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Notice of Appeal.

NOTICE OF APPEAL.

Filed January 30, 1926.

New Jersey Supreme Court

MONMOUTH COUNTY.

10

SARAH REILLY,

Plaintiff,

vs.

LEIGHTON LOBDELL and ARTHUR
DOLBEY,

Defendants.

*Action at
Law.*

*Notice of
Appeal.*

To Quinn, Parsons and Doremus, Attorneys 20
for Plaintiff:

SIRS:

Please take notice that the defendants herein hereby appeal from the judgment of the New Jersey Supreme Court to the Court of Errors and Appeals of New Jersey, the last resort in all causes.

Dated, January 26, 1926.

30

Respectfully yours,

HEINE, BRADNER & LAIRD,
Attorneys for Defendants.

Service acknowledged January 28, 1926.

QUINN, PARSONS & DOREMUS,
Attorneys for Plaintiff.

40

Grounds of Appeal.

GROUNDS OF APPEAL.

New Jersey Court of Errors and Appeals

10	<p>SARAH REILLY, <i>Plaintiff-Respondent,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>LEIGHTON LOBDELL and ARTHUR DOLBEY, <i>Defendants-Appellants.</i></p>	<p><i>Grounds of Appeal.</i></p> <p><i>Action at Law.</i></p> <p><i>On Appeal from New Jersey Supreme Court, Monmouth Circuit.</i></p>
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20 To Messrs. Quinn, Parsons & Doremus, Attorneys for Plaintiff-Respondent:

Please take notice that the defendants herein state the following grounds of appeal:

30 1. The refusal of the Trial Court to sustain the objection of defendant's counsel to the following question asked of the witness Mrs. Mary Wenzell (S. C., p. 32, l. 6), "Q Was there any other traffic on the street at that time, any other vehicles of any character on the street near the Ford station wagon?"

40 2. The refusal of the Trial Court to sustain the objection of the defendant's counsel to the following question asked of the witness Mrs. Wenzell (S. C., p. 37, l. 11), "Q When the driver of this car was around there that afternoon and said that he turned out and hit your mother to avoid hitting a truck, did you know when he said that to what truck he referred?"

Grounds of Appeal.

3. The refusal of the Trial Court to strike out the answer to the following question asked of the witness Anna Farrell (S. C., p. 78, l. 17), "Q Did you see any vehicle in that vicinity? A The only vehicle I remember seeing was Mr. Lobdell's Ford suburban."

4. The refusal of the Trial Court to permit witness Robert Browning Wilson to answer the following question (S. C., p. 96, l. 16), "Q Is it possible, doctor, now and will it be possible until the removal of this cast to say with any certainty just what the character or permanent character of the injuries will be?" 10

5. The refusal of the Trial Court to grant a motion for non-suit upon the grounds:

a. That the plaintiff was guilty of contributory negligence. 20

b. That no negligence was shown on the part of the defendant Arthur Dolbey.

6. The refusal of the Trial Court to grant a motion for mistrial and withdrawal of a juror upon the grounds that the action was prematurely brought by the plaintiff.

7. The refusal of the Trial Court to grant a motion for direction of verdict in favor of the defendant on the grounds: 30

a. Plaintiff was guilty of contributory negligence.

b. No negligence was given on the part of the defendant Dolbey.

c. That no damage was proven of a legal character which could be submitted to the jury.

Grounds of Appeal.

8. The charge of the Trial Court was erroneous in that the Court charged as follows:

10 “Now, gentlemen, if you find that the driver of the car was negligent and that his negligence caused the plaintiff’s injury, without contributory negligence on her part, then she is entitled to your verdict, and you in that event, would come to the question of damages. The evidence is undisputed that she has been practically helpless since the time of the accident, encased in a plaster cast, confined to her bed. The medical opinion seems to be that she will continue in that condition for some considerable time yet. There is also some medical testimony that she may never be able to resume the

20 occupation in which prior to the accident she supported herself; her earnings amounting, as she testified, I think, to about \$21 or \$21.50 a week. Damages in such cases as this are intended to be compensatory. They are not to be based upon sympathy for the injured person, however serious the injuries may be; nor are they intended as a punishment or penalty inflicted upon those whose negligence caused the injury. The

30 rule which must guide the jury in such cases is to award a sum of money which in the judgment of the jury will compensate the injured person for the injury itself, having regard to its nature and extent and effect, for pain and suffering, for loss of earnings and any impairment or loss of earning power and for any expenses of hospital, medical and other incidental treatment. Upon the question, gentlemen, as

40 to the permanence of the injury or dis-

Grounds of Appeal.

ability you are to take into consideration that the medical men substantially agree in the opinion that it is yet too early finally and fully to determine the extent and duration of the plaintiff's disability."

Dated, February 3, 1926.

Respectfully yours,

10

HEINE, BRADNER & LAIRD,
Attorneys for Defendants-Appellants.

Service of a copy of the within Grounds of Appeal is hereby acknowledged this 10th day of February, 1926.

QUINN, PARSONS & DOREMUS,
Attorneys for Plaintiff-Respondent.

20

30

40

Summons.

SUMMONS.

THE STATE OF NEW JERSEY:

To Leighton Lobdell and Arthur

(SEAL) Dolling:

10 YOU ARE SUMMONED to answer the
annexed complaint of Sarah Reilly, in an action
at law in the Supreme Court.

AND TAKE NOTICE, that unless you file your
answer to said complaint with the Clerk of the
Supreme Court, at Trenton, within twenty days
after service upon you of this writ and the an-
nexed complaint, the plaintiffs may proceed in
the suit and judgment may be entered against
you.

20 WITNESS, WILLIAM S. GUMMERE, Esquire, Chief
Justice of the Supreme Court, at Trenton, this
eleventh day of August, A. D. 1925.

EDWARD J. KELLEHER,
Clerk.

QUINN, PARSONS & DOREMUS,
Attorneys.

30

40

Complaint.

COMPLAINT.

Plaintiff, Sarah Reilly, residing in the Borough of Red Bank, in the County of Monmouth, and State of New Jersey, says that:

1. On July 11, 1925, she was crossing White street, a public thoroughfare in the Borough of Red Bank, and was crossing said street from north to south. 10

2. On the day and year aforesaid, the defendant, Leighton Lobdell, was the owner of a certain automobile and by his agent or servant, the defendant, Arthur Dolling, was driving the same upon White street in the Borough of Red Bank, in a westerly direction.

3. It then and there became the duty of the defendants to so carefully, cautiously, prudently and lawfully drive and operate said automobile that they should refrain from running into or colliding with any person lawfully upon said public street. 20

4. Notwithstanding the premises the defendants so carelessly, recklessly, negligently and imprudently ran and operated said automobile that as a direct and proximate result of their negligence they ran into and struck the plaintiff lawfully crossing said public street. 30

5. The defendants were negligent in the operation of their automobile in the following respects:

(a) They ran and operated said automobile at a high, excessive and unlawful rate of speed;

(b) It was operated without being under proper control;

Complaint.

(c) It had no proper brakes or appliances for stopping said automobile;

(d) No horn or other warning signal was given of its approach;

(e) It was driven upon the wrong or left-hand side of said public thoroughfare;

10 (f) It was operated in divers other negligent and careless respects.

6. As a direct and proximate result of said negligence and the collision above referred to, plaintiff sustained the following injuries: she suffered contusions of the hip, body, left side and left leg, which caused her great pain and suffering. She underwent great nervous shock and pain from which she still suffers and will always suffer. She suffered and sustained a
20 transverse fracture of the fifth lumbar vertebrae of the backbone or spine, whereby she has been ever since and will forever be permanently crippled and disabled. She has thereby been rendered, and will forever be rendered unable to follow her usual vocation as a means of livelihood. She has been forced to expend, and will
30 for the remainder of her life, be forced to expend large sums of money in and about endeavoring to be cured of her injuries, and for her medical care and attention, and for further expenses.

Plaintiff demands the sum of \$75,000 damages and costs of this suit.

QUINN, PARSONS & DOREMUS,
Attorneys of Plaintiff.

Answer—Reply.

ANSWER.

The defendants, Leighton Lobdell and Arthur Dolbey, residing in the Borough of Red Bank, County of Monmouth and State of New Jersey, answering the plaintiff's complaint herein, say that:

10

1. They deny each and every allegation of said complaint.

FIRST DEFENSE.

These defendants say that the plaintiff was guilty of contributory negligence.

HEINE, BRADNER & LAIRD,
Attorneys for Defendants.

20

REPLY.

Plaintiff, by way of reply to the answer herein filed, says that she denies the new matter raised therein and joins issue upon the same.

QUINN, PARSONS & DOREMUS,
Attorneys of Plaintiff.

30

40

Postea—Judgment.

POSTEA.

10 This case was tried at the Monmouth Circuit before Judge Frank B. Jess and a jury on January 20, 1926. The jury returned a general verdict in favor of the plaintiff and against the defendants, Leighton Lobdell and Arthur Dolbey, in the sum of \$24,500.

JUDGMENT.

20 WHEREFORE, IT IS ORDERED that judgment final be entered in favor of the plaintiff, Sarah Reilly, and against the defendants, Leighton Lobdell and Arthur Dolbey, in the sum of twenty-four thousand five hundred dollars (\$24,500) damages and costs to be taxed.

Rule actually entered January 22, 1926.

On motion of

QUINN, PARSONS & DOREMUS,
Attorneys for Plaintiff.

30

40

George Randolph, direct.

NEW JERSEY SUPREME COURT.

MONMOUTH COUNTY

SARAH REILLY, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> LEIGHTON LOBDELL and ARTHUR DOLBEY, <div style="text-align: right;"><i>Defendants.</i></div>	}	<i>Action at Law.</i>	10
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Freehold, N. J., January 19, 1926.

GEORGE RANDOLPH, sworn for plaintiff.

Direct examination by Mr. Parsons. 20

Q Mr. Randolph, you are a civil engineer, are you? A Yes, sir.

Q A graduate of what institution? A Princeton University.

Mr. Heine: We can perhaps save time, Mr. Parsons, if you will show me the map. We can save the time of qualifying the engineer. (Examines map.) 30

We will admit that this map is a correct survey of the location shown in Red Bank.

Mr. Parsons: I offer it in evidence.

The Court: It may be marked.

(Map marked Exhibit P. 1.)

Q Mr. Randolph, if you will step down in front of that map, please. Now, will you indicate north on that map? A North is the upper part of the map. 40

George Randolph, direct.

Q And the south is the bottom? A The south is the bottom.

Q East? A East is the right-hand side as you face it.

Q And west is what? A West is the left-hand side.

10 Q Now, if you will indicate to us, Mr. Randolph, the Broad street side. A This is the Broad street side, to the right of the map.

Q And the Maple avenue side? A To the left of the map.

Q Will you indicate to us on the map where the place known as Smock's Laundry is? (Witness indicates.)

Q And that is marked on the map by the word "Smock"? A "Smock," yes.

20 Q Will you indicate to us the width of the street in front of Smock's Laundry? A The width of the street as shown here.

Mr. Heine: From curb to curb.

A From curb to curb it is the driven street, 22.75; 22 feet 9 inches.

30 Mr. Heine: That does not include the sidewalk?

The Witness: From curb to curb.

Mr. Parsons: That does not include the sidewalk.

Q Will you indicate to us Mrs. Reilly's home? A The Reilly home is the house here.

By Mr. Heine.

40 Q What is that marked? A No mark.

George Randolph, direct.

By Mr. Parsons.

Q Will you mark that with the letter "R," please? (Witness marks.)

Q Will you indicate to us on the map, Mr. Randolph, the location of the Liberty Fire Company? A The Liberty Fire Company here, marked "Borough of Red Bank Liberty Hose Company." 10

Q And that is the engine house of the Liberty Fire Company, is it? A It is.

Q Now, will you indicate to us in which direction on the map, on which side of White street is the post office? A The post office is on the southerly side of White street and is beyond the border as shown here toward Broad street.

Q Can you tell us the scale of that map, Mr. Randolph? A The scale is one inch to ten feet. One inch on the map represents ten feet of ground. 20

Q Can you indicate, if you have on the map there, the door of the laundry? A It is not shown on the map.

Q Can you tell us approximately where it is, Mr. Randolph? A By referring to my notes.

Q Will you refer to your notes, please? A In my notes, the larger door of the laundry is shown as being 18½ feet, approximately, 18.6, from the easterly side of the marked building. 30

Q Will you indicate that; scale that off and just mark "D" there, please, Mr. Randolph, to indicate the door? A That is the center of the door. (Marks on map.)

Q Did you at the time of making that survey make observations also for the purpose of determining the entrance to Mrs. Reilly's home? A Why, not particularly as to the entrance, no; 40

George Randolph, direct.

just checked the house and porch as we found them.

Q Can you tell us the width of the porch there, Mr. Randolph? Did you measure that?

A Yes, sir. The porch is six feet wide.

10 *By Mr. Heine.*

Q Parallel with the street? A Yes, parallel with the street.

By Mr. Parsons.

Q With relation to the door marked there in the laundry, Mr. Randolph, can you tell us what the position of the door in Mrs. Reilly's house and the entrance to it is with relation to the door of the laundry?

20

Mr. Heine: Which door, the main door?

Mr. Parsons: Yes, the main door of the laundry. It is marked "D" there.

A Not exactly by referring to the map and the position. The house as shown there is about directly opposite.

30 Q And the door, then, of Mrs. Reilly's house is on the east side of the house, is it? A Yes, on the east side of the house.

Q Can you give us the distance from the Liberty firehouse to the door of Smock's Laundry?

A It is 197½ feet from the easterly side of the firehouse building to the center of the door, so marked, of Smock's Laundry.

40 Q And can you tell us the distance from the westerly side; in other words, deducting the width of the fire company lot? A The fire company's building is 22.1 feet. That would be 175 feet, approximately.

George Randolph, cross.

Q The westerly side of the building? A The westerly side of the building, yes.

Q And, as indicated by the map, Mr. Randolph, is White street a straight street at that point? A White street is straight at that point, yes, sir.

Cross examination by Mr. Heine.

10

Q How far, if you can tell us from your notes or the map, is it from the post office to the easterly line of the laundry? A I didn't measure that, sir.

Q Can you approximate it? A Just guessing.

Q Well, give us your best estimate. You know the locality. A From the post office to the laundry?

20

Q The west side of the post office to the east side of the laundry. A I should say about 500 feet.

Q Will you locate on there or your notes the other door of the laundry? A I took no other locations.

Q Only the central door? A Yes, sir; the large door.

Q Do you recall from your observation whether there is another door there? A Yes, there is a door on either side of the laundry.

30

Q Another door on either side of the main door? A Of the double door that I have located there.

Q Do you live in Red Bank? A No, sir.

Q Are you familiar with the parking regulations there? A By observation, yes.

Q What did you find?

40

George Randolph, cross.

Mr. Parsons: Objected to. That is no way of proving the parking regulations. Also, it is not cross examination.

10 Mr. Heine: Well, I was just trying to bring out all we can about the map so as to save time later. If counsel objects I will have to withdraw it.

Q Can you from your observation state whether the door to the west of the main door of the laundry is nearer to the main door than the door to the east? A No, sir.

20 Q Can you estimate the distance of either door, on either side of the main door, from the main door? A Well, it is within that 18 feet and 5 inches to the east. I know there is a door there; it is within that distance. I don't know just what it is.

Q Would your recollection enable you to state whether the door to the west is nearer than the door to the east? A No, sir; I couldn't recall that.

Q You couldn't recall that? A No, sir.

30 Q Your measurement of the curb was the inside measurement, was it, from the inside of each curb? A Yes, sir; the road side of each curb.

By the Court.

Q What did you say it was? A 22 feet 9 inches at that point opposite Smock's Laundry.

By Mr. Heine.

40 Q The little circles on the map which have been designated "Parking Site," "Hydrant" and "Pole" were put there by accurate survey? A Yes, sir.

Andrew Coleman, direct.

Q And can you tell what kind of a pole is referred to when you marked "Pole" there? A Telegraph poles; carried wires.

Q And lights? A I don't recall them.

Q Well, they are regular telegraph poles?
A Public Service poles, wooden telegraph poles.

Q Will you explain the double line which appears here as the gutter? Is that curbing as opposed to sidewalk? A Not as curbing. The first line represents the line of the curb. That space there is between what we term the parking space, between the curb and the sidewalk. The curb itself is probably about four inches thick and then there is a one-foot parking space over all from the beginning of the sidewalk to the grass plot. 10

Q Not covered by stone? A Yes. 20

Q What is on the Trinity Church property?
A A church that faces on Front street; nothing on White street.

Q Nothing near the sidewalk of White street?
A No.

Q That is the back of the church? A Yes.

ANDREW COLEMAN, sworn for plaintiff. 30

Direct examination by Mr. Parsons.

Q Mr. Coleman, you are a photographer in Red Bank, are you? A Yes.

Q Did you at our request take some pictures of White street and the vicinity there of Mr. Smock's laundry? A I did, yes.

Q On what date, Mr. Coleman? A September sixteenth last. 40

Andrew Coleman, direct.

Q I show you a picture and ask you what that picture represents? A This is taken from the center of the street, the center of White street, looking west. The camera is standing in front of the Liberty Hose firehouse.

10 Mr. Heine: No objection.
Mr. Parsons: I offer that in evidence.
The Court: It may be marked.
(Photograph marked Exhibit P. 2.)

Q I show you another photograph, Mr. Coleman, and ask you what that represents? A This is taken from the front stoop, front piazza, of 61 White street, looking across White street north toward the laundry.

20 Q At what elevation was your camera, the lens of your camera, when that picture was taken? A It was 3 feet 8 inches high.

Q And your camera was placed where, Mr. Coleman? A It was in a spot described to me as the spot where a rocking chair stood.

Mr. Heine: Well, I assume that will be connected?

30 Mr. Parsons: That will be connected up.

Mr. Heine: If not, I reserve the right to move to strike it out.

The Court: Yes.

Q You say the situation of your camera at that time was on the porch? A Yes.

The Court: He gave the number, I think.

Mr. Parsons: Yes, 61 White street.

40 The Witness: 61 White street.

Sarah Reilly, direct.

Mr. Parsons: I offer it in evidence.

Mr. Heine: No objection.

(Photograph marked Exhibit P. 3.)

Q Now, I show you another photograph, Mr. Coleman, and ask you what that photograph represents? A This is a photograph taken from the same spot that the last one was taken, only looking toward Liberty Hose firehouse. 10

By Mr. Heine.

Q The camera at the same elevation? A At the same elevation, yes, sir; same spot.

Mr. Heine: No objection.

Mr. Parsons: I offer it in evidence.

(Photograph marked Exhibit P. 4.) 20

No cross examination.

SARAH REILLY, sworn for plaintiff.

Direct examination by Mr. Quinn.

Q How old are you, Mrs. Reilly? A Forty-three. 30

Q On the day of the accident, where were you employed? A Mr. Smock's laundry.

Q That is the Red Bank Steam Laundry? A Yes, the Red Bank Steam Laundry.

Q And on this day were you working around noontime? A I was working up till five minutes after twelve.

Q And at five minutes after twelve did you go out of the laundry? A Yes.

Q And were you going across the street at that time? 40

Sarah Reilly, direct.

(Objected to.)

Mr. Quinn: Perhaps it is leading.

Q Where were you going when you came out of the laundry? A I was going right home to my lunch.

10 Q And where is your home with respect to the entrance where you came out of the laundry? Where is the door of your home with respect to the door where you came out of the laundry? A There was the door right opposite the door I came out.

Q Your door was opposite? A Right opposite the door that I came out. It was right opposite the door.

Q Did you go across the street?

20

(Objected to.)

Q Where did you go, Mrs. Reilly? A When I got out of the laundry I stopped at the curb when I got outside the laundry door and looked up and down the street and there was a car coming from Maple avenue, coming down town.

30 Q Now right there, Maple avenue is where, to your right or left? A As I come out of the door to my right. The car stopped, and when the car stopped then I crossed the street.

Q Now before you crossed the street? A I looked up and I seen Mr. Lobdell's car come up by the firehouse.

Q Before you crossed the street you say you looked up and saw the Lobdell car coming right about—

40

Mr. Heine: Don't lead.

Sarah Reilly, direct.

Q You say you saw the Lobdell car right up at the firehouse? A Yes.

Q Now tell us what you did. A Then I crossed the street. Just as I got across the street and about to put my foot on the curb it caught me in the back and knocked me down.

Q Where were you knocked? A I was knocked into the sidewalk. I was thrown across the sidewalk right in my own lawn. 10

Q And where did the automobile go, Mrs. Reilly? A Well, it came on the sidewalk after me, in the yard after me.

Q Do you remember anything after that? A No, I don't remember anything, only when I looked up this way I could see his face, he was looking at me, and the sky was all coming down on top of me. That is all I remember. I don't remember anything else. 20

Q Do you remember being taken to the porch? A No, I don't.

Q Now after that was a doctor called in? A Yes, Mr. Quinn.

Q And after the doctor was called in did you remain at your home or did you go somewhere else? A No, remained right at my home.

Q How long did you remain there? A I remained there for one week. 30

Q Then where did you go? A To the hospital.

Q Long Branch Hospital? A Long Branch Hospital.

Q What was done to you there? A There was two X-rays taken and then I was taken back home again, and taken back a couple days later and put the cast on.

Q A cast was put on then? A A couple days after the X-ray. 40

Sarah Reilly, direct.

Q How many casts were put on since the accident? A Three.

Q Three casts? A Yes.

Q When was the last one put on? A I came home last Monday week, yesterday, from the hospital. A week I was from the hospital.

10 Q That is when the last cast was put on? A That is when the last cast was put on me.

Q And have you that cast on still? A Yes.

Q Will you tell us where that cast begins and where it extends to? A Right in here, (indicating under the arms) right to here, and right down to my knees (indicating to the knees) and all around my back.

Q Mrs. Reilly, show the jury how far you can move your head. (Witness indicates.)

20 Q I notice in doing that that you put your elbows or support yourself by your elbows. A I can't lift it up any other way.

Q What is the condition of your left leg, Mrs. Reilly? A My left leg is numb all the time.

30 Q Do you have any feeling in it? A No, only when I rub it with this foot; pins and needles comes on me when I rub it with this foot, and I feel pins and needles going through my foot, is all.

Q Since the date of this accident have you been able to move your left leg? A No, Mr. Quinn.

Q Are you able to move your right leg? A Yes, my right leg I can move, move a little.

Q Are you able to turn your body? A No, Mr. Quinn, without help.

40 Q Since the date of this accident and up to the present time have you at any time been able to move your body? A Not without help.

Sarah Reilly, direct.

Q In the moving of the right leg do you have any pain? A My knees, my knee and my ankles.

Q When you are moved with aid do you have any pain? A Yes, I do.

Q And where do you have that pain? A Right here, (indicating across the stomach) and around the back. 10

Q Do you have any feeling when you cough, Mrs. Reilly? A I can't cough.

Q Well, if you do or are forced to cough what feeling do you have? A I feel down here and in my back as if there was something tearing me, dragging at the leg, hurting me.

Q If you are forced to sneeze what feeling do you have? A When I am forced to sneeze I get and kind of pull myself like this, to bear down as much as I can; it hurts me so right here (indicating). It is the same feeling as when I cough. 20

Q You have already said that since the day of this accident up to the present time you have been unable to move your body without aid. Will you state to the jury the feeling that you have when you have laid for hours motionless, as you have described? A When I lay for two or three hours like the way I am laying now I feel as if all my body was pins and needles, all my whole body here was pins and needles, and then I have got to call for my daughter to help me whatever way she can help me; I want to be turned. 30

Q Now, when she does come to you and turn you what happens then? A I holler with pain.

Q Referring to your hip, Mrs. Reilly, do you have any pain in that section? A I always have 40

Sarah Reilly, direct.

a pain right in here and this here and in this side and all my hip (indicating).

Mr. Quinn: I think she is indicating the groin, indicating both groins and over the hip.

10 Q And when do you feel that pain most frequently? A Well, I feel this pain all the time, almost (indicating in the region of the groin). And when they turn me this hurts me most. I have it all the time, but it hurts more when they turn me. This is all the time.

Q Where when they turn you does it hurt?

A Right over my hip here (indicating).

Q Do you have any pains in the back? A Yes, I do; awful pains.

20 Q What part of the back? A Right straight down that way, here and up in the back of my neck.

Q How frequently do you have those pains?

A I have them all the time in the back of my neck.

Q How frequently do you have the pains in the back? A All the time.

30 Q When it becomes necessary for you to perform an act of nature and you call for the bedpan, who has been in the habit of bringing it to you? A My daughter.

Q And how long does it take to have that bedpan put under you? A Four or five minutes sometimes, and then three or four minutes sometimes.

40 Q And what happens while the bedpan is being put under? A I don't know what happens. I am so killed and so broken up I don't know what happens, my back hurts me so.

Sarah Reilly, direct.

Q Now, when the pan is taken from under, how long does that require? A When they take the pan from under me they have to take the pillows from under my head to let my head drop to rest my back, and I don't raise it for half an hour after and with the pain and distress behind my back.

Q How many times were you taken to the hospital in the ambulance, Mrs. Reilly? A I was taken once for the X-rays and I was taken down three times for this here (indicating cast) and the X-rays once.

Q Have you paid for those yet? A No.

RECESS TO 1:30 P. M.

Trial of the cause resumed at 1:30 P. M.

It is stipulated and agreed between counsel, this being a stretcher case, that upon completion of the direct testimony of the plaintiff that she shall be dismissed; that the cross examination shall be conducted *de bene esse* in the home of the plaintiff in the presence of such physicians and surgeons as counsel may agree upon, and that the testimony so taken on cross examination be transcribed by the court stenographer and read before the jury with the same force and effect as if it had been orally given by the witness in open court.

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Sarah Reilly, direct.

SARAH REILLY, resumed.

By Mr. Quinn.

- Q The pain which you described, Mrs. Reilly, this morning, do you feel that in the night, too, as well as in the daytime? A Yes, all the time.
- 10 Q All the time? A All the time.
- Q Are you able to sleep? A Not much.
- Q At the time of this accident how much had you been earning weekly? A \$21.50.
- Q And how long prior to this accident had you been working? A Seven years.
- Q In the same laundry? A Yes.
- Q And how long prior to that had you been engaged in working or earning your livelihood? A For twenty years.
- 20 Q You are a widow? A Yes.
- Q And how many children have you? A Four.
- Q How many minor children? A Three, and one married.
- Q And how old are the minor children? A Seventeen, nineteen and twenty.
- 30 Q Will you describe, Mrs. Reilly, the feeling which you had after your trip from Red Bank upon arriving at Freehold this morning? Will you describe the feeling which you had from the time you left Red Bank until the time you first arrived at Freehold?

Mr. Heine: Objected to. I don't think that is necessarily connected with the actual results of the accident and proximately.

Mr. Quinn: That will be connected up by the testimony of physicians.

40 Mr. Heine: All right; subject to being connected up and a motion to strike out.

Sarah Reilly, cross.

A The same pain I always had in my back and my stomach hurt me; and my back and stomach hurt me.

Q Anything else? A Well, I felt sick all the way up.

Q Had you ever been ill prior to the time of the accident, Mrs. Reilly? A Never was ill that I remember of; never had a doctor that I remember of, except in confinement. 10

Mr. Quinn: May I add to that stipulation, subject to the right of counsel to ask any omitted questions?

Mr. Heine: The objections to the answers are to be taken and objections reserved to be passed on by the Court.

(The following is the cross examination of the plaintiff taken by stipulation of counsel at the residence of the plaintiff in the evening of January 19, 1926.) 20

Cross examination by Mr. Heine.

Q Mrs. Reilly, I am Mr. Lobdell's lawyer. When you testified down there this morning that you came out to the curb and looked and saw a car coming from Maple avenue, how far away from you was that car when you saw it, about? A Well, when I saw the car coming down it was away up the street. 30

Q Up as far as Mount's? A Yes, it was as far as Mount's.

