.*, 103 N. J. L., 372, 376, the employee was a salesman. He furnished his own car and the company paid him for its upkeep. The employer was held liable for an accident which occurred at the end of the day's work, as the employee was driving from the point of his last call to the garage at his home, where he kept his car.

In *Lewis v. National Cash Register Co.*, 84 N. J. L., 598, the employee, who was a salesman, furnished his own car and paid his own expenses.

In each of the last two cases cited, the accident occurred within the employee's territory. But from the other cases it is clear that that fact is of no importance.

In *Pepoon v. Rachels*, 4 N. J. Misc. Reps., 40, affirmed by the Supreme Court under the title of *Rachels v. Pepoon*, 5 N. J. Misc. Reps., 122; 135 Atl., 684, and by the Court of Errors and Appeals, 104 N. J. L., 183, the accident did not occur in the territory in which the employee worked. It was a Workmen's Compensation case. In that case Pepoon worked for Rachels, who was a wholesale newspaper dealer, making delivery of his papers in Hoboken and distributing them by trucks to his customers who were local retail dealers. The trucks were hired by Rachels and the drivers were furnished by the truck owners. Pepoon's practice and duty was to ride on one of these trucks from Passaic to Hoboken, there assist in assorting and preparing the papers, and from there accompany a truck over a route and assist in the distribution and delivery to Rachel's customers. On the night of his injury he made arrangements with his employer to leave for Hoboken at an hour later than the usual time in order to attend to some personal business. He attended to this personal business and then undertook to go from Passaic to Hoboken in an automobile which he hired or borrowed and which he drove himself. While driving that automobile on his way to Hoboken he came in collision with another car and received the injuries from which he died. The Deputy Commissioner of Compensation decided that the accident arose out of and in the course of the em-

ployment, and this decision was affirmed by both the Supreme Court and the Court of Errors and Appeals.

There are also cases where the employees were being carried by independent contractors.

Foley v. Home Rubber Co., supra;

Fisher v. Tide Water Building Co., 96 N. J. L., 103.

In *Alberta Contracting Co. v. Santomassimo*, 107 N. J. L., 7, the accident did not occur in the employee's territory nor did the automobile truck involved belong to the employer. The court paraphrased the language in the *Cicalese* case and laid down the following rule: "The relation of employer and employee continues while the employe is riding to and from his employer's premises, in a truck *used in connection with his employer's work*, by direction of his employer, with his knowledge and acquiescence in the continued practice, which was beneficial to both the employer and employe; and an injury sustained while so riding arises out of and in the course of his employment."

The consent of the employer to the transportation of the servant to and from work is sometimes evidenced by express agreement, as in *Fisher v. Tide Water Building Co., supra*, by custom, as in *Central Railroad Co. v. Morgan, supra*, *Matthison v. Payne*, 98 N. J. L., 87, *Rachels v. Pepoon* and *Dunbaden v. Castles Ice Cream Company, supra*, or by mere acquiescence as in *Foley v. Home Rubber, Co., supra*.

In all cases where the transportation is shown to be beneficial both to the master and the servant, the decisions are uniform in holding that the relation of the master and servant exists during the carriage of the servant to and from his work.

In the present case, Mrs. Guild lived in Dullen and worked in Union City, a distance of about thirty-five miles (p. 45). As in *Dunbaden v. Castles Ice Cream Co.*, *supra*, at page 433, it was beneficial to the company that she arrive at her place of work promptly. Moreover, the use of the automobile was essential to the performance of her work. It is obvious that transportation to and from her work by automobile was beneficial to both parties.

POINT IV.

The fact that the accident did not occur in the Union City District did not relieve the Metropolitan Life Insurance Company of liability.

Mrs. Guild's work was done in the Union City district, but as an incident to her employment, it was necessary for her to go to and from the district and to return the automobile to her home. If the relation of master and servant had not terminated, her employer is liable even though the accident occurred at a distance from her actual place of work.

O'Mara v. Kirch, 106 N. J. L., 151, at 153,
and cases therein cited;

Rachels v. Pepoon, *supra*;

Dunbaden v. Castles Ice Cream Company,
supra;

Zabriskie v. Erie Railroad Co., 86 N. J. L.,
266;

Depue v. Salmon Co., *supra*.

POINT V.

The relation of master and servant did not terminate when Mrs. Guild finished her nursing work but continued until she had returned her automobile to her garage.

It is sufficient if Mrs. Guild was doing something reasonably incident to her employment.

Zabriskie v. Erie Railroad Co., *supra*, where the servant was responding to a call of nature;

Allen v. Glaser, 4 N. J. Misc., 754, where a hotel waitress was burned to death while sleeping in the hotel.

Ramsey v. Leahey, 102 N. J. L., 513; *aff'd*, 103 N. J. L., 501, where a captain of a coal barge was returning to his boat after having gone ashore to buy food.

