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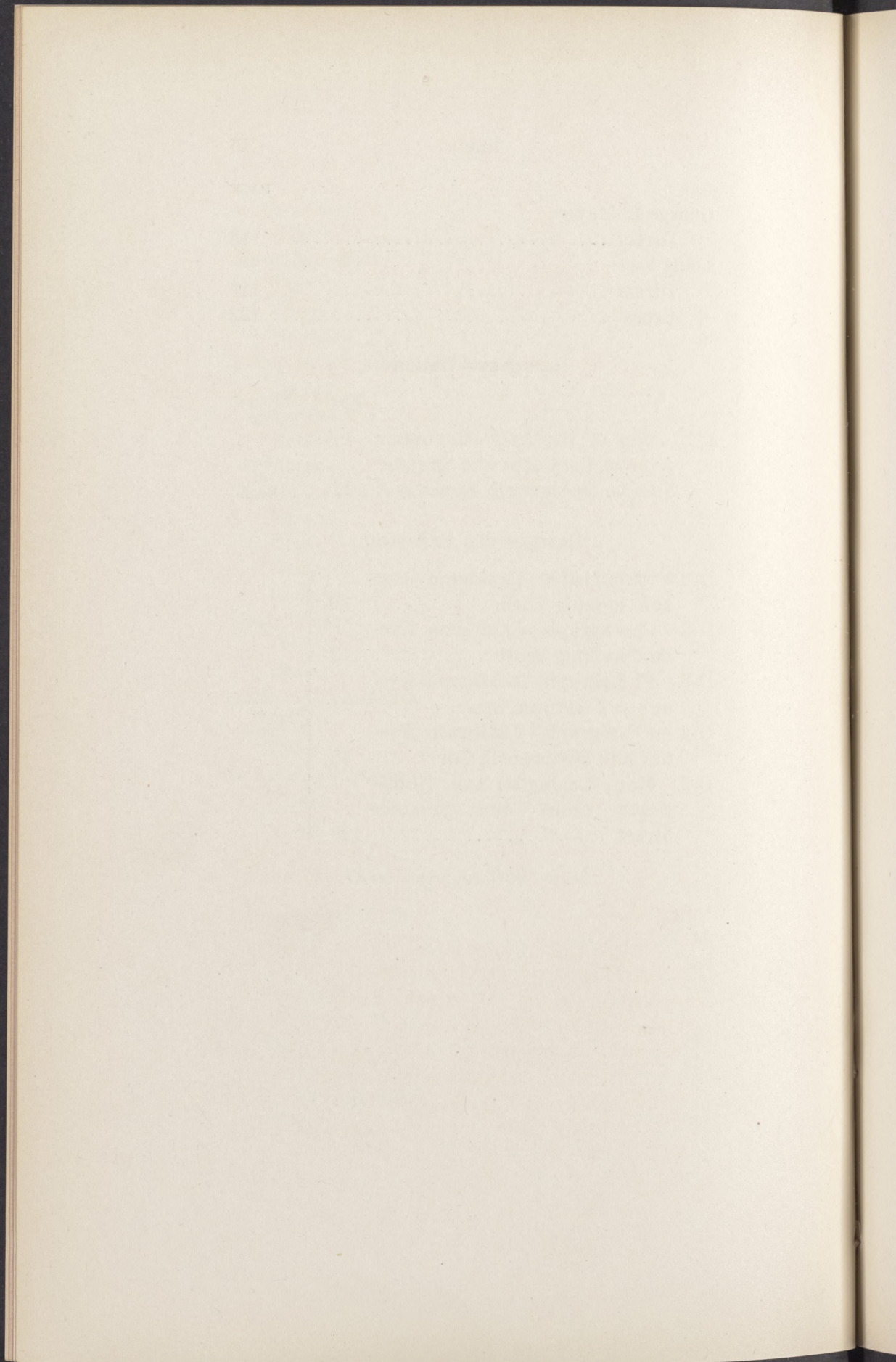
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Opinion, Supreme Court.

(Filed March 28, 1929.)

New Jersey Supreme Court

10 a

No. 34, October Term, 1928.

LILLIE CLARKSON and RUTGERS
CLARKSON, her husband,
Plaintiffs,

v.

LOUIS LEY,
Defendant.

20 a

Submitted October 12, 1928; decided March 28,
1929.

Defendant's rule to show cause.

Before GUMMERE, Chief Justice and Justice
PARKER.

For the Plaintiffs, WARD & MCGINNIS.

30 a

For the Defendant, COLLINS & CORBIN.

PER CURIAM:

This was a suit by husband and wife based on
personal injuries to the wife. There was a ver-
dict for the husband of \$2,500 to which no ob-
jection was made. There was a verdict in favor
of the wife for \$12,500 which is attacked as ex-
cessive. The circumstances of the accident were
that Mrs. Clarkson, a woman of 58 or 60 years
old was crossing a street and was struck by the

40 a

Opinion of Supreme Court.

10b defendant's automobile. She said she was tossed in the air and landed on her back. No limbs were broken but both pelvic bones were fractured and a small process was also broken. Her body was a mass of bruises, her head cut and naturally she sustained very extensive shock. She was in bed 14 weeks, then on crutches and at the trial testified that she had never recovered her former ability to do work.

20b If the testimony in relation to the accident is to be believed, and it is not seriously disputed, it is a marvel that the woman was not killed. The doctors seem to agree that she made what they call a good recovery, but that is not necessarily the same as if she had never been injured. It cannot be denied that she was very seriously injured and in our estimation the verdict, while fairly large should not be set aside as excessive.

The rule to show cause will therefore be discharged.

30b

40b

Order of Affirmance.

(Filed April 15, 1929.)

NEW JERSEY SUPREME COURT.

LILLIE CLARKSON and RUTGERS
CLARKSON, her husband,

*Plaintiffs,**v.*

LOUIS LEY,

Defendant.

Order Affirming
Judgment and
Discharging Rule
to Show Cause.

10 c

This cause having been duly argued at the October Term, 1928, of the Supreme Court, on Rule to Show Cause, by the counsel for the plaintiffs and defendant, and the Court having duly considered the argument:

20 c

It is thereupon ordered and adjudged that the judgment be affirmed in all things, and that judgment be entered *nunc pro tunc* as of the 1st day of June, 1928, and that the rule to show cause be discharged and that plaintiffs' costs be taxed.

Entered April 15, 1929, on motion of Ward & McGinnis, attorneys of plaintiffs.

30 c

A true copy.

FRED L. BLOODGOOD,
Clerk.

40 c

Judgment, Supreme Court.

(Filed Apr. 15, 1929.)

NEW JERSEY SUPREME COURT.

10 d

LILLIE CLARKSON and RUTGERS. CLARKSON, her husband, <div style="text-align: right;"><i>Plaintiffs,</i></div> <div style="text-align: center;"><i>v.</i></div> LOUIS LEY, <div style="text-align: right;"><i>Defendant.</i></div>	}	Action at Law. Judgment on Postea & Rule to Show Cause.
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The rule to show cause heretofore entered in this cause having been discharged by the Court,

20 d

It is ordered that judgment final be and hereby is entered against the defendant and in favor of Lillie Clarkson, plaintiff, for the sum of twelve thousand five hundred dollars, and in favor of Rutgers Clarkson, plaintiff, for the sum of two thousand five hundred dollars, besides costs to be taxed.

Entered April 15, 1929, as of June 15, 1928.

30 d

Damages	\$12,500.00 L.C.	
“	2,500.00 R.C.	
	\$15,000.00	
Costs	105.43	
	\$15,105.43	

40 d

Notice of Appeal.

(Filed May 1, 1929.)

NEW JERSEY SUPREME COURT.

LILLIE CLARKSON and RUTGERS
CLARKSON, her husband,
Plaintiffs,

v.

LOUIS LEY,
Defendant.

Action at Law.

10e

To

Messrs. WARD & MCGINNIS,
Attorneys of Plaintiffs.

20e

SIRS:

TAKE NOTICE that the defendant appeals to the
Court of Errors and Appeals from the whole of
the judgment entered in this cause.

Dated April 26, 1929.

Respectfully yours,

COLLINS & CORBIN,
Attorneys of Defendant.

30e

Service acknowledged May 1, 1929.

WARD & MCGINNIS,
Attorneys of Plaintiffs.

40e

Grounds of Appeal.

(Filed May 28, 1929.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10f

LILLIE CLARKSON and RUTGERS
CLARKSON, her husband,
Plaintiffs-Respondents,

v.

LOUIS LEY,
Defendant-Appellant.

} Action at Law.

20f

The appellant states the following grounds of appeal:

1. The trial court refused to direct a verdict in favor of the defendant-appellant when thereunto moved, whereas said motion should have been granted on the ground that the plaintiff, Lillie Clarkson, as a matter of law was guilty of contributory negligence.

2. The trial court erroneously instructed the jury as follows:

30f

"I am now giving you the rule of law as to the conduct of the defendant with regard to the plaintiff, who was a foot passenger upon this cross-walk."

3. The trial court erroneously instructed the jury as follows:

40f

"Now, it does not appear in the evidence that this Holdsworth Court crosses the street; but, nevertheless and notwithstand-

Grounds of Appeal.

ing that it does not cross the street, and that there is another street, Summer Street, further up, which likewise does not cross the street but comes in from the opposite direction, it was a cross-walk where she was crossing, if she was crossing within the confines of what I shall define as a 'cross-walk.'"

10g

4. The trial court erroneously instructed the jury as follows:

"Now, a cross-walk is that portion of the street which would be embraced within the boundaries of the lines of the sidewalk, if they were continued straight across the street; and in that situation the law has defined the duty of the automobilist as follows:

20g

'When a pedestrian and an automobile moving in different directions approach such a crossing at the same time or in such a manner that if both continue their respective courses there is danger of a collision, then the pedestrian is entitled to first use the crossing, and it is the duty of the driver of the automobile to stop or to so reduce speed as to give such pedestrian a reasonable opportunity to pass in safety, and to that end to have such automobile under such control as to enable him to do so.'

30g

"Now, that is the duty which the law casts upon the automobilist. Concerning the pedestrian I will speak to you in a few moments."

40g

Grounds of Appeal.

5. The trial court erroneously instructed the jury as follows:

10h

“I have stated to you the rule of law at a cross-walk, where the houses are less than 100 feet apart, as to the duty of the automobilist. I will now state to you the duty of the pedestrian.

‘Under similar circumstances as to her or his duty, the right of way over an automobile approaching such crossing at the same time does not relieve him (or her) of the legal duty to use reasonable care to avoid colliding with such automobile, should its driver disregard such right.’”

20h

COLLINS & CORBIN,
Attorneys of Defendant-Appellant.

Service acknowledged May 28, 1929.

WARD & MCGINNIS,
Attorneys of Plaintiffs-Respondents.

30h

40h

Complaint.

(Filed April 26, 1927.)

New Jersey Supreme Court

10

PASSAIC COUNTY.

LILLIE CLARKSON and RUTGERS
CLARKSON, her husband,

Plaintiffs,

v.

LOUIS LEY,

Defendant.

Action at Law.
Complaint.

20

FIRST COUNT.

The plaintiff, Lillie Clarkson, residing in the City of Passaic, County of Passaic and State of New Jersey, complaining of the defendant says:

1. On the Third day of December, Nineteen Hundred and Twenty-six, and for a long time prior thereto the defendant, Louis Ley, was the owner and operator of a certain automobile which he caused to be operated in a general southerly direction on Lexington Avenue, at or near a point where the said Lexington Avenue intersects with Holdsworth Court on the easterly side and Summer Street on the westerly side, all of the said streets being public highways in the City of Passaic, County of Passaic and State of New Jersey.

30

2. At the said time and place it became and was the duty of the said defendant, Louis Ley, to

40

Complaint.

operate his said automobile in a careful, prudent and reasonable manner, to give proper warning of his approach at such intersecting streets and to operate his said automobile at a reasonable and legal rate of speed and to at all times have his said automobile in proper mechanical condition and to at all times have his said automobile under proper control so as to avoid running into pedestrians who were then and there lawfully walking upon the said highways.

3. At the said time and place the plaintiff, Lillie Clarkson, was walking on the cross-walks of the intersection of the said Lexington Avenue and Holdsworth Court, from the easterly side of Lexington Avenue to the westerly side thereof in a careful and prudent manner and without negligence on her part.

4. The defendant, Louis Ley, disregarding the duty which he owed to the said plaintiff, Lillie Clarkson, did operate his said automobile in a careless, reckless and negligent manner and did propel the same at a high and excessive rate of speed and did utterly fail to give any warning of his approach and failed to reduce his speed upon reaching the said intersecting streets to the rate of speed as required by law, and did utterly fail to apply his brakes or any other mechanical appliance on the said automobile so as to cause the same to stop or to reduce its speed. By reason of which he did cause his said automobile to run into and collide with the plaintiff, Lillie Clarkson, who was then and there crossing Lexington Avenue at the intersection aforesaid.

5. As a result of the negligence of the said defendant, Louis Ley, the aforesaid plaintiff, Lillie

Complaint.

Clarkson, was struck by the automobile of the said defendant and hurled over the said automobile and for a distance of thirty feet more or less, and violently thrown to the pavement on Lexington Avenue, sustaining injuries of a permanent nature, to wit: A complete fracture of the right pelvis, a complete fracture of the left pubic bone, a small fragment fractured from the outer surface of the right acetabulum, which has not nor will re-unite, severe lacerations and bruises of both knees, a slight dislocation and permanent injury to the spine, a severe laceration of the scalp, and slight concussion of the brain, contusions, abrasions and lacerations of the face, arms and body. That as a result of the negligence of the said defendant, the plaintiff, Lillie Clarkson, further suffered from severe nervous shock and still is suffering from nervous shock which is of a permanent character, and she was further compelled to undergo great pain and suffering and was compelled to be confined to her home and bed for a long period of time and will be for a long time in the future compelled to undergo great pain and suffering and the said plaintiff has been unable to walk and carry on her regular duties as she has and had a lawful right to do, and will be unable to carry on her regular duties in the future; that the said plaintiff will remain permanently disabled, and that her inability to walk and move about will be of a permanent character. That the said plaintiff, Lillie Clarkson, was unable to carry on her regular household duties and will be unable in the future to ever perform such duties by reason of the injuries aforesaid.

WHEREFORE the plaintiff, Lillie Clarkson, demands as damages on the First Count the sum of Fifty Thousand (\$50,000.00) Dollars.

Complaint.

SECOND COUNT.

The plaintiff, Rutgers Clarkson, the husband of the plaintiff, Lillie Clarkson, residing in the City of Passaic, County of Passaic and State of New Jersey, says:

10

1. Paragraphs 1, 2, 3, 4 and 5 of the First Count are made part of this count.

20

2. By further reason of the negligence of the said defendant, Louis Ley, this plaintiff was compelled to expend large sums of money for medical aid, treatment and attention in an effort to cure his wife of the injuries aforesaid and will be compelled in the future to expend large sums of money in an effort to cure and heal her of the aforesaid injuries. That this plaintiff was compelled to expend money for nurses and domestic help, and will be in the future compelled to expend large sums of money for nurses and domestic help, having been deprived of the services of his said wife by reason of the negligence of the defendant aforesaid. That this plaintiff was further deprived of the services and consortium of his said wife and will be in the future ever deprived of the services and consortium of his wife.

30

WHEREFORE the plaintiff, Rutgers Clarkson, demands as damages on the Second Count the sum of Ten Thousand (\$10,000.00) Dollars.

Judgment will be demanded in the First Count in the sum of Fifty Thousand (\$50,000.00) Dollars; and in the Second Count in the sum of Ten Thousand (\$10,000.00) Dollars, together with costs of suit.

40

RICHARD J. BAKER,
Attorney for Plaintiffs.

Answer.

(Filed May 10, 1927.)

NEW JERSEY SUPREME COURT,
PASSAIC COUNTY.

<p>LILLIE CLARKSON and RUTGERS CLARKSON, her husband, <i>Plaintiffs,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">LOUIS LEY, <i>Defendant,</i></p>	<p style="font-size: 3em;">}</p> <p>Action at Law. Answer.</p>	<p>10</p>
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The defendant, residing in the City and County of Passaic, State of New Jersey, says that: 20

FIRST DEFENSE TO FIRST COUNT.

1. He admits that on December 3, 1926, he was the owner of a certain automobile which he was operating in a general southerly direction on Lexington Avenue, a public highway in the City of Passaic aforesaid; he denies the remaining allegations of paragraph 1.