Q And you said you saw that car stop? A Yes; I stopped to let the car go by, but it didn't go by; it stopped.

Q It stopped? A It stopped. 40

Sarah Reilly, cross.

Q And did you watch it all the time from the time you saw it coming around from Maple avenue until it stopped? A Yes, I did.

Q And which side of the street did it stop on? A Between the dyeing place, Max Leon's place, and the dressmaker's.

10 Q That is on the same side of the street that this is? A No, not on the same side of the street.

Q The same side as the laundry side? A The same side as the laundry.

Q Did you look and see the Lobdell car down by the firehouse before you stepped from the curb? A On the curb. I stepped off the curb when the car was coming by the firehouse.

20 Q And after you stepped off the curb and saw the Lobdell car down by the firehouse, did you see it again until it hit you? A I seen it coming right up the street.

Q That was when you were on the curb? A I got to my own curb then. That was Mr. Smock's curb I seen the car coming by the firehouse and the other car stopped. Then I crossed the street and got to my own curb. As I was just putting my foot upon the curb the car struck me between the hip and the back.

30 Q Did you see the Lobdell car before you saw the car coming around from Maple avenue? A Well, I didn't.

Q It was after you saw the car coming from Maple avenue? A Then I looked down the other way.

Q That you looked down the other way and saw the Lobdell car? A Saw the Lobdell car coming.

40 Q Now, when you looked and saw the Lobdell car coming you were on the curb in front of the laundry? A Yes, going to step off.

Sarah Reilly, cross.

Q Going to step off? A To come over here.

Q Now, after you stepped off—please answer this yes or no—did you see the Lobdell car again until it hit you in the back? A Well, I didn't look any more.

Q Please answer that yes or no. A Yes, I seen the car coming. 10

Q When you were on the curb? A When I was on the curb.

Q After that, after you stepped off the curb? A I seen the car.

Q Where was it? A It was coming up this way further. Then I crossed; I was crossing.

Q Well, then you looked to see the Lobdell car coming after you stepped off the curb? A When I was stepping off the curb. 20

Q When you were stepping off the curb? A When I was stepping off the curb to come across home. 20

Q And did you see it again after that until it struck you? A No, I didn't see it. I crossed the street to get over to my curb. I didn't see it.

Q I want you to please answer me yes or no if you will. You, as I understand it, looked down and saw the Lobdell car just before you stepped off the curb? A Before I stepped off the curb, then, to cross the street. 30

Q And Mr. De Marco's truck was standing there? A Opposite his place.

Q Opposite his place? A Opposite De Marco's place.

Q Opposite De Marco's place? A Yes, sir.

Q And after you stepped off the curb to come across, did you see the Lobdell car or look at the Lobdell car again until it hit you? A Yes, I did. 40

Mrs. Mary Wenzell, direct.

Q Did you keep looking at it? A No, I didn't. I crossed on home.

Q Where were you in the street the last time that you saw the Lobdell car? A Coming off the curb, coming home. Then I could have a look down.

10 Q When you got off the curb? A I will tell you. When I got off Mr. Smock's curb I looked down and the car was coming.

Q Then, you didn't look again? A Then, I never looked until I got to my own side of the street.

Q Then you were hit? A Then I was hit.

Q So, you never looked between the time you got off the curb until you were hit on your own curb? A No, I didn't. I seen the car when I
20 got off the curb. The car was coming and then I crossed.

Q Then you crossed, but you didn't see it again until it hit you? A It hit me, right in the back.

MRS. MARY WENZELL, sworn for plaintiff.

30 *Direct examination* by Mr. Parsons.

Q Mrs. Wenzell, you are a daughter of Mrs. Reilly, are you? A Yes, sir.

Q On this day of July eleventh where were you sitting? A On the front porch.

Q Now, your house is where, the house where you live? A Right opposite the Red Bank Steam Laundry.

40 Q On what street? A White street.

Mrs. Mary Wenzell, direct.

Q Can you refer to Plaintiff's Exhibit 1, the map, Mrs. Wenzell, and indicate where your house is? A Right here (indicating).

Q That is your house? A Yes, sir.

Q And the Red Bank Steam Laundry is where? A Here. (Indicating.)

Q Now the house where your mother lives, the house that you have indicated on the map, does it have a porch on the house? A Yes. 10

Q Where were you sitting? A Right on the porch.

Q And with relation to the east or west side of the porch where were you sitting? A On the west side.

Q Now what time of the day was this, about? A About five after twelve.

Q Did you see your mother leave the laundry? A Yes, sir. 20

Q I show you a picture, Mrs. Wenzell, of the laundry, which is Plaintiff's Exhibit 3. Will you just step down here, please, in front of the jury? Can you tell from that picture where your mother came out of the laundry? A Right here.

Q Indicating the door with the sign "Office" and a hand pointing to the office? A Yes.

Q As you sat on the porch did you also, Mrs. Wenzell, have a view up White street? A Yes, sir. 30

Q I show you Plaintiff's Exhibit 4, which is a photograph, and ask you if that represents the view that you had up White street? A Yes.

Q As you sat there on the porch did you see this Ford station wagon coming? A Yes.

Q And where did you see it? A In front of the firehouse.

Q Did you see anybody else in the street at that time? 40

Mrs. Mary Wenzell, direct.

Mr. Heine: I object, if your Honor please, to any further leading.

Q Was there any other traffic on the street at that time, any other vehicles of any character on the street near the Ford station wagon?

10 Mr. Heine: I object to that as leading, and I think the witness ought to be asked to describe what she saw, without having counsel indicate in questions, as counsel well knows.

Mr. Parsons: I don't think it is leading, if your Honor please.

(Objection overruled. Objection noted for defendant as ground of appeal.)

20 A Nobody else.

Q What did you do after you saw the Ford up there? What did you see next? A I saw Mr.—

Q Mr. who? A Mr. Hartnett.

Q Where was he? A He was by the church yard.

Q What was he doing? A He was on a bicycle.

30 Q And which direction was he traveling? A Towards Maple avenue.

Q In which direction was this Ford station wagon traveling, Mrs. Wenzell? A To Maple avenue.

Q Where was your mother? Did you see your mother come out of the laundry? A Yes.

40 Q Now what did the Ford station wagon do with relation to Mr. Hartnett? A Why, he blew his horn a little and went to the left-hand side of Mr. Hartnett and got to the left-hand

Mrs. Mary Wenzell, direct.

side of the street and never went back to the right; and as my mother was putting her foot on to the curb, that is when he struck her.

Q Where did your mother land? A Up in the yard.

Q Now what happened to the Ford, Mrs. Wenzell? Where did the Ford go? A Up into the yard. 10

Q Did you go out and look at the Ford? A Yes, sir.

Q Did you see any indication on the Ford—

(Objected to.)

Mr. Parsons: Strike that out.

Q What did you see on the Ford, Mrs. Wenzell? A Why, the left mudguard was bent.

Q And in reference to the front or back, which mudguard? A The left. 20

Q Which mudguard was it, the front one—
A The front one.

Q Did you see the driver? A Yes.

Q Did he say anything at that time, the driver? A He said he had to meet his people at the train.

Q And did he leave? A Yes.

Q Now what did you do in reference to your mother? A Why, we brought her to the porch and sit her on the chair and then Mr. Hartnett and I brought her in the house. 30

Q Then what did you do? A We laid her on the couch and sent for the doctor.

Q Now how long did she remain in the house at that time? A About a week.

Q And then where was she taken, if any where? A To the Long Branch Hospital.

Q How long did she stay there? A Ten days. 40

Mrs. Mary Wenzell, direct.

Q Where did she go after she came from the hospital, Mrs. Wenzell? A Home.

Q When she arrived home can you tell as to her condition or if she had any plaster on or anything? A She had a plaster cast on.

10 Q And can you tell the size of that plaster cast? A Why, it is from under her shoulders down to her knees.

Q How many times since then has that plaster cast been changed, if you know? A Three times.

Q And where has it been changed? A At the Long Branch Hospital.

Q How does your mother get from her home to the hospital? A In an ambulance.

20 Q When she returned home where was she in the house? A In the front room.

Q And how, in what position? A In the plaster cast.

Q Well, was she in bed or not? A In bed.

Q Has she been out of bed since that time? A No.

Q Who has taken care of her, Mrs. Wenzell? A I am.

30 Q Has she been able to move in the bed? A No.

Q And to change her position what is necessary? A She has to holler for someone.

Q Have you assisted her in changing her position in the bed? A Yes.

Q Will you just describe to us how it is done? A I have to put my hands under her and just lift her over little by little to one side.

Q Now while that is being done, Mrs. Wenzell, can you tell how she acts and what she does?

40 A Yes, she hollers with pain.

Mrs. Mary Wenzell, direct.

Q When it is necessary for her to answer the calls of nature is she able to take care of herself? A No.

Q And who assists her in that? A Me.

Q What do you do? A Why, I just take the bedpan and put it under her.

Q Now just describe to us how that is done. 10

A Well, I push it right under her, right under her as far as the cast.

Q And while that is being done will you tell us her actions? A She hollers with pain then from her back.

Q And how is it removed when she is done with it? A Just little by little.

Q Now after it is removed can you tell us your mother's actions, after she has completed—

A Yes, she just lays there and hollers with pain. She is not able to move. 20

Q Prior to this time, prior to July 11, 1925, do you know if your mother was working? A Yes.

Q Do you know that she had suffered any illness up to that time? A No.

Q Were you there yesterday afternoon, Mrs. Wenzell, at home yesterday afternoon? A No.

Q When the doctor came there yesterday afternoon? A No, I wasn't. 30

Q That afternoon, the afternoon of the accident, later in the afternoon did the driver of this car come up there? A Yes.

Q Did he talk to you at the time? A Yes, he was talking.

Q Will you just tell us what he said?

Mr. Heine: I object to that as not properly part of the *res gestae* and not binding on the defendant Lobdell. 40

Mrs. Mary Wenzell, direct.

Mr. Parsons: We admit that it is not binding on Mr. Lobdell, but as to the defendant Dolbey I think it is binding. Both are sued in this case.

The Court: There are two defendants?

10 Mr. Parsons: Two defendants, both the driver and the owner.

The Court: Well, then it is of course as to the defendant Dolbey alone.

Mr. Parsons: As to the defendant Dolbey.

A Why, he told us that his boss sent him around, and he said that to avoid hitting the truck he had to hit my mother.

20 Q Now, Mrs. Wenzell, at this time when your mother was crossing the street and this car coming down, were there any other cars, trucks, or vehicles parked on White street? A No.

Q Were there any vehicles not in motion that were parked—

30 Mr. Heine: I object to the continued leading as to the occurrences involved in the accident, the circumstances involved in the accident. The witness ought to be exhausted before Mr. Parsons—

The Court: Yes, I think so, Mr. Parsons.

Q Mrs. Wenzell, do you know the location of Mr. De Marco's tailoring establishment? A Yes, I know it.

40 Q I show you Plaintiff Exhibit P. 2 and ask you if you will step down here in front of the jury, Mrs. Wenzell, if you will, so the jury can see. Will you indicate on that De Marco's place? A Right there. (Indicating.)

Mrs. Mary Wenzell, direct.

Q That is Mr. De Marco's tailoring establishment? A Yes.

Q Now will you refer to Plaintiff's Exhibit P. 1, the map, and indicate where Mr. De Marco's tailoring establishment is? A Right here. (Indicating.)

Q Right there? A Yes, sir. 10

Q When the driver of this car was around there that afternoon and said that he turned out and hit your mother to avoid hitting a truck, did you know when he said that to what truck he referred?

Mr. Heine: Objected to as not binding upon the defendant Lobdell.

(Objection overruled.)

Mr. Parsons: It is not binding as to Lobdell, no. 20

(Objection noted for defendants as ground of appeal.)

A Yes.

Q What truck was it? A Mr. De Marco's truck.

Q And where was that truck? A In front of De Marco's. 30

Q Will you tell us again where that truck was? A In front of Mr. De Marco's.

Q Will you indicate on the map where that truck was? A It would be right here, right there. (Indicating.)

Mr. Parsons: Indicating a place in front of the plot on the north side of White street marked "De Marco."

Mr. Heine: Shall I mark it with a pencil? 40

Mrs. Mary Wenzell, cross.

Mr. Parsons: That is all right. You can mark it, Mr. Heine.

Mr. Heine: You mark. Just mark a little cross. (Witness marks on map.)

10 Mr. Heine: Just put a little W indicating your initial. The witness marks a pencil cross with a W.

Q Mrs. Wenzell, between the time that he passed Mr. Hartnett on a bicycle and the time that he hit your mother what side of White street was he on? A On the left-hand side.

Cross examination.

Q What were you doing, Mrs. Wenzell? A Sitting on the front porch.

20 Q What were you doing? A Sitting on the front porch.

Q You were not knitting or doing anything at all? A No, just sitting there.

Q Mrs. Wenzell, your house—let me understand this front porch. There is a front porch on two sides of the house or is it only in the front? A Right in the front.

Q It doesn't run around to the side? A No, 30 sir.

Q And are the steps that come into the house, do they come up on the porch or do they come in from the side? A Up on the porch.

Q So to come in your front door you come in the walk—is it a stone walk? A Yes, sir.

Q Then you go up the steps and across the porch? A Yes, sir.

Q Into the front door? A Yes, sir.

Q Does the porch go all the way across the front of the house? A No. 40

Mrs. Mary Wenzell, cross.

Q About how much of the front of the house? A I don't know just—

Q No, I mean does it extend about half way across the front of the house? A Just so much (indicating).

Q Well, big enough for a chair to be put on either side of the door? A Yes, sir. 10

Q It is not a verandah? A No.

Q Across the whole— A No.

Q How many steps are there coming up to that porch? A Two.

Q Were there any other chairs or anything on the porch that morning? A No, just the one.

Q One chair? A Yes, sir.

Q And you were sitting in that? A Yes.

Q What kind of a chair was it? A An arm-chair, rocking chair. 20

Q One of these cane-seated, with wide arms? A No, just an ordinary rocking chair.

Q Not one of what we call those big porch rocking chairs? A No.

Q How long had you been sitting there? A About five minutes.

Q And does the whistle blow in Red Bank at twelve o'clock? A Yes.

Q Did you hear the whistle blow? A Yes. 30

Q Did you notice it particularly? A Well, I always take notice of it.

Q You watch for the whistle or watch your clocks, whatever it may be? A Yes.

Q And do you remember just exactly when it whistled on that day? Could you be sure you heard it on the day of the accident? A Yes, I think I do.

Q Would you be absolutely sure of that? A Yes. 40

Mrs. Mary Wenzell, cross.

Q Had you gone out on the porch when you heard the whistle? A I was on the porch.

Q When the whistle blew? A Yes.

Q Sure of that? A Yes.

Q And did you get your mother's meals? I mean did you prepare the meals for your mother, her lunch? A No, she had to prepare her own.

Q Your mother lived alone? She didn't live in your family? A Yes, I was living with her.

Q You were living with her? A Yes.

Q And you and your husband lived there? A Not at the present time.

Q Then your husband was not living there? A Yes, he was living there too at that time.

Q But he was away? A Well, he wasn't home yet.

Q Well, I think you don't understand me. Who arranged for the meals at the house? Who got the meals for everybody in the house? A I do.

Q You do? How many were there in the family that lived there and ate at one table? A About six.

Q And did you prepare the morning and noon and evening meals for the family? A Yes.

Q And had you gotten your mother's lunch ready? A Yes, lunch was ready.

Q It was ready when you came out to sit down and rest after getting it? A Yes.

Q You say you live with your mother. Does your mother own this house? A No.

Q Do you or your husband? A No.

Q It is rented? A Yes.

Q Who rents it, do you know? A My mother.

Q Your mother rents it? A Yes.

Mrs. Mary Wenzell, cross.

Q How long have you lived on White street?

A About four years.

Q And you don't go to business anywhere; you stay home? A To take care of mother, take care of the house.

Q And you are familiar with the traffic going through White street, aren't you? A Yes.

Q A great many cars come turning over that through to the post office, don't they? A Yes. 10

Q I mean it is a street with lots of cars passing all day long? A Yes.

Q And then on both sides of the street cars are parked, on both sides of the street very frequently there, aren't they? A I never noticed.

Q Well, where they come into the post office don't they park the cars? A No, they park on the right-hand side.

Q But there are generally some cars parked along that street most of the time, aren't there? 20

A Well, I don't know.

Q Well, what has been your observation? A Well, I have seen them at times.

Q And on Saturdays particularly there are cars parked along the street there, aren't there?

A No, not always.

Q This was in what month in the year, July?

A July eleventh.

Q You say you saw a truck opposite Mr. De Marco's where you marked on the map there? 30

A Yes.

Q What kind of a truck, a Ford truck? A Yes.

Q Ford delivery truck? A Well, it was a delivery truck.

Q Did it have a covered top? A Yes.

Q Do you remember which way it was headed, toward Broad street or toward Maple avenue?

A Towards Broad street. 40

Mrs. Mary Wenzell, cross.

Q Do you remember any other car coming from Maple avenue down White street that morning just before the accident happened? A There was a car coming from Maple avenue, but it stopped up the street further.

Q Stopped up the street? A Yes.

10 Q Do you know where it stopped up the street? A Well, up towards Mount's.

Q Up towards Mount's? A Up by Mount's.

Q Which side of the street is Mount's on? A Right side.

Q That is the right-hand side going toward— A Maple avenue.

Q Toward Maple? A Yes.

Q Do you know this driveway, where this driveway is along here between Sanborn and Chappelle? Do you know those names? A Yes.

20 Q Do you know what that driveway goes into? A Into the back of the laundry and Chappelle's.

Q What has Chappelle got there, a store? A It is a medicine factory.

Q Medicine factory? A Yes.

Q And that driveway goes in there? Did the car that you saw coming from Maple avenue stop up near Chappelle's or further up? A Further up.

30 Q Can you figure how much further up? What is your best recollection? It didn't stop up as far as Mount's, did it? A Well, between Mount's and the dyeing place there.

Q And how far is the dyeing place away from Maple avenue? A I don't know just about how far.

Q Well, it is quite a little ways, isn't it? A Well, yes; not so very far away.

40 Q And did you watch that car as it turned around from Maple avenue and came down White street? A No; I saw it coming.

Mrs. Mary Wenzell, cross.

Q What? A I didn't watch it; I just saw it coming.

Q Well, you saw it stop, didn't you? A Yes, I saw it stop.

Q Did you watch it from the time you saw it coming till it stopped? A No, I saw it coming and then when it stopped I saw it stop, too.

Q You didn't watch it all the time, continuously? Do you understand what I mean? A Yes.

10

Q Continuously from the time you saw it turn around in Maple avenue until it stopped, did you? A No.

Q How long was it before you saw it turn into Maple avenue and when you saw it stop? How much time elapsed between the two looks that you gave that car? A I don't know.

Q Can you estimate it? Is it a matter of seconds or minutes? A Well, I just couldn't say.

20

Q Do you understand my question? I want to be fair with you. I am cross examining, but I want to be fair with you. I am testing your memory. Do you understand my question? A Yes.

Q What I am asking is how much time passed between the time that you saw this car turn from Maple avenue and then when you saw it stop? A I don't know just how long.

30

Q Well, what is your recollection about it? Was it a matter of a few seconds or— A Just a few seconds.

Q Just a few seconds? A Yes.

Q Where did you look between the time of the two looks that you gave this car that came around from Maple avenue? Where did you look in between? A I looked down the street.

40

Mrs. Mary Wenzell, cross.

Q You looked down the street? A Yes.

Q And when you looked down the street did you see any car along the curb, parked along the curb between De Marco's truck and the fire station? A No, I didn't see any truck, just De Marco's.

10 Q De Marco's car was the only car then? A The only car.

Q Along the curb? A Yes.

Q Was there any car parked on your side of the street? A No.

Q Down as far as the post office? A No.

Q It is further, you know, down as far as the post office? A I know.

Q Did you see any car there? A None at all.

20 Q And when you looked up the street toward Maple avenue, did I understand you to say you saw Mr. Hartnett on a bicycle? A Not towards Maple—

Q He was towards Broad street, was he? A He was coming from Broad street.

Q From Broad street towards Maple? A Towards Maple.

30 Q When you looked down the street in between looking at the Maple avenue car that stopped, how far was Mr. Hartnett down the street there? A Just a little ways above the firehouse.

Q Just a little ways above the firehouse? A Yes.

Q Did you see the Lobdell car then? A When I saw the Lobdell car it was by the firehouse.

40 Q Was the bicycle by the firehouse also? A No, it was a little above the firehouse.

Mrs. Mary Wenzell, cross.

Q You mean that is— A Coming towards Maple.

Q You saw the Lobdell car and the bicycle in between the time that you saw the other car come around from Maple? A Yes.

Q And the time that you saw that car stop? A Yes.

Q And then did you look across the street at your mother? A Yes, I saw my mother on the other side. 10

Q Well, had you seen your mother over to the other side when you saw the car that came around from Maple avenue stop? A She was standing on the curb, up on the sidewalk.

Q She was standing on the curb then? A Up on the sidewalk there by the curb.

Q And she was on the Maple avenue side of De Marco's truck, wasn't she? A Yes. 20

Q And how close to De Marco's truck was the place where your mother was standing on the sidewalk? A How close it it?

Q How close to the end of De Marco's truck nearest to your mother was she? A It was quite a ways up from my mother to De Marco's truck, because there is an alleyway between.

Q How many feet would you say that was between where your mother stood on the curb and the end of De Marco's truck that was nearest to her? A Well, I don't know just how many feet. 30

Q Well, can you point it out here? For instance, just imagine that you were your mother and standing in the curb here. You would be looking that way, wouldn't you, to come across the street? A Yes.

Q If you were standing on the curb of the laundry you would be looking that way? A Yes. 40

Mrs. Mary Wenzell, cross.

Q How far down was the end of De Marco's truck? A A little further than Mr. Parsons.

Mr. Heine: Do you estimate that twelve feet?

Mr. Quinn: Fifteen, I think.

10 The Witness: I said further than Mr. Parsons.

Mr. Heine: Well, call it fifteen feet; is that correct? All right; we will estimate that fifteen feet; between fifteen and eighteen feet; then; that will cover it.

Q How far was the automobile away from the bicycle when it blew its horn? A Why, it was right in back of the bicycle.

20 Q Right in back of the bicycle, and the bicycle was which side of the firehouse? A It was on the right-hand side.

Q But I mean as between you and the end of the firehouse, the bicycle was towards you from the firehouse? A Yes.

Q Is that right? A Yes.

Q And the automobile was behind it when it blew its horn? A Yes.

30 Q How far away from the firehouse or how near to De Marco's place was the bicycle when the automobile blew its horn? A I don't know; it was by the churchyard there, right between.

Q The bicycle was right by the Trinity Church? A Yes.

Q That is the next lot to De Marco? A Yes.

40 Q Was the bicycle on the end, opposite the end of the Trinity Church property nearest to De Marco's or the other way? A Well, it was just in between there.

Mrs. Mary Wenzell, cross.

Q About in the middle of the Trinity Church property? A Yes.

Q And how far behind the bicycle was the automobile then? A It was right behind it.

Q Right behind it? A Yes.

Q And what did the bicycle do then when the horn was blown? A Why, it just kept right, 10
you know—

Q I don't know. That is what I am asking. What did the bicycle do on the roadway when the horn was blown? A Why, it went to one side.

Q Well, which side? A To the right side.

Q Toward De Marco's side? A Yes.

Q And kept on riding? A No, then he stopped.

Q The bicycle stopped? A Yes. 20

Q How long did he keep traveling or how far did he go after the horn was blown before he stopped? A He didn't go very far.

Q Well, had he got opposite De Marco's? A No, not quite as far as De Marco's.

Q If the bicycle was about in the middle of the Trinity Church property when the automobile behind it blew its horn and he kept on going, didn't he go as far as De Marco's, the next 30
property, before he stopped? A No, not quite as far as De Marco's he didn't come. The car cut him off there.

Q The car cut him off there? Which car cut him off? A Why, the one that blew the horn.

Q Well, how did it cut him off, by going in front of him? A No, he turned to the left-hand side of him.

Q Yes. Well, then, how did he cut him off? How did the automobile cut the bicycle off? A 40

Mrs. Mary Wenzell, cross.

Why, he didn't—why, when he went to the left-hand side Mr. Hartnett had to stop then.

Q When the automobile went to the left-hand side? A Yes.

Q Mr. Hartnett had to stop? A Yes, and got down off the bicycle.

10 Q Well, the car didn't get in front of him, did it? The automobile didn't get in front of the bicycle when it turned to the left? A No, it went alongside of him there.

Q Well, can you explain what you mean when you say that the automobile cut the bicycle off?

A When he blew his horn he went to the left-hand side of Mr. Hartnett, and when he went to the left-hand side of him he stayed on the left-hand side, and that is when he hit my
20 mother, and then Mr. Hartnett—

Q Now, wait a minute. When he went to the left-hand side of Mr. Hartnett they were down somewhere opposite this Trinity Church property, weren't they? A Yes.

Q And Mr. Hartnett was on the right of the automobile and the automobile was on the left of Mr. Hartnett? A Yes.

Q So that this is the bicycle going along this way (indicating on photograph)? A Yes.
30

Q You were located up there further—can you understand it? And Hartnett was going along this way and the automobile came along behind it? A Yes.

Q Now, you saw the automobile turn to the left down by the Trinity Church property when he was passing the bicycle? A He blew his horn.

Q He blew his horn? A And turned to the left.

Mrs. Mary Wenzell, cross.

Q And turned to the left. Now, what did the bicycle do that makes you say it was cut off, or what did the automobile do? A Well, that automobile kept coming right on the left-hand side of the road.

Q Well, the bicycle was on his right, wasn't it? A Yes. 10

Q He didn't get in front of the bicycle? A Well, when he hit my mother—

Q Wait a minute. He didn't get in front of the bicycle, did he? A No, he went to the side.

Q He turned to the left. Where did the bicycle stop, then, before it got to De Marco's truck? A No, by De Marco's there.

Q Well, the truck was in front of De Marco's. Did he stop before he got to De Marco's truck, the front of De Marco's truck? A Well, yes. 20

Q Well, then he got off the bicycle there, did he? A Yes.

Q And then he had passed from the Trinity Church property over opposite to De Marco's? A Yes.

Q Had the bicycle come alongside of the truck that was in front of De Marco's? A Yes.

Q He went alongside of it? A Yes. 30

Q Then, he didn't stop before he got to the truck? A No.

Q He kept on going till he got alongside of De Marco's truck? A Yes.

Q And when he got alongside of De Marco's truck, where was the automobile? A On the left-hand side of the road.

Q On the left-hand side of the road, and had it yet passed the bicycle or was it just passing it? A Just passing it. 40

Mrs. Mary Wenzell, cross.

Q Just passing it, so that the bicycle and the automobile, you say, were together opposite De Marco's truck? A Well, no; the car was ahead of it; see?

10 Q The car was ahead of it, but it was in the roadway between the part of the roadway over which the car had gone and De Marco's truck? Do you understand me? If I don't make it clear— A No.

Q The bicycle was in the part of the roadway to the left of De Marco's truck and to the right of the automobile? A The automobile.

Q And he was still riding? A Yes.

20 Q Well, now, I thought you said he stopped before he got to De Marco's truck, or stopped when the automobile passed him? A Well, that is when he stopped, when the automobile passed him.

Q When the automobile passed him? A Yes.

Q And when the automobile passed him he was right alongside of De Marco's truck, right opposite De Marco's truck? A Well, he may be a little towards Maple avenue.

Q Towards Maple avenue of De Marco's truck? A Yes.

30 Q That is when the automobile passed him? A Yes.

Q So, as they passed De Marco's truck the bicycle and the automobile were opposite each other, but perhaps not directly opposite on White street; is that right? If you don't understand my question, don't try to answer it by guessing. A No, I don't just understand it.