See also cases cited under Points II and III in which employees were on their way to or from work.

In *Laverty v. Luddington Management, Inc.*, 110 N. J. L., 410, at 412 and 413, the Court of Errors and Appeals said:

“In the instant case, the employees, though not actually working at the time of injury at the job for which they were employed, were injured in doing something which the employer expressly directed, or consented, they should do as an incident of their employment, and were, in our opinion, within the scope of their employment while on the employer’s truck being by him transported from his job.”

Mrs. Guild testified that she could not go around the district without using a car (p. 40). As in *Lewis v. National Cash Register Co.*, *supra*, the necessities of her employment required the

use of an automobile. It necessarily follows that as an incident of her employment, she had to put the car away when her work was done.

POINT VI.

In a case such as this where the issue depends upon the determination of facts, the existence of which is not admitted, the jury, not the court, should determine them.

The trial judge is only justified in granting a non-suit or directing a verdict upon a court question arising from the admitted or uncontroverted facts of a case, and the weight of conflicting testimony should always be submitted to a jury for their consideration and determination.

Klitch v. Betts, 89 N. J. L., 348, at 356 and cases therein cited.

We contend that in this case, as in *Klitch v. Betts*, there was sufficient evidence to submit to the jury that the relation of master and servant existed between the Metropolitan Life Insurance Company and Mrs. Guild, and that the court erred in directing a verdict.

Respectfully submitted,

WHITING & MOORE,
Attorneys for Plaintiffs-Appellants.

IRA C. MOORE, JR.
Of Counsel.

137001.1.1934

New Jersey Court of Errors and Appeals

KATE M. DEMEREST, FLORENCE
MOORE, HELEN MOORE AND
CATHERINE P. MOORE,
Plaintiffs-Appellants,

vs.

EDITH GUILD AND METROPOLITAN
LIFE INSURANCE COMPANY, A
CORPORATION,
Defendants-Respondents.

*Action
at Law.*

*On Appeal
from the
New Jersey
Supreme
Court.*

BRIEF ON BEHALF OF DEFENDANT—RESPONDENT METROPOLITAN LIFE INSURANCE CO.

Statement of Facts.

This case grows out of an automobile accident in which a car owned and operated by Edith Guild was involved.

Miss Guild, a professional nurse, lived in Dunellen, New Jersey; at the time she was employed as a visiting nurse by the Metropolitan Life Insurance Co. Her territory was Union City, New Jersey. Her duties were to visit policyholders of the Metropolitan who were ill, in Union City, and she was directed where to go by her supervisor. Upon arriving at a home she was only permitted to make a patient comfortable (p. 67), such as washing the face and hands or make the bed. And if the patient appeared to be ill enough, she then directed the family to call in the family doctor. If the family doctor was called in the nurse then followed his directions and was under his control. She was not permitted to recommend or suggest any doctor. (P. 48). If the family failed to call in the family

physician then the nurse left the case, did nothing, and it was considered closed. (P. 67).

Since her duties required her to travel about Union City she was allowed \$20.00 per month to cover her traveling expenses, which amounted to about \$20.00 per month. (Pp. 44, 45). This \$20.00 was not separated but was included in her check and this was confined to transportation in the district and not outside. (P. 46). There was no arrangement with the company to pay the expenses of transportation to and from her home. (P. 46). After her hours were up she was privileged to go wherever she pleased and to do what she pleased. (P. 47). In determining her compensation or allowance the company did not take into consideration the time spent by her in going to and from her home; this defendant had nothing to do with her going to and coming from her home. (P. 36). The transportation allowance was to defray the cost of her transportation from the office in Union City, N. J., to the homes of the policyholders in Union City district and back to the office. (P. 35). The nurse was not doing any work for the company outside of Union City. (P. 38). It made no difference to the company how the nurse got there or how she got home. (Bottom p. 38). In other words, she was to get to and from her district "the best way she could." (Top p. 39). There was no evidence of any arrangement that this nurse should use her car or any car. The \$20.00 allowance she was privileged to use in any way she cared so long as she covered her district. Indeed, it does not clearly appear that the supervisor actually knew that she was using her own car. (P. 40). She was not required to render any account for gas or oil. (Bottom p. 45). On the Saturday in question she had finished her work in Union City shortly after 2 o'clock. (P. 66). She left Union City and was

on her way home and while passing through Plainfield the accident occurred. (P. 67).

ARGUMENT.

It is contended on behalf of the Metropolitan Life Insurance Co. that at the time the accident occurred she was not acting within the scope of her employment. That the company was exercising no direction or control of her movements and the relationship of master and servant did not exist. There is nothing in the case to show that the company assumed any control over her going to or returning from the office in Union City to her home, or that the company provided any transportation for that purpose. In fact, the only direction and control which the company assumed over the nurse was confined strictly within the Union City territory, and that direction and control was limited strictly to directing the nurse to the homes of its policyholders within that city. After reporting at the home, the nurse was then under the exclusive control and direction of the family physician.