- | | |
|---------------------------|----|
| 2. He denies paragraph 2. | 30 |
| 3. He denies paragraph 3. | |
| 4. He denies paragraph 4. | |
| 5. He denies paragraph 5. | |

FIRST DEFENSE TO SECOND COUNT.

1. He repeats his answers to paragraphs 1 to 5, inclusive, of the first count.

- | | |
|---------------------------|----|
| 2. He denies paragraph 2. | 40 |
|---------------------------|----|

Answer.

SECOND DEFENSE TO EACH COUNT.

10 The alleged accident set forth in the complaint was due to contributory negligence on the part of the plaintiff, Lillie Clarkson, in failing to exercise reasonable care for her own safety.

THIRD DEFENSE TO EACH COUNT.

The alleged accident set forth in the complaint was due to contributory negligence on the part of the plaintiff, Lillie Clarkson, in failing to look or listen or otherwise inform herself of the approach of the automobile with which she collided.

FOURTH DEFENSE TO EACH COUNT.

20 The alleged accident set forth in the complaint was due to contributory negligence on the part of the plaintiff, Lillie Clarkson, in suddenly and without warning stepping from between two automobiles going in the opposite direction to that of the defendant's automobile and directly in the path of the defendant's automobile.

FIFTH DEFENSE TO EACH COUNT.

30 The alleged accident set forth in the complaint was due to contributory negligence on the part of the plaintiff, Lillie Clarkson, in suddenly and without warning running from between two automobiles going in the opposite direction to that of the defendant's automobile and directly in the path of the defendant's automobile.

COLLINS & CORBIN,
Attorneys of Defendant.

Reply.

(Filed May 11, 1927.)

NEW JERSEY SUPREME COURT,
PASSAIC COUNTY.

LILLIE CLARKSON and RUTGERS CLARKSON, her husband, <i>Plaintiffs,</i> <i>v.</i> LOUIS LEY, <i>Defendant.</i>	}	Action at Law. Reply.	10
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The plaintiffs, replying to the answer filed in the above entitled cause, say: 20

1. They deny that the plaintiff, Lillie Clarkson, was in any wise guilty of contributory negligence as alleged in the first, second, third, fourth and fifth defense to each count.

RICHARD J. BAKER,
Attorney for Plaintiffs.

30

40

Case.NEW JERSEY SUPREME COURT,
PASSAIC CIRCUIT.

10

LILLIE CLARKSON and RUTGERS
CLARKSON, her husband,
*Plaintiffs,**v.*LOUIS LEY,
Defendant.

Action at Law.

Paterson, N. J., June 1, 1928, 10:00 A. M.

20

Tried before—Hon. CLIFFORD L. NEWMAN, J., and
a Jury.

APPEARANCES:

RICHARD J. BAKER, Esq. (by PETER MC-
GINNIS, Esq.), for Plaintiffs.Messrs. COLLINS & CORBIN (by EDW. A.
MARKLEY, Esq.), for Defendant.A Jury of twelve was duly empanelled and
sworn.

30

Counsel for the respective parties opened the
case to the Jury.

PLAINTIFFS' CASE.

EDWARD A. DEVLIN, sworn.

*Direct examination by Mr. McGinnis:*Q. Mr. Devlin, what is your business or profes-
sion? A. Civil engineer.

40

Q. How many years? A. Eight years.

Edward A. Devlin, direct.

Q. Are you acquainted with the locality known as Lexington Avenue and Holdsworth Court and Summer Street? A. Yes.

Q. Did you at the request of the plaintiffs in this case make a map? A. I did.

Q. I show you the map on the board here; is this the map you made? A. Yes, that is it. 10

Q. To what scale is it drawn? A. One inch is equal to ten feet.

Q. Lexington Avenue, marked on the map here, that, I believe, runs north and south generally? A. Practically north and south.

Q. Summer Street runs west, from the westerly side of Lexington Avenue; is that right? A. Yes.

Q. Holdsworth Court runs east, from the easterly side of Lexington Avenue? A. Yes, sir. 20

Q. What is the width of Lexington Avenue from curb to curb? A. The width from curb to curb is 48 feet.

Q. What is the width of Summer Street from curb to curb? A. 40 feet.

Q. What is the width of the sidewalk on Summer Street, that is, to the property line, from the curb? A. 14 feet.

Q. What is the width of Holdsworth Court from curb to curb? A. 24 feet. 30

Q. What is the width of the sidewalk from the curb to the property line? A. Eight feet.

Q. Lexington Avenue is paved with an improved pavement—*asphalt* or some such pavement? A. Yes, *asphalt* pavement.

Q. Is there a line or marking to indicate the center line of the street? A. Yes.

Q. You haven't that marked on that street? A. No. 40

Q. That is put there by the Police Department,

Edward A. Devlin, direct.

or some department, I suppose? A. Yes, the Traffic Department puts lines in the center, or, I should say, practically in the center, to separate north and south bound traffic.

10 The Court: Speak up.

Q. Will you take your rule and tell us the distance it is from the northerly curb of Summer Street and Summer Street, up to the beginning of this, to the northerly end of what I indicate here, as the second house from the corner? A. 110 feet.

The Court: 110 feet to what?

Mr. McGinnis: To the southerly end.

20 The Witness: To the southerly property line of the second house.

Q. From Summer Street. A. From Summer Street. 160 feet to the northerly line.

Mr. Markley: How much?

The Witness: 160 feet.

Q. Now, will you indicate, from the southerly line of Lexington Avenue and Summer Street, the distance to the line where you have marked "48" across the street?

30 The Court: To what line is that?

Mr. McGinnis: Line indicating the width of Lexington Avenue and the figures "48."

A. 95 feet.

Q. That line is approximately opposite the crossing of Holdsworth Court,— A. Yes, sir.

Q. —at the southerly end or side, whatever you would call it? A. Yes.

40 Q. Is there, or not, an electric light on the corner of Summer Street? I do not see it marked on

Edward A. Devlin, cross.

the map. If you do not know, do not answer? A. I do not know.

Mr. McGinnis: Yo do not know; that is all.

Cross examination by Mr. Markley:

10

Q. This distance you gave of 95 feet, as I understand it, is from the southerly curb line of Summer Street, at the corner,— A. Yes, sir.

Q. —going south along the curb of Lexington Avenue— A. Yes, sir.

Q. —on the west side— A. Yes.

Q. —to the point where the line is located that says 48 feet— A. Yes, sir.

Q. —designating the width of Lexington Avenue? A. Yes.

20

Q. In other words, from the southerly corner of Summer Street and Lexington Avenue, to that line marked "48 ft." is 95 feet; isn't it? A. 95 feet.

Q. Where that line marked "48 ft." is located is inside the lot line of the Clarkson house, as shown on that map? A. Yes, sir.

Q. Now, won't you just tell me the distance from the corner, that would be the southerly corner, on Holdsworth Court, to the same line marked "48 ft."? A. Eight feet.

30

Q. Eh? A. Eight feet.

Q. How far is it from the northerly line of Summer Avenue, if extended across Lexington Avenue, to the northerly line or Holdsworth Court? What is the distance between those two lines, on a straight line? A. You mean (indicating)?

Q. Yes, producing from the northerly curb, across the street, the distance along a straight line? A. 95 feet.

40

Q. 95 feet. Now, you said you did not denote on

Edward A. Devlin, cross.

your map the white line in the center of the street? Did you? A. No, I haven't it on the map.

Q. I show you a photograph and ask you whether you recognize that photograph? A. Yes.

10 Q. Whether that shows the white line that you have reference to? A. Yes, it does.

Q. Suppose you take the stand now, for a moment, Mr. Devlin. A. (Witness resumes stand.)

Q. Taking this first photograph, which you say, shows the white line, can you tell us in what direction that photograph is looking? Is it north or south on Lexington Avenue? A. Looking north.

Q. In other words, it is looking toward Paterson? A. Toward Paterson.

20 Q. That shows Lexington Avenue, does it not? A. Yes, it does.

Q. It shows the electric light to which the Senator refers? A. Yes, sir.

Q. Eh? A. Yes, sir.

Q. This street here? A. That is Summer Street.

Q. That is the left of the picture, isn't it? A. Yes, sir.

Mr. Markley: Have you any objection to that going in, Senator?

30 Mr. McGinnis: No, I haven't any.
(Marked D-1 in evidence.)

Mr. McGinnis: By the way, I offer the map in evidence.

Mr. Markley: No objections.
(Marked P-1 in evidence.)

Q. This picture is looking north; in other words, looking from the direction in which a vehicle would come, going south? A. Yes.

40 Q. Now, I show you another photograph, and ask you whether you recognize that? A. Yes.

Edward A. Devlin, cross.

Q. Does that show Lexington Avenue as the main street in the picture? A. Lexington Avenue, looking south.

Q. That is Lexington Avenue, looking south. In other words, as you look down the picture, that is looking south? Yes, toward Passaic. 10

Q. At the right of the bottom of the picture is Summer Street? A. Summer Street.

Q. So marked on the street sign? A. On the sign.

Q. Across the picture— A. Holdsworth Court.

Q. That is Holdsworth Court. That is a fair representation of the locality, is it not? A. Yes.

Mr. Markley: Any objection?

Mr. McGinnis: None at all. 20

Mr. Markley: I offer this picture.

(Marked D-2 in evidence.)

Q. This picture, as I understand you, is looking south? A. Toward Passaic.

Q. Toward Passaic. Now, I show you another picture, sir, and ask you whether you recognize this as part of the intersection of Autumn Street and Lexington Avenue?

Mr. McGinnis: Autumn Street; that is nearer to Passaic? 30

The Witness: Nearer to Passaic; yes, sir.

Q. Do you recognize that? A. Yes.

Q. Is that a fair representation of it? A. Yes, sir.

Q. Autumn Street, can you show approximately on your map where Autumn Street would be, which direction from Summer Street? A. (Indicating.)

Q. This will probably be Autumn Street? A. Autumn Street. 40

Edward A. Devlin, cross.

Mr. Markley: Do you mind my putting Autumn Street there, Senator?

Mr. McGinnis: No.

The Court: At the south end of the map.

Mr. Markley: It is one block south of Summer Street, your Honor.

10 Q. And runs parallel to Summer, does it not? A. No.

Q. It doesn't go across? A. No.

Q. But it runs parallel to Summer? A. It may not be parallel, but generally.

Q. General direction, east and west? A. Yes.

Q. So that Summer Street is north a block? A. Autumn?

20 Q. Autumn is one block south of Summer Street? A. Yes.

Q. Does it go across? A. No.

Q. It does not go across? A. No.

Q. On the same side of Lexington Avenue? A. Yes.

Q. Take the stand. A. (Witness resumes stand.)

30 Q. Now, this street shown at the bottom of this picture that we are referring to, that is Autumn Street, isn't it? A. That is Autumn Street.

Q. As you look across the street on the picture, to the far side, that shows Holdsworth Court? A. Yes.

Q. Where the little delivery wagon is located; is that so? A. Yes.

Q. In other words, this picture is looking in a generally northerly direction, along Lexington— A. —Avenue, yes.

40 Mr. Markley: Any objection?

Mr. McGinnis: No.

(Marked D-3 in evidence.)

Edward A. Devlin, cross.

Q. I have one more picture, and I believe that is looking in a southerly direction along Lexington Avenue? A. Yes.

Q. It shows what street at the left of the picture? A. Holdsworth Court.

Q. At the right of the picture, near the bottom, below the center, is the curb at the corner of Summer Street? A. Yes. 10

Q. That is a fair representation, is it? A. It is.

Q. Of the white line, also? A. Yes, sir.

Mr. Markley: I offer that.

Mr. McGinnis: No objection.

(Marked D-4 in evidence.)

Q. This picture, as I understand you, is looking toward Passaic, or in a southerly direction, along Lexington Avenue? A. In a southerly direction along Lexington Avenue. 20

Q. There is a considerable view down there, in the southerly direction, isn't there? A. Yes.

Q. How great a view, would you say, south?

Mr. McGinnis: It seems to me that the picture ought to speak for itself.

Mr. Markley: I am asking him what is the view south, along Lexington Avenue, from Holdsworth Court. 30

A. Well, it is a thousand feet, anyway.

Q. Surely a thousand feet, isn't it? A. Yes.

Q. Looking in a northerly direction, from the same spot, that is, on Lexington Avenue, looking northerly, you have a very fine view, too, haven't you? A. Yes, sir.

Q. What view have you in the northerly direction along Lexington? A. Well, something the same, I think. 40

Lillie Clarkson, direct.

Q. Well, how many feet would you say? A. About a thousand feet.

Q. It is over a thousand north, isn't it? A. Yes.

Q. Does this picture show us the view north with a fair degree of accuracy? A. It does.

10

The Court: Exhibit—

Mr. Markley: This is Exhibit D-1.

Q. It is over a thousand feet, at least, isn't it? A. Yes.

Mr. Markley: That is all.

Redirect examination by Mr. McGinnis:

20

Q. Mr. Devlin, you were asked to indicate the distance from the south corner of Holdsworth Place up to a line at the curb of Summer Street. Will you do that again, please? A. Produced toward the northerly curb?

Q. Yes. A. If produced to the easterly curb, on Lexington Avenue, that line is a distance of 95 feet from the northerly curb of Holdsworth Court.

Q. And the southerly curb? A. And the southerly curb is 110 feet.

30

Mr. McGinnis: That is all.

Mrs. LILLIE CLARKSON, sworn.

Direct examination by Mr. McGinnis:

Q. Mrs. Clarkson, you are one of the plaintiffs in this case? A. Yes.

Q. And the wife of Mr. Rutgers Clarkson? A. Yes.

40

Q. Where do you live? A. 237 Lexington Avenue, Passaic.

Q. How old are you? A. I am fifty-eight.

Q. How much do you weigh? A. I don't know;

Lillie Clarkson, direct.

I haven't been weighed since before I was struck; that is a year and a half ago.

Q. Well, at the time of the accident, of which I am about to ask you, how much did you weigh?

A. About 155, I think.

Q. Have you any family? A. I have.

10

Q. How many? A. Six children.

Q. How many living at home? A. Four.

Q. Withdraw that. How many were living at home at the time of this accident I am about to ask you about? A. Four.

Q. Grown up? A. Yes, youngest is eighteen.

Q. How many years have you been married? A. We were married twenty-nine years ago, last November.

Q. What was the date of the accident, in which you received the injuries that have been discussed here? A. December 3, 1926.

20

Q. Before this accident, what was the condition of your health? A. About the best of any person you could find.

Q. Who did your housework? A. For me?

Q. Before the accident, yes? A. Myself.

Q. How big a house did you look after? A. Nine rooms.

Q. Who did your laundry work? A. Myself.

30

Q. In addition to doing your housework and laundry work, did you do anything else? I direct your mind to some papering? A. Ha! Ha! (laughingly).

Q. Did you try to paper some rooms? A. Well, I did all of the papering, all of the decoration throughout the house. I don't think that has much to do with the case.

Q. About what time of day did this accident

40

Lillie Clarkson, direct.

happen? A. About six-thirty in the afternoon, or the evening.

The Court: December 3, 1926?

Mr. McGinnis: 1926.

10 Q. At the time of this accident, where were you living? A. 237 Lexington Avenue, Passaic.

Q. Same place you are living now? A. Same place.

Q. That is almost opposite Holdsworth Court, is it not, on Lexington Avenue? A. I would say that it was opposite—

Q. Yes? A. That it is opposite.

Q. Before this accident, where had you been that late afternoon? A. I had been getting the meat
20 for dinner.

Q. Were you downtown Passaic? A. Yes.

Q. And to go to your home, what did you do after you had done your shopping? A. I took the No. 16 bus, at the corner of Park Place and Main Street.

Q. That was the bus that came right up on Lexington Avenue? A. It comes past Lexington to go—comes up passes through Lexington Avenue up at our house.

30 Q. When it got up to Holdsworth Court, did the bus stop? A. Yes.

Q. Did you have with you any bundles? A. Yes, I had my meat and some grapes.

Q. Did any other people get off the bus besides you? A. Yes, lots of people.

Q. When the bus stopped, where did it stop? A. It stopped a little south of Holdsworth Court, so that we passengers alighted on the sidewalk that comes from Holdsworth Court.

40

The Court: Did you alight on the south side or north side?

Lillie Clarkson, direct.

The Witness: South side of Holdsworth Court.