40 Q Well, you say that the bicycle and the automobile, when the bicycle was being passed by the automobile, were in the space between De

Mrs. Mary Wenzell, cross.

Marco's truck and the post office side of White street? A Yes.

Q And the automobile was a little ahead of the bicycle? A Yes, it was ahead of the bicycle.

Q And they were both going? A Yes.

Q Now, did the bicycle stop, as you say, and get on again or didn't he stop— A No, he had to stop right up there. 10

Q He stopped after he passed De Marco's truck? A Yes.

Q After the bicycle passed De Marco's truck? A The bicycle was just by De Marco's truck when he had to stop up there.

Q Now, when you say by De Marco's truck, do you mean the front of the truck, that was towards Broad street, or the back of the truck, that was towards Maple avenue? A To the back of the truck. 20

Q To the back of the truck; so, when the bicycle had to stop or did stop, as you say, it was right at the back or Maple avenue end of De Marco's truck? A Yes.

Q And the automobile was then passing the bicycle or just a little ahead of it? A Yes.

Q And, as you say, on its left? A On the left-hand side.

Q On its left-hand side? A Yes. 30

Q Did you see Mr. Smock, the employer of your mother, immediately after the accident? A No, not right away.

Q Did he come over afterwards? A In the afternoon.

Q Didn't he come over and help her up the steps after the accident? A No, he didn't.

Q Are you sure of that? A Positive.

Q After your mother was thrown down, as you describe, and before you got her in the front 40

Mrs. Mary Wenzell, cross.

door, didn't Mr. Smock come out and while the automobile was still standing in the roadway—

A No, sir.

Q —help your mother up? A No, sir.

Q Wasn't Mr. Smock around there while the automobile driven by Dolbey remained there?

10 A No.

Q He didn't come around while the automobile was there as it was after the accident? A No.

Q It was pretty well up on the lawn, the automobile? A It was right up in the lawn.

Q All four wheels? A Three, and then the one was just right out to the sidewalk.

Q The two front wheels were across the sidewalk on the lawn? A The three of them.

20 Q Which three? Now, taking right and left, front and rear, which three wheels were up on the sidewalk? A The two front and the one—

Q Which one of the rear? A That would be the right.

Q And the right rear; where was the left rear wheel? A Right down on the sidewalk.

Q Well, you mean by the sidewalk—you mean the sidewalk or the gutter? A In the curb.

30 Q On the curb? Was it over on the street side, in the street? A Just about to come off of there.

Q Just on the curb, then? A Yes, right on the curb.

Q And that was the left wheel that was on the curb? A Left rear wheel, yes.

Q Now, think that over so you get it straight. A Yes.

40 Q The left rear wheel was on the curb? A Yes.

Mrs. Mary Wenzell, cross.

Q And the two front wheels and the right rear wheel were up on your lawn? A Yes.

Q And over the sidewalk? A Yes.

Q And when your mother was thrown you saw her— A Yes.

Q —strike the ground? A Yes.

Q Now, what part of the ground; what part of your front lawn did she strike, or what part of the sidewalk did she strike when she was first thrown down? A Why, she was thrown right up onto the lawn. 10

Q Referring to Exhibit P. 3, pointing to the sidewalk leading up to the stoop, that is the sidewalk that comes into your house? A Yes.

Q Now, can you point out on that picture where your mother was thrown? A Right up in here (indicating). There is a tree—right up in here. 20

Q On the lawn? Indicating the leaves—just mark with a pencil there where she was thrown.

Mr. Heine: The witness marked Exhibit P. 3 as showing the position where her mother was thrown, with a pencil mark.

Q And how far away from the street sidewalk was your mother when she was thrown? How far in toward the house from the street sidewalk? A She had her foot right upon the curb. 30

Q What? A Her foot was on the curb, ready to put down on the curb.

Q Her foot was on the curb when she was struck? A Yes.

Q And when she was thrown to the ground, as you pointed out here, where she was on the lawn, how far back from the sidewalk towards 40

Mrs. Mary Wenzell, cross.

your house was she when she landed? How close to the house was she when she was thrown on the ground? A Right almost to the porch.

Q Almost to the porch? A Yes.

Q And at the position where you have marked in pencil on that picture, Exhibit P. 3? A Yes.

10 Q And the car, as you said, I think, followed her up onto the sidewalk? A It threw her up onto the sidewalk.

Q And then the car itself followed upon the sidewalk? A Yes.

Q You are sure that Mr. Smock didn't come there while the car was up— A No, he didn't.

Q —on the lawn? A No.

Q Did you immediately take hold of your mother and help her up? A Yes.

20 Q And Mr. Hartnett, too? A Yes.

Q Was there anybody else around there at that time? Did you see anybody else? A Yes, there was people around.

Q Where were they? A Well, they were standing all around there.

Q They were standing all around? A Yes.

Q There were no automobiles on the street except the one which was stopped and the one that Dolbey was driving? A That is all.

30 Q And was there anybody walking along the sidewalk just as you sat there before the accident, opposite in front of De Marco's or the laundry? A Not that I remember.

Q Was there anybody on your side of the street walking along the sidewalk between you and your mother? A No.

Q And as your mother came out of the laundry, did anybody come out with her? A No.

40 Q Was there anybody standing on the sidewalk in front of the laundry when she came out? A No.

Mrs. Mary Wenzell, cross.

Q And started to cross? A No.

Q Was there anybody standing in front of De Marco's or unloading anything from the truck? A No.

Q Did you notice anybody walking down from Maple avenue, toward the laundry from Maple avenue, walking from Maple avenue, as your mother came out and walked over to the curb? A I didn't see anybody. 10

Q And, looking toward the post office, was there anybody walking from the post office along the sidewalk? A No, not that I know of.

Q Just before your mother came out and started across? A No, not as I know of.

Q Was there anybody that you saw there just before your mother walked across other than Mr. Hartnett? A No, I don't remember seeing anybody. 20

Q And immediately after she was struck Mr. Hartnett came up and helped you lift her? A Yes.

Q And nobody else came and lifted her, did they? A Nobody else.

Q And you took her up to the step? A Yes.

Q Then, who was the first person that appeared on the scene after that, after you got her upon the step? A Why, I think Mrs. Farrell and her daughter. 30

Q Where do they live? A Right next door.

Q Which side, toward Broad street or the other way? A Towards Board street.

Q Did you see Mrs. Farrell or her daughter out there on their porch— A No.

Q As your mother came across the street? A No.

Q Was there anybody out on the porch of any of the houses—the house on the other side, 40

Mrs. Mary Wenzell, cross.

toward Maple avenue—as your mother came across the street? A There was two women.

Q Two women where? A On the other side of our house towards Maple avenue.

Q On the porch of that house? A Yes.

Q Do you know who they were? A Why, 10 Mrs. Marks and Mrs. Henry.

Q Did they live there? A Yes.

Q Were they sitting on their front porch? A Yes.

Q And had you seen them there when you came out at twelve o'clock? A Why, I can't just remember.

Q Did they come out there after you sat there? A No, they were out there—they were there when I looked over on the stoop after I 20 came out.

Q And did they stay there? A Yes.

Q Are you sure they stayed there? A Yes.

Q How could you tell, because you looked at them? A Well, I saw them there.

Q You saw them there? A Yes.

Q You saw them there from the time you first went out at twelve o'clock? A Yes.

Q They stayed there? A No; they were 30 both there.

Q They might have gone in and come out? A No.

Q Might not that be? A No.

Q You kept looking at them? A I saw them there.

Q You saw them there? A Yes.

Q Did you see them there when you were looking down toward the firehouse? A No, I didn't see them.

Alvin Hartnett, direct.

Q When you were looking toward the fire-house they might have gone in again? A No, they were there all the time.

Q You are positive of that? A Yes.

Q In spite of the fact that you were not looking at them all the time? A Well, because I seen them there before. They sit during the noon hour there. 10

Q They what? A They sit there noon hours.

Q Is it Mrs. Marks? A And Mrs. Henry.

Q The third seat back, is that Mrs. Marks in black, the third seat on the right-hand side of the room? A Yes.

Q Is that Mrs. Henry sitting next to her? A Yes. No, that is Mrs. Henry, the first one, and Mrs. Marks is next.

20

ALVIN HARTNETT, sworn for the plaintiff.

Direct examination by Mr. Quinn.

Q Mr. Hartnett, you live in Red Bank? A Yes, sir.

Q And employed by the Red Bank Steam Laundry? A Yes, sir.

Q That is the same place Mrs. Reilly is employed? A Yes, sir. 30

Q Before I begin your main examination I would like to ask you this: have you seen the defendant Dolbey within the last few days? A Sunday.

Q Will you state to the jury what conversation you had with him, what he said to you?

Mr. Quinn: If the Court please, this is confined to the defendant Dolbey. 40

Alvin Hartnett, direct.

Q State what he said to you. A Why, he
 come up and he said, "The boss told me to come
 down and see you, if you were going to Freehold
 Tuesday;" and I said, "What would I be going
 there for?" "Why," he said, "the case comes
 up Tuesday." So we got to talking about it,
 10 and he said, "Of course," he said—what I said
 to him, "It is pretty near time your boss came
 around and seen somebody. The woman has
 been hit all this time and nobody has been to see
 her."

Mr. Heine: I move to strike that out.

The Court: Yes.

Mr. Quinn: I consent.

20 A He says, "Well, you know how it is. Of
 course," he said, "I was over—"

Mr. Heine: I object to the statement of
 conclusions or general impressions of the
 witness as a substitute for conversation.

Mr. Quinn: I will consent that that be
 stricken out.

Q Now, you were about to say he said, "Of
 30 course." A "Of course, I was pretty well over
 to the left of the road, away over," he said,
 "but I couldn't do any otherwise because the
 road is narrow."

Q Now, preceding the accident, Mr. Hart-
 nett, did you see the automobile which was
 driven by the defendant Dolbey? A I did.

Q And what did that automobile do with
 reference to yourself? A Blew the horn.

Q What else? A And kept right on coming,
 40 but he cut off—

Alvin Hartnett, direct.

Q You have answered, kept right on coming. You were walking or riding or how? A On a bicycle.

Q When you first knew that the automobile was on White street, where was it? A About the firehouse.

Q Will you step up here to the blue print and mark with the numeral "1" about where that was? This is the street, here is the firehouse, the church property, De Marco. A Just past the firehouse. 10

Q Mark that with a "1." (Witness marks on map.)

Q You were just above the firehouse? A Yes.

Q About how far back of you was the automobile at that time? 20

(Objected to as an estimate.)

(Question withdrawn.)

Q You have already stated that you were just beyond the firehouse. At that time did you see Mrs. Reilly? A Yes, sir.

Q When you were at the firehouse? A Yes; she came off the sidewalk the other side of that truck. 30

Q She came off the sidewalk the other side of that truck just as you were past the firehouse? A Yes.

Q And you say at that time the automobile was just in the rear of you? A Yes.

Q Did that automobile pass you? A He blew his horn.

Q And then what did he do? A Blew his horn for me to get out of his way, and I pulled over to one side and he whizzed by. 40

Alvin Hartnett, direct.

Mr. Heine: I move to strike out the statement "whizzed by" as a conclusion of the witness and not proper evidence.

The Court: An objection to "whizzed?"

Mr. Heine: Yes, as an assumed speed.

10 The Court: Well, I don't know. If it is meant to be an estimate of speed of course it is proper.

Mr. Heine: That is an undubitable inference.

The Court: Just change that to "passed by."

Mr. Quinn: Yes; I consent at this time.

Q How did he pass by? A At a good rate of speed. He whizzed—

20

(Objected to.)

Q And you have already said he went by at a good rate of speed? A He did.

Q When he did that what did you have to do?
A I pulled, I pulled away off to one side, the right-hand side, on my right, and I said, "You are in a hell of a hurry."

30 Mr. Heine: I move to strike out the effect on the witness.

Q Do you recollect whether or not as the automobile passed you made this observation?
A Yes.

Q Did you receive any reply to that? A No, he was gone then.

40 Q At that time when he passed you, will you step down and mark with a number 2 just about where you were? Here is the Pierce property

Alvin Hartnett, direct.

and the church property. Mark with a number 2. (Witness marks on map.)

Q Now, at that time when he passed you and when you were in front of the Trinity Church property where was Mrs. Reilly? A Well, about the center of the road.

Q Mark with number 3. (Witness marks.) 10

Q You say the center of the road. Mark that with a number 3. Did you say the center?

A Yes.

Q Well, mark it in the center, not just in the road. Mark it where you say she was. (Witness marks.)

Q After he had passed you or as he was passing you, on what side of the road was he, meaning the defendant? A He went over to the left side and stayed there. 20

Q Did you see Mrs. Reilly struck? A Yes.

Q Between the time that he passed you in front of the Trinity Church property, at which time you say he was on the left side of the road, between that time and the time that Mrs. Reilly was struck what side of the road was this car on? A The left side.

Q Between the time that he passed you in front of the Trinity Church property and the time that he struck Mrs. Reilly did he ever go back to the right-hand side of the road? A No. 30

Q When he struck Mrs. Reilly about where was she? A Right close to the curb.

Q By the curb you mean what, which curb? A Across the street from the laundry, opposite the laundry.

Q In front of whose home? A In front of her house.

Q After she was struck what happened to her? A Well, it seemed as though she was 40

Alvin Hartnett, direct.

picked right up and hurled onto the lawn, and the car followed her up.

Mr. Heine: I move to strike out the answer of the witness on the ground that it is a conclusion.

10 Q Just tell us what was done to her after she was struck by the car. A Hurled up on the lawn and left there.

Q And where did the automobile go? A Well, the first two wheels went over the sidewalk and the other wheel was here (indicating) and one down by the curb, above the curb.

Q And with respect to her lawn where was the automobile? A Right by that tree.

20 Q I show you Exhibit P. 3 and ask you if you will mark with a pin point approximately where the automobile was when it came to a stop.

Mr. Quinn: I can explain that we agree on this, Mr. Heine, that this is Mrs. Reilly's walk and this is the laundry right opposite?

Mr. Heine: Yes.

30 Q Now, where was it? A Right about here (indicating).

Q About where was the automobile? A Right across in here.

Q In the lawn? A Yes.

Q Mark with a pin point right through the picture.

(Witness marks.)

40 Q And will also mark that with the figure 4 on the map, this being the Reilly home? (Witness marks.)

Alvin Hartnett, direct.

Q Now, where was Mrs. Reilly at that time?

A She laid off to one side there on the ground.

Q To what side of what? A Of the car.

Q Now, after the accident, did you see the defendant Dolbey, the driver of the car? A Yes.

Q And what did he say to you? A He said 10
he had to—

Mr. Heine: Objected to as binding on the other defendant, Lobdell.

Mr. Quinn: This being part of the *res gestae* I think it would be binding in the case, right immediately at the time.

Mr. Heine: Well, it has not been placed as the *res gestae* require, I think.

20

Q How long after the accident did you have your talk with him? A Why, he was there, of course, with the car, and I came right up and jumped off and helped pick Mrs. Reilly up, and it was there at the time, it was the driver of the car.

Q And then this conversation took place then?

A Yes.

Mr. Quinn: I think it is part of the *res gestae*. 30

The Court: Well, so much depends on whether it was responsive or anything of that sort. If it was it was not part of the *res gestae*.

Q How long would you say after the actual happening? A Well, not very long; a few seconds or so.

Q A few seconds? A Yes.

40

Alvin Hartnett, cross.

The Court: I will hear the answer subject to objection.

Q What did he say? A What did he say?

Q Yes. A Well, he said he had to hit the woman to save hitting the truck; and he said to her was she hurt; she said no.

10

Mr. Heine: I object to what was said to her.

Mr. Quinn: What he said to her?

The Court: Objection overruled.

A So he said to me, "I have got to meet the boss at 12:06"; and he gave me his number, took his card out of his pocket and gave me his number and he said, "I work for Mr. Lobdell over at Rumson."

20

Q And what was that number he gave? A 382138.

Q Did you examine the mudguards of the car? A Yes.

Q Did you see them? A Yes.

Q And tell us what you saw with respect to the mudguards. A Well, the left-hand mudguard and fender was bent.

30

Cross examination by Mr. Heine.

Q What time of day did this accident happen, Mr. Hartnett? A Around twelve or a little after.

Q How long had you been connected with the laundry there? A About fifteen years.

Q Grow up with the business? A Yes, sir.

Q And what is your job there? A Foreman.

Q And were you out that day for lunch, coming in from lunch or going to lunch? A

40

Alvin Hartnett, cross.

At eleven o'clock I go to lunch.

Q You go to lunch at eleven o'clock? A Yes, sir.

Q Where is your home? A 21 Harding Road.

Q So that you go down—how do you generally come back from lunch, come in White street or up Maple? A I come in on Harding Road into Broad street and Broad street to White. 10

Q And turn in there? A Yes, sir.

Q And had you done that this day? A Yes, sir; every day.

Q And White street is a pretty busy street as a matter of fact, isn't it? A Yes.

Q A lot of people going there to the post office? A Yes, the post office end does. 20

Q And when there are a lot of cars and people calling for mail that congestion extends pretty well up toward Maple avenue? A On one side of the street. They only allow parking on one side.

Q Which side is it they allow parking there?

A On the side where the firehouse is on.

Q That is the same side as De Marco's and the laundry? A Yes.

Q They only allow parking on one side? A Yes; it is a fire street. 30

Q As a matter of fact you have seen parking on both sides? A Well, only in front of the post office and nowhere else, because it is a violation of the traffic.

Q They can't park anywhere near a fire hydrant? A I mean up and down White street all the way through.

Q Only allowed to park on one side? A Yes.

Q And that means that the track there is really tied up when it is going both ways, be- 40

Alvin Hartnett, cross.

cause of parking on one side? A Well, you have got to watch your step all the time.

Q All the time? A Yes.

Q And on this particular morning this automobile blew its horn behind you and you were somewhere around that house? (Indicating.) A
10 Just a little past the firehouse, a little driveway there; I was about there; alongside of Pierce's house, just about there.

Q Just getting to the church property? A No, I wasn't quite there yet.

Q Not quite to the church property? A No.

Q And you had at that time noticed Mrs. Reilly coming across? A Yes, sir.

Q And did the automobile cut you off? Is that what made you cuss them out, as you tried to express? A Well, he blew his horn, you
20 know.

Q Did he cut you off? A Well, he couldn't cut me off, sir, while I was ahead of him, see? and he crowded me.

Q Crowded you to the right? A To the right, yes.

Q And did he crowd you so that you were right up against De Marco's car? A Oh, no.

Q You hadn't got to De Marco's car when
30 he passed you? A Hadn't got there yet.

Q Hadn't got there yet? A No.

Q And the De Marco place is toward the post office from the laundry? A Yes, sir.

Q Were there any cars along the curb between De Marco's and the firehouse? A The truck of De Marco's is always parked there.

Q Were there any cars parked along the curb as you rode along that morning? A I couldn't say. I didn't notice any.

40 Q Beyond this? A I didn't notice any.

Alvin Hartnett, cross.

Q And when this automobile passed you it kind of crowded you to the right? A Yes.

Q How far away from the laundry—take it right from the laundry door, main door—how far away from the laundry was the car when the automobile passed you and crowded you to the right? A I was about opposite the church gates in that yard there. Around that yard there is a fence, but there is two gates there and I was about opposite them gates. 10

Q So that if he blew a horn when he actually lapped you, passed you, you were about by the church gates? A Yes, sir.

Q And when he passed you was when he crowded you over to the right side of the road? A Yes, sir; he went left.

Q To the north side? A He went left.

Q He had to go to the left to clear you? A Yes. 20

Q How close to the curb were you riding before the automobile blew the horn? A Well, I never ride very close—

Q I mean to your right-hand curb. Not what you never do, but on that particular day how close to the right-hand curb, the north curb of White street were you riding before you knew there was an automobile behind you? A I was about the center of the road, where I always ride. 30

Q And then when you heard the horn you pulled over to your right? A Yes.

Q Now, how close to the curb were you riding when you pulled over to your right? A Well, I would say about that far (indicating).

Q Two and a half feet?

Mr. Quinn: Indicating three feet.

The Witness: About two feet. 40

Alvin Hartnett, cross.

Q About three feet? A About three feet, yes.

Q And it was when the automobile blew its horn that you saw Mrs. Reilly crossing from the laundry? A Come out from behind this truck that was past there.

10 Q Come out from behind the truck? A Yes, when I was about Pierce's.

Q After the automobile passed you were you closer or not to the sidewalk than two and a half feet, when he actually passed you? A I guess about the same.

Q About the same? A About the same.

Q Now, when you were riding two and a half feet from the curb and saw Mrs. Reilly coming out from behind De Marco's truck how far from the curb was Mrs. Reilly? A About
20 that time when I was by the church yard she was out in the middle of the street.

Q So she was in the middle of the street? A When the automobile blew its horn and passed me.

Q And you went in two feet from the curb? A Well, between two and a half and three feet. I wouldn't say for sure.

30 Q I don't want to tie you to six inches, but when you were within two and a half to three feet from the curb Mrs. Reilly was half-way across? A Yes.

Q Was that the first that you saw her? A No, I seen her twice. I seen her when I was at Pierce's.

Q When you were at Pierce's where No. 1 is, you saw Mrs.— A Pierce's is right about here (indicating); when I first noticed the car behind me.
40

Alvin Hartnett, cross.

Q When you first noticed the car behind you?

A Yes.

Q Is that when he blew his horn? A I worked a little faster on the bicycle to get away from him.

Q You heard the automobile behind you?

A Yes; when I first noticed him he was about the firehouse. 10

Q East of Pierce's? A Yes.

Q By the firehouse? A Yes.

Q And you were then riding in the middle of the street? A Yes.

Q And he blew his horn and you pedaled up? A Yes.

Q And when you got up here by the middle of the church property you pulled in? A Yes.

Q And he passed you at about the same time that you pulled in? A Yes. 20

Q And he pushed you over to the right there?

A Yes.

Q Now, you saw Mrs. Reilly when you were at Pierce's step off the curb? A Well, I couldn't see her step off the curb. She came from behind this truck, Ford truck there.

Q Do you mean that when you were at Pierce's you saw her from behind the truck when you were up by the church? A No, I saw her about the middle of the road then. 30

Q Where were you down here when you saw her before you saw her come out from behind the truck? A The first time I seen her she come out from behind the truck.

Q It was the first time; then you didn't see her when you were down by Pierce's? You only saw her when the automobile passed you and she came out from behind the truck? A I seen her the first time when I was at Pierce's or a little past. 40

Alvin Hartnett, cross.

Q Now, where was she? A Coming from behind this truck, stepping off the sidewalk.

Q Now, just a minute. When you were at Pierce's—we will begin over again—when you were at Pierce's you saw Mrs. Reilly? A Yes, the first time.

10 Q You are sure of that? A Yes, the first time.

Q The first time? A Yes.

Q Where was Mrs. Reilly then? A Just coming from behind the truck.

Q Just coming from behind the truck in front of De Marco's? A In front of De Marco's.

Q And you were then riding about the middle of the street? A Yes, sir.

20 Q Now, when you saw her then had she come out from behind that truck more than one or two feet? A Well, I should say about two feet. She came out and kind of hesitated, looked around and then went across.

Q Was she then in about the middle of White street? A In the middle of the road? No, not quite.

Q Not quite in the middle? A No.

Q Pretty near? A After I got by the church yard she was about the middle.

30 Q Don't volunteer. You will make more speed if you don't answer only what I ask you. She was not quite in the middle then when you saw her from Pierce's? A Yes.

Q Now, when you turned in by the church property and the automobile blew its horn and passed you, then you saw Mrs. Reilly again the second time; where was she then? A About the middle of the road, maybe a little bit past it.

40 Q So that between the time that you were at Pierce's and the time that you got by the

Alvin Hartnett, cross.

gates in the middle of the church property Mrs. Reilly had progressed from just outside the De Marco truck, that is, south of it, to about the middle of the road? A Yes.

Q That would be a distance of two or three feet? A Yes.

Q So she had walked two or three feet during the time that you traveled from Pierce's up to the church gates? A Yes, sir. 10

Q Now, when the automobile passed you at the church gates did you continue to ride two feet from the curb or did you come out toward the south, toward the middle of the street more? A Came out toward the middle of the street.

Q Toward the middle of the street more, in order to avoid De Marco's truck? A That is it.

Q And that brought you behind the Lobdell automobile, didn't it? A Oh, it was past me then. 20

Q It was past you then? A Yes.

Q When you got to where the De Marco truck was where was the automobile? A It had hit her then.

Q It had hit her then? A Yes.

Q And had run up on the sidewalk? A Yes.

Q All three wheels? A Yes.

Q As this young lady— A Yes. 30

Q You heard this young lady testify? A The two front wheels and—

Q And which rear one? A The one on this side.

Q Well, that is your right, isn't it? A Yes.

Q Two front wheels and the right rear wheel all up on the lawn or on the sidewalk? A No, the two front ones and the left one would be up on the sidewalk, and the right one, on this side, and the rear wheels, one was in the gutter or about the gutter, the curb. 40

Alvin Hartnett, cross.

Q Which wheels went down in the gutter?

A The left wheels went—the right wheels went.

Q Which is it? Think it over and get it straight. A It is the right wheels; one was down in the gutter.

10 Q The right wheels, one was down in the gutter? A Yes.

Q And the left wheels, one of the two front ones—both front wheels were up on the sidewalk or lawn? A Yes, two front ones were on the lawn; the other was on the sidewalk, you know, about that distance.

Q Can you say which mudguard struck Mrs. Reilly? A The left one. It was bent when I got there.

Q Did you see it when it struck her? A Yes.

20 Q Did you see the impact? A Yes.

Q The mudguard attached to the body, did you see the actual blow? A Well, I wouldn't say that. I seen her fall from it.

Q And when she struck the ground what part of the ground was she on? A The grass; the lawn towards the house.

Q Between the sidewalk and the house? A Yes.

30 Q And did Mr. Smock come out from the laundry just about that time? A No, sir.

Q What? A Wasn't out there then.

Q Did he come over and help you get her up on the stoop? A No, the daughter and I picked her up, and he was there.

Q The daughter from the stoop? A Yes.

Q And who, Mr. Dolbey? A Yes.

Q The driver of the car? A Yes.

Q And how soon did Mr. Smock come there? A Oh, I guess he didn't get there until it was pretty well all over.

Alvin Hartnett, cross.

Q How much does that mean in time? Before the car was moved from where it stopped after the accident, wasn't it? A Well, the car was gone then, when he got there.

Q You mean to say the car had moved? A Yes.

Q The car had moved from where it came to a stop after the accident before Mr. Smock got there? A Yes. 10

Q You are sure of that? A Yes.

Q Were you coming from the direction of Maple avenue toward the laundry? A Wasn't I?

Q Yes. A No.

Q Sure of that? A Positive.

Q Didn't you tell Mr. Dolbey when you had this talk with him that it was the right mud-guard of the automobile which was in contact with Mrs. Reilly? A No. 20

Q It is a good deal more difficult to operate a bicycle across down Broad street into White, past the post office, a good deal more traffic to contend against than there is if you go down Maple street, come around by Maple avenue, is it not? A Well, generally, especially on Saturdays, there is generally traffic passing there.

Q Where? A Corner of White and Broad street. 30

Q Well, that is evidence of just what I say: there is a whole lot of traffic there; there is very much less traffic around by Monmouth and Maple? A No, there would be more on Monmouth and Maple avenue. Maple avenue is a state highway.

Q But there is a whole lot of local traffic that crosses Broad street that you don't get on Maple avenue? A There is lots of traffic on Broad street. 40

Alvin Hartnett, cross.

Q Isn't it an easier route to go in from the Maple avenue end when you are coming from home? A No, I would rather the other way.

Q How many times have you seen that truck at De Marco's? A How many times?