POINT I.

Miss Guild was an independent contractor.

We are unwilling to concede that this professional nurse was not an independent contractor.

The defendant-company merely purchased her professional skill and services to be rendered, free of charge, to its policyholders. The only direction and control, if it may be so termed, which the company exercised over the nurse, was to give her the name and address of the patient, upon receiving which, she was to go to the home of the patient and place herself under the exclusive direction and con-

trol of the patient's own family physician. Under no circumstances was she permitted to render any professional services to a patient except to make him comfortable, unless and until the patient's family physician took charge, directed and controlled her work. If no family physician was called she retired and the case was closed. (P. 47).

"That the service is in the furtherance of the employer's business is not enough. It must be so far his business as to be his own work and undertaking. The engagement of others to do the work does not affect his responsibility. But when the undertaking is that of the person engaged to do it, and the employer is only concerned in the result, the latter's responsibility fails since the undertaking is not his."

"His (the employer's) responsibility does not grow so much out of the relationship of master and servant as out of the power and direction and control which are usually incident to that relation." *Hooper v. Browner* (M. D.), 129 Atl. 672, 674; *McCarthy v. Souther* (N. H.), 137 Atl. 445, 450.

While the defendant-company was undoubtedly interested in the result, it in no way exercised the power of direction and control.

POINT II.

The relation of master and servant did not exist at the time the accident occurred.

We have no quarrel with the various cases cited by the plaintiff-appellants under their second and third points; but as was held by the learned trial judge, they do not apply to the facts in this case.

The evidence already quoted and referred to in the statement of facts and which is the evidence of the plaintiff, and the only evidence in the case (pp. 35, 36, 38, 39) shows that this defendant had nothing to do with her going to and coming from her home.

If the fact that the Metropolitan Insurance Company added to this nurse's pay \$20.00 a month to cover her transportation charges has any bearing on the relationship, then, the defendant contends that a case of liability could only grow out of a tort, committed by the nurse within the Union City district. The evidence very clearly shows that the company made no arrangement concerning the transportation of this nurse from her home to her district or from her district to her home and that her territory was restricted to the Union City district (pp. 35, 36, 38, 39).

This contention is strengthened by the fact that there isn't a particle of evidence to be found in the case anywhere which shows that the contract between the company and the nurse *required* the nurse to use her own car. The company allowed \$20.00 for transportation charges, but they did not prescribe the means of transportation. The nurse seems to have assumed that she was expected to use her own car (p. 40, l. 38), and she did use her own car because that means of transportation was more convenient and practicable. Under the evidence it seems clear that the method of transportation was left to the nurse to determine. She could go by trolley, bus, or otherwise. All the company did was to tell her where to go in Union City and gave her \$20.00 a month to pay her way around.

POINT III.

At the time of the alleged accident Mrs.

Guild was not the servant of the Defendant-Company.

The cases referred to by counsel in Point III do not apply to the facts in this case.

As has been stated, this nurse had completed all of her work for the company in Union City, Saturday at about 2 o'clock. Her connection with the defendant-company ceased for the time being and she was privileged to go where she pleased. (P. 47).

The mere fact that the nurse worked for this company in Union City, New Jersey, and that she was obliged to travel from her home in Dunellen to Union City in order to fulfill her engagement does not make the company responsible for her actions while going to and returning from her work. If the company had assumed to transport her the case might be different.

She was returning to her home at the time this accident occurred. She was not engaged in any undertaking in which the company was interested and the relationship of master and servant did not exist.

A very well and considered and interesting case is that of *McCarthy v. Souther*, 137 Atl. 445 at 449 (N. H.), where the learned justice seems to state the rule with perfect understanding.

“There is substantial authority for the proposition that the employer is liable for all torts of his agent or servant committed in the course of the employment, and under such authority the distinction between service in the course of the employment that is, and that is not, under the employer's control and direction is not observed. But the doctrine of respondeat superior underlying the employer's liability, and through which the liability has been estab-

lished, is either disregarded or fallaciously applied when the distinction is not made. The doctrine rests on the employer's right of control and direction, and in reason applies only to the extent of the control and direction. What one does by another he does by himself, but what another does is not always the act of the one employing him to do it. Where no control may be implied from the situation and none has been expressly reserved, the mere fact that the relationship is of agency or service should not be enough to subject the employer to liability. And if, under the contract of employment, the employer has control over part only of the service to be rendered, liability for the manner in which the rest of the service is performed does not thereby follow."