Q. When you got off, then what happened, after that? What did you do? A. Well, when I got off—

Q. Yes? A. —I put down one of my bundles to help two ladies that I thought were older than myself off, and while I was putting my bundle down I say they were getting off as well as I could get off—

10

Q. Yes? A. —so that I picked up my bundle again, and waited for the bus to get out of my way before crossing.

Q. Then, did the bus get out of your way? A. Oh, yes.

20

Q. Then did you start to cross? Yes or no. A. Why, I started right back of the bus—I went toward the back of the bus for about one step and waited there. I had to do that to let these other people off the bus, or else to go down Holdsworth Court. Then I stood there at the curb, but I didn't have to wait for the bus to go off, because the bus went off by that time.

Q. Did you then start across the street? A. Oh, not without looking.

30

Q. Never mind that; did you start across? A. Oh, yes.

Q. Can you tell us where it was that you started to cross, when you stepped off the curb? A. Well, right at the crossing, or, not at the crossing,—I mean where the sidewalk comes to the curb.

Q. In other words, you mean if there were a crosswalk across the street there, you would have been on it? A. Yes.

Q. Was it light or dark at the time? A. It was dark.

40

Lillie Clarkson, direct.

Q. Were there any electric lights in the vicinity?

A. Three.

10 Q. Will you tell us where they were? A. One is out on the corner of Lexington Avenue and Summer Street; one is in Holdsworth Court, I imagine, a hundred feet down; the other one is on Lexington Avenue at Autumn Street.

Q. Was the street well lighted at the time at that spot? A. Very well lighted.

Q. Tell us what you did from there, when you started across the street; tell us from then on what your actions were. A. I took—I stepped to the curb and stepped down on the gutter; then I took my calculation of how I was crossing that street.

20 Q. What observations did you make? A. Why, there was one car coming—

Q. What observations did you make? Which way did you look? What did you do? A. I looked first down the street, that is, south; I saw a car near this side of Harrison.

Q. Harrison is two blocks down? A. It is about a block from where I was, I imagine.

30 Q. When you looked south— A. (Interrupting.) Then I looked north, and I saw this other car coming from the north—

Q. Yes? A. —and I calculated that I had plenty of time to go across there—

Mr. Markley: I ask that be stricken out, what she calculated.

The Court: Strike it out. Where were you when you saw it.

40 Q. Yes, where were you, first, when you looked to your right and saw this car up the street? Where were you? A. In the gutter, near the curb.

Lillie Clarkson, direct.

Q. How far out from the curb were you in the street? A. About four feet.

The Court: Where was this car?

Q. Where was this car that was coming from the north? Where was it at that time? A. It was about in front of the second house beyond Summer Street. 10

Q. What second house? A. Beyond Summer Street.

The Court: About how many feet would that be?

The Witness: Well, now, they have measured it; I wouldn't attempt to say how many feet; I am no judge.

Mr. McGinnis: The engineer has given us that. 20

The Court: 160 feet.

Mr. McGinnis: 160 feet to the north side.

Mr. Markley: 110 feet to the south side. 110 feet to the north side.

Mr. McGinnis: From Summer Street.

The Court: From the northerly side of Summer Street.

Mr. McGinnis: Yes, sir. 30

Q. Well, having made this observation, then what did you do? A. I went directly across.

Q. What was your gait? On a walk or run? A. No, I was walking.

Q. Did you keep in a straight line, or not? A. I kept in a straight line.

Q. How far across the street had you gotten before anything happened? A. About five feet over the white line that is the middle of the street.

Q. By five feet over, you mean five feet beyond 40

Lillie Clarkson, direct.

the white line, toward your house? A. Toward my home.

Q. Yes, toward your home, or your side of the street? A. Yes.

10 Q. Now, this oncoming automobile, did that give any warning or anything else to you as it came along? A. No, sir.

Q. What happened? A. What happened? I was hit right there on this street, as I was crossing. I will never get over—

Q. How badly were you hit? How much of a strike was it? A. Well, so that I was tossed up in the air, and landed on my back on the sidewalk, on the pavement. Then, of course, I cannot tell you anything after that.

20 Q. Was there any horn blown at all? A. No horn whatever.

Q. When you were looking to the left and looking to the right and saw these two machines, they had headlights on, I suppose, burning? A. Both.

Mr. Markley: What was that?

The Court: Both.

The Witness: Both cars.

30 Q. Is that what you mean when you say you saw the cars? A. I saw both their bright headlights.

Q. Yes. Did you still have your bundles in your hand as you were crossing the street? A. I did.

Q. Aside from this vehicle that you saw down towards Harrison Street and this machine from the north that came along, and the bus, of course, which passed, were there any other vehicles on the street at that time, in that vicinity? A. No vehicles.

40 Q. Was it this automobile coming from the

Lillie Clarkson, direct.

north, that you have described as seeing up beyond the second house,—was that the automobile that struck you? A. Yes, sir.

Mr. Markley: She didn't say beyond the second house.

The Court: About.

Mr. Markley: She said, approximately the second house.

Mr. McGinnis: Yes, in front of the second house; I will correct that.

Q. After the accident, where were you taken?
A. Home, in the house.

Q. Put to bed, I suppose? A. Yes, sir.

Q. How long were you confined to your bed? A. About fourteen weeks, altogether.

Q. Under the care of what physician? A. Dr. Van Schotte, Jr.,—Gerard Van Schotte, Jr.

Q. After those fourteen weeks in bed, then what was the progress of your sickness? A. Why, it was rather slow, of course, but I got around the floor with two crutches for several months, and I didn't get downstairs until long after Easter of that year, that is, last year.

Q. Then, after you used two crutches for a while, you got down to one crutch, I think? A. Yes, I am down to one crutch.

Q. Yes, one crutch. Did you suffer any injuries of any kind, as to cause you to go to bed? Do you know of having any fractures? A. Yes, sir.

Q. Where were those fractures? A. Why, one pubic arch was a complete fracture, and the other was a partial fracture.

Mr. Markley: I object to this woman's description of the injuries, internal injuries.

Lillie Clarkson, direct.

The Court: I do not think she can tell us about that.

Mr. McGinnis: The doctors can tell us better, I suppose. Withdraw that.

10 Q. Did these various injuries produce any pain?
A. Yes, sir.

Q. In addition to the pains produced by these fractures, that you have mentioned, where else did you have any pain? A. I had two knees very badly injured, both knees; a ruptured blood vessel in one knee.

20 Q. In what knee did you have the ruptured blood vessel? A. Right in the side of the left knee and in the other side of the right knee, was very badly injured.

Q. Any other serious injury? A. Oh, I had my head cut open and a big bump on one side and the joint on one toe injured.

Q. Any trouble with your spine? A. I have had trouble with my spine ever since.

Q. Do these various injuries produce pain? A. A great deal.

Q. How do those pains effect you? A. How did it affect me?

30 Q. Yes. A. Well, they just hurt me terribly from my waist to below my knee.

Q. Do they affect your hip? A. Oh, do they affect my hip? Certainly.

Q. How long did these pains continue? A. Well, the very hardest pain, it continued maybe, oh, for weeks; of course, I can't tell you just how long.

Q. Then you eased off to some extent, I suppose? A. It eased off to some extent, yes.

40 Q. Do you still, or not, suffer pain? A. I certainly suffer pain right now.

Lillie Clarkson, direct.

Q. Where do you suffer pain now? A. Well, where I am sitting down, for instance, I cannot sit now, right under here where I sit down; I cannot sit down.

Mr. McGinnis: Indicating the buttocks.

10

Q. When you sit down, what happens? A. Why, I am sitting on all kinds of sores under me.

Q. You mean, sensitive spots? A. Sensitory spots, spots that hurt; my back hurts me continually.

Q. Does walking or standing produce any pain? A. No, I am very comfortable standing than in any other position, but I can't stand only a certain length of time; I haven't the strength to stand. I can't sleep. I have to sleep with a pillow between these two knees, to keep them so that I can sleep at all, they both ache so, where this injury was here.

20

Q. By "here" you mean what? A. In here (indicating) was where I was awfully hurt.

Mr. McGinnis: Yes (indicating between the two knees).

Q. Did you have any nurse to attend you? A. I have had two practical nurses.

30

Q. For how long did you have the practical nurses? A. We had the practical nurses until the latter part of March.

Q. After that, what about your housework? Who did your housework? A. Mrs. Weiss; we have had her ever since.

Q. Have you had your laundry done ever since, or not? A. Yes.

Q. Have you done any housework since this accident? A. Oh, yes; I have done some housework.

40

Q. What have you done? A. For instance, I do

Lillie Clarkson, cross.

a little cooking; once in a while I putter around with the lightest housework, I really help a lot, but I can't do my housework.

Q. Come back for a moment to your injuries; do you have any trouble going up and downstairs?

10 A. Yes, a great deal of trouble going up and downstairs.

Q. How do you go up and downstairs? A. Well, I use the crutch to go up and downstairs, but I must walk around a little bit. Dr. Van advised me to do that.

Q. Have you made an effort to help yourself in walking and doing other things? A. Yes, I have tried it; that is under the doctor's orders I have tried it.

20 Q. When you said you had two practical nurses to the latter part of March, you mean March, 1927, do you? A. Yes, March, 1927.

Q. Then you have had this housekeeper since when? A. Since—she came the day that the practical nurse left.

Mr. McGinnis: Cross examine.

Cross examination by Mr. Markley:

30 Q. How tall are you, Mrs. Clarkson? A. Five feet, four.

Q. You say you have four children living at home? A. Yes, sir.

Q. You have a son who is a lawyer, have you not? A. Yes, New York lawyer.

Q. What is his name? A. Louis—R. Louis Clarkson.

Q. How old is he? A. Twenty-eight years old.

Q. Does he live home? A. Yes, sir.

40 Q. He is a New York lawyer? A. Yes, sir.

Lillie Clarkson, cross.

- Q. The youngest child living at home is eighteen?
A. Eighteen.
- Q. What is the name of that child? A. Lillie M. Clarkson.
- Q. Does she work? A. No, she is graduating from high school this month. 10
- Q. She still goes to school? A. Yes.
- Q. The other two children, what are their names? A. I have four more.
- Q. At home? A. No, two at home.
- Q. Yes? A. One is Margaret.
- Q. How old is Margaret? A. Margaret is twenty-three.
- Q. What does she do? A. She teaches in Clifton High School.
- Q. The other one is home? A. Yes. 20
- Q. What is her name? A. Catherine Clarkson.
- Q. How old is she? A. She is twenty-five.
- Q. What does she do? A. She is in the Conference Board in New York.
- Q. She lives home with you, too? A. Yes.
- Q. Your husband lives home, of course? A. Yes.
- Q. You make up the family of six? A. Make up six, but—in our family, you mean?
- Q. There are two members that don't live at home? A. No; I have my sister with me, my sister-in-law with me, and my father with me. 30
- Q. Your sister-in-law is with you? A. My sister-in-law is with me.
- Q. Does she work also? A. Yes.
- Q. She goes out to work? A. Yes.
- Q. Whom else at home? A. My sister.
- Q. Your sister, does she work too? A. Yes.
- Q. You all live in this house together? A. Yes.
- Q. Now, on this particular day, it was snowing, 40

Lillie Clarkson, cross.

wasn't it, Mrs. Clarkson? A. No, it didn't snow until after I come out of the market.

Q. After you came out of the market? A. After I came out of the market.

10 Q. What time was that, Mrs. Clarkson? A. I imagine it was about twenty after six.

Q. That is, it was snowing up to about ten minutes before this accident? A. About.

The Court: Was it still snowing at the time of the accident?

The Witness: Yes, not very hard, but just a light snow; it was the first snow we had had that year.

20 Q. When you alighted from the bus at Holdsworth Court, it was at the south of the south curb of Holdsworth Court, wasn't it? A. Southeast corner, yes.

Q. That would be the southeast corner? A. Yes.

Q. And the bus, of course, wasn't in Holdsworth Court; it was south of Holdsworth Court, wasn't it? A. Well, the steps of the bus were right on a line with the walk that goes down Holdsworth Court.

30 Q. The bus was then at the south of Holdsworth Court, wasn't it? A. Not all of it; the nose of it was beyond it; the nose of the bus was beyond the sidewalk.

Q. You say the nose of the bus was in Holdsworth Court? A. Yes, a little distance.

Q. Was it a long bus, do you know? A. Yes.

Q. Was it crowded? A. No.

Q. Were you standing up in the bus? A. No.

Q. You had a seat? A. Yes.

40 Q. You say a number of people alighted at that corner? A. Yes.

Lillie Clarkson, cross.

Q. Could you give us an idea of who or how many? A. I couldn't give you an idea of how many or who they were.

Q. You said a crowd left the bus? A. It was only several went out there, that left the car.

Q. You said a great many got out? A. I said a great many; I think it was a large number. 10

Q. How many would you say? A. I would say at least five got out.

Q. At least five got out? A. I don't know how many more.

Q. At least that? A. At least that, yes.

Q. When you got out there, you went around the back of the bus? A. No, I didn't.

Q. You went out in the street behind the bus? A. No, I didn't go out in the street behind the bus. 20

Q. What did you do? A. As I told Mr. McGinnis, I stopped to help two old ladies off, that were alighting off the bus; I had to lay my bundle down, and by the time I picked up my parcel the bus had gone or had started on, how far away, I couldn't tell you that.

Q. How far was it from you when you started across? A. That I wouldn't attempt to tell you; I know it was past me a ways, that is all I can tell you. 30

Q. But you do not know how far away it was? A. No, I cannot tell you that.

Q. You passed behind it? A. Passed behind it?

Q. You didn't go in front of the bus? A. No.

Q. You had to walk in back of it? A. I didn't walk in back of it, because it wasn't right along in back of it.

Q. There was another car coming from your left, was there not? A. When I stood there, I cannot say were that car was. Of course, I stood and 40

Lillie Clarkson, cross.

looked, took my calculations, before I went any further.

Q. You did look to the left, as you say, before you left the curb? A. I stepped down from the curb to the gutter before I looked to my left.

10 Q. Where was the car at your left then? A. The car at the left was just this side of Harrison.

Q. How far was that? A. I don't know how far Harrison Street is on the left, how far, from that point.

Q. Where is it? A. It is south—

Q. You know where Autumn Street is? A. Oh, yes.

Q. It is another block south of Autumn Street? A. Yes.

20 Q. What is the name of the street? A. Harrison Street.

Q. Then this car that was to your left was two blocks away? A. The car to my left was just one block away.

Q. One block to your left would be Autumn, wouldn't it? A. One block, no; we are only about 87½ feet from Autumn Street.

30 Q. Taking Holdsworth Court, the next block south would be Autumn Street? A. Yes.

Q. Next block beyond that is— A. One short block, you know.

Q. What is the name? A. Harrison.

Q. Then, this car was down at Harrison— A. No, it wasn't as far as Harrison; it was this side of Harrison.

Q. Was it between Harrison, then, and yourself? A. Yes, it was between myself and Harrison.

40 Q. Eh? A. Yes, it was between myself and Harrison.

Lillie Clarkson, cross.

Q. How near Harrison was it? A. I think it was only about one-third of the way from Harrison to Autumn.

Q. I see; you couldn't fix that in feet at all? A. Oh, no.

Q. At any rate, you saw that car? A. Yes. 10

Q. The headlights were burning? A. Yes, extra bright.

Q. And you proceeded to pass without waiting for that car? A. Oh, no; then I looked the other way.

Q. Did you wait to allow that car to go by? A. I did not.

Q. No? A. No.

Q. You say you got four feet from your curb? A. From where? 20

Q. I think you said—if I am wrong, correct me—I understood you to say, when you got four feet from the curb— A. From the curb on the opposite side, yes.

Q. From the opposite side of your house? A. Yes.

Q. —you for the first time saw Mr. Ley's car? A. Yes.

The Court: Had the bus then gone? 30
The Witness: Yes.

Q. At that time you say it was in front of the second house? A. Yes.

Q. On the other side of Summer Street? A. Yes, sir.

Q. That is what you said? A. Yes, sir.

Q. You saw the headlights burning on that car? A. Yes.

Q. Had no trouble seeing them? A. No trouble whatever. 40

Lillie Clarkson, cross.

Q. It was in plain view, wasn't it? A. Yes, sir.

Q. At that time you were four feet from your curb, that is, the curb, on the east side? A. Opposite.

10 Q. That would be the east side, wouldn't it? A. Yes, the east side.

Q. Of Summer Street? Then you started to go across? A. Yes, then I proceeded to walk across.

Q. Then you proceeded four feet across the white line? A. Yes, sir.

Q. You got on the opposite side of the white line, How far over the line were you before the accident happened? A. About three or four steps.