Q Yes; you know it well, don't you? A Yes, sir.

10 Q How wide is it at the back? A I think it is a Dodge truck. Now, whatever the width is—it is not a very large one.

Q A covered truck? A It is a black covered truck.

Q What would you say would be the width from tire to tire in the back, the width of the tread? A Well, I don't know. You know it isn't out of the ordinary one way or the other.

20 Q The body overhangs either side outside the wheels, doesn't it? A Oh, no; the wheels come up alongside the side.

Q Got a mudguard over the wheels? A Yes.

Q And the body inside the mudguard or over the mudguard? A No, inside.

Q Well, what would you say would be the width between the inside edges of the mudguard, right and left rear? A Well, I don't know much about automobiles.

30 Q Well, estimate it.

Mr. Quinn: If the Court please, if the witness says he doesn't know I don't think he should be called upon to estimate.

The Court: Well, if he doesn't know he doesn't have to say.

A I wouldn't want to say it was three or four feet. Whatever feet it is I really don't know.

40 Q Can you indicate it on anything here, how wide the rear of that truck is? Take the table,

Alvin Hartnett, cross.

this table, or the map or anything to indicate it.

A Well, as I say, I wouldn't want to say so as to be sure.

Q Well, you haven't any recollection then about how wide that truck is on the back? A No, it is an ordinary truck, I would say that.

Q Ordinary truck, covered? A Yes, small delivery truck. 10

Q When you saw Mrs. Reilly struck were you still riding on your bicycle or had you dismounted? A I had dismounted.

Q And when you dismounted were you in front of, that is, in front of the automobile truck or at the side of it? A I was about the side or about half-way.

Q About opposite the middle of the side? A Yes. 20

Q That would be the south side of the truck? A Yes, sir.

Q Or its right-hand side facing its front? A Yes.

Q And when you were making your observations as to the way Mrs. Reilly fell and the movement of the automobile you were toward Broad street from the scene of the accident, were you? A I was towards Broad street? No, I was towards Maple avenue. 30

Q You were toward Maple avenue? A Yes.

Q That is, you were toward the Maple avenue side of the accident? A Yes, only coming down.

Q And the collision between Mrs. Reilly and the truck was between you and Broad street? A No, between me and Maple avenue.

Q Then you didn't understand my last question. I asked you when you were making your observations about the striking of the car and Mrs. Reilly, whether you were on the Broad 40

Alvin Hartnett, cross.

street side, toward Broad street, or toward Maple avenue. A I don't understand you yet.

Q Were you toward Maple avenue or toward Broad street? A Well, I was coming from Broad street.

10 Q And the accident between you and Maple avenue? A Yes.

Q So that when you made your observations you were either on your bicycle or standing between the scene of the accident and Broad street?

A No, I would be going back then if I was.

Q You were going toward Maple avenue? A On White street.

Q And Broad street was behind you? A Yes.

20 Q And when you were riding along and making your observations about where this automobile struck Mrs. Reilly, you were between that scene of the accident and Broad street, weren't you? A I was between the scene of the accident and Broad street, yes.

Q That is what I wanted. A I didn't understand your question. I beg your pardon.

Q And you can be certain, can you, that you were not between Maple avenue and the scene of the accident going toward Broad street? A No.

30 Q You are sure of that? A Positive.

Q Now do you understand me? A I don't know as I do.

Q Were you east or west of the accident when you observed what you have stated about the hitting of the car and the hitting of Mrs. Reilly by the car? A I was coming from Broad street. I was between, as you said, between the accident and Broad street.

40 Q You have never made any denial of that before to anyone, have you? A I have never made any denial? No.

Miss Anna Farrell, direct.

Q Of that location, yes, your location. A
No.

Q Not to Mr. Dolbey? A No.

MISS ANNA FARRELL, sworn for plaintiff. 10

Direct examination by Mr. Parsons.

Q Miss Farrell, you live in Red Bank, do
you? A Yes, I do.

Q And on what street? A White street.

Q With relation to where Mrs. Reilly lives
where do you live? A Right next door, 59.

Q Mrs. Reilly lives what number? A 61.

Q On this day of July 11th were you at home
that day? A I was. 20

Q And where were you? A I was in the
rear of the house.

Q What attracted your attention of anything?
A Why, the screeching of the brakes.

Q What did you do when you heard that? A
I ran to the front and when I got out I saw Mrs.
Reilly hurled up on the lawn.

Q Where was she when you saw her? A
Where was she? 30

Q Yes. A On the lawn.

Q Did you see an automobile at that time? A
No, I didn't.

Mr. Heine: I object to his leading this
witness. She ought to be exhausted on what
she saw before her attention is specifically
directed to any incident involved in the ac-
cident.

Miss Anna Farrell, direct.

Q After you saw Mrs. Reilly there on the lawn did you see anything else in that vicinity?

A I didn't notice.

Q May I direct your attention then to the automobile? Did you see an automobile known as the Ford station wagon?

10

Mr. Heine: I object, that this is improper; that the witness has specifically denied that she saw anything else, then to have her specifically asked.

Mr. Parsons: I will reframe the question.

Q Did you see any vehicle in that vicinity?

A The only vehicle I remember seeing was Mr. Lobdell's Ford suburban.

20

Mr. Heine: I move to strike that out on the ground that it contains a conclusion of ownership which is not in this case and not binding on the defendant.

Mr. Parsons: Strike out Mr. Lobdell.

Mr. Heine: Strike out her whole answer.

Q Where was this Ford suburban that you mentioned?

30

Mr. Heine: She hasn't mentioned any yet, if your Honor please; the answer was stricken out.

The Court: I think the answer may stand, except as to Mr. Lobdell's ownership.

Mr. Heine: My objection is broader than that. It went to the whole direction of the witness' attention to the specific automobile, that she has already said that she didn't notice anything else in the vicinity when

40

Miss Anna Farrell, direct.

she came out. It seems to me counsel cannot impeach his own witness on direct examination.

The Court: I have ruled that that is admissible (objection noted for defendant as ground of appeal).

Q Now, Miss Farrell, where was this Ford suburban? A Why, it was on the lawn; the front wheels of it were on the lawn. 10

Q Did you look at the car? A Well, no; I didn't take time, because when they brought Mrs. Reilly over to the porch the chauffeur, Mr. Dolbey, never offered to get a doctor. She said as anybody—

Mr. Heine: I move to strike that out as a conclusion of the witness and as contradicting the testimony in the plaintiff's case already given. 20

The Court: It may be stricken out.

Q What did you do after that, Miss Farrell? A I went over home and called a physician.

Q Did you come back? Were you in the Reilly house in the afternoon? A I was.

Q Did Mr. Dolbey, the chauffeur, come there that afternoon? A He did. 30

Q Did you overhear any conversation of Mr. Dolbey's? A Yes; I asked Mr. Dolbey how it happened and he said, "Well,—"

Mr. Heine: Objected to as to the defendant Lobdell.

Mr. Parsons: We are only submitting it as to Dolbey.

Q What did Mr. Dolbey say? 40

Miss Anna Farrell, cross.

Mr. Heine: Objected to unless the answer is taken subject to being stricken out by the Court. It doesn't yet appear as part of the *res gestae*.

The Court: It will be taken subject to the objection.

10

Q Now go ahead, Miss Farrell. A Mr. Dolbey said that to avoid hitting the other car he had to hit Mrs. Reilly.

Cross examination by Mr. Heine:

Q Did Mrs. Reilly walk any of the distance when you were helping her herself, walk any of the distance to the house? A I didn't help Mrs. Reilly.

20

Q Mr. Dolbey, so far as you know, was not an enemy of Mrs. Reilly, was he?

Mr. Parsons: Objected to. That is a characterization and immaterial.

The Court: I will allow it.

Q You didn't know of any grudge that Mr. Dolbey had against Mrs. Reilly, did you?

30

Mr. Parsons: I think that is objectionable also.

The Court: Objection overruled.

Q Why, then, do you try to give this jury the impression, by saying he didn't call a doctor, that he was heartless about this thing? A Well, all he seemed to think about this thing was—

40

Mr. Parsons: Objected to as a characterization.

Mrs. Mary Farrell, direct.

The Court: That has been stricken out of the case.

MRS. MARY FARRELL, sworn for plaintiff.

Direct examination by Mr. Parsons. 10

Q Mrs. Farrell, you are the mother of the last witness, are you? A Yes.

Q And you reside next door to Mrs. Reilly's home on White street? A Yes.

Q On this day of July 11th last summer where were you? A I was in the rear of the house and both my daughter and I heard the noise, heard the brakes, hollering—

Mr. Heine: I object as far as this testimony characterizes what her daughter heard. 20

Mr. Parsons: Strike that out.

Q What did you personally hear? A What did I personally hear?

Q Yes, you yourself. A I heard the brakes go on the car and knew something had happened.

Mr. Heine: I move to strike out what she knew from hearing the brakes. 30

Mr. Parsons: Yes, we consent that be stricken out.

Q And as a result of hearing the brakes and her hollering what did you do? A Well, I went over, and by that they were assisting her on the porch, and they sat her on a chair, and I noticed when I went I thought she was going to faint. 40

Mrs. Mary Farrell, cross.

Mr. Heine: I move that be stricken out.

Mr. Parsons: Consented to.

Q Now, at that time, Mrs. Farrell, when you went over there did you notice any vehicles in that vicinity? A Yes, I noticed the car that struck her.

10 Q Where was that? A Up over the sidewalk on the corner of the lawn.

Q Were you at Mrs. Reilly's that afternoon? A No, I wasn't.

Q Oh, you were not there? A No.

Cross examination by Mr. Heine.

Q Where was the front of the car on the lawn? A Why, the two front wheels were right up on the corner of the lawn.

20 Q Which corner? A The two front wheels.

Q In relation to the house, in relation to Mrs. Reilly's house. A Well, yes; on this side; and the two wheels was right on the corner of the lawn.

Q Right close to the front steps? A Well, not very far away.

Q Were they from Maple avenue or toward Maple avenue from the front steps? A They turned right on in this way (indicating).

30 Q And were the rear wheels up on the lawn? A One of them.

Q Which one? A The other was down—

Q Which one? A The left one.

Q The left one was up on the lawn? A Yes.

Q Where was the right one? A The right one was down over the curb a little. I didn't exactly take notice, because I was in a hurry to get to the woman that was injured.

40

Mrs. Mary Farrell, cross.

Q And the car was past the stone walk—was it toward Maple avenue from the stone walk that goes into Mrs. Reilly's house? A Why, it was the sidewalk, not the front walk that leads in, it was the sidewalk, on the corner of the lawn. There is a driveway in alongside of her house and it was right on that.

10

Q And the walk that runs along that? A Yes.

Q And is that the walk that they use to go into the Reilly house? A No, there is two houses in the rear. They use that to go into the rear houses.

Q Then, there is a front walk that goes into the Reilly house direct? A Yes.

Q I show you Plaintiff's Exhibit P. 3. Do you recognize that picture, looking from the Reilly house across to the laundry? A I recognize the laundry here.

20

Q Calling your attention to a stone walk that appears in the lower right-hand corner of the picture, is that the walk that goes into the houses, is that the walk that goes into the rear houses or is that the walk that goes into the porch of the Reilly house? A Well, now, it looks very much—I couldn't just say by that picture; it is kind of puzzling to me, but there is a walk like this goes in to her front door right across from the laundry.

30

Q Is that it? A I couldn't swear to that, whether that is it or not, or whether it is the corner of the lawn.

Q Do you recall the door of the laundry? A Yes.

Q Is the walk that goes into the back opposite the door of the laundry? A The walk that goes into the back is more this way (indicating).

40

Mrs. Mary Farrell, cross.

Q Down toward Maple avenue more? A Yes.

Q That is down toward Maple avenue more?

A Yes.

Q So that it goes in on the side of the Reilly house? A Yes.

Q It is toward Maple avenue? A Yes.

10 Q And there is no walk between the Reilly house—which side do you live? A I live—I don't know what side they call it—I live right opposite De Marco's.

Q Towards Broad? A Yes.

Q The next house? A Yes.

Q So looking at Plaintiff's Exhibit P. 4, that would be the walk, pointing to the walk running into the house the stoop of which appears on the right of the picture—that would be the walk into your front stoop, wouldn't it? A Well, it
20 looks that way, yes; and this is Mrs. Reilly's end of her porch.

Q So that between your house and Mrs. Reilly's— A So that this side of her porch is the entrance.

Q When you say this side you mean the side toward Maple avenue? A Yes.

Q Had the automobile when it got up on the lawn got over to the side of the house toward Maple avenue where this goes into the
30 back? A Yes.

Q So the front wheels of the automobile were on the lawn between the sidewalk and the house? A Well, right on the corner of the square lawn in front of the house.

Q When you refer to a square lawn— A There is a tree there and it was almost in that space between the tree, because that was the first remark I made, it was a good thing it didn't
40 strike the tree.

Mrs. Mary Farrell, cross.

Mr. Heine: Strike out the remark. You only answer my questions.

Q Now, the square of the lawn is between the sidewalk and the house and the driveway between your house and those two that goes in back? A Yes.

10

Q That is over in front of the Reilly house? A Yes.

Q Now, that is correct? A Yes.

Q There is a driveway between you and next to your house? A Yes.

Q There is a walk that goes on the other side of the Reilly house toward Maple avenue? A Yes, there is a driveway.

Q And a walk that goes into the houses in the back? A Yes.

20

Q And then there is a sidewalk on White street? A Yes.

Q And the porch of the Reilly house? A Yes.

Q And on the grass plot? A Yes.

Q Now, the automobile was on that grass plot, was it? A Yes.

Q Now, was it on the corner or end of that grass plot that was nearer to Maple avenue? A Yes, nearer to Maple avenue.

30

Q And almost up to the tree that was on Mrs. Reilly's lawn? A Yes.

Q How close to her house is that tree? A Well, I couldn't just say.

Q Well, how far were the front wheels of the automobile away from that tree? A Not very far.

Q Well, a yard or inches? A About a yard, I should judge.

Q About three feet? A Yes.

40

Mrs. Mary Farrell, cross.

Q And did you see Mr. Smock come over there while the automobile was there on the lawn? A No, sir; I didn't see Mr. Smock. Mr. Smock wasn't there while I was there.

Q Were you there very long? A I was, yes.

Q Five or ten minutes? A More than that.

10 Q Did you see the car go away? A No, I went inside.

Q You went inside; you don't know how the car got away or how long it stayed out there? A No.

Q And you don't know whether Mr. Smock was in the yard out there where the car was or not, do you? A No.

Q Did Mrs. Reilly walk in on her way into the house? A They were assisting her when I seen her coming.

20 Q She was walking on her own feet? A Well, they were holding her up.

Q She was moving her own feet? A I didn't notice that, whether they were carrying her—

Q They hadn't her lifted off the ground, had they? A No.

Q She was making her feet go and they were supporting her on either side? A I couldn't actually say whether she was walking or not. They were assisting her.

30 Q They were not carrying her, were they? A No.

Q They were not carrying her? A No.

Mr. Quinn: At this time I offer in evidence a certified copy of the record of the Registration Bureau of New Jersey, indicating the owner of the car bearing license number 382138. I understand there is no objection.

Mrs. Margaret Henry, direct.

The Court: It may be marked.

(Paper marked Exhibit P. 5.)

Mr. Quinn: I would ask to read from the license card, which was to the certification of registration number 382138, name of the owner, Leighton Lobdell; city or town, Rumson, New Jersey, Monmouth County. 10

MRS. MARGARET HENRY, sworn for plaintiff.

Direct examination by Mr. Quinn.

Q Mrs. Henry, on the day of this accident or injury to Mrs. Reilly, where were you? A On my porch. 20

Q And where do you live with respect to Mrs. Reilly's home? A The next house. It is a double house. I live the other side.

Q You live in the next house to Mrs. Reilly? A Yes, sir.

Q What is it, a double house? A Yes, sir.

Q You live in the far side of the double house? A Yes, sir.

Q On this day of the accident, will you tell us what you saw? A Well, I was sitting on the porch. 30

Q First tell us what you heard. A I heard the crash of brakes and I heard a scream; and I just raised up and just seen Mrs. Reilly hurled in the yard.

Q In whose yard? A Mrs. Reilly's yard.

Q And hurled by what? A By the car.

Q And where was the car? A Right on the sidewalk; right in on the sidewalk. 40

Mrs. Margaret Henry, cross.

Q With respect to her yard, where was it?
 A Well, the two front wheels, I imagine, came right in the yard and the other one was on the walk; and the other one on the right was—I don't know what you call it; the curb or gutter or whatever you may call it.

10 *Cross examination by Mr. Heine.*

Q What were you doing at that time? A Waiting for my people to come in to dinner.

Q And where did they come from? A From work.

Q Where was that? A Well, Burdge & Russell's they work for; and it was noon hour and we were waiting.

20 Q Do they come in from Maple avenue or Broad street? A From Broad street.

Q From Broad street? A Yes.

Q Was anyone else sitting out there on the porch with you? A My daughter.

Q And that is on the far side from Mrs. Reilly's? A Yes, sir.

Q Opposite the driveway between Chappelle's, that goes in back to the medicine factory? A Yes, right opposite the driveway.

30 Q Right opposite that driveway? A Yes, sir.

Q Is there a telegraph pole in front of your house? A Yes, sir.

Q Is the front porch there divided into two sections, one for the use of the people on one side and one on the other? A Yes, sir.

Q Is there a tree out in front of Mrs. Reilly's house? A Yes, sir.

40 Q How close to Mrs. Reilly's porch is the tree? A I couldn't say.

Mrs. Margaret Henry, cross.

Q Well, could you reach it from the porch?

A I don't know as I could.

Q Do you think I could?

Mr. Quinn: What difference does it make whether you could or not?

A I don't think so. 10

Q And this car had all the wheels off the street, that is, the pavement, concrete pavement in the middle of White street? A All but one.

Q All but one? A The right one.

Q Which one? A The right one.

Q The right one in the rear, you mean? A The right one in the rear.

Q It was right on the pavement? A It was right on the pavement.

Q What do you mean, the middle of the street pavement? A Yes. 20

Q And the two front wheels were toward the house across the sidewalk? A In Mrs. Reilly's yard.

Q In Mrs. Reilly's yard? A Yes.

Q Inside the sidewalk? A Yes.

Q And the left rear wheel was where? A On the sidewalk.

Q On the sidewalk? A Yes.

Q And the car was facing— A Facing me. 30

Q Where you were sitting on your piazza?

A Yes.

Q Mrs. Reilly fell ahead of the car? A Yes, right in the front of it.

Q How far in front of it, over as far as the walk that goes into the houses in the rear? A No, not quite as far as that, but quite a little ways.

Q Did she get up herself? A Well, that I couldn't say. 40

Mrs. Margaret Henry, cross.

Q You were looking at her? A Well, I was scared so I didn't see what happened after. That is all I know.

Q You didn't see the car strike her? A Yes, I did. I seen the car strike her; hurled her right in the yard.

10 Q And then did the car follow her up over the sidewalk? A It came right in on the sidewalk.

Q How far did the car throw her? A I don't know.

Q Well? A Quite a distance.

Q Quite a distance? A Quite a distance in from the—

Q Did the car follow after? A Came right in on her walk.

20 Q Came right in on her walk? A On the walk.

Q And she came in ahead of it? A But she laid ahead of it.

Q She went ahead of the car and the car followed up on the walk after her? A Yes.

Q Is that right? A Yes.

Q And how far away from the front of the car did she lie when everything stopped, the car and she? A I don't know. I couldn't say.

30 Q Well, her limbs or arms or body were not under the front of the car, were they? A No.

Q What? A No, sir.

Q No part of the car ran over her? A No, sir.

Q The front wheels didn't run over her? A No, sir.

Q And did she get up herself? A Well, that I don't remember.

40 Q Well, you were looking right at it. A Well, I don't remember. Maybe she did. I forget. I think she did, as I remember, get up.

Mrs. Margaret Henry, cross.

Q She got up herself? A I think so.

Q And didn't she say, "I am not hurt," and then say afterwards, "Well, I guess maybe I am"? A That I couldn't say. I didn't hear the woman say that.

Q You didn't hear her say that? A No, sir.

Q Did you get to her shortly after she got up? A No, sir; I went right straight in the house. 10

Q You saw her, then you went in the house?

A I went right in my own house.

Q It affected you? A Certainly did.

Q And did you see the daughter start toward her? A Yes, sir.

Q Did you see the daughter come down off the front porch? A I seen her come off the porch and go over to her mother.

Q And did you wait there and see— A 20
Nothing more after that.

Q And you wait there and see the daughter get as far as her mother? A No, no more after that.

By Mr. Quinn.

Q You say you heard the scraping of the brakes. Was that loud or soft? A Oh, it was loud. 30

Mrs. Teresa Marks, direct—cross.

MRS. TERESA MARKS, sworn for plaintiff.

Direct examination by Mr. Quinn.

Q Mrs. Marks, you are the daughter of Mrs. Henry, the preceding witness? A Yes.

10 Q On the day of this accident where were you? A On the porch.

Q With your mother? A Yes.

Q Will you tell us what you saw? Tell us first what you heard. A I was reading; I heard the screaming, the crashing of the brakes, whatever you may call it, and when I looked Mrs. Reilly was just being hurled in the yard.

Q And hurled by what? A By the car that struck her.

20 Q Where was the car? A Up on the sidewalk. The two front wheels and one of the rear wheels was on the sidewalk and the other was on the curb.

Q And where was Mrs. Reilly then, if you can recall? A Right in the yard; right in the front yard.

Q And what did you do after that? A I went in the house; I didn't see any more.

30 Q Went right in the house immediately? A Yes, sir.

Cross examination by Mr. Heine.

Q When did you first talk to Mr. Quinn about this story that you have just stated? A Just now.

Q Never talked to him before? A No.

Q Never mentioned it to him before? A No.

Q Or Mr. Parsons? A No.

40 Q None of that firm? A No.

Mrs. Teresa Marks, cross.

Q They never heard you state the facts that you have just stated on the stand before? A Absolutely.

Q Absolutely never said a word to them? A No.

Q Or anybody representing their office? A No.

Q How did they know what you were going to say? A How do I know? I am telling the truth.

Q How did they call you for a witness? Were you subpoenaed? A Yes, sir.

Q How did you get the subpoena? A It was given to me by a man whom I didn't know his name.

Q Never talked to either of these counsel about your story? A No.

Q About what you were going to say? A No, sir.

Q Never said a word to them? A No.

Q And when you went on the stand, you mean to tell me they didn't know what you were going to say? A No. How should they know?

Adjourned till January 20, 1926, at 10:00 A. M.

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Freehold, N. J., January 20, 1926.

Trial of the cause resumed at 10:00 A. M.

Mr. Heine: If your Honor please, there has been a stipulation entered into between counsel and the doctors. I should like to have that read.

40

Dr. Robert Browning Wilson, direct.

(Stipulation read as follows:)

10 It is stipulated and agreed between counsel for the plaintiff and counsel for the defendant and further agreed between the surgeons for the plaintiff and the surgeons for the defendant that the character of the injury to the plaintiff as the result of the accident is as follows: A complete transverse fracture of the body of the fifth lumbar vertebra, with a slight lateral dislocation of the lower segment, with about one-sixteenth inch overlapping of the fragments; the fracture line being about the middle or center of the body of the vertebra.

20 Mr. Heine: If your Honor please, shall I proceed to read to the jury the cross examination of the plaintiff taken last night?

The Court: Yes.

Mr. Heine: Pursuant to the stipulation, I will read the cross examination of Mrs. Sarah Reilly taken last night at her home.

(Reads cross examination. This appears in the previous record immediately following the direct examination of the plaintiff.)

30 DR. ROBERT BROWNING WILSON, sworn for plaintiff.

Direct examination by Mr. Parsons.

Q Dr. Wilson, you are a practicing physician of the State of New Jersey, are you? A I am.

Q On July eleventh were you called to Mrs. Reilly's home? A I was.

Q And did you go there? A I did.

40 Q As a result of your visit there, what did you do with reference to Mrs. Reilly? A I ex-

Dr. Robert Browning Wilson, direct.

amined her and ordered her kept quiet for a few days and later took her into the hospital and had the spine X-rayed.

Q And were these X-rays which I now show you taken under your supervision? A Yes, taken by my direction.

Q I show you those X-rays. A Under my supervision, because I haven't an X-ray department. 10

Mr. Parsons: I offer these X-rays in evidence.

Mr. Heine: No objection.

(X-rays marked Exhibits P. 6 and P. 7.)

Q Doctor, as a result of those X-rays you found the injuries that have been read in the stipulation here? A I did. 20

Q Now, doctor, if you will step down here and with this X-ray just indicate to the jury on the X-ray the condition. A The fracture line runs practically across the body of the fifth lumbar vertebra. You will notice a slight break in the continuity of this line on the right. You will notice the body in a proper condition. That is a perfectly smooth line. In this one you will notice a slight notch there, which is the termination of a fracture across the body of the vertebra. 30

Q The testimony you have just given, doctor, is from Plaintiff's Exhibit P. 7? A Yes.

Q Doctor, as a result of that, what treatment was given Mrs. Reilly? A I called Dr. Moffatt in and she was put in a cast, a cast extending from just under the arm down including the hips and including the left leg down nearly to the knee. 40

Dr. Robert Browning Wilson, cross.

Q Has she remained in that cast from that time on? A That or other casts.

Q I mean in a cast? A Yes, sir.

Q Do you know how many times the cast has been changed, doctor? A It has been changed twice.

10 Q You have been attending her, have you, to the present time? A I have.

Q Can you tell us the amount of your bill to date? A Why, it is a little over \$400.

Cross examination by Mr. Heine.

20 Q Is it possible, doctor, now, and will it be possible until the removal of this cast to say with any certainly just what the character or permanent character of the injuries will be?

Mr. Parsons: I object. That is not proper cross examination.

(Objection sustained. Objection noted for defendants as ground of appeal.)

30 Q Are you able, doctor, to now state anything regarding the patient's condition and what it will be in the future until after the cast is removed?

(Objected to as not proper cross examination.)

Mr. Heine: He testified that a cast is on and had been changed three times.

The Court: I don't think he was asked anything about her condition.

Dr. Harry B. Slocum, direct.

DR. HARRY B. SLOCUM, sworn for plaintiff.

Direct examination by Mr. Quinn.

Q Doctor, you are chief of the staff of the Monmouth Memorial Hospital at Long Branch?

A Yes, sir.

Q And have you examined Mrs. Reilly? A I have.

10

Q And when, doctor? A Today.

Q You have read the stipulation as to the character of the injury? A I have.

Q I show you Exhibit P. 7 and ask you if you have seen that X-ray before? A Yes, sir.

Q And will you state the result of the examination made by you this morning of Mrs. Reilly? A You mean on how I found her?

20

Q How you found her. A I found Mrs. Reilly lying in bed in a plaster cast, the cast extending nearly to her left knee, with loss of sensation on both aspects of her leg, both posterior and lateral, so that she could not feel the prick of a knife given fairly forcibly. She seems to have a total lack of sensation from the knee down. She didn't seem to have any power in her left leg. Of course, the cast was nearly to her knee, which made it impossible for me to be sure of just how much power she may have. But, for instance, she was able to do most everything with her right leg, but when she would attempt to do anything with her left leg she would have to take her right leg and lift her left leg by it; and then when it would drop down she couldn't orientate it, for she didn't seem to know whether it was up or down or not, due to loss of sensation in that part of her leg. She also claimed loss of sensation in the gluteal

30

40

Dr. Harry B. Slocum, direct.

region and the perineum. Of course, that was impossible for us to tell much about, because it was in the cast.

Q These conditions, doctor, that you found, were the result of what, caused by what? A Caused by pressure on the nerves due to the fracture.