"For service not subject to the employer's control and direction in its details, on principle, he is no more to be held for its faulty performance than for the liability of an independent contractor. If the employer may not direct how a thing shall be done, then what the agent or servant does is not the employer's act. That he has the right under the contract of employment to have the thing done is not enough to impose liability. That right obtains as well in cases of independent contracts. The further right to direct the manner of performance must appear."

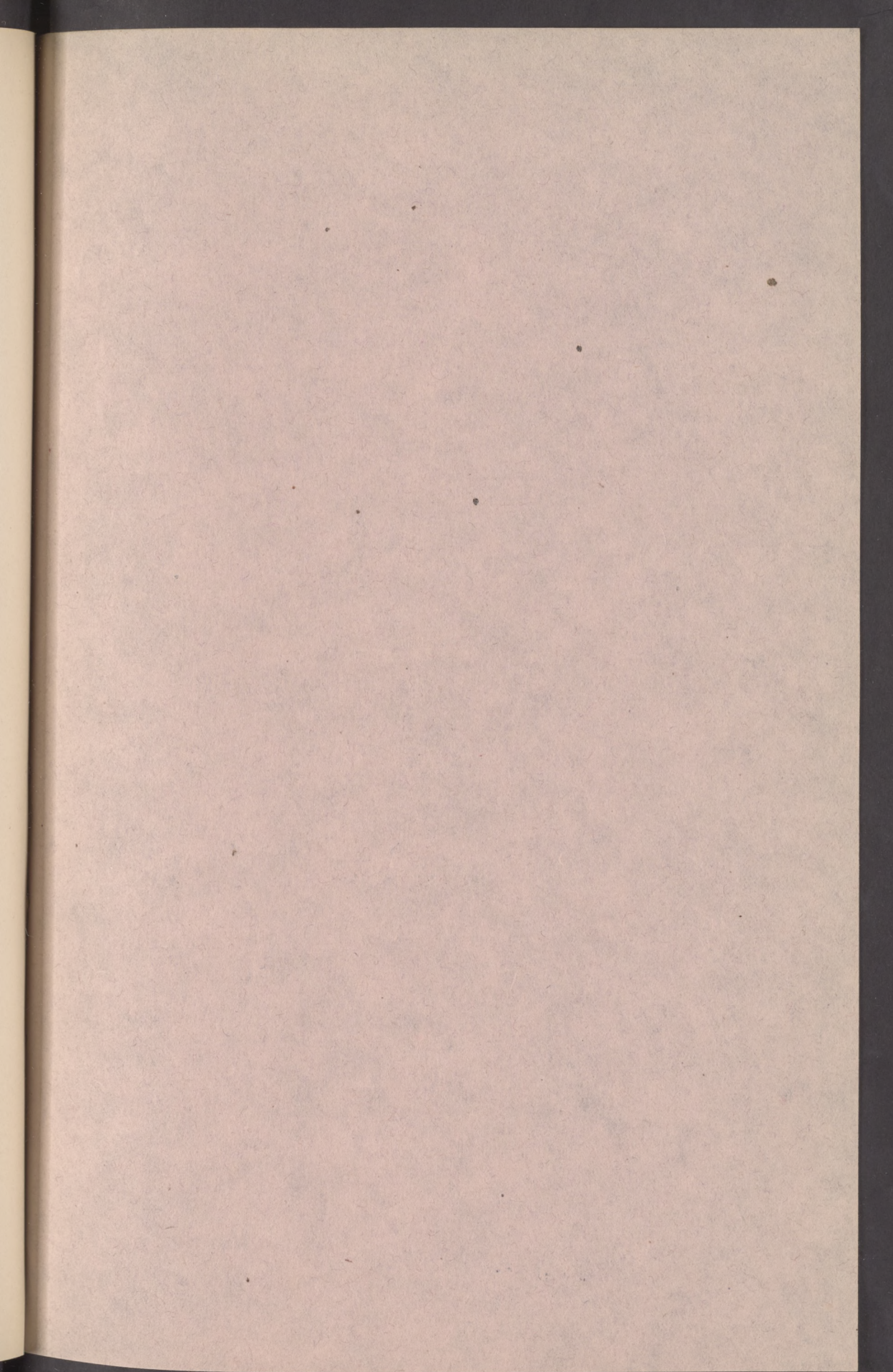
At p. 450, the Court continues: "the allowance made for expenses implied no right and no liability on the employer's part in respect to its (the car) maintenance and operation."

FINALLY, we respectfully submit that the ruling of the learned trial Judge was justified by the evi-

dence, the law of the case properly applied, and should be affirmed.

Respectfully submitted,

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Of Counsel with the Defendant-Respondent,
Metropolitan Life Insurance Co.



death, the use of the case previously applied, and
should be affirmed.

Respectfully submitted,

FREDK A. JOPE

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Metropolitan Life Insurance Co.