Q. Three or four steps? A. Yes.

20 Q. How many feet?

The Court: I thought you said about five feet?

A. I imagine about five feet, but it was three or four steps.

Q. So that you had crossed from your position on the easterly curb, you had gone across the center line of the street, and you were five feet on the other side of it? A. Yes.

30 Q. Before the accident happened? A. Yes.

Q. Well, did you make any observation of this automobile that was in the accident with you from the time you first saw it four feet from the curb? A. I made no observations, no definite observations, because I had made my calculation, that I had ample time, I could cross.

Q. I understand that, Mrs. Clarkson; but you made no other observations then, did you? A. No.

40 Q. So that from that point, four feet, you proceeded across to the place that you had your accident? A. Yes.

Lillie Clarkson, cross.

Q. And you didn't look again? A. No, I didn't look again.

Q. Did you look again to your left? A. No.

Q. You only made one observation to your left?

A. I didn't look again to either side.

Q. Weren't you in a little bit of a hurry, Mrs. Clarkson? A. Yes, I was in a hurry. 10

Q. You wanted to get your dinner ready? A. No, we don't have our dinner until half past seven.

Q. You say you were in a little hurry; what for?

A. I was in a hurry to get across the street.

Q. For what? A. So as to avoid any of those cars.

Q. Did you run? A. No, sir.

Q. Are you sure? A. I did not run.

Q. Now, you can walk without a crutch, can't you, Mrs. Clarkson? A. On the even floor, I could. 20

Q. On the even floor? A. Yes, not any distance or to go anywhere or to do anything like that.

Q. You do go shopping, do you not? A. No, I do not.

Q. Haven't you been shopping? A. No, I have not.

Q. You mean to say you haven't been shopping at all? A. No, I have not.

Q. Do you remember March 24th? A. Of this year? 30

Q. Yes. A. What do you mean "shopping"? Tell me what you mean by "shopping."

Q. What do you mean by going shopping? A. I mean that I haven't gone downtown to buy groceries, meats, and everything that I have always bought in the last six and a half years, since we have lived in that house.

Q. Do you know where Passaic center is? A. Passaic city? 40

Lillie Clarksón, cross.

Q. Yes. A. I have never heard of Passaic center.

Q. You know where the stores are, down in the center of Passaic? A. Yes.

10 Q. How far is that from your house? A. About half a mile, I imagine.

Q. Didn't you go down there on March 24th? A. Not that I remember.

Q. Will you say you did not? A. I won't say I did not; I do not remember.

Q. Do you remember buying some clothes down there that day? A. I bought some clothes?

Q. Yes. A. No, sir.

20 Q. Didn't you go down shopping that day in the drygoods stores down there? A. I don't remember shopping in any stores March 24th.

Q. And didn't you go from counter to counter to do your shopping without the aid of a crutch? A. I did not.

Q. Didn't you continue with that shopping tour from before noon until three or half past in the afternoon, when you walked back home again, ten or twelve blocks? A. I did not.

Q. You say you did not? A. I did not.

30 Q. You have left your house without the aid of crutches, haven't you? A. I have not.

Q. Haven't you been out on the street without a crutch? A. I have not.

Q. Haven't you walked out on the street without a crutch? A. I have not.

Q. You say you have not walked out on the street without a crutch? A. I have not; I have not been able to.

40 Q. You walk around your house without the crutch? A. Down around the floor where I can touch the furniture, touch the wall or touch the

Rutgers Clarkson, direct.

fixtures, put my hand on a chair. I have only done that very lately.

Q. Your doctor is Dr. Van Schotte? A. Van Schotte.

Q. Van Schotte? A. S-c-h-o-t-t-e.

Q. He has given instructions that you should walk without the crutch, hasn't he? A. That I must try, yes. 10

Q. And he has told you to go out on the street without the crutch, hasn't he? A. He hasn't told me to go on the street.

Mr. Markley: That is all.

Redirect examination by Mr. McGinnis:

Q. This automobile coming along, before it struck you, you didn't know whether it was going to turn into Holdsworth Court or into Summer Street, or come on, did you? A. I certainly did not. 20

Q. In crossing the street, did you maintain the same gait right across? A. Yes, sir.

Mr. McGinnis: That is all.

RUTGERS CLARKSON, sworn.

30

Direct examination by Mr. McGinnis:

Q. Mr. Clarkson, you are one of the plaintiffs in this case? A. Yes, sir.

Q. Husband of the lady that was just on the stand? A. Yes, sir.

Q. Living with your wife at 237 Lexington Avenue? A. Yes, sir.

Q. Before this accident that your wife has related, what was your wife's health? A. It was very good. 40

Rutgers Clarkson, direct.

Q. Who did the housework? A. I don't think she ever had a doctor.

Q. (Continuing.) At home?

Mr. Markley: What is that?

10

Mr. McGinnis: She never had a doctor.

A. She had very fine health.

Mr. Markley: Won't you keep your voice up, please?

Q. You see, Mr. Clarkson, all of these ladies and gentlemen here are the ones that are going to decide this case, not the judge or the lawyers. Who did the housework at home before this accident?

A. My wife.

20

Q. Who did the washing and ironing? A. My wife.

Q. How many rooms in the house? A. Nine rooms.

Q. She has correctly stated the number that resided in that house? A. Yes, sir.

Q. Four children, yourself, herself of course, and two other persons? A. Three other persons.

Q. Three? A. Father-in-law, my sister and her sister.

30

Q. Are you acquainted with the locality where this accident happened? A. Yes, sir.

Q. Are there any electric lights around there?
A. Yes, there is an electric light on the corner of Summer Street and Lexington Avenue; another one on the corner of Autumn Street and Lexington Avenue; then there is one down Holdsworth Court a little ways.

40

Q. Do you know of this white line, this traffic line, along the middle of the street at that point?

A. Yes; of course, all automobile drivers know it.

Rutgers Clarkson, direct.

Q. Was that there at the time of this accident?

A. Yes, sir; that was there.

Q. All right. Did you see this accident, Mr. Clarkson? A. Yes, sir.

Q. Where were you at the time it happened? A. Why, I was on our yard. 10

Q. What part of your yard? A. Well, I was coming down to the curb.

Q. You mean, the front of your house? A. Yes, the front of our house; I came out of the front door.

Q. Why were you coming out, coming down?

A. Why, I came home from New York and I found my wife was out, and I knew that she was down shopping, downtown, so I expected her to come on a bus. 20

Q. That is what I mean, you were there waiting for her; were you? A. Yes, I was waiting for her.

Q. Did you see this bus coming up on which she was a passenger? A. Yes, sir; I saw this bus come up and stop.

Q. Where did it stop? A. It stopped at Holdsworth Court, at the southeast corner of Holdsworth Court. 30

Q. When it stopped, tell us from then on what you observed. A. Well, I waited a second or two and the bus moved on. Then I saw my wife on the other side of the street.

Q. Did she have anything in her arms? A. Yes, she had two parcels.

Q. What did she do? Tell us about her actions, as you observed them after. A. Well, she started across the street, she first looked south and then north. 40

Q. When she looked south, which, of course,

Rutgers Clarkson, direct.

would be to her left, about how far off the curb was she? A. I should judge, two or three feet.

Q. Then when she looked to her right, how much further had she gotten out into the street? A. Well, she might have got a step or so.

10 Q. At that time could you see what the traffic conditions were around there? A. Why, yes.

Q. Were there any cars in the immediate vicinity? A. No, there was no cars in the immediate vicinity; there was one coming up and one coming down.

Q. When you say, "one coming up," that was from Passaic, going north? A. One from Passaic, going north; one going south.

20 Q. And the one going south, is that the car that struck your wife? A. That was the car that hit my wife.

Q. Where was that car when you first observed it? A. Well, it was up above Summer Street.

Q. About how far up above Summer Street? A. Well, a house or two up above Summer Street.

Q. A house or two? Well, which do you think? A. Well, I should judge it was about the second house up on Lexington Avenue.

30 Q. Had it reached past the second house when you first saw it? A. Well, it was about at the second house.

Q. About at the second house? Is that as nearly as you can tell us? A. That is as near as I can judge.

Q. Where your wife was crossing the street, where was that with reference to Holdsworth Court? A. Where was my wife?

40 Q. On what part of Lexington Avenue was she crossing? A. She crossed right directly from Holdsworth Court, right straight across.

Rutgers Clarkson, direct.

Q. If this sidewalk of Holdsworth Court had been carried across, where would she have been with reference to that sidewalk; on it or how much off? A. I would say she would be on it.

Q. How was she—walking or running? A. She was walking an ordinary gait, right across the street. 10

Q. How far had she gotten across the street right before the accident happened? A. Why, she had gotten about five feet over the white line, over the center of the street.

Q. She got past the center of the street? A. She got past the center of the street.

Q. That is, five feet more? A. Yes.

Q. Did you observe the speed of this on-coming bus that struck— A. It was not a bus; it was a private car. 20

Q. What was that? A. It was not a bus; it was a private car.

Q. I see; correct the question to the car that struck her. A. I saw her coming down; it seemed to be coming along pretty fast.

Q. As it came along past Summer street on, did it change its speed any way? A. It seemed to me, after he passed Summer Street, which is on the north, that he had stepped on his gas, because the car picked up so quick after that. 30

Mr. Markley: I object to this witness' conclusions, your honor.

The Court: Yes, strike that out.

A. (Continuing.) It looked as if he—

Mr. Markley: I object to that.

A. (Continuing.) —stepped on the gas and the car picked up. 40

Rutgers Clarkson, direct.

The Court: We don't want the "as if";
tell us what you saw.

A. That is what I saw.

10 Q. You see, you cannot tell us whether you think
he stepped on the gas, or not; you can tell us
whether the car went faster, or not. A. Well, the
car went faster.

Q. So that, after the car passed Summer Street,
it seemed to go faster? A. Seemed to go faster.

Q. Much faster? A. Yes, sir; it seemed to be
picking up.

Q. Then what happened? A. Why, then it hit
her.

Mr. Markley: What is that?

20 A. Then it hit my wife.

Q. When it hit your wife, with what force did
it hit your wife? A. It hit with such force you
could hear across the street, like two cars coming
together pretty near, hit her with such force.

Q. What happened to your wife? A. Why, it
carried my wife along past me, down past our
grounds, which is about forty feet.

30 Q. So, what you mean is that from the time your
wife was struck then to the point where she was
dropped off or stopped was forty feet? A. Yes.
Well, it was about forty feet.

Q. Did the car stop at that point, or did it con-
tinue? A. Certainly, it continued to go about
fifteen or twenty feet further before he stopped it.

Q. At any time that you observed this car, until
it struck your wife, was the horn blown? A. No.
No, he didn't blow a horn.

40 Q. After the accident, what was done with your
wife? A. Why, I runs out in the street, picked
her up; somebody helped me to get her over on

Rutgers Clarkson, direct.

the sidewalk. Well of course, the people says, "Get a doctor"—

Mr. Markley: I object.

Q. Never mind that. You took her into the house and got a doctor for her. A. We brought her up, took her in the house. 10

Q. How long was she confined to her bed? A. Well, it must have been fourteen weeks, I guess.

Q. Attended by Dr. Van Schotte? A. Attended by Dr. Van Schotte.

Q. Did any other doctors ever attend her, by the way, either consultants or otherwise? A. Why, Dr. Joyce was up to see her.

Q. You did not employ Dr. Joyce, did you? A. No, I didn't employ Dr. Joyce. 20

Q. Well, was there any other doctor? Didn't Dr. Terhune take X-rays? A. Oh, Dr. Terhune, he did, yes; he took some X-rays.

Q. Did Dr. McBride come and consult, or not? A. Yes.

Q. Or were there any other physicians that your family employed? A. No, I don't think there was any others there.

Q. During this fourteen weeks, did you have any nurse attend her? A. Yes, sir. 30

Q. Practical nurse, I believe? A. We had practical nurses because she was home.

Q. How much a week did you have to pay the practical nurse? A. The first nurse was paid \$45.00 a week; second one, \$40.00.

Q. How long did you have the \$45.00 nurse? A. Four weeks, and then the \$40.00 for ten weeks.

Q. After that, whom did you get? A. We had to get a housekeeper to take care of the house.

Q. Have you had the housekeeper since then? A. Yes, sir. 40

Rutgers Clarkson, direct.

Q. How much have you paid her? A. We pay her \$80.00 a month.

The Court: You have had her how long?

10 The Witness: We have had her since the accident, or since the nurse left.

The Court: When was that?

The Witness: Fourteen weeks after the accident.

Q. You have got receipts, have you, of moneys paid to this housekeeper? A. I have got receipts, yes.

Q. Will you produce them? A. Yes, sir (producing papers).

20 Mr. McGinnis: The witness produces a bunch of receipts. I am going to offer them in evidence (handing to counsel).

Q. Why have you had a housekeeper since this practical nurse went away? A. Why, there was no one to do the work.

Q. Has your wife and this housekeeper done the housework since the accident? A. What is that?

Q. Who has done the housework there? A. Why, the housekeeper.

30 Q. After these fourteen weeks that your wife was laid up, in bed, did she, or not, get around then? A. Well, she got around a little, in and about in her room, before she come downstairs; then I could help her up and downstairs, see?

Q. She used crutches? A. She used crutches.

Q. For a time, I believe, she used two crutches? A. Yes, and then I had to help her about before these crutches, I had to help her go up and down stairs, when she was first taken down.

40 Q. Do you know whether or not your wife has

Rutgers Clarkson, direct.

tried to walk and made efforts to help herself along? Has she? A. Why, I think she has, because I advised her to try to strengthen her muscles by walking and doing something.

Q. Do you know whether or not your wife has suffered any pain as a result of this accident? A. Yes, she complains of a great deal of pain. 10

Q. What have you observed? What have you seen with reference to that? A. Very nervous.

Q. For instance, take her sleeping. A. Very nervous, irritable, wants to fight all of the time.

Q. Now, in addition to these housekeeper's expenditures, that you have mentioned, what about any laundry work? A. Well, we had to have a woman do the laundry work.

Q. How much did that cost you weekly? A. That costs us \$4.00 a week, and I believe there is seventy-eight weeks since the accident. Then her clothes were all ruined. 20

Q. I will take that up in a minute. Have you paid the doctor's bills? A. Yes.

Q. How much was Dr. Van Schotte's bill? A. Dr. Van Schotte's bill was \$131.00; that is not to today.

Mr. Markley: How much?

Mr. McGinnis: \$131.00. 30

The Witness: That is not up to date.

Q. How much were the X-rays? A. X-rays, \$30.00.

Q. Did you, or not, have to have an ambulance? A. Yes, we had to have an ambulance.

Q. Why did you have to have an ambulance? A. Because she couldn't get up there any other way; we took her up to Dr. Terhune's private office.

Q. Dr. Terhune is an X-ray specialist? A. Yes. 40

Rutgers Clarkson, direct.

Q. How much did the ambulance cost? A. The ambulance cost \$24.00.

Q. You mean, for all of the trips? A. Yes.

10 Q. About how much, in all, if you recollect, did you pay for druggists, medicines, bandages? A. About \$150.00, I guess; that come in small dribbles, little bits at a time.

Q. Was your wife's clothing injured in any way? A. Her coat was ruined.

Q. What kind of a coat was it? A. Well, it was just—I don't know what you mean.

Q. Was it a fur coat or a cloth coat? A. No, it wasn't fur; it was just a cloth coat.

20 Q. Was it in good condition before the accident? A. It was in good condition before the accident.

Q. How long had she had it? A. I don't know that; I couldn't tell you that; she would be able to tell you that herself.

Q. Did she shop for it, and lay the cash out for it, or did you? A. Well, I gave her the cash.

Q. But, I mean, she bought it? A. She bought it; she bought all of the stuff herself.

Q. Then you do not know what she paid for it? A. No, I do not.

30 Q. What is the name of the housekeeper that you have? A. Mrs. Weiss.

Q. What was the name of the practical nurses that you had? A. One was M. Wolfe, the other was Ida MacCullough.

Q. Who was Mary Weiss? A. She was the housekeeper.

Q. Same housekeeper you have now? A. Yes.

40 Q. You did not have any talk with this defendant, Mr. Ley, did you, after this accident? A. No, sir.

Mr. McGinnis: You may cross examine.

*Rutgers Clarkson, cross.**Cross examination by Mr. Markley:*

Mr. Markley: I would like to ask him some questions about these bills, if I may.

Mr. McGinnis: Certainly; I will offer the bills in evidence.