Q Doctor, will you explain to the jury the connection between the fracture as you found it and the nerves of the leg with respect to the condition which you have just described? A Well, the spinal cord, of course, is in the vertebrae, and the main part of the spinal cord ends before this particular vertebra comes in evidence. But there are certain of the terminal nerves, the chorda echina, and with a complete fracture of one of these vertebrae a certain amount of these nerves are caught or impinged in the break; and then in the healing process the callus or the bone cement which is thrown out to form a good union between these fragments, certain of these nerves are caught or impinged or pressed on by the pieces of bone formed in the reconstruction or healing process of the fracture, and according to what nerves are pinched you get loss of sensation.

Q In your opinion, doctor, will she ever recover the sensation in the left leg?

Mr. Heine: I object to the form of the question.

(Question withdrawn.)

Q In your opinion, doctor, will there be a recovery of the sensation of that leg?

Dr. Harry B. Slocum, direct.

Mr. Heine: Objected to, unless the question is based upon such reasonable certainty as the doctor can give in his answer.

The Court: I sustain the objection to the form.

Q Doctor, are you able to state with reasonable certainty as to whether or not there will be a recovery of sensation in the leg? A I should think from the fact of the long duration that has gone on now that the probability of the return of sensation was remote. 10

Q And in what part or parts of the leg would you say it was remote, doctor? A From the knee down.

Q And if that condition should continue, namely, the remoteness of recovery, what effect would that have on locomotion? A It would interfere very much with her motion in that she would not be able to feel where she was going. 20

Q Doctor, at the present time would you say that the condition of Mrs. Reilly as you found her was attended with any pain or suffering? A I would think she would have decided pain in her back.

Q In your opinion, can you say whether or not she will be able to do laborious work again? 30

Mr. Heine: The same objection, if your Honor please.

(Question withdrawn.)

Q Doctor, are you able to state with reasonable certainty whether or not she will ever be able to do hard work? A In my judgment, she will always have a weak back; she will have a stiff back, and on standing any length of time 40

Dr. Harry B. Slocum, direct.

or walking any length of time or attempting to bend over she will have pain in her back of such a character as to disable her from laborious work.

Q Doctor, applying that to ordinary housework, what would you say as to that? A I
10 would think she would have a fifty per cent. permanent disability as far as ordinary housework is concerned.

Q There has been a union here, of course, some union of the bone? A Very solid union.

Q And will you state to the jury what kind of a union that is? A Well, you know, ordinarily between the different vertebrae there is a certain amount of cartilage, which allows certain
20 flexibility or movement of the spine; down in that portion of the spine; not a great deal but a certain amount. Now, in the healing process this callus or bone cement is thrown out in such quantities as to make it a very much less flexible spine than it was before. She will have a stiff spine.

Q And what effect generally will this injury, doctor, have on the general physical condition of the patient? A I wouldn't answer that;
30 wouldn't be able to answer that.

Q That couldn't be answered definitely? A I wouldn't think so.

Q Assuming, doctor, that this woman worked in a laundry, requiring lifting of irons and ironing of clothes, in your opinion, will she ever be able to do that work or character of work again?
A Absolutely not.

Dr. Harry B. Slocum, cross.

Cross examination by Mr. Heine.

Q That last answer, doctor, is a result which you are able to arrive at with reasonable certainty, is it? A Yes, sir.

Mr. Heine: When were these X-rays as marked in evidence P. 6 and P. 7, when were these taken, what day, March some-time? 10

Mr. Quinn: July twenty-first.

Q Doctor, have you seen any other X-ray since Exhibits P. 6 and P. 7? A These are the only ones I have seen.

Q These are the only ones? A Yes.

Q Would an X-ray taken at the present time or within the very recent past be able to give you further light on the actual physical condition of the injured part? A It would show us just how much callus was formed. 20

Q That would be informing and would have possibly a material effect on any opinion that you might express, would it not? A It would tell us the exact condition at the present time.

Q And it would enable you to have before you the exact physical condition which you now have to figure out as best you can in your own judgment? A Yes, sir. 30

Q In fact, you say there is a firm union, solid union there? A Yes, sir.

Q That is, a solid union of the actual vertebra itself along the line of fracture, across the middle of it? A And also from the fact that this back has been up in plaster for all these months gives her an ankylosis of all those vertebrae involved in the plaster. She has got a 40

Dr. Harry B. Slocum, cross.

stiff joint all the way along, the same as if you put the leg up in plaster six months.

Q That would apply to the whole spine, wouldn't it? A Only the part in the plaster.

Q How many vertebrae are involved in the plaster? A I don't know; I didn't examine it.
10 It goes from the shoulder to the knee.

Q How many would you say? A It would be the twelve dorsal and five lumbar if it goes all the way up to here (indicating).

Q The plaster cast was testified here yesterday to go from the shoulder to the knee. That would involve all the dorsal and lumbar vertebrae? A Well, of course, I would think there was enough motion, probably, in the upper part of that cast; it would not be so tight up there
20 but what there would be a certain amount of motion, and if there is just a little bit of motion up there you wouldn't get a complete ankylosis; but down below where it is tight you certainly would get an ankylosis of those vertebrae.

Q Well, she can use her head, can't she, doctor? A Can she use her head? I don't know that she can use her head on that side where the plaster is.

Q That is the left side? A Left side.

30 Q But she can on the right side? A Yes, she can move her right leg; I told you that.

Q In your opinion, will she be able to use her left one, which is now in the cast, after the cast is removed? A Her left hip?

Q Yes. A After a while she will.

Q In other words, after the stiffness from the— A Conditions.

Q —from the non-use wears off? A Yes.

40 Q Isn't that true of the vertebrae of the spine after the stiffness from this enforced non-

Dr. Harry B. Slocum, cross.

use wears off? A No, sir; she will never have a flexible spine again.

Q The injury, doctor, as I understood was agreed, was a lateral—at least a transverse fracture through the median line of the fifth lumbar vertebra? A Yes, sir.

Q And that has become joined, as you say, in the form of a bony union now? A Yes, sir. 10

Q And that fracture does not involve in its place the joint on either side of it except indirectly, does it? A You mean above and below it?

Q Yes, above and below it, where it joins the sacral and where it joins the fourth lumbar. A Well, in a fracture of that kind all the ligaments adjacent to the vertebra are all strained, and as a result of keeping all of those joints quiet for a period of time you get an ankylosis. 20

Q Yes, but that will be removed after the plaster cast has been removed and motion has been restored, if there has been a firm union at the place of fracture? A I wouldn't think so, sir.

Q Would the fact that this woman was able to walk immediately after the accident, after the blow was received, alter your opinion in that regard? A That she was able to walk? 30

Q Immediately after the blow, immediately after she received the blow; would that alter your opinion? A I do not think that would. I think that her stiffness in those joints is going to be due to the fact that she has been held up in plaster so long.

Q Would the fact of her walking and using her feet and legs after the accident affect your opinion regarding the tearing of the ligaments?

A No, sir; it would not at all. 40

Dr. Harry B. Slocum, cross.

Q The removal of this cast, doctor, will enable you to examine and to state with a much greater degree of certainty the results from this injury, will it not? A You mean if her cast were taken off now?

10 Q Not now; after it is finally removed. A I would say six months or a year after it was removed we could give you a more definite opinion.

Q In other words, at the present time there is a good deal in the absence of an X-ray taken recently and because of the inability to see inside of the cast and so on; there is a good deal of uncertainty as compared with what you would be able to give as a prognosis after the cast has been removed and six months or a year after that? A From my experience with similar cases, I would say without a question of doubt that because she has had a fracture in the vertebra and because her back has been in plaster all this length of time, she will have a permanently stiff back; she will have lost her flexibility.

20

Q And, as you recognize, doctor, the individual case is always turning out and proving the exception, isn't it? A There are exceptions to all rules, but that is the rule that I would follow in this case.

30

Q Each of these individual cases such as that of this plaintiff is subject to variation which is unexpected from a surgical and medical point of view? A I will have to admit that.

Q That is what we find in law and you find it in medicine. And after this cast is removed and an observation of this patient is had for a period afterwards, you will be able to give with much greater certainty an opinion as to the ultimate effect of this injury? A Then we will know.

40

Dr. John Maher, direct.

Q Then you will know? A Then we will know. Now I am giving you what in my judgment will be the result.

Q That certainty of knowledge can be arrived at, you think, within six months after the removal of this cast? A I think we would know then definitely, yes.

10

DR. JOHN MAHER, sworn for plaintiff.

Direct examination by Mr. Quinn.

Q Doctor, you are also connected as a surgeon with the Monmouth Memorial Hospital?

A Yes, sir.

Q Did you examine Mrs. Reilly this morning? 20

A Yes, sir.

Q With Dr. Slocum? A Yes, sir.

Q And how was that examination conducted?

A Mrs. Reilly was in bed; she was encased in a plaster cast. We examined both of her lower extremities. We found that she was able to flex her right leg, that there was very little disturbance of sensation in her right leg, but her left leg she was unable to flex. There was some disturbance of sensation on the inner and posterior aspects of her left leg. She was unable to lift her left heels in the bed without aid from her other foot and she had no sensation of dropping that foot at all.

30

Q And how was the feeling with respect to the condition of her left leg tested? A By pricking the limb and by the application of heat and cold.

Q And in this particular instance it was pricked with what? A With a knife.

40

Dr. John Maher, direct.

Q What kind of a knife, doctor? A A pen-knife.

Q Was there any resistance from the patient? A Not in the left leg.

10 Q In what parts of the leg was the penknife inserted or stuck? A It was stuck in the well foot, the posterior aspect of the leg and the anterior and lateral aspects of the leg.

Q And in your opinion these conditions which you found resulted from what? A Are the results of an injury to her spine.

20 Q In your opinion, or are you able to state with reasonable certainty as to whether or not there will be a recovery of sensation in that leg? A I don't think so. It is my opinion that there will be no recovery from this sensory disturbance.

Q And will you state on what you base your opinion, doctor? A On the observations that I have had of fractures and the opinion that I have obtained through authorities.

Q Assuming that this woman was employed in a laundry, requiring the lifting of irons and the usual business of ironing, in your opinion, will she ever be able to do that character or sort of work again? A No.

30 Q And will you state to the jury why not? A Because of the sensory disturbance on her leg, the injury to her back, the spasticity of the fracture and the muscles of her spine, I don't think that she will be able to accommodate herself to that type of work.

Q Would you say that there will be a temporary or a permanent condition? A Permanent.

40 Q In your opinion, what approximate loss or percentage of the function will she suffer? A No less than fifty per cent.

Dr. John Maher, cross.

Cross examination by Mr. Heine.

Q As I understand, doctor, you don't believe that the patient will remain permanently in bed?

A In bed, no.

Q She will be up and around? A Yes, sir.

Q And in giving your opinion, which is negative, as to the possibility of returning sensation, you give that opinion believing that it is one of reasonable certainty on your part? A Yes. 10

Q An X-ray taken recently, within the last week or two, would be of assistance in forming such an opinion? A No.

Q Not as to that at all? A No.

Q Would a removal of the cast with a future re-examination after that time give you greater light on the question of loss or not of sensation in that leg? A The disturbance of sensation in this type of fracture is peculiarly adapted to the lower leg and not to the upper leg or thigh. 20

Q The sensory nerves involved are those involved in this seat of injury and affect the lower leg and not the upper? A Yes, sir.

Q And you would be able to make a better answer to the question which counsel for the plaintiff asked you after the cast was removed and after you had observed the patient without the cast? A Only for further disturbance. 30

Q But you would be able to answer that question better then, wouldn't you? A Yes.

Q And any opinion which is expressed by you now would not be as certain and authoritative as an opinion after the cast has been removed and after the patient had been relieved then? A Of the disturbance of the lower leg.

Q The latter opinion would be more certain and definite? A To disturbances elsewhere. 40

Dr. Daniel Featherstone, direct.

Re-direct examination by Mr. Quinn.

Q Will she be able to bend over? A No.

Q And why not? A Because of the changes that have occurred in the articular surface of the vertebra, the spasticity of her muscles.

10

DR. DANIEL FEATHERSTONE, sworn for plaintiff.

Direct examination by Mr. Quinn.

Q Doctor, you are an orthopedic surgeon? A Yes, sir.

Q And connected with what hospital? A Long Branch Hospital.

20 Q And did you examine Mrs. Reilly? A I did.

Q With whom? A Dr. Moffatt.

Q You are connected with or an assistant of Dr. Moffatt in orthopedic work? A Yes.

Q And when was your first examination made of her, doctor? A Several weeks ago.

Q And did you find a fracture of the fifth lumbar? A Fifth lumbar vertebra.

30 Q And at that time what was her condition, doctor? A At that time she was in a body cast, extending from just below her shoulders down to and including the left leg. Last week we changed the cast, took one cast off and put another cast on, and at that time she had a sluggish knee-jerk on the left side.

Q Any pain, doctor, attendant with that condition? A Oh, yes; great pain on the slightest motion of any part of her body.

40

Dr. Daniel Featherstone, direct.

Q Doctor, this condition which you found resulted from what? These conditions which you found resulted from what? A From a fracture of the lumbar vertebra.

Q In your opinion, will there be a recovery?

A A recovery of the fracture, healing of the fracture, do you mean?

10

Q Well, you can start with that. We can say, will you say there will be a recovery, healing of the fracture? A The fracture will heal.

Q Will there be a recovery from the result standpoint?

Mr. Heine: I object, unless the doctor can qualify as an expert.

(Question withdrawn.)

Q Will she, in your opinion, doctor, ever be able to bend over? A No.

20

Mr. Heine: Objected to, if your Honor please, unless the character of the physical function is more definitely described than by the general phrase "bend over." I think the percentage of flexion or something of that kind should be made to appear, so as not to give the jury an improper—

30

Q Will she be able to bend over her back, doctor? A She will have a stiff back.

Q And will that be temporary or permanent?

A Permanent.

Q Assuming that this lady was employed in a factory or an ironing establishment, requiring the lifting of irons and ironing of clothes; in your opinion, will she be able to do that kind or character of work again? A She will never be able to do that character of work again.

40

Dr. Daniel Featherstone, cross.

Cross examination by Mr. Heine.

Q When you say she will have a stiff back, doctor, that is your opinion? A Yes.

10 Q That opinion would be much more definite and certain after the cast has been removed and after the woman has had a little chance to go around with the cast off? A This type of case usually has stiff back.

Q I mean as to this particular case, regardless of what usually happens, your prognosis would be more certain when you see her without the cast and she has had an opportunity to limber up? A That is so.

20 Q Really, the only certainty as to what her condition will be in the future is after you have had an opportunity to observe her with the cast off? A That is right.

Q And, as a matter of fact, very frankly, you can't say with certainty now in this individual case just what the effect will be after the cast is removed? A You can base your prognosis on what this type of use usually does.

30 Q But outside of that as applied to this specific case, your certain prognosis of the effect of this injury can only be certainly given after this cast has been removed in six months or so? A That is so.

Q I understood you to say she will have a healing or union of the fracture, that that has occurred, has it not? A It is not complete. She is in the process of healing now.

40 Q The lateral fracture, the transverse fracture itself, has not had a bony union already formed? A I don't think it is complete; that is, it is not secure enough to remove the cast yet.

Dr. Daniel Featherstone, cross.

Q A fracture of that kind heals within ten weeks normally, doesn't it? A That is a pretty short time to take a chance on to remove the cast.

Q Not to remove the cast, but the healing of the fracture? A Well, if the fracture was healed you could take the cast off.

10

Q Can't you take the cast off a broken leg as soon as a bony union has been formed? A That is a different thing altogether.

Q The back is different from the leg, you have different way positions and so on involved that you haven't in the leg? A Yes.

Q But you have the bony union, and you still keep a cast on after there has been a bony union formed? A I beg pardon?

Q You still keep the cast on a leg after there has been a complete bony union formed? A No, when you have firm bony union you remove the cast.

20

Q Immediately? A Yes.

Q You wouldn't let the patient walk? A With the cast on?

Q Yes. A It depends on the site of the fracture in the leg.

Q With the cast off? A I don't follow you at all.

30

Q As an element of precaution when you take the cast off, even a leg that a firm bony union has been formed, would you let the patient go out and walk on it immediately? A No.

Q You take precautions; and those precautions continue in the case of the back the same as in the case of the leg; you keep the cast on after a bony union has been formed? A Yes.

Q So far as the formation of any bony union is concerned? A As a precaution, yes.

40

Dr. Barclay W. Moffatt, direct.

Q So, in this case you dispute the testimony given here that there has been—

Mr. Quinn: I object to any dispute or conclusion.

The Court: Yes.

10 (Question withdrawn.)

Q Sluggish knee-jerks are common in a great many cases, are they not, doctor? A Yes.

Q A great many of us have them? A Yes.

Q They are not necessarily typical or symptomatic of broken back? A No.

Q Or the involvement of the nerves, either? A No.

20

DR. BARCLAY W. MOFFATT, sworn for plaintiff.

Direct examination by Mr. Quinn.

Q Doctor, you are an orthopedic surgeon? A I am.

30 Q Connected with what institution? A The Long Branch Hospital, Spring Lake Hospital, the Ruptured and Crippled and Post Graduate.

Q Of New York City? A Yes.

Q And, doctor, when did you first examine Mrs. Reilly? A In the neighborhood of six or seven months ago; immediately, soon after the injury.

40 Q I don't know whether you were here at the time, but it has been agreed and stipulated as to the character of this injury that it was the fifth lumber. A Yes.

Dr. Barclay W. Moffatt, cross.

Q What condition did you find her in at that time, doctor? A There was a pain throughout the lower part of the back, a spasm of the muscles—that is, the muscles were hard and tender to touch; there was tenderness over the particular spinous process of the vertebra involved and there was a very sluggish knee-jerk on the left side. 10

Q How many casts have been put on, doctor? A Three so far.

Q And, in your opinion, how long will it be necessary to keep a cast on? A For a period of a year at a minimum.

Q A year at the minimum? A Yes.

Q In your opinion, doctor, will she ever be able to bend her back? A No. That is, she will be able to bend her back, but it will be attended with so much pain as to be practically disabling. 20

Q And would you say that that condition is permanent or temporary? A Permanent.

Q In your opinion, will she ever be able to do ordinary housework requiring lifting? A No.

Q Or requiring sweeping? A No.

Q What per cent. of loss of use of function, in your opinion, will she suffer permanently? A Well, as far as manual work goes, it will be one hundred per cent. She might be able to do some occupation at which she could sit, provided the outcome of the case is as I hope it will be at the end of a year. If it is not, it is then possible to operate on her and improve her function to some extent, possibly. 30

Cross examination by Mr. Heine.

Q So, that at the end of a year, doctor, you will be in a position to know a little more about 40

Motion for a Non-suit.

just what the ultimate effects of the injury are going to be? A Well, at the end of a year we can tell whether she is simply going to be disabled for hard work or possibly for any kind of work.

Q For all work? A Yes.

10 Q And really that is when the cast will be removed? A Yes.

Q And really until the end of the year it is impossible to state whether she will be incapacitated for all kinds of work or only for what you call manual labor? A Yes.

Q Such as she has performed heretofore? A Yes.

Q What is the amount of your bill for services to date, doctor? A \$150.

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PLAINTIFF RESTS.

MOTION FOR NON-SUIT.

30 Mr. Heine: I respectfully ask the Court to grant a non-suit on the ground that it conclusively appears that the plaintiff has been guilty of contributory negligence. And I call your attention to this situation of the evidence, which I think is very significant. The testimony of only two eyewitnesses appears to the accident: the testimony of Hartnett, who was riding on a bicycle; and going through his testimony there are only two positions which he testifies to of the plaintiff in making this crossing. He saw her first when he was riding in the middle of the street down near the firehouse. That

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Motion for a Non-suit.

would bring him in the middle of a twenty-three-foot street, about eleven feet out from the north curb, eleven feet south of the north curb, looking down the middle of the street; and the plaintiff is conceded to have crossed at about in front of the laundry door, which was testified to by the surveyor to be something less than 175 feet from the side line of the firehouse. So that we have the plaintiff located; and out beyond De Marco's standing a covered Dodge truck, south of the street line was standing a Dodge truck, of which the Court might take judicial notice, but nothing was made of the number of feet. But she was slightly beyond the south side of that truck when Hartnett saw her in the street, not yet quite to the middle of the street, as he says. So that it would place her in a position somewhere between eleven and one-half feet out from the sidewalk and the south side of that standing truck, which was facing east. He testifies that he saw her there. He then testifies to the honking of the horn, and he speeded up to get ahead of the automobile, or something of the kind, **pulled over to his right** about opposite the gates of the church yard, and the automobile then passed him. The distance from the plaintiff is not specified, but at that time he saw her somewhere about the middle of the street when the automobile passed him by the church gates.

Now, that is the only testimony of Hartnett. He does not testify that he saw her look in either direction; he does not testify to anything except her position in the roadway at two particular times.

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Motion for a Non-suit.

10 Now, the daughter, the only other eye-witness, testified finally that her mother stopped at the curb, looked up and saw the other automobile coming and looked in the opposite direction before she came out from the rear of this De Marco standing truck. Now, there is no testimony from the daughter, and I purposely refrained from cross examination in any way that would bring it out, that her mother crossed, or what she did before crossing or while crossing in relation to such precautions as looking during the time that she was crossing in the middle of a block, and that there was a duty imposed upon her certainly greater than if she were crossing at a crosswalk.

20 So there is only the testimony of two interested witnesses, which is barren of any precaution such as looking or making any observation such as required by law when crossing in the middle of a block. The case is barren of any testimony of any precaution except from the plaintiff herself.

30 Therefore when you come to the testimony of the plaintiff herself, which was read to the jury this morning, she in effect says that she looked down and saw this other car coming from Maple avenue; that she looked the other way when she was stepping off the curb; and the trail of the testimony leads around and finally she is positive, she says, in effect, that she looked and saw the Lobdell car down at the firehouse; that she looked and saw it coming; thereby creating the duty of further observing it after she saw it coming at a fast speed, such as testified to by other witnesses, such as whiz-

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Motion for a Non-suit.

zing or something of that kind; it must be assumed that the speed of the car was such as that if she saw it coming she saw it coming at the testified speed, which would be a speed which would require her to immediately refrain from attempting to cross in front of it. And the testimony that she was on the curb shows absolutely, I submit that that testimony is absolutely conclusive that she was at or just stepping from the curb when she made that observation; and that between her and the driver of this automobile, whatever the angle may have been, at some time during her progress across the street was this truck, De Marco's truck, in front of his place, and that she must be assumed as a matter of law to be required when she came to the south line of that truck to again make an observation in order that vehicles approaching to the south of that truck might be seen by her. And yet she says that she stepped off the curb after making that single observation, she crossed without looking again; and she says positively here in one phrase: "And did you see it again after that until you were struck?" She says, "No, I didn't see it. I crossed the street. I got over the curb." But there is one place—"Then you didn't look again?" "Then I never looked till I got to my own side of the street."

(Argues further and cites authorities.)

(Mr. Parsons replies.)

The Court: Well, I don't agree with you, Mr. Heine, on that aspect of it, that her evidence conclusively shows that she did not make a second observation. I have read

Dr. Walter Rullman, direct.

over her testimony in cross examination and I think the jury might find that she had made an observation after she passed the curb. She says somewhere there, then she got a clear look as she was stepping from the curb, didn't she?

10 Mr. Heine: She evidently has in mind, she was speaking of one curb. She came from the curb and then I thought she was going to look here in the street after she looked off the curb; and then she comes back, no, that she was stepping from the curb; that was when she looked. I think she is conclusively tied to her position on the curb when she looked.

20 The Court: I think her evidence may be somewhat confusing or contradictory as to what did happen. So I deny the motion.

(Objection noted for defendant as ground of appeal.)

DEFENDANTS' TESTIMONY

30 DR. WALTER RULLMAN, sworn for defendants.

Direct examination by Mr. Heine.

Q Doctor, you are a licensed and practicing physician of the State of New Jersey? A Yes, sir.

Q And practice at what place? A Red Bank, New Jersey.

40 Q And how long have you been in practice there? A Since 1911.

Dr. Walter Rullman, direct.

Q And what has been in general your experience? State it very generally. In what institutions and so on? A Why, I am associated with the Monmouth Memorial at Long Branch, in the surgical department.

Q Have you made an examination of the plaintiff in this case, Mrs. Reilly? A Yes, sir.

Q You are familiar with and participated in framing the statement of what was the agreed injury, the complete description of the injury in the case? A Yes, sir.

Q And can you, doctor, at the present time with reasonable certainty state what the effects of that injury are? A What the present effects are, do you mean?

Q Yes, what the present effects are. We will ask that to start with. A She has a fracture of the body—a transverse fracture, meaning across the body, of the fifth lumbar vertebra. Her right leg does not seem to be interfered with at all so far as motion and function are concerned. Her left leg is interfered with. When I examined her last evening she had a body cast on and a spica cast connected with the body cast running down as far as her knee, with revolutions. Of course it was impossible to examine under that cast and the only examination I could make was from the knee down. At that time there was a sluggishness of reflexes, that is, the patellar reflex particularly. There was a loss of tactile sensation, as we call it, which is touching, except to the inner side of her left knee and the sole of her foot. There was loss of pain sensation upon pricking her with the sharp point of a pin except to the inside of her left knee and the sole of her foot. She moved her foot with a little difficulty, or some difficulty, I will say, the left foot.

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Dr. Walter Rullman, direct.

Q The left foot? A The left foot; and complained of pain upon motion.

Q Would what you term the spica cast involve in any way those symptoms or some of them? A Only—it could not except that the cast were tight, if it were tight.

10 Q Now, doctor, assuming the condition that you found and this presence of the cast and so on, can you with any reasonable certainty indicate what will be the final or ultimate condition of this patient from this injury received? A Not at this time, sir.

Q Would you be able with any certainty to give a prognosis—that is, you gentlemen know what I am talking about—that is, an opinion as to what will be the result in the future of the injury after the cast has been removed? A Not
20 at this time.

Q Not immediately? A No.

Q But after the cast has been removed you would be able to? A Possibly not immediately after that.

Q Well, a period of time to enable her to limber up and adjust herself? A Yes, in a period of time you would be able to give an opinion.

30 Q So at the present time you are not, doctor, able with any certainty to state what the injuries ultimately will be and whether or not they will be permanent or partial? A No.

Q Doctor, you have said, I understand, after the cast is removed they will know whether or not the patient will be disabled from doing all work or disabled from doing heavy manual work? A That is right.

40 Q And it is impossible at the present time for you to state with any reasonable certainty

Dr. Irving M. Vanderhoff, direct.

what that ultimate situation will be as to permanency of injury? A You cannot tell at this time what her disability will be eventually.

No cross examination.

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DR. IRVING M. VANDERHOFF, sworn for defendants.

Direct examination by Mr. Heine.

Q Doctor, you are a licensed and practicing physician in the State of New Jersey? A Yes.

Q And your office is where? A In Newark.

Q And you have made an examination of the plaintiff in this case? A Yes, I made two examinations. 20

Q Will you state in general what you found on those examinations? A One was on September tenth and the other was on Monday of this week. The patient had on a cast, a plaster cast, body cast, and the cast extending down to the left thigh, as I was told. She was in bed. She has some change in sensation from the knee down. 30

Q Which knee? A Left knee. The sensation is not entirely gone. There are places where she feels, particularly on the sole of the left foot. She was able to move the ankle for me about that much. (Indicating.) That is possible to describe it. I might say that she moved the foot so that the toes moved through an arc of about three inches; and then she was able to move the different toes for me. Of course she couldn't move the thigh because it was in a plaster cast. 40

Dr. Irving M. Vanderhoff, direct.

Q And on the examination on Monday you have also included that? A Yes, practically the same thing.

Q Doctor, can you state whether or not this left limb is in any way affected as to its sensory condition by the cast, the presence of the cast?

10 A I think in this way: that she feels the cast on there, and I think that up here on the side where she complains of pain, I think that is from the cast.

Q In other words, is there any question of injury to the hip joint? A No; I don't think there is any injury to the hip joint.