Mr. Markley: Let me ask him first about them.

10

Q. Who made out these receipts? A. Why, my son made the receipts out.

Q. They are all typewritten? A. Yes.

Q. All made out at one time? A. Yes, he run them out on the typewriter—

Q. All made out at one time? A. I don't know as they are all made out at one time.

Q. You got them all at one time, didn't you? A. I got them all at one time?

20

Q. You got them all at one time? A. Why, I got them—it was quite a while ago I got them, some of them; of course, some of them are all right up to date.

Q. You got them all at one time, I say; is that right? Did you get them all at one time, as you have just testified? A. Yes, I got them all at one time.

Q. When did you get them all at one time? A. Well, now, I got them all at one time; he kept the testimony.

30

Q. Well, you got them? A. After the entire thing; I have got the last receipt.

Q. The last receipt here is for the end of May, isn't it? A. 26th.

Q. End of May, 1926? A. Yes, the 26th; this is dated the 26th, isn't it?

Q. 26th of May? A. That was the last day the receipt was made out.

40

Rutgers Clarkson, cross.

Q. That one pays this housekeeper up until the first of June, this year? A. Oh, well—

Q. Up until today, in other words, does it not?

A. Well, I don't know, as you take this one,—no, it should go up to the 26th.

10 Q. Here is one dated May the 26th, 1928, \$40.00, housekeeper for half month, May 27, 1928; that pays her up until May 27, 1928? A. Yes.

Q. When did you get these receipts? That is what I want to know. Was it after May 27, 1928?

A. After May the 27th I got them, yes, about May the 27th.

Q. You got them all at one time, didn't you? A. Yes.

20 Q. You got them all from your son? A. I got them all from my son.

Q. He is a New York lawyer? A. Yes, sir.

Q. Is he here? A. Yes sir.

Q. Is this housekeeper here? A. No, the housekeeper is not.

Q. The housekeeper is not? A. She is down at the house.

Q. She is down at your house now, is she? A. Yes, sir.

Q. Is she there today? A. Yes.

30 Q. You are sure about that? A. Well, of course, I don't know now, because I ain't down there.

Q. How many days a week does she spend at your house? A. She spends seven days a week at our house.

Q. Does she sleep at your house? A. No.

Q. Does she eat there? A. She eats there.

Q. Her name is Mary Weiss? A. Yes, sir.

40 Q. What time does she come to work in the morning? A. Well, she comes to work, I guess, after I leave, in the morning.

Rutgers Clarkson, cross.

Q. When do you leave? A. I leave at a quarter to eight.

Q. Well, then, she is not there when you leave in the morning, is she? A. No, she comes shortly after that.

Q. Is she there when you return at home? A. Yes, sir; she is there when I return home. 10

Q. What time do you return at night? A. I return about six o'clock, around six, sometimes it is later.

Q. All right; what time does she go home? A. Well, generally goes home around that time or a little later.

Q. What time? A. Sometimes she will stay until seven o'clock, sometimes she leaves earlier.

Q. Sometimes she isn't there when you get there? A. No, if we can get rid of her, that is, after she has fixed the supper for us, we let her go earlier. 20

Q. She would go before supper then? A. Yes.

Q. Now, how old is your wife? A. My wife is fifty-eight.

Q. She is fifty-eight years old? A. Yes.

Q. This household of your consists of how many persons? A. Why, it is myself and wife, that is two; six children, two of them are away,—

Q. Four children are home? A. Four children are home. 30

Q. And three others? A. And there are three others.

Q. Consisting of your father-in-law— A. Father-in-law.

Q. Yes? A. Sister-in-law.

Q. He is a cripple, isn't he? A. Yes.

Q. He uses crutches? A. He don't use crutches; he uses a cane.

Q. Well, he uses crutches, too, doesn't he? A. No. 40

Rutgers Clarkson, cross.

Q. Hasn't he got crutches? A. No, he hasn't got crutches.

Q. That is your father-in-law,—that is, your wife's father? A. Yes.

10 Q. How old is he? A. Why, I think he is about eighty-three years old.

Q. Then, is it your sister that lives there? A. Yes, my sister lives there.

Q. She is employed home all of the time, isn't she? A. No, she works in New York.

Q. What is her name? A. Her name is Louise Clarkson.

Q. How old is she? A. Why, she must be, I suppose, about fifty-nine.

20 Q. Then, there is another outsider who is there, or a member not of your immediate family, I should say,—your wife's brother? A. No, my wife's sister.

Q. Sister; does she go to work, too? A. Yes, she goes to work, too.

Q. What is her name? A. Ida MacCullough.

Q. Eh? A. Miss MacCullough.

Q. I cannot hear you? A. Miss MacCullough.

30 Q. Miss MacCullough helps around the house, doesn't she? A. Why, if she has time; she don't help around the house only when she has—when she has the time, because when she gets back home,—she comes up around six or half-past six.

Q. What does Miss MacCullough do for a living? A. Dressmaker.

Q. Where does she do her dressmaking? A. Down in Passaic.

Q. What time does she get home? A. She is in all hours.

40 Q. Frequently she is home for days at a time,

Rutgers Clarkson, cross.

isn't she? A. Well, once in a while she will stay home for a day; she has to take care of her work.

Q. For whom does she work? A. For herself.

Q. Has she a place of business? A. Yes.

Q. Where? A. On Bloomfield Avenue, Passaic.

Q. How far from your home? A. Why, half a mile or so; it is down-town. 10

Q. Is it a store? A. What?

Q. Is it a store? A. No, just rooms there.

Q. And she lives at your house? A. She lives at our house.

Q. All of those people live at your house? A. Yes.

Q. They all eat there? A. Yes, sir.

Q. And they are all working outside? A. Yes, sir. 20

Q. Now, didn't you have a housekeeper before this accident? A. Didn't I have?

Q. Yes. A. No, my wife did the work.

Q. Didn't you have a washwoman before this accident? A. No, my wife did the work.

Q. I asked, didn't you have a washwoman before this accident? A. No, that is not a fact.

Q. You say your wife was sixty-seven? A. She isn't sixty; I said "fifty-seven." 30

Q. Fifty-six, rather.

The Court: She said, "fifty-eight."

Q. Then, she was fifty-six then? A. If she is, fifty-seven, I think she is fifty-eight now.

Q. All right, fifty-seven. You say she did all of the washing for this big family? A. No, I don't.

Q. You did have a washwoman, didn't you? A. No, most of them do their own washing, a little washing at a time; my wife did the general wash.

Q. You have a son who is a lawyer? A. Yes. 40

Rutgers Clarkson, cross.

Q. What is his name? A. Louis Clarkson.

Q. How old is he? A. Twenty—

Q. Approximately? A. Well, I guess, twenty-six or seven.

Q. Eh? A. Twenty-six or seven.

10 Q. You don't mean to say he did his own washing, do you? A. No.

Q. Who are the other children you have? A. Why, I have my daughter—two daughters.

Q. What do they do? A. Well, one of them works in the High School in Clifton; the other one works in New York.

Q. They are both of age, aren't they? A. They are both of age.

20 Q. You work also, as I understand it. A. I work also.

Q. What do you do for a living? A. I work in the Erie Railroad.

Q. What do you do for a living? A. Clerk in the Erie Railroad.

Q. Do you do your own washing? A. No, but I get a good deal of my washing done out at the laundry.

30 Q. You did do that before the accident, didn't you? A. What?

Q. Didn't you send your wash out before the accident to the laundry? A. Well, just the shirts.

Q. You just said a moment ago that you all did your own washing; what did you mean? A. Now, I didn't mean my father-in-law, eighty-three years old, did his own washing.

Q. His washing was done by, a washwoman wasn't it? A. No, it was done by my wife.

40 Q. Why, there were nine people in your family, and you say most of them did their own washing; isn't that what you said? A. I meant by that all

Rutgers Clarkson, cross.

little washing when they would come home at night such as washing stockings, things like that. All the general wash and work was done by my wife.

Q. Didn't you send your wash out before this accident? A. No, I told you that we did not. 10

Q. Did your wife do all of the cooking for that whole family? A. Yes, my wife did all of the cooking for my family.

Q. Did anyone else cook? A. Well, the girls helped her when they came home at night; they would help her some.

Q. Did your wife do all of the housework for that large family? A. Yes.

Q. Didn't they help? A. Yes, they would help a little, when they had the time, but when they got home at night, most of them, didn't want to go home to do any work. 20

Q. As a matter of fact, you did not pay these receipts?

Mr. McGinnis: Wait a minute; that is not in evidence yet.

Q. Have you paid these receipts? A. Why, I certainly have paid these receipts. 30

Q. How did you pay? A. Well, we paid it some in cash, some in checks.

Q. Who paid it? A. Well, I paid it or left it to my wife to give to Mrs. Weiss.

Q. You don't mean to tell this jury that every one of these receipts are paid at the time—

Mr. McGinnis: I object to the form of the question. Of course, he has to tell everything truthfully.

The Court: Permit the question. 40

Rutgers Clarkson, cross.

Q. What I am asking you, Mr. Clarkson, is this: You do not mean to tell this jury that these receipts, all of them, that you have got at one time, have been actually paid by you? A. Yes, sir.

10 Q. You say that prior to this accident there wasn't any help at all, outside of the members of your family, in this large household? A. No, sir.

Q. Is that what you mean to say? A. Yes, sir; that is what I mean to say.

Q. Your wife who was fifty-seven years of age did all of the work? A. Yes, sir.

Q. Now, you say your bill to Dr. Van Schotte was \$131.00?

The Court: Not to date.

20 Q. Up until when? A. Well, that is up to, I guess, January 20—here is the bill.

Q. Up until when? A. January 26th.

Q. Of what year? A. 1928.

Q. Well, you haven't any bills since then, have you?

Q. We haven't had any bills since then.

Q. Dr. Terhune, he was the doctor that took the x-rays? A. Yes.

30 Q. You paid him \$30.00? A. I paid him \$30.00 to take two X-rays.

Q. Have you paid Dr. Van Schotte? A. No.

Q. You haven't paid this ambulance; have you paid that? A. No.

Q. Eh? A. No.

Q. Have you paid Dr. Terhune?

40 Mr. McGinnis: It seems to me that that is irrelevant, sir, whether he has actually paid the money or not, if he has obligated himself to do it.

The Court: It is relevant.

Rutgers Clarkson, cross.

Mr. Markley: It goes to his credibility, that is all.

A. Yes, sir; I paid Dr. Terhune.

Q. How much did you pay Dr. Terhune? A. \$30.00.

Q. Eh? A. \$30.00.

10

Q. Where does this housekeeper live when she doesn't live at your house? Do you know her address? A. Why, she lives on Lake Street.

Q. Lake Street? A. Yes.

Q. In Passaic? A. Yes.

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

Q. Do you know near what street she lives? A. No, I am not quite sure, I don't know what street.

Q. You could go to it? A. Yes.

20

Q. Near what cross-street is she on Lake Street? A. Why, she is—I don't know what the streets are; they are little, small streets down in that neighborhood, I don't know the names of them,—

Q. Now, then, you were already home?— A. —I don't know if they have got any name.

Q. —on the date of this accident, weren't you? A. Yes, I got back—

Q. What time did you get home? A. Well, I got home around six o'clock.

30

Q. Is that your usual time for getting home? A. Yes, sir; well, between somewheres six, half-past six; it is according to how the trains run, how I happen to catch the train. I get off at five o'clock.

The Court: Was it, is that right; was it your usual time for getting home?

The Witness: Yes.

The Court: Was it snowing at the time, Mr. Clarkson?

40

The Witness: It was a very light snow,

Rutgers Clarkson, cross.

first of the season, just a little scurry, you know.

Q. Your house stands back from the front of your lot, doesn't it? A. Eh?

10 Q. Where were you standing with respect to your house? Were you in the house, on the porch, or where? A. Where?

Q. On the date of the accident? A. Oh, I was in the house; I came out of the house.

Q. When did you come out, before or after the accident? A. Why, I came out before the accident.

Q. How long before the accident did you come out of the house? A. Well, I couldn't tell you just how long before the accident; I saw the bus stopping and I came out of the house.

20 Q. Did you have your hat and coat on? A. I had my hat on.

Q. Your overcoat on? A. No.

Q. It was cold, wasn't it? A. No—yes—it wasn't so cold but what you could go without an overcoat, to run down to the street.

Q. You came out, you say, when you saw the bus stopped, did you? A. Yes.

30 Q. Was your wife in the bus? A. I didn't know whether she was, or not.

Q. You came out anyway? A. I came out anyway.

Q. Thinking that she may be on the bus; was that it? A. Yes, certainly.

Q. Where were you when the accident happened? A. Why, I was going down from our house, from the stoop down towards the street.

Q. Well, were you on the stoop when the accident happened? A. No, I was just below the stoop.

40 Q. How far below the stoop? A. Say, half-way down.

Rutgers Clarkson, cross.

Q. Can you see that map from here? Is that the stoop of your house? A. I couldn't say if that was the stoop, no; I can't see that from here.

Q. Won't you step down a moment, Mr. Clarkson? A. (At the Exhibit P-1).

Q. I understand this second house from Summer Street with your name on, Clarkson, I think, is your house? A. Yes. 10

Q. You have a porch on your house, haven't you? A. Yes.

Q. You have a stoop; is that the stoop? A. That is the stoop.

Q. A stoop that leads from your porch? A. Yes.

Q. You say you were not on your stoop? A. No, I was down below.

Q. How far down? A. I should say, about the center, there. 20

Q. About the center, leading from your porch, down to the sidewalk? A. Yes.

Q. That is where you were when the accident happened? A. Yes.

Q. Take the stand, Mr. Clarkson. A. (Witness resumes stand.)

Q. Now, where was this automobile of Mr. Ley's when you saw it for the first time? A. Why, it was coming down Lexington Avenue, up the other side of Summer Street. 30

Q. Can you place it more particularly than that, when you first saw it? A. Well, it was about the second house there; you can see the second house.

Q. You say it was about the second house from Summer Street? A. From Summer Street, yes, about where you have got there.

Q. That is the second house north of Summer Street. A. North of Summer Street. 40

Q. You say it was about opposite that? A. Yes.

Rutgers Clarkson, cross.

Q. Where was your wife when the automobile was about opposite the second house north of Summer Street? A. Why, my wife started to come across the street.

10 Q. Where was she with respect to the easterly curb on Lexington Avenue? A. Why, she was about maybe two or three feet off the curb on the other side of the street.

Q. I see; then you saw this automobile about the same time she did, didn't you? A. Yes, I guess I did.

Q. You saw her at about the same place that she says she was when you first saw the automobile. A. Why, naturally, I would see her about the same place, wouldn't I?

20 Q. I see. Where was the other automobile that was coming from her left when she was about at the curb? A. Well, it was down—it was coming up—it was, I guess, half way between Harrison Street and Autumn Street.

Q. Autumn? A. Yes, it was just a little below Autumn Street, I think.

30 Q. In other words, when you first saw this automobile coming from her left, it was half way between Autumn Street and Harrison; is that right? A. I don't know it was half way or not; I just saw the automobile coming up; it was below Autumn.

Q. Well, was it between Autumn Street and Harrison? A. It was between Autumn and Harrison.

Q. Now, you say there were three lights also, as I understand. A. Yes, sir.

Q. You said that those lights were on Holdsworth Court? A. I said what?

40 Q. You said one of the lights was on Holdsworth Court, I believe, you said? A. On Holdsworth Court.

Rutgers Clarkson, cross.

Q. Now, then I believe this Exhibit D-2 shows Holdsworth Court, does it not, where that two family house is, on the corner; is that Holdsworth Court? A. Two family house?

Q. The three story building; can you recognize that as Holdsworth Court, in D-2? A. This is Holdsworth Court, runs up here. 10

Q. That is right? A. Holdsworth Court runs up here; that is right.

Q. You recognize that, do you? A. Yes, that is Lexington Avenue.

Q. All right; now where is the electric light on Holdsworth Court to which you refer? A. It is up here, the other side of this house.

Q. It doesn't show on that picture, does it? A. It doesn't show on that picture, I don't think; it might be at the end there. 20

Q. Do you see it? A. No, I don't see it.

Q. How far would you say that electric light on Holdsworth Court is from Lexington Avenue? A. Why, I should judge a hundred feet from there.

Q. A hundred feet, that would be east of Lexington, then, wouldn't it? A. Yes, east of Lexington.

Q. It doesn't show then, on that picture, anyway, does it? A. (No audible response.) 30

Q. Where were the other two lights that you refer to? A. One was on the corner of Summer Street; the other was on the corner of Autumn Street.

Q. What was the name of your sister-in-law that you say lived home with you—the dressmaker? A. MacCullough.

Q. Ida? A. MacCullough.

Q. Ida E. MacCullough? A. (No audible response.) 40

Rutgers Clarkson, cross.

Q. And she is your wife's sister, isn't she? A. Yes, sir.

Q. She is the individual that got the \$45.00 a week as a nurse, is she?

10

Mr. McGinnis: Wait a minute. These were offered in evidence, and counsel has not consented as yet. Now we want them in evidence.

The Court: He is examining on them, I presume.

Mr. Markley: An offer of these in evidence has been made, and I think I have the right to cross-examine on them before they go in.

20

The Court: I will permit the question.

Mr. McGinnis: Exception.

Q. Ida E. MacCullough is the nurse you have referred to who received \$45.00 a week; is that right? A. Yes, sir.

Q. And the Ida E. MacCullough that you refer to is also your wife's sister? A. Yes, sir.

Q. To whom you have referred as a dress-maker? A. Yes, sir.

30

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

Q. You don't mean to say you paid her \$45.00 a week, do you? A. Do you think she was going to give—

The Court: No; did you pay her?

A. Yes, surely.

Q. She lives right in that house? A. Yes.

Q. Had her washing done there? A. Yes.

Q. Her cooking? A. Yes.

40

Q. She sleeps there? A. Yes.

Rutgers Clarkson, cross.

Q. Yet you paid her \$45.00 a week? A. Yes, surely; she had to leave her own business.

The Court: Don't argue.

Q. This Mary Weiss, what relation is she to you or to your wife? A. She ain't no relation. 10

Q. Eh? A. She ain't no relation.

Mr. McGinnis: Talk up a little, please.

Q. What relation is Margaret Wolfe? A. Margaret Wolfe is the sister-in-law.

Q. Whose sister-in-law? A. My sister-in-law.

Q. Is she your wife's sister? A. No.

Q. You say she is your sister-in-law? A. Yes, sir.

Q. Did she marry your brother? A. Yes, sir; she married my brother. 20

Q. So that the other nurse, Margaret Wolfe, to whom you say you paid \$40.00 a week, for ten weeks, is your sister-in-law? A. Yes, sir.

Q. Did she live in your house, too? A. No, sir.

Q. Did you actually pay her \$40.00 a week? A. I certainly paid her \$40.00 a week; she has got a family, she had to leave her family. She lives in Lafayette Avenue, she left her family to come down to take care of my wife. 30

Q. Is Margaret Wolfe here? A. No.

Q. Is Ida MacCullough here? A. No, I don't think she is.

Q. Is Mary Weiss here? A. No.

Q. Is she related to you by marriage, Mary Weiss? A. No, no relation at all.

Q. After you first saw this automobile that was in this accident opposite the second house above Summer Street, did you keep watching it, or didn't you watch it after that at all? A. Why, I didn't 40

Rutgers Clarkson, redirect.

keep watching it, no. Why should I watch the automobile?

Q. You didn't pay any more attention to it? A. No, it seemed to me to be far—

10 The Court: Don't argue.

Mr. Markley: I ask that be stricken out.

The Court: Strike it out.

Q. You just saw it that one time; is that right? A. Yes.

Q. You had no trouble seeing it, did you, when you looked up there? A. No.

Q. The lights were lit on the automobile? A. Yes, the lights were lit on the automobile.

20 Q. You could very plainly see it, couldn't you? A. You could see it, yes.

Q. Now, in addition to these people you have mentioned as forming part of your household, there was some school teachers boarding there, too, wasn't there? A. No, sir.

Q. Didn't you have some school teachers boarding at your house? A. Not since my wife has been sick; we used to have them quite a while ago.

30 Q. Quite a while ago? A. Yes, maybe four or five years ago. It is along there.

Mr. Markley: That is all.

Redirect examination by Mr. McGinnis:

Q. These receipts, who typewrote these receipts? A. Why, my son.

Q. Your son, Louis? A. My son, Louis.

Q. What nationality is this Mary Weiss? A. I do not know.

40 Q. Do not know? A. I do not know.

Mr. McGinnis: That is all.

Gustav Otto, direct.

GUSTAV OTTO, sworn.

Direct examination by Mr. McGinnis:

Q. Mr. Otto, where do you live? A. At 352 Harrison Street, Passaic.

Q. Do you remember the day of this accident? 10

A. I do; yes, sir.

Q. Did you see the accident? A. I did not; no, sir.

Q. Did you come there after the accident was over? A. I did, after Mr. Clarkson sent for me, asked me whether or not—

Q. Never mind what Mr. Clarkson said to you. A. Oh!

Q. You came to the scene, didn't you? A. I did; yes, sir. 20

Q. Did you have any conversation with Mr. Ley? A. I did; yes, sir.

Q. Is Mr. Ley here in court?

Mr. McGinnis: Stand up, Mr. Ley. Won't you stand up?

Q. (Continuing.) Is that the man? A. Yes, sir.

Q. Where did you have this talk with him? A. In front of Mr. Clarkson's house, where the accident had happened. 30

Q. What language did you talk with him in? A. German.

Q. What was said by Mr. Ley to you or you to Mr. Ley, with reference to this accident? A. I asked Mr. Ley how it happened, and he said that he was—that his wife was waiting for him downtown and he was going down and meet her, and that he didn't see this woman whom he hit, whom he addressed as "that woman" until his fender had hit her and then he couldn't immediately stop his 40

Mary Dunshatt, direct.

car, and he had to drag her along. Then I suggested to him, after a few minutes, it would be better for us to go down—to come down with him to police headquarters and report the case, and he said, well, he would have to go and get his wife because she was nervous, and she had been waiting for him, and she didn't know what had happened to him or what had delayed him.

The Court: Was this immediately after the accident, this conversation?

The Witness: Yes, sir.

A. (Continuing.) So we went down, and his wife was at some store, I think next to the old Post Office, and we picked her up, and he told her in French, which, of course, I couldn't understand, but then, she can also speak German, and then we recited the whole affair in German and he recited the same thing there, that he did not see the woman until his fender had struck her. From there we went to police headquarters and reported it.

Q. How was it that Mr. Clarkson sent for you—

A. After—

Mr. Markley: I object.

30 Q. However, you speak German— A. Yes, sir.

Q. —and Mr. Ley spoke German? A. Yes, sir.

Q. You are no relation to Mr. Clarkson or to Mrs. Clarkson? A. I am not; no, sir.

Mr. McGinnis: Cross-examine.

Mr. Markley: No questions.

MISS MARY DUNSHATT, sworn.

Direct examination by Mr. McGinnis:

40 Q. Mary, where do you live? A. I live at 31 Jefferson Street, Passaic.

Mary Dunshatt, direct.

Q. How old are you, Mary? A. Eighteen.

Q. Where were you living at the time of this accident, December, 1926? A. 87 Burgess place.

Q. Were you on this bus at the time of this accident, Mary? A. Yes, sir.

Q. Where did you get off the bus? A. I got off at Holdsworth Court. 10

Q. Any other people get off? A. Yes, sir.

Q. Was there anybody with you? A. Yes, a girl friend of mine.

Q. Who has since married, I believe? A. Yes, sir.

Q. Then, when you got off the bus, what did you do? A. Well, I don't know whether I walked behind the bus or in front of the bus, I just don't remember, but I got half-way across the street, and I saw a car that was about—it was not quite at the second house—it was just about leaving past the third house, or towards the north side— 20

Q. Coming which direction? A. Coming down to Passaic.

Q. That is, like coming from Paterson, going to Passaic? A. Yes, sir.

Q. Up around the third house?

Mr. Markley: Passing the third house, she said. 30

Q. Passing the third house. Did you observe anything about the rate of speed of that car? A. Yes, is was going fast, very fast.

Q. You say you saw it when you were crossing the street? A. Yes, because I was in the middle of the street when I saw it, and we just got over on the sidewalk.

Q. Your friend with you? A. Yes, sir. 40

Q. When you say you were over on the side-

Mary Dunshatt, cross.

walk, you got over on the other side of Lexington Avenue? A. (No audible response.)

Mr. McGinnis: She shook her head, "yes".

10 Q. What happened after that, Mary? A. Me and my girl friend got on the sidewalk, when we heard a crash, and we looked around we saw the woman up in the air.

Q. Was that near the same automobile that was by this woman? A. Yes, it was the same automobile.

Q. Then what happened? A. Then a lot people ran and they took her, carried her to the sidewalk.

20 Q. Did you notice about where this woman was, and where the automobile was, when the crash took place? A. No, I did not.

Q. How near was it to the curb where you were, that side of the street, had she gotten? Was she in the middle of the street, or where was she? Did you notice that? A. She was not quite in the middle, between the curb and the white line.

Q. Between the white line and which curb, Mary? A. The side that I was on.

30 Q. The side on which you were? It was dark at the time? A. Yes.

Q. I mean, night time? A. Yes.

Q. You say this automobile was going fast? A. Yes, sir.

Q. How fast? A. Well, pretty fast; I can't tell by miles.

Q. It had started to snow, I believe, hadn't it? A. Yes, a very little.

Mr. McGinnis: You may cross-examine.

40 *Cross-examination by Mr. Markley:*

Q. Mary, did you say that you were not sure

Mary Dunshatt, cross.

whether you passed to the front of the bus or to the back of the bus? A. Yes, sir.

Q. You are not sure of that? A. Yes.

Q. That is, you do not remember? A. No, I don't remember.

Q. As I understand you, you crossed over Lexington Avenue? A. Yes, sir. 10

Q. Ahead of this car that you saw; is that right? A. Yes.

Q. In other words, you did not wait for this car to pass? A. No, sir.

Q. But you walked over ahead? A. Yes, sir.

Q. You lived, you say, where—at Burgess Place? A. I lived there at that time, yes.

Q. What is that? A. At that time.

20

The Court: At that time?

The Witness: Of the accident.

The Court: At that time, she said.

Mr. Markley: At the time of the accident, yes.

Q. How far is that from Holdsworth Court where you alighted from the bus? A. How far away? I lived up over at the other end of Passaic—

Q. Yes? A. —up across the railroad tracks.

Q. Where were you going at the time of this accident? A. I was coming home from work. 30

Q. Eh? A. I was coming home from work.

Q. Can't you tell me about how far were you from home after you got off the bus? A. Yes, sir.

Q. How far was Burgess Place, where you lived, from where you got off the bus, how many blocks? A. Oh, Burgess Place is just one block from Summer Street, on the left-hand side; going up towards Paterson, it is one block.

Q. Well, is it one block further on on Lexington 40

Mary Dunshatt, cross.

Avenue (indicating on P-1)? A. Yes, sir; on this side.

Q. In other words, from where Summer Street is, from there one block up, one block above Summer Street? A. Yes, sir.

10 Q. Would be Burgess Place? A. Yes, sir.

Q. Why didn't you ride up there? A. Well, Burgess Place doesn't run all over the way through where the track is; I have got to get off there and walk up Summer Street.

Q. Do you remember the corner you got off the bus? A. Yes, sir.

Q. Did you walk right straight across at that point? A. Yes, sir.

Q. Eh? A. Yes, sir.

20 Q. How far away were you from Mrs. Clarkson when the accident happened? A. I was just on the sidewalk.

Q. Well, were you—did you cross at the same point that she crossed? A. She didn't cross with me; she was in back of me.

Q. Well, how far in back of you was she? A. I do not know; I do not know in what way, how she came behind me.

30 Q. Did you walk along the edge of the walk at all? A. No, I just got up on the sidewalk.

Q. You were up on the sidewalk, on Mrs. Clarkson's side of the street? A. Yes, sir.

Q. Where were you when you first looked at this car? A. In the middle of the road.

Q. That is, you were in the middle of Lexington Avenue, were you? A. Yes, sir.

Q. You were about on the white line— A. Yes, sir.

40 Q. —when you first looked? A. Yes, sir; when I first looked, that is about where I was.

Percy H. Terhune, direct.

Q. You say you were there? A. Yes, sir.

Q. Where was the automobile then? A. It was just passing the third house, not quite to the second.

Q. You mean the third house north of Summer Street? A. Yes. 10

Q. Just passing the third house toward here, was it, to you? A. No, the third house up, it was just near the end, going on to the second one.

Q. Coming onto the second when you were in the center of the street? A. Yes, sir.

Q. You could see it all right? A. Yes, sir.

Q. No trouble to see it? A. No.

Q. It was in plain view? A. Huh-huh.

Q. Lights were burning? A. Yes. 20

Mr. Markley: That is all.

Redirect examination by Mr. McGinnis:

Q. What was the name of your girl friend? A. Her first name is Fanny.

Q. Do you know what her marriage name is? A. No.

Q. Fannie? A. Yes.

Mr. McGinnis: That is all. 30

PERCY H. TERHUNE, M. D., sworn

Direct examination by Mr. McGinnis:

Q. Doctor, you are a practicing physician of this state? A. Yes, sir.

Q. For how many years? A. Thirty-eight.

Q. Have you specialized in any particular type of medical work? A. X-ray diagnosis.

Q. X-ray diagnosis; how many years have you been doing that doctor? 40

Percy H. Terhune, direct.

Mr. Markley: We will admit the doctor's qualifications. I know Dr. Terhune very well.

Mr. McGinnis: I will say this also; it has been a number of years.

10 Q. You are connected with certain hospitals in Passaic in this capacity that you have just told us? A. Yes.

Q. Doctor, did you take some X-rays of Mrs. Clarkson? A. I did.

Q. Can you tell us when you took them? A. I made the first examination December 17, 1926.

Q. Did you take X-rays on that occasion? A. I did.

20 Q. Have you the X-rays here? A. I will tell you in a minute (producing X-ray plates).

Q. What did you find, doctor, upon examination of that X-ray? A. Why, I found a double fracture of the pelvis.

Q. First, will you indicate to the jury where the pelvis is? A. Why, it is the main supporting part of your body, where the hips are articulating below and the spine above, these wings.

30 Q. A double fracture, doctor, what do you mean by a double fracture? A. Well, it was a fracture on the right side of the pubic bone, also on the left side, there being two bones of the same name, one right, one left.

Q. Can you indicate generally to the jury where those bones are located? A. About there, about this point (indicating).

40 Q. Did you find any other breaks? A. There was a fracture of the pelvis right near the articular surface of the right hip joint, small fragment fractured.

Q. That is, three fractures in all? A. Right.

Percy H. Terhune, direct.

Q. Was there any serious separation? A. No.

The Court: What was that other, doctor?

The Witness: Fracture of a fragment from the articular surface of the articulation of the right hip joint, acetabulum it is called. 10

The Court: Articular surface?

The Witness: Yes, of the right hip joint.

Q. When was the next X-ray taken, doctor? A. The next one was taken—

Mr. Markley: When was the first taken, may I ask, Dr. Terhune?

The Witness: December 17, 1926.

A. (Continuing.) Second was the 3rd of March —no, the 9th of March, 1927. 20

Q. Same position as the first X-rays? A. Yes, the same position, taken stereoscopically.

Q. Before we get them confused, I am going to offer this first X-ray in evidence. A. These are the first ones (indicating).

Q. Why did you take two, doctor? A. Why, in a fracture, if we can get two right angle views, we do it, to get displacement, but where we cannot do that, we take them with the plates separated, one above the other, what we call stereoscopic. 30

Q. Are both of these X-rays you have in your hand taken from the same position? A. Taken in the same position, just simply the tube is shifting. (Exhibiting plate in X-ray machine). All of these bones here include the pelvis. The pubic bones extend from here across to this area, then run up to that point; then there is a portion comes down here; there is another bone, called the ischium, 40

Percy H. Terhune, direct.

comes down here, joins with it, about that point. Now, the fracture is at the junction of what we call the descending ramus, the part of this bone, descending part of this bone, the ischium, right at that point, if you will notice, see a crack through there (indicating).

10

Q. Yes, sir. A. (Continuing.) There is another mark up here, because the articular surface is not continuous there; it is displaced inward about a quarter of an inch or more. That is that. On the other side, there is a fracture through here and through here, but particularly through here, opposite this point here. Under the stereoscope it shows much better than it does in the plain plane, because it shows the perspective.

20

Mr. McGinnis: I offer these in evidence. (Marked exhibits P-2 and P-3 in evidence.)

Mr. Markley: Were there two in December, may I ask, doctor?

The Witness: Yes.