Q And the testimony that she was able to lift the right leg, but that the left leg was apparently without power, would that in any way be accounted for by the presence of the cast
20 down as far as the knee on the left leg? A Yes, it would. I would not expect her to be able to move the left leg to any extent with the cast on.

Q With the cast extending down to the knee? A Yes.

Q In your opinion, doctor, is there any question of the completion of the bony union of this transverse fracture proper? A No, I think that that would heal in eight to ten weeks, the bony
30 union.

Q And your examination of the X-ray indicates that fracture very clearly? A Yes, sir.

Q You have examined Plaintiff's Exhibits P. 6 and P. 7? A Yes, sir.

Q And you agree with the other doctors on the character of the injury? A Yes, sir; as far as the fracture is concerned.

Q Now, as to the taking of another X-ray, would your opinion, doctor, as to the probable
40 permanence or non-permanence of injury be

Dr. Irving M. Vanderhoff, direct.

assisted by an X-ray plate taken at the present time or shortly prior to the present time? A An X-ray taken at this time would show the callus to have formed, I believe.

Q And that would be very instructive as to the present condition of that fracture, would it not?

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Mr. Quinn: Objected to as leading. The question is answered before the doctor gets it.

(Question withdrawn.)

Q Would it or not be of assistance in forming an opinion as to the present condition of the fracture? A Yes.

Q Is it possible, doctor, at the present time for you to state with reasonable certainty what will be the permanency of the results flowing from this injury? A No, sir.

20

Q When, in your opinion, could such a medical opinion or prognosis be given? A I would say six months after the cast is off.

Q In other words, in view of the fact that this cast will remain on her for a period of six months or more, possibly a year, you would not be able with any certainty to now state what the final result will be until after the removal of that cast and the lapse of sufficient time thereafter for the patient to limber up and be over it? A Only by basing an opinion on other cases.

30

Q There is no particular element in the examination of this particular case which would enable you to give that opinion? A No.

Q And in cases of this kind isn't there individual variation from what you would call the usual course of treatment? A Yes, it is.

40

Dr. Irving M. Vanderhoff, direct.

Q Is it more or less frequent than in cases of fractures of an extremity? A It is—now let me get the question exactly. It is harder to tell in these cases than it is in a fractured extremity what the future will be.

10 Q In other words, if you had a fractured leg you could be much more certain in your prognosis of what the permanence of the injury would be than you can in a case of this kind here where there is a fractured vertebra? A Yes, in a fractured leg as soon as we had union of the bone we could give a pretty good opinion as to the ultimate future.

20 Q In other words, will this plaintiff, doctor, if you can state with reasonable certainty, be likely to be able to resume housework? A Basing my opinion on other cases, I would say yes.

30 Q And what in your opinion is the present effect of the bony union of this vertebra on any of the nerves having their origin in that section of the spinal cord? A There are certain nerves which pass that bone and it may be that the callus which is formed presses on those nerves. That is the reason we have to wait for the future, because callus tends to disappear, a certain amount of it, and that is just the reason we can't tell now—

Q When you have a fracture there is a certain amount of this bony glue or callus? A If you wish to describe it that way, yes. New bone forms. An exudate from the two ends of the bones, new bone is formed in that way, yes.

40 Q And there is a little more formed, particularly if the union is complete, which tends to disappear later? A Nature always forms what we call excess callus.

Dr. Irving M. Vanderhoff, direct.

Q And what is the course usually regarding the excess callus so formed? A The excess callus disappears.

Q And would the situation as to the left leg as testified here, the loss of feeling and pain, loss of sensation and so on, would that be involved in the nerves originating in this section of the cord? A That is one of the questions in the case. 10

Q And can that now be with any certainty determined? A No, sir.

Q Not until when? A Well, I would say if this cast is to be left on for a year, if she is to wear the cast for a year from the accident, then we should wait about six months.

Q That would be eighteen months from the accident before that can be determined with certainty? A Yes. I don't mean that she should have to stay in bed all that time. I think she should be given six months after the cast is taken off to see how much she improves before we try to determine definitely what the future will be. 20

Q Doctor, is the bone which is fractured in this spine, the fifth lumbar vertebra, above or below the spinal cord? A The spinal cord itself stops at the second lumbar vertebra and this is the fifth; so it is several inches further down. But there are nerve trunks which run down inside the spinal canal and come out the spine below the fifth lumbar. 30

Q But the spinal cord itself does not continue down as far as the seat of this injury? A No, that stops at what is called the second lumbar. That is several inches above.

Q And in your opinion, doctor, can you state whether or not in this case there is any direct 40

Dr. Irving M. Vanderhoff, cross.

injury to the spinal cord? A I believe there is none to the spinal cord.

Cross examination by Mr. Quinn.

10 Q I believe you said it would be some months before you could give an opinion as to the certain condition of this woman and the results? A Yes.

Q And how can you say whether or not there is any injury to the cord? A Because of the distance of the cord from the site of the injury shown in the X-ray. I can show you on the X-ray if you wish.

20 Q Do you mean to say that it will take months before you can give an opinion in one instance and yet by looking at this X-ray you can tell whether or not there is a pressure or other injury on the cord? A Yes, sir.

Q The X-ray will show you whether there is a pressure? A The X-ray will show where the injury was.

Q Will the X-ray show you whether or not there is a pressure on the cord? A No.

Q What will show? A A lumbar puncture.

30 Q No other way? A If it is pressure there, any internal secretion there, it would be shown by lumbar puncture.

Q Well, if you can't tell except by this lumbar puncture as to the symptoms how can you give an opinion as to whether there is any injury to the cord? A Because there are no symptoms of injury to the cord.

40 Q Then you are basing it purely on symptoms as to whether there is or is not an injury or pressure on the spinal cord? A Symptoms plus X-ray.

Dr. Irving M. Vanderhoff, cross.

Q Isn't it true that as a natural result of a fracture of a vertebra that some damage or injury is done to the cord by reason of pressure or some other condition? A That is true from the second lumbar up, where the cord is. But this particular vertebra is so far below, it is the third one below the end of the spinal cord and could not of itself have pressed on the spinal cord when it was fractured, no part of it, could ever have given the results. 10

Q But does not the nerve tissue or fibre extend on down below that second lumbar? A The nerves progress and extend down below the fracture and pass out below, certain ones.

Q Isn't it true that the loss of sensation in this woman's left leg is due to the fact of interference with nerve impulses? A Yes, that is always true. 20

Q And state to the jury why there is an interference with the nerve impulses. A That is just what I can't do at this time and will have to wait till later to determine. If it is due to the callus there is a probability of its clearing up.

Q And isn't it a fact that the reason that you cannot at this time give an opinion as to how long those nerve impulses will be interfered with, isn't it a fact that you can't do it on account of the seriousness of the injury and the results therefrom? A Because of results therefrom. There is no question about the injury being serious. 30

Q During this period of time that you have estimated, eighteen months, this woman will suffer pain? A At times.

Q Frequently or infrequently? A She will suffer pain any time she moves in the cast.

Q For the next eighteen months? A Well, till the cast comes off. 40

Dr. Irving M. Vanderhoff, cross.

Q And, doctor, wouldn't you describe that pain as acute? A Acute as to period of time, I suppose you mean?

Q And the severity of it. A Oh, yes; she may have acute pain and she may not? It may be the pressure from the cast.

10 Q So that if this woman turns in her bed at night she will then suffer pain from the cast at night? A No, not in her sleep, unless she turns or moves certain parts of her body, she will suffer pain for some minutes after she wakes up.

Q And isn't it a fact that after eighteen months she will continue to suffer pain? A That is not a fact.

Q Will the pain be entirely eliminated? A That is the question in the case.

20 Q That is another question that has developed? A That is the whole question in the case.

Q So that even after eighteen months you will not even then be able to tell whether or not this woman will continue to suffer pain? A After eighteen months the pain which she has will be largely pain which people have with a fracture—a change of weather and so forth.

30 Q How long would you say that pain will continue after the expiration of eighteen months? A I have known people with fractures like that that tell me that they always can tell when the weather is going to change. They claim they feel like a person with rheumatism.

Q But here, rather than a broken leg we have a broken spine. Tell us what happens in this instance. A The same thing. The spine itself, as far as pain is concerned, is just the same as pain any other place. The difference is in the nerves that run along.

40 Q Except that the union here is a stiff union; isn't that so? A All unions are stiff unions.

Dr. Irving M. Vanderhoff, cross.

Q Well, it is not as it was before? A Why not?

Q Well, can the woman bend over now as she could before? A Why, no; she is in a cast.

Q After she gets out of her cast will she be able to bend her back as she did before the accident? A There are twenty-five joints in the spine, and the joint above this bone and the joint below it may be eliminated. There is no proof at present that it is, but those two may be eliminated. In other words, she may lack two of the joints, possibly a third, out of the twenty-five. The rest of the motion she should have. 10

Q You yet haven't answered my question. Will this woman be able to bend her back in the manner or similar manner as she did before the accident? A No, there may be three joints gone out of twenty-five. 20

Q And why will she not be able to bend her back as she did before? A Because she may have these three stiff joints.

Q Not may have, doctor; you know that is so; she has got them, don't you know? A No, I don't know that she has. This fracture, by the X-ray, does not run into the joint; it is across the bone.

Q It is the usual and natural result, isn't it? 30
A No, sir; I can tell you cases where they haven't had them.

Q You mean an exception? A No, sir; I can tell you a man I am treating now.

Q You mean to say with a broken vertebra in the column that generally the result is not stiffness afterwards? A When you say stiff back you imply the whole back being stiff?

Q No, I didn't; that part which is injured.
A That particular bone, yes. 40

Arthur Dolbey, direct.

Q There is no question of that, is there?
That will always be stiff? A That one bone?

Q Yes. A Yes, sir.

RECESS TO 1:30 P. M.

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Trial of the cause resumed at 1:30 P. M.

ARTHUR DOLBEY, sworn for defendants.

Direct examination by Mr. Heine.

Q Mr. Dolbey, you are in the employ of Mr. Lodbell? A Yes, sir.

20 Q And also you are one of the defendants in this suit yourself? A Yes, sir.

Q And you were driving this Ford car on the day of the accident when Mrs. Reilly was hurt? A Yes, sir.

Q Now, on that day when you left your employer's house where did you go? A I went to the post office in Red Bank.

Q And about what time was it that you left your employer's house? A I guess about half-past eleven in the morning.

30 Q And how long did it take you to get to Red Bank? A Well, I wouldn't say more than fifteen minutes.

Q And when you got into Red Bank you went to the post office direct, or somewhere else first? A Went direct to the post office.

Q And then from the post office where did you go? A I went down White street, west on White street.

40 Q And was that the street on which this accident happened? A Yes, sir.

Arthur Dolbey, direct.

Q And were you to meet someone at the 12:06 train? A Yes, sir.

Q At the Red Bank station? A Yes, sir.

Q About what time was it when you left the post office to go down White street? A Well, I can't say for sure, but I think about five minutes to twelve. 10

Q Had the whistle for twelve o'clock blown, if you can remember, before you left the post office? A I never heard any.

Q You didn't hear any? A No, sir.

Q And the distance from the post office down to the station is down the length of White street and then into Monmouth and over to the station? A Then into Maple avenue and on to the station. 20

Q Then into Maple avenue? A Yes, sir.

Q And over to Monmouth and down to the station? A Yes, sir.

Q That is a distance of how far? A Well, I don't know; I shouldn't think it would be half a mile.

Q Less than half a mile? A Yes, to the station.

Q And you feel certain that it was before twelve o'clock when you left the post office? A Yes, sir. 30

Q And started down White street? A Yes, sir.

Q Now, as you started down White street you were going toward Maple avenue or west? A Yes, towards Maple avenue to the west.

Q And what part of the street were you traveling in as you left the post office and started on down? A Well, I was traveling as near as I could to my right-hand side; that is, on account 40

Arthur Dolbey, direct.

of the condition of the cars that are parked along there.

Q Were there any cars parked along after you left the post office on your right between the firehouse—do you know where that is? A Yes, sir.

10 Q —and the place where the accident happened? A Well, I can't remember any only the one truck.

Q Where was that? A I don't remember whether there was any more.

Q Where was that truck? A That truck was somewheres near Smock's laundry.

Q Do you know the De Marco place by name or do you know it simply as near Smock's? A Well, I can't say where it is.

20 Q Looking at this Exhibit P. 1, this is the firehouse, Liberty Hose Company, and Maple avenue is in that direction, to the west; there is the Trinity Church property with the gates, next after the intervening property known as Pierce's; then comes De Marco's place, then comes the laundry. A Yes, sir.

30 Q Where was the truck that you refer to, if you can locate it on this Exhibit P. 1; in front of what place? A In White street.

Q Where was it as between the laundry and the post office? A The one truck?

Q Yes. A The one I seen?

Q Yes. A Well, I should say it would be somewhere here, right near Smock's laundry.

Q Right near Smock's laundry? A Yes, sir.

Q Between where you were coming from the post office—

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(Objected to as leading.)

Arthur Dolbey, direct.

Q Or in relation to Smock's laundry and the post office, between the two places?

(Objected to as leading.)

A I think it was outside Smock's laundry. I think it stood outside, as near as I can figure, outside Smock's laundry. 10

Q Near there? A Yes, sir.

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

Q And was there any other truck or vehicle on your right-hand side as you went up White street? A Not that I can remember. I can't remember whether there was any trucks there or not.

Q Do you remember passing a bicycle as you went up toward this truck was standing before the accident? A No, sir; I don't remember. 20

Q Now, at about what rate of speed, as you recall, were you traveling as you proceeded from the post office toward Maple avenue? A Well, I was just taking my time. I don't think I would be going over fifteen, because that is a bad street, and just taking my time to go there; lots of time to go to the station.

Q Will you just turn to these gentlemen of the jury and describe as you drove along White street, after leaving the post office, and as you approached this truck standing on White street, near the laundry, what took place? Just the facts; not what anybody said, but just your story of what happened? A Well, as I was going west on White street there was a truck standing on the right-hand side of the road. As I was going past that truck Mrs. Reilly ran out from the back of that truck. I couldn't do any- 30 40

Arthur Dolbey, direct.

thing. I swerved my wheel, steered my wheel to the left and tried to avoid hitting her, but I caught her with my right-hand mudguard, front; that is the position I was traveling; right-hand side. I stopped my car, went right up on the sidewalk, stopped my car there, jumped out.
10 Mrs. Reilly was just getting up out of the road. So she went right to her house and I followed her; and I says, "Mrs. Reilly, are you hurt?" and she says, "No, I don't think so. I think I am all right." Her daughter says to me, "What had I better do?" I says, "Better send for a doctor, because you never can tell what might happen in those instances." That is all there was to do. I said I would come back after lunch and I went back there.

20 Q Did you see this Mr. Hartnett, this witness who testified, when you got out of the car and went up to see Mrs. Reilly? A The first that I seen Mr. Hartnett was on the stoop after the accident.

Q He came to the stoop? A He came to the stoop.

Q When Mrs. Reilly was there? A Yes, sir.

30 Q And did you give him your license card and the name of your employer? A Yes; I said, "Somebody had better take my number and license card," because I was going down to meet the train; told him I was going down to meet the 12:06; and Mr. Hartnett took it.

40 Q Now, as you came up to this standing truck, which we will call the De Marco truck—it belongs to the De Marco place—how far along on that truck had the front of your car got when Mrs. Reilly came out from behind it? A Well, as Mrs. Reilly came out from the back of it I struck her right there. I tried to swing as I

Arthur Dolbey, direct.

struck her, because I was right at the end of the truck as she came out.

Q How close to the front of your car was she when she came out from behind that truck? A Well, I should figure three feet.

Q And was it possible for you to do anything except to swerve your car? 10

(Objected to as leading and suggestive.)

Mr. Heine: Well, I will withdraw it.

Q You have driven a car for how long? A Over ten years.

Q Have you ever had an accident? A No, sir.

Q And on this occasion when Mrs. Reilly came out it was from your right, was it? A At my right, yes, sir. 20

Q And as close to you as you have testified. Did you do the thing which, in the light of your driving experience, was the best course open to you in the operation of your car?

(Objected to as calling for a conclusion.)

(Objection sustained.)

Q How long had you been driving this car? 30
A That one car?

Q Yes. A Got it new the end of May.

Q Got it new the end of May? A Yes.

Q Were you in the sole charge of the car and keeping it in working order? A Yes.

Q What was the condition of its brakes on the day of the accident? A The brakes were good.

Q All right? A Yes, sir. 40

Arthur Dolbey, cross.

Q And what kind of a car was it? A A Ford sedan, a Ford suburban.

Q And do you know this car that was standing on your right and from the back of which Mrs. Reilly came, what kind of a car that was?

A No; all I know, it was a delivery truck.

10 Q A covered delivery truck? A Yes, sir.

Q Have you any idea about how wide that car was? A No, I couldn't—

Q Was it wider than your Ford? A Well, I should say it would be a little wider than a Ford is, yes.

Q Do you know how wide your Ford is? A No; I never measured it.

Q Can you estimate it from over all measurement on the outside, on each side? A It would
20 be from five to six feet.

Q Between five and six feet? A I think so.

Q Now, was your car, after it stopped up on the sidewalk, with three of its wheels, the two front and the left rear, over on the grassplot of Mrs. Reilly's house? A The front left one was on the sidewalk.

Q The front left one was on the sidewalk? A The front left one.

Q Where were the other three? A The other
30 three were in the road.

Q And the car was left in that position until you went up on the stoop and talked to Mrs. Reilly? A I left it in that position, yes.

Cross examination by Mr. Quinn.

Q How long have you been employed by Mr. Lobdell of Rumson? A I can say this summer; because I have been working for Mr. Lobdell's
40 relations for over ten years.

Arthur Dolbey, cross.

Q Who is that? A Mr. E. D. Thomas, Mr. Lobdell's father-in-law. I have been working for him for ten years.

Q So that you know this locality, Red Bank?

A Yes, sir.

Q You know particularly the locality of White street? Been around here a good many years? A Yes, sir. 10

Q When did you discover that it was five minutes of twelve that day? A Well, I just figured on that time because I was going down to the station.

Q Is that a guess as to the time? A Well, I suppose it would be a guess.

Q So that you don't know whether it was five minutes of twelve or five minutes after? A Well, I know it wasn't five minutes after, because it was five minutes of; I have got a clock right on the car and I would know whether I would have to hurry to the station. 20

Q Did you look at that before? A Yes, sir.

Q And you say it was five minutes of twelve?

A Well, I looked at it perhaps before when I was going toward the post office.

Q Where did you look at it? A As I was going towards the post office, as I was going towards the place, and I see it said toward quarter of twelve at one time, and after that I went to the post office. 30

Q Where did it say quarter of twelve? A Well, soon after I got into Red Bank.

Q How long did it take you to go to the post office? A Well, I don't know. I might have a little traffic hold me up. I don't know exactly how long it took.

Q Did you look at the clock at any time while you were on White street? A No, sir. 40

Arthur Dolbey, cross.

Q So that as far as the time is concerned when you were on White street, it is a guess? A It is just a guess, yes.

Q Didn't you see the factory hands coming out of the factory on White street when you passed by here? A There was none coming
10 out, not as I see.

Q You mean to say you saw no women or girls going up and down that street? A Yes, sir.

Q A number of them? A There was none going up and down when I passed.

Q You say you saw a number of women and girls on White street? A No, sir, I didn't. I said I didn't see them.

Q You didn't see any at all? A No, I
20 didn't see any.

Q What time did you get to the station? A I got to the station about seven minutes—well, I couldn't say what time it was, but the train was just pulling out of the station.

Q There is no doubt of that in your mind? A No, there is no doubt.

Q Did you look at the clock when you got there? A I can't say that I did look at the
30 clock.

Q Did you see any people going from any of the factories on White street that day? A No, sir.

Q Did you see any other cars parked on White street except the one Ford car? A Well, I can't remember that. There always is some parked there, of course; I couldn't remember that special day.

Q You say in Red Bank you looked at the clock and saw that it was quarter of twelve? A
40

Arthur Dolbey, cross.

Well, somewheres just around Red Bank when I looked at quarter of twelve.

Q It didn't take you more than five minutes, did it, to go through Red Bank and go to the post office? A Well, it all depends if I get held up.

Q And had you anything to do in the post office? A I had to go in the post office. I think there was registered mail that day. 10

Q You rushed in the post office and rushed out very quickly that day, didn't you? A I had to do whatever I had to do. I think it was some registered mail or something that day.

Q Do you know whether it was or not? A No, I can't swear to it now.

Q Then, why do you suggest it now? A Because that was my reason for going into White street, was to go to the post office for something Mrs. Lobdell gave me. 20

Q And you had registered mail that day? A I can't say it was registered mail; I know it was something.

Q What brings registered mail to your mind? A Well, I say it might have been that was insured or something with the letters.

Q You had to wait in line there for awhile, didn't you? A No, I didn't have to wait in line, not as I know of. 30

Q You had to wait until the record was made of either a registered letter or parcel post? You had to wait in line so the record was made for either your registered mail or parcel post or whatever else was done? A I had to wait till they fixed it up.

Q Had to wait in line. Some other customers were ahead of you? A I don't think so. 40

Arthur Dolbey, cross.

Q Then you rushed hurriedly out of the post office? You ran out; you didn't walk out? A No; there was no need to rush.

Q Because you were late at that time? A No; I wasn't late at all. I figured I had plenty of time.

10 Q Do you know Mr. Hartnett? A Do I know Mr. Hartnett? Yes.

Q Did you speak to him after this accident? A I don't recollect speaking to him, not till last Sunday morning.

Q Didn't you give him the number of your car? A Well, that was the day of the accident.

Q And that is all you said to him, "Just take the number of my car"? A Well, I may have said one or two other things to him. Mr. Hartnett turned around and said, "Well," he says, "it couldn't be helped. It wasn't your fault."

20

Q He said that to you? A He said that to me.

Q You said one or two other things besides the thing you have given? A Well, might have just been talking naturally to him.

Q Did you hear Mr. Hartnett say and testify that on that day you said to him, "I am in a hurry to get to my boss and I am late now"? A I said to Mr. Hartnett, "You had better take my license number and my name, because I have got to go to the station to meet some people."

30

Q Answer my question: Did you hear Mr. Hartnett say and testify that you said to him, "I am in a hurry to get my boss and I am late now"? A Yes, I might have said that.

Q You did say that? A Well, I won't say I did. I might have said it, because I was on my way to the station.

40

Arthur Dolbey, cross.

Q And you were late? A Well, I was late then, I guess. Yes, I was late then.

Q At the post office 500 feet away you were not late, but at the point of this accident you were late? A When I was leaving. Look at the time it takes for that accident. I had to wait and go on the porch to see Mrs. Reilly.

10

Q How long did you stay there? A I should judge I stayed there—well, anyway, perhaps seven or eight minutes.

Q After the accident? A Yes, after the accident.

Q Well, if it was about five minutes of twelve when you were in front of the post office and the accident occurred and you stayed seven or eight minutes talking there, you would arrive at the station around six minutes after twelve? A I had just arrived there at the station, the train had pulled out of the station when I got there.

20

Q The people were waiting for you? A The people were waiting on the station, yes.

Q Certainly; the train had gone? A The train had gone.

Q So there was how many minutes? Six minutes after twelve when you got there? A Well, I don't think it was long, because I seen the train pull out of the station itself.

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Q Was the train right near the station at the time? A The train was pulling out.

Q And your people were there waiting for you? A When I got the other side.

Q You know this truck was the De Marco truck? A I didn't know.

Q You know now? A Yes.

Q And you say that the De Marco truck was parked in front of Smock's place rather than in front of its own? A That is what I said.

40

Arthur Dolbey, cross.

Q Do you mean it? A Well, that is as far as I can figure, if Mrs. Reilly came out of Smock's.

Q Are you doubtful about it? A I don't think so.

10 Q Where was it parked, in front of its own place or Smock's place? A I should figure it was in front of Smock's place.

Q Are you sure of it? A Well, that is just from what I think the position of it was.

Q Then you are doubtful about it? A Well, because I couldn't swear exactly where it was.

Q You are placing it down there, isn't it so, for the purpose of saying that Mrs. Reilly came from behind it?

(Objected to. Question withdrawn.)

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Q You know that De Marco's truck, this Ford truck, was parked in front of De Marco's place and no other place? A I don't know it at all. I never knew whose truck it was. When I saw it it was a laundry truck.

Q Did you also hear Mr. Hartnett say that a few days ago you saw him? A Yes, sir.

Q You went looking for him, didn't you? A Sunday morning.

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Q And you said to him Sunday morning, a few days ago, "I was pretty well on the left-hand side of the road, but I had to because the road is narrow." You said that to him, didn't you? A No, sir.

Q You remember passing Mr. Hartnett? A No, I didn't see Mr. Hartnett at all.

40 Q How did it happen that you were looking for him Sunday morning if you never saw him before? A I just told you I spoke to him on the porch after the accident.

Arthur Dolbey, cross.

Q Don't you remember a bicycle in front of you that day? A No, I don't remember anything about a bicycle.

Q Were you going so fast that you don't remember what objects you passed? A Well, anybody driving along is not looking at everything you see. I can't remember that. I didn't know an accident was going to happen. 10

Q How far in back of this truck, according to your version, was Mrs. Reilly when she stepped out? A Stepped out from back of the truck?

Q Yes; how far back of the truck? A Well, it seems to me, as near as I can figure, she was right near the truck, come right from back of it.

Q A couple feet? A Hardly two, if she was any more. 20

Q Then there is no doubt the De Marco truck was parked in front of Smock's? A Well, it all depends on where she came from. I don't know whether she came from Smock's or where.

Q Did you hear the testimony that from the point of the door of Smock's laundry to this driveway it is about eighteen or twenty feet? A Yes.

Q You heard that? A Yes.

Q How long is this truck, approximately, that was parked over here? A I don't know the size of the truck. 30

Q About how many feet? A Twelve or fifteen feet or so.

Q Then no part of the truck was parked in front of De Marco's or even in front of this driveway; that entire truck was parked in front of Smock's place?

(Objected to.)

Arthur Dolbey, cross.

Q Is that so? A I don't know; I can't say for sure where the truck was, whether it was in front there—I said I figured it was in front of Smock's.

Q Well, it is about fifteen feet long? A I never looked to see exactly where it was.

10 Q It is about fifteen feet long; isn't that so?
A I should judge somewhere there.

Q And do you say that Mrs. Reilly came out from the door of the Smock factory? A She must have.

Q After the accident did you look over and see? A No, sir.

Q When Mrs. Reilly was picked up was she picked up about opposite the door of her home? A I couldn't say that. She come out in the
20 road. She wasn't picked up; she got up herself.

Q Did you help take her home? A She was up before I got there and I followed her into her house.

Q Who was with you when you followed her in? A There was nobody with me.

Q Did she go right in the house? A No, she went to the porch.

Q And was placed in a chair on the porch?
30 A Yes, sir.

Q And who was there then? A Her daughter.

Q Did you see Mr. Smock there after the accident? A I seen Mr. Smock after the accident.

Q Have you talked to Mr. Smock since the accident? A I might have said something to him at that time.

Q Well, you did talk to him, didn't you? You knew him? A Yes, I think I might have spoke to him.
40

Arthur Dolbey, cross.

Q And while you were talking to Mr. Smock your automobile had not yet been moved? A No, sir.

Q Is Mr. Smock subpoenaed here in court today? A Not that I know of.

Q Did you give the name of Mr. Smock to your counsel? A No, sir.

Q Wait a minute. Did you give the name of Mr. Smock to your counsel as being one of the persons who was there after the accident? A I might have mentioned his name.

Q Did you tell your counsel that Mr. Smock came to the scene of this accident shortly afterward and saw the position of your car? A Yes, I said Mr. Smock seen the car.

Q And Mr. Smock is not in court today; is that right? A As far as I know.