Q. Two at the same time, may I ask, doctor?
A. Yes, at the same time stereoscopically.

30

Q. You are now holding in your hand what, doctor? A. This is the examination made in March, March 9th—

Q. 1927? A. Yes, sir; 1927.

Q. Same position? A. Same position exactly.

Q. Tell what you found on the second examination. A. You see the same fracture at these points with perhaps a limited displacement with callus in there. I can put it down with a pen, if you like. All right?

40

Q. Yes.

Mr. Markley: Certainly, Doctor.

Percy H. Terhune, direct.

A. (Continuing.) There is one fracture, there is the other one (indicating); just a little tip off there, don't amount to anything (indicating).

Mr. Markley: Put "T" there, will you, Doctor, so as to have something to recognize it? 10

The Witness: Yes.

A. (Continuing.) This shows the same fracture you see in the first examination, with the same displacement here perhaps a little bit greater than in the original examination. You see here the articular surface comes around (indicating), and here we have the fracture comes around like that (indicating).

Q. Why, in your opinion, does it show larger in these pictures, the 9th of March, which is subsequent to this one? A. Because the displacement may have become a little greater since the original examination. 20

Q. You mean, from the formation of some callus? A. Perhaps there is callus in there because we do not see any daylight in between.

Q. Callus, for the benefit of the jury, is a bone-like substance that is thrown out by nature to heal a fracture? A. It is. 30

Q. It resembles bone? A. Exactly; it becomes hard, like bone.

Q. You took two on this occasion, did you? A. Stereoscopically; yes, sir.

Mr. McGinnis: I offer this picture in evidence.

The Court: Let it be marked.
(Marked Exhibit P-4 in evidence.)

Q. You handed me a second picture taken March 9, 1927? A. Yes. 40

Percy H. Terhune, direct.

Q. What does that picture show, Doctor? A. That is just a companion picture to the other one. They are made in pairs.

Q. In the same position? A. Same position, just shifting of the tube.

10

Mr. McGinnis: I will offer that in evidence.

(Marked Exhibit P-5 in evidence.)

Q. Now, did you take any further pictures, Doctor? A. That is all I took.

Q. What was your bill, Doctor? A. \$15.00 for each examination.

Q. \$30.00 in all? A. \$30.00.

20

Q. Doctor, the pelvis, has that any relation to the movements of the leg, of the thigh? A. The hip joint or thigh bone articulates with the pelvis, the acetabulum, the articular surface of it as a part of the pelvis.

Q. So that any pressure on the pelvis, would that react in any way with the motion of the hip? A. It might, if there were adhesions in and around with the fracture at that point.

Q. Adhesions do form following fractures, do they not, Doctor? A. Yes.

30

Q. Callus formation also will cause trouble in that respect? A. Yes.

Q. And would standing any length of time on the feet, throwing the weight of the body there, would that be likely to produce pain or discomfort where a person has had fracture of the pelvis? A. I do not know as I am in a position to go on with that line of testimony, as my work really is confined to X-ray diagnosis.

40

Q. I will withdraw the question. A. (Continuing.) As a general practitioner, I could say; but I am not an expert in that line.

Percy H. Terhune, direct.

Q. I see. The tip fractured off the hip bone that you have mentioned, of course, that would produce pain? A fracture such as that, would that produce pain?

Mr. Markley: I object to that, unless the doctor is asked, first, whether he knows. I understood he just said he was not qualified. 10

Mr. McGinnis: Not as an expert he is not qualified.

The Court: He doesn't know.

Q. Would that fracture cause some pain, Doctor —of that kind? A. Any fracture can cause some pain.

Q. You made no examination after the 17th of March, did you, Doctor? A. Only verbal. 20

Q. I mean, no X-ray examination? A. No.

Q. Doctor, the weight of a person's body, would that have something to do in its relation to discomfort or impediment in movement following a fracture of a pelvis?

Mr. Markley: I object to that.

Mr. McGinnis: He admitted his qualifications.

Mr. Markley: I admit his qualification as an X-ray specialist. 30

The Court: If he does not know, he may say so. Of course, he is a general practitioner.

Mr. Markley: I will withdraw the objection. Go ahead, Doctor.

A. I would think the more the weight, the more the discomfort.

Mr. McGinnis: You may cross examine. 40

Percy H. Terhune, cross.

Cross examination by Mr. Markley:

Q. Doctor, there is no distortion of this pelvic outline at all, is there? A. Except in the articular surface, where the head of—articulation with the large bone—with the femur.

10

Q. Is that where you put the "T"? A. No. Shall I show you?

Q. Yes. A. Last examination?

Q. Yes. A. (Referring to P-4.) Now, if you will following the outlines of this the hip joint is perfectly clean cut, on a regular curve.

Q. That is the hip joint, Doctor? A. Yes.

Q. That is not the pelvis? A. Absolutely, part of the pelvis.

20

Q. Where is the hip joint, Doctor? A. (Indicating.)

Q. You say that is part of the pelvis? A. Yes, sir.

Q. All right. I do not mean to dispute that with you. I just wanted to get it clear. A. On the opposite side, this being clean cut, smooth line; you notice, you come around here to that point, then you go into there, then come around, so that it is a displacement of that part of the ischium inward.

30

Q. That is small, however? A. It is quite a little displacement for that part of the body.

Q. Can you describe it particularly? A. It is a displacement or pushing in of the head of the bone or the lower half of the articular surface of the acetabulum.

Q. Is there a callus formation? A. Probably around there, it is pretty hard to say; there may be union without callus.

40

Q. You say this little thing is insignificant, you said? A. Yes.

Percy H. Terhune, redirect—recross.

Q. Why did you say that, Doctor? A. Because this small fragment could not interfere much with motion.

Mr. Markley: That is all.

Redirect examination by Mr. McGinnis: 10

Q. This displacement is inward, is it? A. Displacement of the lower fragment of the "internal" ramus inward.

Q. What would that press against, Doctor? A. It doesn't press against anything particularly.

Mr. McGinnis: That is all.

Recross examination by Mr. Markley:

Q. There is no distortion of the form of the inlet of the pelvis, is there, Doctor? A. No, that is very good. 20

Q. That is very good, and the fragments are in excellent apposition there, are they not? A. There is no fracture above, in this particular part; the fractures are down below. These are in very good position.

Q. The fragments of the fractures are in excellent apposition, are they not? A. With the exception of the acetabulum, I cannot say they are. 30

Mr. Markley: All right.

By Mr. McGinnis:

Q. I want to get that word right, "acetabulum"? A. That is the hip—surface of the hip joint which is in the pelvic bones, that is, their articular surface for the head of the bones, which articulate with the acetabulum.

Q. By articulation you mean "movement," do you? A. That is a joint. 40

Mr. McGinnis: That is all.

Gerard J. Van Schotte, direct.

GERARD J. VAN SCHOTTE, M. D., sworn.

Direct examination by Mr. McGinnis:

Q. Doctor, are you a practicing physician and surgeon of this State? A. Yes, sir.

10 Q. And carrying on your practice where? A. Passaic, New Jersey.

Q. Connected with any institutions? A. Passaic General Hospital.

Q. What capacity? A. Orthopedic surgeon.

Q. Did you treat Mrs. Clarkson, the plaintiff in this case, for the injuries following this accident that she has told us about? A. I did.

20 Q. When and where did you first see her? A. I first saw Mrs. Clarkson, it was on the 4th day of December, 1926; she was lying on the curbstone or on the curb—along the curb—in front of her house, which is adjoining my house.

Q. You were summoned there immediately following an accident that was reported to you? A. Yes.

Q. I mention that, because of the date you have given us. What time was that? A. Sometime between half past six and seven in the evening.

30 Q. After that, did you treat her at the house? A. Yes, sir.

Q. Now, did you direct these X-rays to be taken that Dr. Terhune took? A. Yes, sir.

40 Q. Will you tell us, Doctor, after she was taken into the house, where you saw her first? In bed? A. Well, as I say, I saw her lying in the street first. It was snowing, and there was a little snow—about an inch or two of snow, on the ground. My first thought was to get her out of that snow and get her out of the weather as soon as possible, so I directed her husband and her own son to lift her

Gerard J. Van Schotte, direct.

up, put her into the house, to put her to bed. When she was in bed I examined her.

Q. What did you find, Doctor, on this first examination? A. I found that she had a contusion and laceration of her scalp; she had contusions of her back, both legs, back of the knees, both thighs; and she was in some shock at that time. 10

Q. Did you find evidences of these fractures that were afterwards found? A. She complained of pain in the lower part of her back, her pelvic region; I examined her rather carefully for that, and I found no evidence at that time of any internal injury, such as hemorrhage or rupture of any viscus.

Q. The scalp wound that you have told us about, where was that? How big was that? A. Well, that was a laceration about half an inch long on the right side of her scalp, in the back, in the parieto-occipital region. 20

Q. Next, what is it with respect to the knees? A. Well, in the back of the lower thighs—

Q. Yes? A. —back of the knees, back of the upper part of her leg, she was very black and blue, she was ecchymotic there, which lasted for a long time. 30

Q. Ecchymotic means what, doctor? A. Discolored from hemorrhage.

Q. Did you find whether or not there was anything serious in connection with those injuries?

A. I did not elicit any—

Q. What I mean is on this preliminary examination. A. No, I didn't find anything there.

Q. That evidently cleared up? A. Yes.

Q. And the head injury, or the scalp wound, that cleared up? A. That cleared up, too, yes. 40

Gerard J. Van Schotte, direct.

Q. Did you find some trouble about one of her toes? A. I do not remember of any toes.

10 Q. Eventually, did you find, from these X-rays that she had these fractures that Dr. Terhune has told us about? A. Well, I suspected them the first time I examined her, but I could manipulate her hips, and I couldn't feel any dislocation any-
wheres, so on account of the weather, etc., I didn't want to move her to the hospital, so I decided to leave her stay in her own home and as soon as a favorable opportunity arose to have an X-ray examination.

20 Q. There were some other bruises and contusions about her, doctor? A. Yes, she had ecchymosis all over the lower part of the back, thighs, back of the knees.

Q. To put it in plain English, all over the thighs, back and knees she was black and blue? A. Yes.

Q. That eventually, so far as there was anything the matter, eventually cleared up? A. Yes.

Q. But did she make any complaint about any pain in her back? A. Yes, she did complain about pain in her back.

30 Q. How frequently did you see her after that? A. Why, I saw her about every day for about a week, then every few days up until the 24th of January, 1927, and that time I instructed her that she could sit up in a chair part of the day, as much as she felt able to be, and about a week or two later than that I saw her once or twice more, at which time she was able to walk a little; she walked around a little bit and then she sat down.

Q. All of this time, doctor, was she complaining of pains or not? A. Yes, she complained of pain.

40 Q. Where did she indicate the pain was? A. Pain was in her back, lower part of her back.

Gerard J. Van Schotte, direct.

Q. From what you have observed on this first visit, was it probable, or not, that she did have pain in her back? A. Yes, it was.

Q. Were the injuries that you observed that she had suffered, were they injuries such as would produce pain, or not? A. Yes.

10

Q. Very much pain, or not? A. Yes; very stout woman, it would.

Q. And the fact that she was stout, would that help to accent the pain, to accentuate these injuries? A. No, but the severity of the fall would do that.

Q. Did she develop any nervous condition? A. She has complained recently, this past February, I think it was, about headaches and being nervous at times, and some pain in her back, lower part of her back.

20

Q. To what would you attribute this pain in the lower part of the back, doctor? A. Well, I could not elicit any organic reason for it; I suppose that it is a functional nervous disturbance.

Q. Shock to the nervous system, doctor, could make a patient become very sensitive to pains in this region, even though there might be no organic cause; is that right?

30

Mr. Markley: I object to that.

The Witness: (Interrupting.) Yes.

The Court: I think that is a little leading, Senator.

Q. Well, even if there were no organic disturbance, Doctor, might a person, because of shock to the nervous system, suffer or simulate pain? A. Yes, and they might be nervous, too.

Q. A condition of that kind is frequently referred to as neurasthenia; is that right?

40

Gerard J. Van Schotte, direct.

Mr. Markley: I object. I think that is a little leading. The doctor ought to testify, not Senator McGinnis.

10 Q. What do they call it, Doctor, a condition such as I have just mentioned? A. Neurasthenia.

Q. So that, Doctor, your visits gradually fell off. A. (No audible response.)

Q. Did you, or not, Doctor, direct her to do all she could in the shape of exercise? A. I did.

Q. Did you notice the lady before the accident? A. Why, I have lived next door to Mrs. Clarkson about a year or a little over a year previous to that.

20 Q. Do you know whether or not she was apparently a vigorous, healthy woman, or not? A. Yes, I observed her occasionally as I come in and out; she seemed to be well.

Q. Doctor, do you know that afterwards, when she did get up, she was obliged to use crutches for a while? A. Yes, sir; I saw her do it.

Q. Was that reasonably necessary or likely, in your judgment, following injuries such as she received? A. I think it was.

30 Q. Doctor, she has complained of trouble in walking; she says it makes it difficult, she cannot walk very well without the aid of a crutch or some form of support, such as that, to walk any distance; also complains of pain or weakness if she stands any length of time on her feet; in your judgment would that be the probable result of this injury? A. It might be.

Q. Doctor, did you set the fractures, by the way, in this case? A. There was no setting necessary.

40 Q. Doctor, if she suffers from pain at this time, and finds it necessary to aid herself with a crutch or other support, and having in mind that this acci-

Gerard J. Van Schotte, direct.

dent happened nineteen months ago, or thereabouts, what, in your opinion, is there to be said as to the future?

Mr. Markley: What is that?

Q. (Continuing.) What, in your opinion, is the likelihood of a recovery? A. I do not know. 10

Q. It may, Doctor, or not, last for all time?

The Court: That is not the test, Senator.

Mr. McGinnis: Withdraw the question.

Q. In your judgment, is this condition that she is suffering from a permanent condition?

The Court: He said he did not know.

Mr. Markley: He said he did not know. 20

A. I do not know; Mrs. Clarkson's symptoms are subjective.

Q. Well, taking the symptoms that she discloses to you, plus the actual injuries which you found her suffering from in December, 1928, what, in your opinion, is the likelihood of her injuries being permanent?

Mr. Markley: I object to that. This witness has already testified he doesn't know. 30

The Court: All right, he said so, he did not know.

Q. Can you answer that question, Doctor? A. Why, I cannot answer that, I do not believe.

Q. All right, sir. What was your bill, Doctor?

A. I think it was \$131.00.

Q. Yes; will this refresh your memory? A. Yes, sir; correct.

Q. \$131.00, showing him the bill. 40

Mr. McGinnis: You may cross examine.

Gerard J. Van Schotte, cross.

Cross examination by Mr. Markley:

10 Q. Doctor, you have just testified, I believe, that her symptoms at the present time are purely subjective; is that right? A. Well, the last time Mrs. Clarkson consulted me was in February of this year. At that time she complained about headaches, disturbances with her eyes, nervousness, pain in her back.

Q. I am asking you, then, as of February, Doctor,—take February when you last examined her, I believe— A. Yes.

Q. —of 1928, you say, when you last examined her, in February, 1928, her symptoms were all purely subjective? A. Yes.

20 Q. When you say that her symptoms were all purely subjective, that means that you have got to take her word for it; isn't that so? A. Yes; she states she has the pain—I must take her word for it because I do not know whether she has or not.

Q. I see. Now, then, you also found from your physical examination of her, at that time, that she had no organic trouble? A. No, I couldn't find any organic trouble.

30 Q. So that, in February, 1928, you made an examination of her and could find, from your examination, no trouble, could you; is that right? A. I couldn't; I even had her eyes tested by an oculist.

Q. What is that? A. I say, I referred her to an oculist for an expert eye examination.

Q. Well, so far as you were able to reveal, from your own physical examination of the woman, you could find nothing wrong with her, could you? A. No; I felt that, as far as the fractures were concerned, that the recovery was very good.

40 Q. You felt that she had made a good recovery from the fractures? A. Yes, sir.

Gerard J. Van Schotte, cross.

Q. So far as the black and blue places or the bruises were concerned, they had fully cleared up long before that, hadn't they? A. Yes.

Q. In fact, they cleared up in about six weeks or two months? A. About two months, or a little more.

10

Q. So that the black—ecchymotic signs, as you call them, they had all cleared up? A. They had, yes.

Q. "Ecchymotic" means "black and blue"; that had all cleared up. That leaves nothing in the way of injuries that you could see or feel or examine for except the fractures? A. Yes.