Q And he was not in court yesterday; is that right? A As far as I know he was not in court.

Q Have you had a talk with him since the day of the accident? A No, sir.

Q What part of the roadway was Mrs. Reilly when you first saw her? A She was just coming out from the side of the truck. That would be more to the right than the left.

Q Running, I suppose? A Yes, sir.

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

Q She just appeared about in an instant in front of you? A Just come right on me like that. (illustrating).

Q You struck her in the stomach? A No, I swerved my car and my right mudguard caught her. Of course it was done so quick I couldn't say where it hit her, and it threw her to the right.

Q She was facing your car? A Well, naturally she was coming this way and she must have been facing the car.

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Arthur Dolbey, cross.

Q And she ran right into your car? A Yes, sir.

Q Then you struck her in the stomach? A I won't say where I struck her.

Q She didn't fall down before you struck her? A Didn't fall down?

10 Q Before you hit her? A It was done so quick that I couldn't tell.

Q You didn't see her turn around before you hit her? A I didn't see her turn around.

Q And she came right across the street? A Yes.

Q So your car, according to that version, must have hit her in the stomach or in front?

A Not necessarily. She could have been running sideways and hit her in the side.

20 Q Was she running sideways? You just said a minute ago she was running across the street.

A If she was running across the street you would hit her in the side.

Q Didn't you hit her in the stomach? Was she running sideways? A I don't know, I said. It seemed she came right from the side of the truck.

30 Q Don't you know her doorway is exactly opposite Smock's factory and it was between that and the street line? A I don't know for sure it is.

Q You saw the doorway that day? A Yes, but I never figured whether it was opposite or not. I haven't figured exactly whether her door is opposite Smock's door or not.

Q Did you not go back and look at the location? A No, sir.

Q Have you ever been back since the day of the happening of this accident? A No, sir.

40 Q Never been requested to go back and look at it? A No, sir.

Arthur Dolbey, cross.

Q You were going about ten miles an hour, did you say? A Well, I won't say. I might have been going as high as fifteen; not over fifteen; just taking my time.

Q What side of your car struck her? A The right-hand mudguard.

Q Where did you have it repaired? A It 10
never was repaired.

Q Where is it? A Down in the garage.

Q Why didn't you bring it here today? A
Well, it could have been brought in.

Mr. Heine: I object. No notice to produce the car or demand of any kind or interrogatory or bill of particulars as to a description of its condition.

Mr. Quinn: I withdraw the question. 20

Q Did anybody instruct you not to bring it here today? A No, sir.

Mr. Heine: The same objection.

The Court: Well, he has answered it now.

Q Were you instructed by anybody to bring it here today? A No, sir.

Q Is it in the same condition today as it was 30
at the time of the accident? A Exactly. There might be just a little kind of a white mark on the mudguard where it has caught coming out of a door or something like that.

Q And is it bent? A The right mudguard has just got a little bend in it, yes.

Q And where is that bend? A Just on the end of the mudguard where it turns over, about a foot back.

Q A foot back from the front? A Yes. 40

Arthur Dolbey, cross.

Q Is that where the bend or mark is? A Yes, that is where the mark is.

Q Are there any marks in the front, the extreme front of the mudguard? A I don't think so.

10 Q Well, you have looked at it? A Yes; I don't think there is any marks on the front.

Q The only mark is on the side of the mudguard? A Well, a little on the top.

Q About a foot back from the front. A I should figure about a foot back from the front.

Q So that according to that version the side of your car struck her?

(Objected to as argumentative.)

20 Q Then the side of your car struck her? A Not necessarily.

Q The front didn't? A Well, you know very well that if you hit in the front it generally buckles it down.

Q It didn't buckle it? A Well, it bent it.

Q No mark on it? A Yes, no mark on it.

Q You have just taken your oath that there are no marks on the front. A I didn't; I just told you there was a bend on the right front mudguard.

30 Q Didn't you just say a moment ago that there was a mark on the front?

(Objected to.)

Q Do you remember saying a moment ago— A Right in the front, but the marks is on the front mudguard.

40 Q Do you remember saying a moment ago that the only mark on that mudguard was a mark about a foot back from the front?

Arthur Dolbey, cross.

Mr. Heine: I object on the ground that the question is improper in form.

(Objection overruled.)

Q Do you remember saying that? A I do.

Q And was that correct? A No, it is not correct, because the dent is a foot back from the front. 10

Q All right; if it was not correct why did you say it?

(Objected to.)

A You put it so a man can't understand exactly what you mean.

Q By that you mean you made a mistake?

A I made a mistake. 20

Q You didn't understand my question? A Yes.

Q It was so difficult you didn't get the meaning of it? A No, it was the way you put it.

(Objected to as a conclusion. Objection overruled.)

Q Did you hear Mrs. Marks testify? A Yes.

Q Did you hear her say she sat in the front porch? A I heard her say so, yes. 30

Q Did you hear her and other witnesses testify that your automobile was up on the front lawn of Mrs. Reilly? A Yes, sir.

Q Do you know of any other persons who were there at the scene of that accident except those that have been mentioned? A No, I don't know any.

Q When you struck Mrs. Reilly you knocked her down, didn't you? A Yes, sir. 40

Arthur Dolbey, cross.

Q And you knocked her to the side or in front of you? A In front of me.

Q How far in front? A Well, I should say perhaps a little further than where that gentleman is, about as far as where that gentleman is she fell down.

10 Q And before you came to a stop she had gotten up and was on her way to her home? A Not before the car stopped.

Q Before you were able to get out of your car and assist her she had gotten up and was on her way to her home and you followed her in? A Yes, sir.

Q Is that correct? A Yes, sir.

Q What took you so long to get out of your car? A Well, as soon as I stopped I got out.

20 Q That was only a matter of a couple seconds? A Well, she was up before that.

Q She got up in less time than two seconds? A She got up in less time than it took me to get out of the car to get to her.

Q Did you roll her over after you struck her? A I can't say how she fell. I know she fell in front of the car.

Q Where is that mudguard? A It is on the car.

30 Q It is on the car now? A It is on the car now, yes, sir.

Q Have you got the car here today? A No.

Q How long would it take to run the car up here? A About forty minutes, I guess, a Ford.

Q What car did you come in today? A Come up in a Cadillac.

Q Were you driving that car yesterday? A Last night for the mail.

40 Q Were you given instructions not to bring that car to Freehold today?

Arthur Dolbey, cross.

Mr. Heine: Objected to on the ground that that question has already been asked and on the ground that it is improper; that counsel has served no notice to produce, and no interrogatories. He had six months to find out if he wanted to see that car and he has made no request for it until this minute. If he wants to see the car I will offer to bring the car here now and let him and the jury see it. 10

(Question withdrawn.)

Q When Mrs. Reilly got up did she walk right into her home unassisted? A I won't say walked right to the porch. Her daughter might possibly have met her at the steps or something like that; but she got up herself and went up on the sidewalk towards the house. 20

Q What side of the road were you on when you struck her? A Well, I was a little, perhaps, further from the middle of the road, because the truck was standing. I suppose I was about three feet away from this truck.

Q So that you were on the right-hand side of the road? A Right-hand side of the road as far as I could get, almost, considering the room there was between this truck and the other sidewalk. 30

Q Were you over on the right-hand side of the middle of the road? A Yes, on the right-hand side of the middle of the road.

Q You are sure of that? A Yes.

Q Your entire car was over on the right-hand side of the middle of the road? A No, not the entire car, because you couldn't get there, just the right-hand side.

Q So that you were about in the center of the road? A Well, I suppose it would be. I 40

Arthur Dolbey, cross.

figure it would be about the center of the road, yes.

10 Q And how far before reaching this truck did you turn from the right-hand side of the road to the center of the road? A Well, I come down the street, because I didn't know—I just come down the street, I keep to my right as far as I can.

Q Had you been riding in the center of the road prior to this accident? A No, I never ride in the center of the road unless there is traffic on the right-hand side; but then you know how the road there—

Q I mean on this particular day? A I don't remember whether there was any cars there or not. If there was I would have to ride in the middle; if not I kept to my right.

20 Q Don't you know there were no other cars there? A I say I don't know whether there was or not. If there wasn't I kept on the right-hand side. If there was I kept in the middle of the road.

Q So prior to the accident you don't know whether you were in the middle of the road or on the right-hand side of the road? A No, I can't exactly say.

30 Q How many feet was there between you and the truck when they passed it? A That one truck, the De Marco truck?

Q Yes; that was the only truck there was there? A What it was between as I was going along and the truck itself?

Q Yes. A Well, I shouldn't figure there was more than three feet.

40 Q How far was your left-hand mudguard or wheel from the left-hand sidewalk or curb? A Of course, I don't know the width of the road, but it is not so far away.

Arthur Dolbey, cross.

Q Just give me the distance if you can. A Well, I don't know; about the width of the car.

Q About how many feet was your left-hand wheel from the left-hand curb? A Well, I can't exactly say how many feet, but I say it is about the width of the car.

Q And the width of your car is what, about? 10
A Well, I haven't measured it. About six feet, I suppose.

Q Now, how far were you from the end of the truck—by that I mean the westerly side or westerly end of the truck—when you saw Mrs. Reilly? A Right at the back.

Q Within a few feet from the back of the truck? A No, she wasn't within a few feet; she was right there at the time, it seems to me that she was.

Q You were about three feet away from the back of the truck when you first saw her? A 20
On the side of the truck when I first saw her.

Q And you were three feet on the side? A On this side when I was passing her.

Q Had you passed the truck when you first saw her? A No.

Q How far were you from the rear of the truck when you first saw her? A I couldn't tell you, it happened so quick.

Q About? A It happened too quick that I 30
couldn't tell you whether she come out right over there at the back or whether she was two feet away.

Q Had you nearly passed the truck or come to the end of the truck when you saw her? A Right in at the back of the truck when I saw her.

Q When you saw her how many feet away was she from your car? A From the truck?

Q From your car, when you first saw her? A 40
How many feet was I away from the truck?

John J. Quinn, direct.

Q No, how many feet was she away from your car when you first saw her? A Well, I don't think she was any distance at all, because she was right on top of me.

Q About how many feet? A I don't think she was any feet away.

10 Q Didn't you see her at all before you struck her? A It happened so quick, she came out from the back and I struck her and it happened like that (illustrating).

By the Court.

Q Where was she after you struck her? Where did she fall? A She fell in the road, sir.

20 JOHN J. QUINN, sworn for defendants.

Direct examination by Mr. Heine.

Q Mr. Smock was subpoenaed in this case by your office, wasn't he? A Not that I know of.

Q Who had charge of the subpoenaing of the witnesses? A One or two clerks in the office.

30 Q You don't know whether Mr. Smock was subpoenaed or not? A I do not. All that I know is that you asked me if I was going to have him here and I asked you if you were.

Q Last night? A Yes.

Mr. Heine: I will ask Mr. Parsons, without being sworn: Was Mr. Smock subpoenaed by your office?

Mr. Parsons: Yes, he was subpoenaed to prove Mrs. Reilly's wages and he said that Mr. Hartnett knew and Mrs. Reilly knew and I told him he did not need to come.

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DEFENDANTS REST.

Motions for Mistrial and Direction of Verdict.

PLAINTIFF'S TESTIMONY IN REBUTTAL.

M. CASEWELL HEINE, sworn for plaintiff.

Direct examination by Mr. Quinn.

Q Mr. Heine, did you or anyone attached to
your staff interview Mr. Smock? A Yes. 10

Q Was he subpoenaed by you after the in-
terview? A No.

The Court: Any cross examination?

Mr. Heine: Yes. The reason was because
he said he didn't know anything about it,
and he told Reilly, Quinn & Parsons that he
didn't know anything about it except the
wages, and they were not going to call him.

BOTH SIDES REST. 20

MOTIONS FOR MISTRIAL AND DIRECTION.

Mr. Heine: I would like to move first for
the withdrawal of a juror and the declaring
of a mistrial on the ground that it appears
from the medical testimony in this case that
the action is prematurely brought so far as
the ascertainment of compensatory damages
is concerned, in that the medical testimony
appears to be unanimous to the effect that
it is impossible now to state with any degree
of reasonable certainty whether or not the
injuries resulting from this accident will be
permanent or not, and so far as the per-
manency is concerned of what character they
will be, whether total or partial; and that
therefore under the cases in this State the 40 30

Motions for Mistrial and Direction of Verdict.

10 action cannot now be maintained by reason of the uncertainty as to the damages; that the question of damage in the present state of the evidence cannot be submitted to the jury, and the evidence is not in such shape that the jury can thereon find as required by a law a certainty or with the certainty which is required by law the amount of damages, for the reason that the medical testimony shows them to be uncertain both as to the permanency and as to the character of injury which may or may not be permanent.

The Court: I will deny the motion on that ground.

(Objection noted for defendants as ground of appeal.)

20 Mr. Heine: Then I move for the direction of a verdict for both defendants on the grounds already stated in the motion for non-suit: that no negligence has been proven on the part of the defendant Lobdell nor on the part of the defendant Dolbey in the operation of the car according to the issue framed in this case, and that the plaintiff has been shown to be conclusively guilty, at the end of the whole case, of contributory negligence, and on the ground that no damage has been proved of a legal character which can be submitted to the jury.

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The Court: The motion is denied.

(Objection noted for defendants as ground of appeal.)

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*Charge to Jury.***COURT'S CHARGE.**

Gentlemen of the Jury: The plaintiff in this case was seriously injured in an automobile accident. I say that she was seriously injured because the medical testimony in the case is in practical agreement upon that point. The automobile involved in the accident was owned by the defendant Leighton Lobdell and driven by his servant and employee, Arthur Dolbey, the other defendant. Mrs. Reilly seeks to hold them both liable for the injuries she received, and both are liable if the injuries were the result of negligence in the operation of the car. This is so because Dolbey was the servant of Mr. Lobdell and at the time of the accident was engaged in his master's business and acting within the scope of his employment. Under those circumstances the law holds the master answerable for the injurious results that follow any negligence of which the servant may be guilty in the performance of his duty to the master.

The primary question then for decision is whether the defendant Dolbey was negligent in a legal sense. Negligence in a legal sense means the failure to observe that degree of care for the protection of another person which the circumstances in any given case justly demand, whereby such other person suffers injury. The degree of care which the law requires is that degree of care which a reasonably prudent person would observe under the existing circumstances to avoid injury to others. Thus negligence as I have used it is a relative term, depending upon the circumstances under which the injury is received. And so in this case the circumstances must be considered in order to

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Charge to Jury.

determine whether in those circumstances the defendant driver of the car involved in this accident did something which a reasonably prudent person would not have done or failed to do something that a reasonably prudent person would have done under those circumstances. If
10 by this test applied to the evidence in this case the defendant Dolbey was not guilty of negligence then it necessarily follows that there was no negligence to be chargeable to Mr. Lobdell, and both defendants must be absolved from any blame for the injuries Mrs. Reilly received, notwithstanding the fact that they were of a serious nature.

The fact that an accident occurred in which Mrs. Reilly was injured raises no presumption that the defendants were negligent; because
20 negligence is never presumed; it must be proved. So in this case it is incumbent upon the plaintiff to show by the greater weight of the evidence some negligent act or omission of the defendants or to show circumstances from which the existence of such negligence may legitimately be inferred.

The plaintiff, according to the evidence—and in referring to the evidence I will, of course, give
30 you my recollection, and if it does not coincide with yours you are to accept your own recollection of what the evidence is and not be guided by what the Court may say on that—but I may say as I recall the testimony the plaintiff says she was injured while crossing White street in Red Bank from her place of employment to her home immediately across the street. Her testimony and that of her witnesses is that she was at or near the curb on the far side of the street
40 she was crossing when she was run down by

Charge to Jury.

defendant's automobile and hurled upon the lawn in front of her house, the car which struck her following and coming to a stop with three of its wheels on the sidewalk or grass-plot and one at or near the curb or gutter. If the accident happened in that way then the circumstances would seem to suggest an inference of negligence on the part of the driver. That is a question of fact for the jury to determine and not for the Court. The jury may find from all the evidence in the case that any such inference is precluded.

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The side of the street on which, according to Mrs. Reilly's testimony, she was struck was the left-hand side of the driver in the direction in which he was proceeding. He was, therefore, if the testimony of the plaintiff is to be believed, where in the exercise of reasonable care he had no right to be unless he was forced into that position by circumstances which in the exercise of reasonable care he could not control or the consequences of which he could not avoid. It was the duty of the driver to use reasonable care to have his car under such control as to avoid injury to any person who, also with reasonable care, happened to cross the street in front of his car; and this duty especially existed in the case of the plaintiff if, as her evidence shows, she had gotten practically across the street when she was hit and was out of the normal, usual path of traffic proceeding in a westerly direction on White street.

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Now, the defendant's story gives you an entirely different version of the accident. Mr. Dolbey, the driver of the car, tells you that as he was proceeding westwardly on White street, just as he was passing a truck parked on his

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Charge to Jury.

right side, the plaintiff, Mrs. Reilly, stepped out from behind the truck immediately in front of his car and that he could not avoid hitting her, although he made an effort to do by swerving his car to the left. He says that only his left wheel went upon the sidewalk, the left rear wheel, I think, and that the other three wheels of the car remained in the street. He also denies that Mrs. Reilly was thrown from the roadway up upon the sidewalk; and he said that he had no recollection whatever of seeing Mr. Hartnett, one of the witnesses for the plaintiff, who testified that he was on a bicycle just ahead of Dolbey or the defendant's car just prior to the accident.

Now, gentlemen, if the plaintiff has failed to satisfy you by a preponderance of the evidence that her injuries were due to negligence in the operation of the defendant's car your verdict should be in favor of the defendants, both of them. If, however, the plaintiff in your judgment has established her claim of negligence your next inquiry would be whether she was guilty herself of contributory negligence. If she was she cannot recover. She is not, however, obliged to show her freedom from contributory negligence. Contributory negligence is a defense and the burden is upon the defendants to establish that defense by the greater weight of the evidence. To conclude the plaintiff from maintaining this action the defendants must satisfy you that her conduct contributed to her injury in such a way that if she had not been negligent she would have received no injury from the negligence of the other party.

The duty rested upon the plaintiff to use reasonable care for her own personal safety. She

Charge to Jury.

had a lawful right to the use of the street or any part of it, including the portion in which vehicles run as well as the sidewalk. She had a right to cross the street where she did cross, even though it was not a regular place of crossing for pedestrians. But, of course, in exercising that right she was required to use the degree of care, caution and vigilance that a reasonably prudent person would observe in crossing at that place and under the conditions then existing. If she was struck by the defendant's car at the south curb, that is, the curb opposite the side from which she crossed, as she says she was, when under normal, ordinary conditions defendant's car should have been on the north side of the street, it would seem difficult to convict her of contributory negligence, since according to her story she had reached a place where she had no reason to anticipate that she would be in danger from traffic moving westwardly along White street. Before she started to cross the street Mrs. Reilly says that at the curb she looked first towards Maple avenue, that was in a westwardly direction, and saw a car coming from that direction; she waited for that car to pass, but it did not pass but stopped at the curb. Looking in the other direction, that is, to the east, she says she saw the Lobdell car coming westwardly and that it was then about in front of the firehouse. This point, according to the testimony of the surveyor who made the map, I think was about one hundred and seventy-five feet from the laundry in front of which Mrs. Reilly stood. She says she saw the car coming as she stepped from the curb to cross the street. If she walked directly in the path of an on-coming car it would be a question whether her act was that of a rea-

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Charge to Jury.

sonably prudent person under the circumstances and whether she was thereby guilty of negligence. If, however, she was not hit by the car of the defendant until she reached the far side of the street any negligence upon her part in crossing when and where she did it would seem
10 could not have contributed to her injury unless you should find that her sudden appearance in the path of the defendant's car from a position in which her presence upon the sidewalk could not have been noticed by the driver created a situation in which the driver, in the exercise of reasonable care in the control of his car, could not avoid the accident. That is to say, if the driver was exercising due caution with reference to the speed of his car, the rules of the road and the lawful use of the street by pedestrians, and
20 in the effort to avoid injury to the plaintiff, if she had negligently placed herself in a position of peril, acted as a reasonably prudent person would have acted in an emergency, then the jury would have to say whether, even if Mrs. Reilly was hit at the south curb, as she says she was, she was guilty of negligence under those circumstances but for which she would not have been injured.

30 If, as the plaintiff insists, the defendant was running on the north side of the street or about the middle of the street as she stepped from behind a parked car, then of course a different situation would present itself for your consideration, and which would suggest an inference of contributory negligence. But in any aspect of the case, depending upon what you find from the evidence, the question of negligence and contributory negligence are solely within your
40 province to decide under the evidence and in

Charge to Jury.

accordance with the definitions of negligence and contributory negligence which I have given you.

Now, gentlemen, if you find that the driver of the car was negligent and that his negligence caused the plaintiff's injury, without contributory negligence on her part, then she is entitled to your verdict, and you in that event would come to the question of damages. The evidence is undisputed that she has been practically helpless since the time of the accident, encased in a plaster cast, confined to her bed. The medical opinion seems to be that she will continue in that condition for some considerable time yet. There is also some medical testimony that she may never be able to resume the occupation in which prior to the accident she supported herself; her earnings amounting, as she testified, I think, to about \$21 or \$21.50 a week. Damages in such cases as this are intended to be compensatory. They are not to be based upon sympathy for the injured person, however serious the injuries may be; nor are they intended as a punishment or penalty inflicted upon those whose negligence caused the injury. The rule which must guide the jury in such cases is to award a sum of money which in the judgment of the jury will compensate the injured person for the injury itself, having regard to its nature and extent and effect, for pain and suffering, for loss of earnings and any impairment or loss of earning power and for any expenses of hospital, medical and other incidental treatment. Upon the question, gentlemen, as to the permanence of the injury or disability you are to take into consideration that the medical men substantially agree in the opinion that it is yet too early finally and fully to determine the extent and duration of the plaintiff's disability.

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Defendants' Exceptions to Charge.

Gentlemen, I leave this case in your hands with the assurance that you will give it your careful, painstaking and unbiased consideration.

DEFENDANTS' EXCEPTIONS.

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Mr. Heine: I would like to have an exception only to portions of the charge regarding the question of the consideration of injuries sustained and their possible continuance, right toward the end of the charge, and the part which dealt with the fact that it was too early yet for the experts to express themselves as to the certainty of permanence of the injuries—just what the phraseology of your Honor was in that part; and to have the same exception noted there as was made the basis of the motion for mistrial, on the ground that this was improper to submit to the jury evidence of this uncertain character as to the likelihood of the permanent injuries continuing; I mean the uncertainty due to the impossibility of testimony indicating how long those injuries would continue or what their extent would be.

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New Jersey Court of Errors and Appeals

SARAH REILLY,
Plaintiff-Respondent,

vs.

LEIGHTON LOBDELL and ARTHUR
DOLBEY,
Defendants-Appellants.

*On Appeal
from New
Jersey
Supreme
Court,*

*Monmouth
Circuit.*

BRIEF OF APPELLANTS.

Statement.

This is an appeal from an action at law tried before Frank B. Jess, Esq., Judge of the Monmouth County Circuit Court, and a jury on January 20, 1926.

The complaint charged that the defendant Arthur Dolbey, as the servant or agent of the defendant Leighton Lobdell, so carelessly and negligently operated his certain automobile as to cause the same to run into and strike the plaintiff, Sarah Reilly, while she was crossing White street, in the Borough of Red Bank, Monmouth County, New Jersey. The alleged accident happened on July 11, 1925. The answer denied the allegations of the complaint and set up the defense of contributory negligence. A verdict was rendered in favor of the plaintiff, Sarah Reilly, against both defendants in the sum of \$24,500.

Grounds of Appeal.

The grounds of appeal relied upon by the appellants are as follows:

1. The refusal of the Trial Court to sustain the objection of defendant's counsel to the following question asked of the witness Mrs. Mary Wenzell (S. C., p. 32, l. 9):

“Q Was there any other traffic on the street at that time, any other vehicles of any character on the street near the Ford station wagon?”

2. The refusal of the Trial Court to sustain the objection of the defendant's counsel to the following question asked of the witness Mrs. Wenzell (S. C., p. 37, l. 13):

“Q When the driver of this car was around there that afternoon and said that he turned out and hit your mother to avoid hitting a truck, did you know when he said that to what truck he referred?”

3. The refusal of the Trial Court to strike out the answer to the following question asked of the witness Anna Farrell (S. C., p. 78):

“Q Did you see any vehicle in that vicinity? A The only vehicle I remember seeing was Mr. Lobdell's Ford suburban.”

4. The refusal of the Trial Court to permit witness Robert Browning Wilson to answer the following question (S. C., p. 96):

“Q Is it possible, doctor, now, and will it be possible until the removal of this cast to say with any certainty just what the character or permanent character of the injuries will be?”

5. The refusal of the Trial Court to grant a motion for non-suit upon the grounds:

a. That the plaintiff was guilty of contributory negligence.

b. That no negligence was shown on the part of the defendant Arthur Dolbey.

6. The refusal of the Trial Court to grant a motion for mistrial and withdrawal of a juror upon the grounds that the action was prematurely brought by the plaintiff.

7. The refusal of the Trial Court to grant a motion for direction of verdict in favor of the defendant on the grounds:

a. Plaintiff was guilty of contributory negligence.

b. No negligence was proven on the part of the defendant Dolbey.

c. That no damage was proven of a legal character which could be submitted to the jury.

8. The charge of the Trial Court was erroneous in that the Court charged as follows:

“Now, gentlemen, if you find that the driver of the car was negligent and that his negligence caused the plaintiff’s injury, without contributory negligence on her part, then she is entitled to your verdict, and you in that event would come to the question of damages. The evidence is undisputed that she has been practically helpless since the time of the accident, encased in a plaster cast, confined to her bed. The medical opinion seems to be that she will continue in that condition for some considerable time yet. There is also some medical testimony that she may never be able to resume the occupation in which prior to the accident she supported herself; her earnings amounting, as she testified, I think to about \$21 or \$21.50 a week. Damages in such cases as this are intended to be compensatory. They are not to be based upon sympathy for the injured person, however serious the injuries may be; nor are they intended as a punishment or penalty inflicted upon those whose negligence caused the injury. The rule which

must guide the jury in such cases is to award a sum of money which in the judgment of the jury will compensate the injured person for the injury itself, having regard to its nature and extent and effect, for pain and suffering, for loss of earnings and any impairment or loss of earning power and for any expenses of hospital, medical and other incidental treatment. Upon the question, gentlemen, as to the permanence of the injury or disability you are to take into consideration that the medical men substantially agree in the opinion that it is yet too early finally and fully to determine the extent and duration of the plaintiff's disability."

Facts.

Sarah Reilly, the plaintiff, was an employee of the Red Bank Steam Laundry (S. C., p. 19). On July 11, 1925, at five minutes after twelve (S. C., p. 19), she left the laundry and started to cross the street to go to her home, which was directly opposite the laundry. Both the laundry and the Reilly home are on White street, which is a street twenty-two feet nine inches from curb to curb in width (S. C., p. 12, l. 28). Mrs. Reilly left the laundry, stopped at the curb (S. C., p. 20, l. 22), looked up and down the street, noticed a car coming from Maple avenue, which later stopped, and saw the defendant's car up by the fire house, which was about one hundred and seventy-five feet distant from the laundry (S. C., p. 14, l. 39). She then started to cross the street in back of a truck owned by one De Marco, which was between her and the defendant's car (S. C., p. 29, l. 32). She did not look again to see if the defendant's car was coming and did not see anything until she was struck by the defendant's car in the center of the street. Plain-

tiff was struck in the back and received as a result of the blow a complete transverse fracture of the body of the fifth lumbar vertebra with a slight lateral dislocation of the lower segment of the same (S. C., p. 94), and at the time of the trial was in a plaster cast, extending from just under the arm down to and including the hips and left leg to the knee.

It was testified by all of the physicians, both for the plaintiff and for the defendant, that they could not say with any certainty just what the permanent character of the injury would be until after the cast was removed (S. C., p. 105, l. 10; p. 107, l. 30; p. 110, p. 114, p. 120, p. 128). None of the plaintiff's witnesses testified to the effect that the plaintiff made any observation to discover the approach of any automobiles or made any effort to avoid an accident. On the other hand, the plaintiff herself testified that she did not look to see what was coming after she stepped off the curb (S. C., p. 30, l. 1). The defendant Arthur Dolbey, the driver of the defendant Lobdell's car, testified that he was going by a truck on White street when Mrs. Reilly ran out suddenly from the back of the truck and he could do nothing but swerve his car to avoid hitting her and that he could not avoid an accident.

POINT I.

The Trial Court erred in refusing to sustain the objection of defendant's counsel to question asked of the witness, Mary Wenzell (S. C. 32, l. 3).

The objectionable question read as follows:

“Q Was there any other traffic on the street at that time; any other vehicles of

that character on the street near the Ford station wagon?"

The objection to this question is that it is very leading. An examination of the direct testimony of the witness Mary Wenzell (S. C., p. 30) and the pages following indicates that she was being led by her counsel. Defendant's counsel objected to this leading and finally was forced to endeavor to call a halt to it. He specifically objected to the question above set forth and the objection was overruled. The leading character of the question is perfectly apparent and speaks for itself and its effect upon the jury is obvious.

POINT II.

The Trial Court erred in refusing to sustain objection of defendant's counsel to question asked of the witness, Mary Wenzell (S. C., 37, 1. 11).

The question above mentioned is as follows:

"Q When the driver of this car was around there that afternoon and said that he turned out and hit your mother to avoid hitting a truck, did you know when he said that to what truck he referred?"

This question was also distinctly leading and in addition was objectionable because it was not binding upon the defendant Lobdell.

POINT III.

The refusal of the Trial Court to strike out the answer to a certain question asked of the witness, Anna Farrell (S. C., 78, 1. 18).

The witness Anna Farrell was asked the question:

"Q Did you see any vehicle in that vicinity? A The only vehicle I remember seeing was Mr. Lobdell's Ford suburban."

A motion was made to strike out the answer on the grounds that the witness had already answered that she had not seen any vehicle in the vicinity. The motion was denied. The witness Anna Farrell testified that she heard the screeching of brakes outside of her home (S. C., p. 77), ran to the front of her house. When she got out she saw Mrs. Reilly hurled upon the lawn. She was asked:

“Q Did you see an automobile at that time? A No, I didn't.”

Once more her counsel questioned her:

“Q After you saw Mrs. Reilly there on the lawn, did you see anything else in that vicinity? A I didn't notice.”

Counsel then directed her attention to the automobile and asked her twice if she saw any vehicle in the vicinity. The results of the plaintiff's counsel's leading questions were perfectly apparent and the witness was forced to contradict herself.

POINT IV.

The Trial Court erred in refusing to permit Doctor Wilson to answer a certain question (S. C., 96).

On cross examination, Dr. Robert Browning Wilson, practicing physician, who had examined Mrs. Reilly, the plaintiff, and had taken care of her while she was in the hospital, was asked the following question:

“Q Is it possible, doctor, now, and will it be possible until the removal of this cast to say with any certainty just what the character of the injuries will be?”

Dr. Wilson had direct charge of the treatment of the plaintiff and a cast was put upon her

under his supervision. He attended her from the time of the accident up to the time of trial. It is respectfully submitted that inasmuch as the doctor both examined and treated Mrs. Reilly and had charge of her, that the question was a fair one on cross examination, and that the Trial Court in refusing to direct Dr. Wilson to answer the question worked harmful error on the defendant. Dr. Wilson's opinion as to the character and permanency of Mrs. Reilly's injuries would be worth more, both to the plaintiff, as well as to the defendant in this case, than any of the other medical experts for the simple reason that Dr. Wilson was the one man who had treated Mrs. Reilly continuously, and it is particularly for this reason that the defendant feels that the Trial Court erred.

POINT V.

The Trial Court erred in failing to grant a non-suit on motion of the defendant and also in failing to direct a verdict for the defendant.

The failure to direct a non-suit and failure to direct a verdict can be argued together. There are two grounds for this motion:

First. The plaintiff was guilty of contributory negligence as a matter of law.

Second. The action was prematurely brought by the plaintiff.

a. *Plaintiff was guilty of contributory negligence.*

Beside the plaintiff herself, there is the testimony of only two eyewitnesses to the accident, in her behalf. Alvin Hartnett, who was riding on a bicycle, testifies that he saw the plaintiff first when he was riding in the middle of the

street down near the fire house. The street is twenty-three feet from curb to curb and the plaintiff at that time was one hundred and seventy-five feet from the fire house. There was a Dodge truck between Hartnett and the plaintiff. Hartnett saw the plaintiff step out from behind the truck and saw the automobile of the defendant strike her. He, however, testifies to the honking of a horn, but he does not testify that the plaintiff looked either direction as she stepped out.

The only other eyewitness, namely, the plaintiff's daughter, testified that her mother stopped at the curb and looked up and down the street, but she does not testify that her mother looked again after she had passed by De Marco's truck. There is no testimony in the case whatsoever which shows that the plaintiff made any observation such as is required by law when crossing in the middle of the block. It must be noted that the plaintiff's crossing took place in the *middle of the block*. An examination of the plaintiff's testimony, particularly on cross examination, shows that she did not look at the Lobdell car after she stepped off the curb. She says specifically that she looked up and down the street when she was on the curb (S. C., p. 29, l. 12), and in answer to question:

“Q And did you see it again after that until it struck you? A No, I didn't see it. I crossed the street to get over to my curb. I didn't see it.”

And she reiterates again and again that she looked as she stepped off the curb but did *not* look again after that.

The two cases in New Jersey which most closely resemble the present one on the facts are the cases of *Poole v. Brown*, N. J. Court of Err.

& App., 98 Atl. 262, and *Thornton v. Cater*, 111 Atl. 158 (N. J. Err. & App.).

In the case of *Poole v. Brown*, the plaintiff Poole attempted to cross Halsey street, at the intersection of Halsey and Bleecker streets, in Newark; he made an observation before starting to cross and observed a team of horses pulling a wagon about fifty or sixty feet away. There was a wagon of a certain department store backed up to the curb, extending out some twelve feet. Poole started to cross and was struck by the defendant's automobile, which happened to be upon the wrong side of the street at the time. The Court held that Poole was not guilty of contributory negligence as a matter of law because in the first place he had a right to assume that the defendant's car would be on the right side of the street and, secondly, he was not obliged to look through the horse and wagon and see the defendant's automobile coming behind it and passing it. There was also evidence in the case that the defendant gave no audible signal or warning, although the accident took place upon a cross-walk.

It seems to us that the Poole case is very clearly distinguishable from the Reilly case. First, the scene of the accident was different. Mrs. Reilly attempted to cross in the middle of the block. Poole crossed on a cross-walk. The duty owing by the plaintiff to the defendant is considerably greater when the plaintiff endeavors to cross in the middle of the block, as the Traffic Act or Motor Vehicle Act of New Jersey gives the pedestrian the right of way at a cross-walk. Secondly, in the Poole case defendant's automobile was on the wrong side of the road at the time of the accident. In the Reilly case it was on its right side of the road

and only swerved in an endeavor to avoid an accident. Thirdly, in the Poole case the approach of the defendant's automobile was concealed by a horse-drawn team. Consequently, Poole was not bound to make any further observation. In the Reilly case there was nothing concealing the automobile from Mrs. Reilly's view whatsoever, because when she made her first observation as she stepped off the curb she saw it approaching, and had she made another observation after she came out from De Marco's truck she would have observed it approaching in time to avoid it.

In the *Thornton v. Cater* case, Mrs. Thornton started to cross the street without making any observation after she left the curb. There were no other vehicles on the street or parked at the sides of the same. Consequently, the Court held that the plaintiff had a right to assume that her passage across the street would be observed by the driver of the defendant's car, in that he had the full width of the street in which to operate his car in order to avoid hitting her. This case is clearly distinguishable from the case at bar, because in the Reilly case the vision of the defendant's driver was obscured by the De Marco truck, and he not only had to avoid hitting the man Hartnett on a bicycle, which he did by sounding his horn and directing him to get out of the way, but he also had to turn out in order to avoid hitting the De Marco truck. Consequently, how could the defendant's driver be expected to perceive and observe anything that was concealed behind the De Marco truck?

Therefore, it is respectfully submitted that the plaintiff's conduct contributed proximately to the accident to such an extent that the Court should have exercised control of the case and

either granted a non-suit or directed a verdict for the defendant. *Brigden v. Pirozzi*, 117 Atl. 602, and *Monroe v. P. R. R. Co.*, 85 L. 688.

This action was prematurely brought to trial by the plaintiff.

The defendant, as part of his grounds for a motion of non-suit and for a direction of verdict, argued for a withdrawal of a juror on the grounds that it appeared from the medical testimony that the character of the permanency of the plaintiff's injuries could not be determined with any degree of reasonable certainty and, therefore, the ascertainment of compensatory damages would be a matter of speculation. The motion for mistrial was denied as well as the motion for direction of verdict. All of the physicians, both for the plaintiff and for the defendant, testified that they could give a more definite prognosis of the plaintiff's condition within six months to a year after the plaster cast was removed. For example, Dr. Featherstone, an expert called for the plaintiff, was asked on cross examination:

“Q Really, the only certainty as to what her condition will be in the future is after you have had an opportunity to examine her with the cast off? A That is right.”

And also Dr. Bartley W. Moffatt, an expert called by the plaintiff:

“Q And, really, until the end of the year it is impossible to state whether she will be incapacitated for all kinds of work or only for what you call manual labor? A Yes.”

The defendant's experts, namely, Dr. Walter Rullman and Dr. Irving M. Vanderhoff, testified to the same effect.

Inasmuch as the plaintiff was still in a plaster cast at the time of trial and, in the opinion of all of these medical experts, it would be a practical impossibility to give a definite prognosis as to her condition until six months or more after the removal of the cast, the defendant contends that the jury could not, with fairness to the defendant, estimate compensatory damages.

It is not just to a defendant to permit a jury to speculate upon the speculations of others. The physicians admitted on cross examination that they were only giving their opinions based upon the results of other cases; in other words, speculations, and then were forced to admit that they could give a definite prognosis after the cast had been removed. Six months after the removal of the cast, Mrs. Reilly may well be able to do manual labor again, and if so, the defendant should surely be entitled to this evidence in litigation damages.

It is, therefore, respectfully submitted that the case was prematurely tried. That a juror should have been withdrawn or a verdict directed for the defendant on this ground.

POINT VI.

The Trial Court erred in its charge with respect to the damages.

The charge of the Trial Court is set forth in the grounds of appeal. The error consists in the Court permitting the jury to speculate as to the damages after telling the jury that medical men substantially agree in the opinion that it is too early to determine the extent and duration of the plaintiff's disability. In other words, the Court erred in charging at all upon the question of future disability. If the Court was justified

in letting the case go to the jury, the charge should have limited the plaintiff's recovery to compensation for her pain and suffering, &c., up to the time of the trial, because the evidence in the case showed conclusively that at that time no one could give an opinion with reasonable certainty as to the extent and duration of the plaintiff's disability.

The defendants think that the true rule governing a situation of this kind is set forth in the language of Justice Minturn in the case of *Rheinsmith v. Erie Railroad Co.*, 76 N. J. L. 783, at page 785, where the learned Justice says:

“The rule concededly is that to entitle plaintiff to recover damage for set loss consequent upon her injuries, the damage must appear to be such as would in the language of the authorities be ‘reasonably certain’ to result from the injury.”

Yerkes v. Northern Pacific Railroad Co., 112 Wis. 184; see also 9 Ann. Cases 1050. If the Court had followed this it would either have directed a mistrial or else charged the jury not to speculate upon the possibilities of the extent and duration of the plaintiff's disability.

POINT VII.

It is, therefore, respectfully submitted that the judgment for the plaintiff should be set aside and reversed and a judgment entered thereon for the defendant or a *venire de novo* directed.

HEINE, BRADNER & LAIRD,
Attorneys for Defendants.

PALMER BRADNER,
Counsel.

New Jersey Court of Errors and Appeals

SARAH REILLY,

Plaintiff-Respondent,

vs.

LEIGHTON LOBDELL and ARTHUR

DOLBEY,

Defendants-Appellant.

*Action
at
Law.*

BRIEF OF RESPONDENT.

STATEMENTS.

The defendants appeal from a judgment given in the Monmouth County Circuit of the Supreme Court, on January 20th, 1926, against them and in favor of the plaintiff, in the sum of \$24,500. The plaintiff, Mrs. Reilly, a widow, was working at the Red Bank Steam Laundry, which is situated on the north side of White street in the Borough of Red Bank. White street, from curb to curb, is twenty-two feet nine inches wide. Her home was directly opposite the laundry. As she left the laundry on the noon of July 11th, 1925, she walked to the curb and waited for a car approaching from the west. This car stopped and she looked then to her left and saw a car approaching from the east about 175 feet away. She started across and

says she looked again at the middle of the road. The car was then some 75 feet away. She continued walking and the approaching car, which was owned by the defendant Lobdell and driven by the defendant Dolbey, turned to its left, past the center onto the lefthand side of the road, which is the southerly portion of the road, to turn out for a truck which was parked on the north side of the road. The Lobdell car continued on the lefthand side and struck Mrs. Reilly just as she had one foot on the curb, hurling her across the sidewalk and onto the lawn. The car itself jumped the curb. It is to be remembered that Mrs. Reilly was just stepping on the south curb of White street when the car approached from the east, striking her with its left mud guard. It was admitted at the trial that she suffered a complete transverse fracture of the body of the fifth lumbar vertebra. In other words, Mrs. Reilly had a broken back. She had been in a plaster cast since the day of the accident, and had been unable to move down to the time of the trial. She was still in a plaster cast at the time of the trial and would be for some further time. She will have a permanently stiff back; be totally incapacitated for manual labor; fifty per cent disabled for light housework, and will also suffer from nervous disorders.

The defendants appeal on eight grounds. These will be divided by the respondent in this brief, into three headings. The first four grounds deal with questions of evidence. The fifth and seventh grounds deal with contributory negligence, and the sixth and eighth grounds deal with the measure of damage.

ARGUMENT.

I.

No Error Was Made by the Trial Court on the Question of Admission and Rejection of Evidence.

The first three points raised by the appellants in their brief are in regard to the admission over objection of three questions. The objections to all of these questions made at the trial, were that the questions were leading. (S. C. p. 32, line 3; S. C. p. 37, line 11; S. C. p. 78, lines 12 to 40.) The Court of Errors and Appeals has repeatedly held that the admission of leading questions cannot be reviewed on appeal. *Leonard v. Standard Aero Corp.*, 95 N. J. L. 235, at page 236:

“The next objection is that the Court permitted certain leading questions to be asked, but this is a matter always left to the discretion of the court, and is not reviewable on appeal.”

Also see *Trenton, etc., Co. v. Cooper*, 60 N. J. L. 219 at 223, wherein the Court of Errors and Appeals speaking through Justice Collins, says:

“The question was somewhat leading, but the discretion of the Judge in admitting it cannot be reviewed on error.”

This disposes of the first three points urged by the appellants.

The appellants further urge that the trial court erred in refusing to permit Dr. Wilson to answer a certain question (S. C. p. 96, lines 15 to 38). Dr. Wilson was the family physician and was simply put on to testify as to the treatments, but was not asked to prognosticate or to detail the results of the injury. The question asked by the appellants on cross-examination in no way related to any of the matters brought out on the direct. It would

seem almost elementary that the cross-examination of a witness who was not a party to the suit can have no greater scope or be directed to any other matters except those brought out on the direct examination. The Court of Errors and Appeals in *Quellmalz v. Atlantic Coast R. Co.*, 110 Atl. 914, says a witness could not be cross-examined on matters not covered by examination in chief. It is therefore respectfully submitted that no error reviewable by this Court, appears in points one, two, three and four of the appellants' brief.

II.

The Trial Court Correctly Refused to Grant a Nonsuit and to Direct a Verdict.

Plaintiff offered three eye witnesses of the accident, namely, the plaintiff herself, her daughter, Mrs. Wenzell, and Alvin Harnett. In addition to this a map and measurements were offered by a civil engineer, and photographs by a photographer.

Mrs. Reilly, sworn for herself, testified in regard to the accident, as follows: Her home is directly opposite the laundry where she works. (S. C. p. 20). When she came out of the laundry she stopped at the curb to allow a car coming from Maple avenue to pass, but this car stopped, and before she crossed the street she looked up White street and saw the defendants' car near the fire-house. (S. C. p. 20). She then crossed the street and just as she got across and was about to put her foot on the curb the car hit her in the back, knocking her down, and jumped the sidewalk. (S. C. p. 21, lines 6 to 16.) On cross-examination (at p. 28, line 20) she says after she stepped off the curb she saw the Lobdell car coming up the street. She repeats this at page 29, line 12, and at line 40.

Mrs. Wenzell, the plaintiff's daughter, was sit-

ting on the porch. She saw the Ford station wagon of the defendants when it passed Mr. Harnett and turned to the left hand side of the street. It stayed on the left hand side of the street and struck Mrs. Reilly as she was putting her foot on the curb (p. 32, line 40). On cross-examination she stated the car came up on the lawn (p. 52, line 15); that her mother's foot was on the curb when she was struck (p. 53, line 35).

Alvin Harnett was riding a bicycle and was at the firehouse when Mrs. Reilly stepped off the curb. The defendants' automobile blew its horn and turned to the left and stayed on the left hand side of the road until it struck Mrs. Reilly close to the curb. (P. 61, lines 18 to 40.) The automobile jumped the curb and landed on the sidewalk (p. 62, line 15). On cross-examination Mr. Harnett said that when Mrs. Reilly came out from behind a truck about two feet she looked around and then went on across. (P. 70, line 20.) The left mudguard of the automobile struck Mrs. Reilly.

Miss Farrell, page 77, Mrs. Mary Farrell, her mother, page 81, Mrs. Margaret Henry, page 87, and Mrs. Teresa Marks, page 92, all saw the automobile over this left hand curb and saw Mrs. Reilly lying beyond the sidewalk after the actual happening of the accident. These were all the witnesses and the gist of the testimony covering the actual happening of the accident.

It is to be noted, and the respondent stresses the fact that she was struck on the extreme left hand side of the road; that if the car of the defendants' had been travelling upon its right hand side as Mrs. Reilly had the right to presume it would, she would never have been injured. It is to be further noted that the car jumped the left hand curb after hitting Mrs. Reilly.

The appellants cite in their brief the two cases of *Poole v. Brown*, 89 N. J. L. 314, and *Thornton v. Cater*, 94 N. J. L. 435, and attempt to distin-

guish the instant case from those two cases.

It is respectfully submitted that the facts of the instant case are more cogent and more indicative of negligence on the part of the defendant, than in either of the cited cases. The plaintiff had the right to assume that she was in a place of safety when struck. She had the further right to assume that the defendants would not drive their automobile on the left hand side or the wrong side of the street. In the words of Justice Kalisch in *Poole v. Brown, supra*, at page 318:

“Nor’ was the appellant bound to anticipate that a vehicle would approach him on the left side of the road, which was the wrong side for vehicles to be on going south * * * From what has been said it is manifest that the question whether or not the appellant had acted with reasonable care in the circumstance which confronted him at the time he made the attempt to cross the street, is one for the jury and not for the Court to pass upon.”

In *Thornton v. Cater, supra*, Chief Justice Gummere, at page 437, says:

“In determining whether or not this non-suit was properly directed, every presumption of fact must be resolved in favor of Mrs. Thornton. She saw the automobile approaching; she perceived that it was three hundred feet away as she stepped off the westerly curb; she knew that the roadway was a very narrow one; she had a right to assume that her passage across the street would be observed by the driver of the defendant’s car; she knew that he could utilize the full width of the street to avoid running her down, for the evidence showed that there was no obstruction in the street to prevent such free use of it by him. We do not think it can be said as a matter of law that a reasonably prudent person exercising due care for her own safety would not have acted as Mrs. Thornton did in the situation which was presented to her mind. In other words, that the existence of negligence

on her part was a matter for the jury, and not for the court, to settle, in view of all the facts and presumptions which have been indicated."

The circumstances and attendant facts in the case sub judice are even more favorable to the plaintiff than they were to Mrs. Thornton. We might paraphrase Chief Justice Gummere's words as follows:

"Mrs. Reilly saw the automobile approaching. She perceived it was 200 feet away as she stepped off the northerly curb. She knew that the roadway was a very narrow one. She had a right to assume that her passage across the street would be observed by the driver of the defendants' car. She knew that he could utilize the full width of the street to avoid running her down."

Clearly under the testimony of plaintiff's witnesses the case properly was submitted to the jury. No reference has been made to Arthur Dolbey's testimony. He, however, admitted that his car did jump the sidewalk and that he did strike Mrs. Reilly on the left hand side of the center of the road. It is respectfully submitted that the trial court correctly submitted the case to the jury on all the facts.

III.

The Trial Court Properly Submitted the Question of Damages to the Jury.

The appellants in their brief, as a further ground of appeal, argue that the plaintiff's injuries had not, under the evidence, been proven to such a degree of certainty that it was proper to submit the question to the jury. A short analysis of the medical testimony offered by the plaintiff is necessary to determine this question. Dr. Harry B. Slocum, Chief of Staff of the Monmouth Memorial Hospital

at Long Branch, had examined Mrs. Reilly. He testified as to her present condition. (S. C. p. 97 and 98.) At page 99, line 32, the following questions were asked:

Q. Doctor, are you able to state with reasonable certainty whether or not she will ever be able to do hard work? A. In my judgment, she will always have a weak back; she will have a stiff back, and on standing any length of time or walking any length of time or attempting to bend over she will have pain in her back of such a character as to disable her from laborious work.

Q. Doctor, applying that to ordinary housework, what would you say as to that? A. I would think she would have a fifty per cent permanent disability as far as ordinary housework is concerned.

* * * * *

Q. And will you state to the jury what kind of a union that is? A. Well, you know, ordinarily between the different vertebrae there is a certain amount of cartilage, which allows certain flexibility or movement of the spine; down in that portion of the spine; not a great deal but a certain amount. Now, in the healing process this callus or bone cement is thrown out in such quantities as to make it a very much less flexible spine than it was before. She will have a stiff spine.

* * * * *

Q. Assuming, Doctor, that this woman worked in a laundry, requiring lifting of irons and ironing of clothes, in your opinion, will she ever be able to do that work or character of work again? A. Absolutely not.

On cross-examination he was asked in relation to the last question and answer set out as follows:

Q. That last answer, doctor, is a result which you are able to arrive at with reasonable certainty, is it? A. Yes, sir.

At page 103 on cross-examination, line 1, Dr.

Slocum definitely states she would never have a flexible spine. At page 104 his testimony is based on his experience with similar cases, and he states she will have a permanently stiff back.

Dr. Maher, also offered by the plaintiff, is a surgeon connected with the Monmouth Memorial Hospital. At page 106, line 28, he states that Mrs. Reilly will never be able to perform the work that she had heretofore. The condition will be permanent and she will suffer a loss of fifty per cent (S. C. p. 106, lines 30 to 41); she will never be able to bend over. (S. C. p. 108, line 8.)

Dr. Daniel Featherstone, offered by the plaintiff, is an orthopedic surgeon. (S. C. page 108.) Mrs. Reilly will never be able to bend over. (S. C. 109, line 20.) She will have a permanently stiff back and will never be able to do the character of work she had done before. (S. C. 109, lines 20 to 40.) On cross-examination his opinion was based on the results in this type of cases.

Dr. Barclay W. Moffatt, an orthopedic surgeon connected with the Long Branch Hospital, Spring Lake Hospital, the Ruptured and Crippled of New York, and the New York Post Graduate Hospital, stated (S. C. p. 112) that Mrs. Reilly's condition was permanent; that she would never be able to do ordinary housework, and as far as manual work goes she has a 100 per cent permanent disability. On cross-examination he stated that the only question which was still in doubt was whether at the end of a year she would be incapacitated to do all kinds of work, or only manual labor.

There was no dispute by the defendants of the character of the injury. In fact, it was stipulated during the trial that she had suffered a broken back.

On cross-examination Dr. Vanderhoff, offered by the defendants, stated that there is no question about the injury being serious. (S. C. page 127, line 32.) He further stated on cross-examination

that Mrs. Reilly would never be able to bend her back. (S. C. p. 129, line 20.) There was no question in his mind that the back would always be stiff. (S. C. p. 130, line 5.)

By the overwhelming weight of the testimony it thus appears that within the reasonable probability all the doctors state that Mrs. Reilly, the respondent, is permanently injured. She will always suffer from a stiff back, and according to the plaintiff's doctors she will never be able to do the type of work which she was doing prior to her injuries, and will also be unable to do any acts in ordinary housework requiring lifting or manual labor such as sweeping.

It is respectfully submitted that such testimony shows the injury and the results of the injuries to be so definite as to permit the extent to be ascertained by the jury.

The Court's charge when read as a whole covers this very point. The Court says (S. C. p. 163) :

"The evidence is undisputed that she has been practically helpless since the time of the accident, encased in a plaster cast confined to her bed. The medical opinion seems to be that she will continue in that condition for some considerable time yet. There is also some medical testimony that she may never be able to resume the occupation in which prior to the accident she supported herself."

The charge of the trial Court together with the evidence adduced, complies with the general rule in such cases. The case cited in Appellants' brief and the quotation therefrom, it is believed is applicable to the present case. In the words of that case :

"The damage to Mrs. Reilly has been proven to have resulted from the injuries and has also been proven to be reasonably certain in its extent and permanency."

In *Richter v. Excelsior Brewing Company*, 70 N. J. L. 200, the Supreme Court refused to grant a new trial on the ground that the evidence showed that it was *probable* that the plaintiff would never entirely recover from their effects.

The general rule is laid down in 17 C. J. 764:

“It is necessary that there exist a reasonable certainty that the apprehended future consequences will ensue from the original injury. * * * The evidence to authorize a recovery because of the future consequences of an injury to the person, must establish such consequences with reasonable certainty or reasonable probability.”

In 8 R. C. L. 470:

“To warrant a recovery for permanent injury, however, the future effect of the injury must be shown with reasonable certainty. While *absolute* certainty *should not* be required, yet a mere conjecture or even a probability does not warrant the giving of damages for future disability which may never exist.”

In 11, *L. A. R.*, at page 43, there is appended a note which lays down the general rule that the extent and effect of injuries with reference to future disability, need be shown only with reasonable certainty.

It is respectfully submitted that in line with the foregoing statements of the law applicable to the case sub judice, the permanent consequences of the injury have been proven with reasonable certainty. Dr. Harry B. Slocum, head of the Monmouth Memorial Hospital, Dr. John Maher, a surgeon, Dr. Daniel Featherstone, an orthopedic surgeon, Dr. Barclay Moffatt, an orthopedic surgeon, have all testified that the respondent will never be able to perform any manual labor; that she will always suffer from a stiff back. The only possible uncertainty arising from their testimony is as to the extent of her ability to perform light work. The

four experts, however, unanimously agree that her days have been numbered so far as the performance of manual labor which was her means of livelihood.

IV.
CONCLUSION.

For the foregoing reasons, namely, that the admission of the leading questions is not reviewable by this court, that the denial of the question to Dr. Wilson was not within the scope of direct examination and therefore not proper cross-examination; that the plaintiff was not guilty of contributory negligence, that the case was properly submitted to the jury and that the respondent has proven with reasonable certainty the extent and permanency of her injuries, it is respectfully submitted that the judgment below should be affirmed.

Respectfully submitted,

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Attorneys for and of Counsel

With Respondent.