Q. Is that right? A. Yes. Of course, the contusions—the main lacerations or contusions beneath the skin had; there might have been minute lacerations that I couldn't see or feel.

20

Q. But so far as your examination revealed, that had cleared up in about two months? A. Yes.

Q. There are no evidences as to those. Now, then as to the fractures, you felt she had made a good recovery,—as you say, of the fractures; is that right? A. Correct.

Q. You advised her to use her legs, didn't you? A. Yes.

Q. She did do that, didn't she, to your knowledge? A. She did.

30

Q. That is, she walked around to your knowledge, without the aid of any support, without the crutch? A. I cannot say as to that; I have not seen her walking without a crutch, except in the house, not outside.

Q. She can walk without crutches, though, can't she? A. Yes.

Q. In your opinion, that indicates that she has good bony union of these fractures? A. Yes.

40

Gerard J. Van Schotte, cross.

Q. If she did not have good bony union of these fractures, she couldn't walk without the aid of the crutch, or a stick, could she? A. I suppose she could, but she would have a lot more pain, if she does.

10 Q. In your opinion, you say she has made a good recovery of the fractures? A. Yes, sir.

Q. That implies that she had bony union of the fractures? A. Yes, sir.

Q. She has the ability to put her weight on her legs? You mean that, orthopedically, she has made a good recovery; is that correct? A. Correct.

Q. You have seen her do that, have you not? A. Correct.

20 Q. You did not mean to say that this woman was neurasthenic, did you, Doctor? A. No, I do not mean that Mrs. Clarkson is neurasthenic, but—

Q. As a matter of fact—

Mr. McGinnis: Go on, Doctor; but what?

Q. I did not mean to interrupt you, Doctor; go ahead. A. The symptoms which Mrs. Clarkson complains of, the nervous symptoms, might be of neurasthenic origin.

30 Q. Might be, but you are not saying they are, are you? A. I do not say so, no.

Q. You would not say that she was neurasthenic, would you? A. No.

Q. She complains of pain and she complains of nervousness, and a great many people complain of pains and of nervousness, who are not neurasthenics?

Mr. McGinnis: That is objectionable.

40 A. That is true.

Q. Isn't that so, Doctor? A. Well, some pain

Gerard J. Van Schotte, redirect.

might easily cause a person to become neurasthenic.

Q. But she is not, is she? A. But illness does cause pain, causes people to worry, and worry and anxiety are causes for neurasthenia.

Q. But you did not find her neurasthenic, did you? A. No. 10

Q. What? A. No.

Q. Your bill is \$131.00, Doctor, and that was testified by Mr. Clarkson paid up until, I think he said, January or February of this year? A. That is correct.

Q. You haven't any further bill, have you? A. No, I do not believe I have.

Mr. Markley: That is all.

20

Redirect examination by Mr. McGinnis:

Q. Doctor, you were asked about seeing her walk, that she would walk around her room? A. In her house.

Q. You also testified that while she might walk in that way, that it would cause pain; if I understood you correctly? A. Yes, certainly.

Q. So that, in order to relieve her from pain on walking, it would be better that she have a support of some kind; is that right? A. Any person that has severe enough pain is going to seek support, no matter whether you tell them to or not. 30

Q. You were asked about whether or not she was neurasthenic. You have testified that these pains that she complains of could be of neurasthenic origin; that is correct? A. The reason I say that is because I cannot find any organic reason for it.

Q. Exactly; you find no organic reason but you do find a person who has suffered shock to the nervous system, and from that, taking these sub- 40

Gerard J. Van Schotte, recross.

jective symptoms, that she complains of, so that indicates neurasthenia; is that right? A. Yes.

Q. Tell us what neurasthenia is? A. Neurasthenia is a functional disease of the nervous system.

10 Q. And traumatic neurasthenia is neurasthenia which follows injury? A. Shock following injury.

Mr. McGinnis: That is all.

Recross-examination by Mr. Markley:

Q. But you do not say she has neurasthenia, do you, Doctor? A. No, I do not say that Mrs. Clarkson has neurasthenia, but the only explanation I can offer for these symptoms of Mrs. Clarkson, at
20 this time, is that they are neurasthenic symptoms following this injury.

Q. She did not complain of them until February of this year?

Mr. McGinnis: He did not say that.

A. Sir?

Q. Didn't you say that she did not complain of them until February of this year? A. In February, I say, Mrs. Clarkson called on me at that time, and she complained about headaches, disturbances
30 with her eyes, and pains in the back.

Q. That was in February, 1928? A. '28, correct; and I believe in December, too.

Q. You couldn't find anything wrong with her eyes, could you? A. I couldn't; I referred her to an oculist, Dr. Chase, in Passaic, for an expert examination of her eyes.

Q. She reported back to you after that? A. Dr. Chase reported to me that he found no evidences
40 of hemorrhage into the eyeball or retinitis.

Gerard J. Van Schotte, redirect.

Q. Could find no evidences of eye injury; all right. A. He found none.

Mr. Markley: That is all.

Redirect examination by Mr. McGinnis:

Q. Doctor, a neurasthenic, if I may use the word, may have such a shock as to be unable to walk, for instance, or turn in the bed, or to raise a hand, and may not be able to find any symptoms; that is true, isn't it?

10

Mr. Markley: I object to that.

A. (Interrupting.) That is true.

The Court: Is there anything in the complaint about neurasthenia?

20

Mr. McGinnis: No, except the shock to her nervous system.

Mr. Markley: That doesn't let in any subject the plaintiff has testified to, your Honor.

The Court: Neurasthenia, I understand, is where there are, generally, complaints of nervous disturbances, Doctor?

The Witness: Yes, they are nervous symptoms which are not based on any organic disease.

30

The Court: I think we have had enough about that.

Q. Doctor, did she, during all of the course of these treatments, complain to you about pains in her back? A. Yes, sir.

Q. And these other pains? A. Yes, sir.

Mr. McGinnis: That is all.

The Court: That is all; two o'clock, members of the jury, promptly.

40

(NOON RECESS.)

Mary Weiss, direct.

June 1, 1928, 2:00 P. M.

MRS. MARY WEISS, sworn.

Direct examination by Mr. McGinnis:

- 10 Q. You are Mrs. Mary Weiss? A. Yes, sir.
Q. Where do you live? A. I live on 115 Lake Avenue.
Q. What city? A. Clifton.
Q. Whom do you work for? A. For Mrs. Clarkson.
Q. How long have you worked for Mrs. Clarkson? A. I started to work, it was a year last March.
20 Q. What kind of work do you do for Mrs. Clarkson? A. I do house cleaning, ironing and cooking.
Q. What time of day do you go to work, or, what time in the morning? A. I go in the mornings at eight o'clock, and go home after supper, sometimes earlier, sometimes later.
Q. How much a month did you get for your wages? A. Well, I got \$80.00 a month, but I get paid every two weeks, \$40.00.
Q. Twice a month you get paid? A. Yes.
30 Q. Did you render receipts for your money? A. Yes, I always signed receipts, each time I got my pay.
Q. Whom did you sign the receipts to? A. To Mr. Louis Clarkson.
Q. I show you a number of receipts here, the name Mrs. Mary Weiss. A. Yes.
Q. Are these your signatures? A. These are mine, I signed them.
40 Mr. McGinnis: Showing the witness a number of receipts.
Q. Did Mrs. Clarkson do much work around the

Mary Weiss, cross.

house, if any? A. No, she don't do work; she gets up late in the afternoon, sometimes she gets up a little earlier, but she goes to bed again; she doesn't feel like to stay up.

Q. Does she walk around much? A. Not much.

Q. Are you any relation to Mr. Clarkson? A. 10
No.

Q. Or to Mrs. Clarkson? A. No.

Q. What is your nationality? A. I am Hungarian, and I speak German, too.

Mr. McGinnis: You may cross examine.

Cross examination by Mr. Markley:

Q. How long have you known Mrs. Clarkson?
A. Only since I started to work for her. 20

Q. Did you sign these receipts all at one time?
A. Not at one time, when I got paid, each time I got paid, I signed them.

Q. When did you sign all of these? A. When I got paid.

Q. Didn't you sign them all at one time? A.
No.

Q. Didn't you sign them only a few days ago?
A. No.

Q. Eh? A. I signed them as I got paid. 30

Q. You would sign them as you would get paid?
A. Yes.

Q. Did you get paid by check? A. By check.

Q. Always? A. Always.

Mr. Markley: I see; that is all.

By Mr. McGinnis:

Q. Did you get checks or cash? A. By check.

The Court: She said checks always. 40

Andrew F. McBride, direct.

ANDREW F. McBRIDE, M. D., sworn.

Direct examination by Mr. McGinnis:

Q. Doctor, you are a practicing physician and surgeon of this State? A. Yes, sir.

10 Q. For how many years? A. Thirty-eight.

Q. You specialize in any branch of the medical profession? Surgery? A. Surgery; yes, sir.

Q. During the World War, were you in charge of any hospital unit?—do any hospital work? A. I was.

Q. What position did you hold? What military title?

20 Mr. Markley: We will admit Dr. McBride's qualifications; I have known the doctor for many years, Senator.

Q. I will ask just one question. Are you a member of the staff of any hospitals here? A. Yes.

Q. What hospital? A. St. Joseph's.

Q. Now, do you know professionally the plaintiffs in this case,—one of the plaintiffs, Mrs. Clarkson? A. I do.

Q. Did you make a medical examination of her? A. I made an examination of her; yes, sir.

30 Q. At whose request?

Mr. Markley: You say "examination," Doctor.

The Witness: An examination; yes, sir.

Q. At whose request? A. At the request of Mr. Gourley.

Q. Where did you make the examination, Doctor, and when? A. At my office; I don't know the exact date,—several weeks ago.

40 Mr. Markley: How long ago?

The Witness: Several weeks ago.

Andrew F. McBride, direct.

Q. Did you have a history of the case, Doctor?

A. I did.

Q. The date of the accident? A. Yes, sir.

Q. Of her having received any fractures?

Mr. Markley: I object.

10

Mr. McGinnis: I will withdraw that.

Mr. Markley: The history, I do not think the doctor has the right to rely on the history.

Q. Doctor, what did you find upon an examination of her? A. I found that she was suffering as the result of an injury received, or injuries received, by her at the time of the accident. I examined some X-ray plates which she brought to my office with her. I made a very careful examination of her and found that she was suffering in locomotion, she was not able to walk without the aid of crutches and cane or canes; that she suffered a good deal of pain upon moving her thigh and hip; I found that she was unable to make certain motions with her body that a person who has not suffered with injuries might make, and that as the result of my examination I felt that she was suffering from conditions that would not be ever cleared up on account of her age.

20

30

Q. Doctor, from an examination of these X-rays that were brought to you, could you observe that there had been fractures of the— A. Pubic bones.

Q. Yes; I couldn't think of the word. A. I could; yes, sir.

Q. Having in mind that those fractures were received on the 3rd of December, 1926, and the date of your examination recently, is, in your opinion, the condition you now find her suffering from, is or is not that permanent? A. It is permanent.

40

Andrew F. McBride, cross.

Q. Is the condition that you found here, Doctor, such as to produce pain? A. Yes, sir.

Q. Where would it produce pain, Doctor, aside from any subjective symptoms that the witness might describe to you? Where would you expect
10 to find pains with such injuries? A. Pains in the region of the pelvis or pains in her thigh and hip, pains in her back.

Mr. McGinnis: That is all. You may cross examine.

Cross examination by Mr. Markley:

Q. How many examinations did you make, Doctor? A. One.

Q. Just the one? A. Yes, sir.

Q. Where did you make it, doctor? A. At my office.

Q. Eh? A. At my office.

Q. That was at the request of Mr. William B. Gourley? A. Yes, sir.

Q. The attorney? A. Yes, sir.

Q. You made that for the purpose of testifying? A. Yes, sir.

Q. Not for the purpose of— A. Why, I made it
30 for the purpose of, if I might say that—I made it for the purpose of ascertaining what her condition was and to report to Mr. Gourley.

Q. You did not do it for the purpose of treating the woman, as her physician? A. No, sir.

Q. How long did that examination take? A. Why, between half an hour—one half to one hour, I would say.

Q. Did you ask her to walk without the aid of any cane or crutch? A. I did; yes, sir.

Q. She could walk, couldn't she? A. She did,
40 with great difficulty.

Andrew F. McBride, cross.

Q. Didn't she walk all right without the cane or crutch? A. No, sir.

Q. Did you ever see her at her home? A. No, sir.

Q. As a result of that physical examination, you could not find any objective symptoms, could you?

A. Yes, I could; yes, sir. 10

Q. The symptoms were subjective? A. No, no.

Q. What objective symptoms could you find?

A. Limitation of motion.

Q. Well, that might be subjective? A. Well, my judgment was it was not.

Q. Pain would be subjective, wouldn't it? A. Well, it might be.

Q. Wouldn't you have to take the patient's word for it? A. No, not necessarily; no.

Q. You did— A. (Continuing.) I would have to take into consideration the examination coupled with the history and the X-ray findings, all of that. 20

Q. The X-ray findings show good apposition of the fragments, do they not? A. Very good, yes; but there is still some callus there, some thickening, and a woman of Mrs. Clarkson's age never fully recovers from a fracture. You never have the same functional power in a person around sixty, as Mrs. Clarkson is. 30

Q. Well, that is generally so, isn't it? A. Yes, sir.

Q. But, I say, in this case, there was good apposition of the fragments? A. Yes, it was fairly good.

Q. Good bony union? A. Fairly good, yes.

Q. She could put the weight of her body on her legs, couldn't she? A. She could, but not, in my judgment, without pain.

Q. Of course, your judgment may possibly be faulty, doctor? A. I do not think so. 40

R. Louis Clarkson, direct.

Q. You do not think so, but all doctors err at times? A. Yes.

Q. You do not pretend to be infallible, do you?
A. Not at all, no.

10 Q. Did you ever see her after that again? A.
No.

Q. No? That is all.

R. LOUIS CLARKSON, sworn.

Direct examination by Mr. McGinnis:

Q. You are a son of the two plaintiffs in this case? A. Yes, sir.

Q. Living at home? A. Yes, sir.

20 Q. Before your mother's accident in December,
1926, what was the condition of her health, as you
observed it? A. Well, she was unusually strong,
and everybody commented on her—

Q. Never mind about everybody.

Mr. Markley: I asked it be stricken out.

The Court: Strike it out.

Mr. McGinnis: I consent to it.

Q. Who did the housework at the home? A. My
mother.

30 Q. Since this accident, has your mother done
the housework? A. No, sir; Mrs. Weiss has done
it.

Q. The woman that was just on the stand? A.
Yes, sir.

Q. Who paid from time to time Mrs. Weiss? A.
Well, I had most of the transaction myself.

Q. Pardon me? A. I did most of the transac-
tion myself.

40 Q. And when you paid her, did you get a re-
ceipt? A. Yes, sir.

R. Louis Clarkson, direct.

Q. Is that true of these nurses, these practical nurses? A. Yes, sir.

Q. Did you pay them? A. Yes, sir.

Q. Get receipts from time to time? A. Yes, sir.

Q. Who kept charge of these receipts? A. I did myself.

10

Q. When did you give them to your father? A. Well, I guess, day before yesterday.

Q. I show you a bunch of receipts. I am not going to read them off one by one.

Mr. McGinnis: Do you want that?

Mr. Markley: No.

Q. (Continuing.) And ask you if these are the various receipts you took from time to time? A. Yes, sir.

20

Q. Some of the names are Mary Weiss? A. Yes, sir; most of them.

Q. Who did the typewriting? A. I did the typewriting, on my own typewriter at the home down there.

Mr. McGinnis: I offer them in evidence.

Mr. Markley: I object to them.

The Court: I do not see how they are evidential.

Mr. McGinnis: All right, sir.

30

Q. You did not see this accident, did you? A. No, sir.

Q. Were you in the house? A. Yes, sir; in my room.

Q. Did you come out after the accident was over? A. Yes, sir; I heard the noise and I came right out.

Q. You came out; did you see the defendant, Mr. Ley? A. Yes, sir.

Q. Did you say anything to him? A. Well, after we took my mother in, he waited around—

40

R. Louis Clarkson, direct.

Mr. Markley: After what?

Mr. McGinins: "Taking my mother in."

A. After we took my mother in, he waited around; he must have waited around fifteen or twenty minutes.

10 Q. Did you talk to him? A. I asked him how the accident happened, how he came to hit her. He said, "I didn't see her." I said, "Why didn't you see her?" He said, "Do you speak French or German?" I said, "No, but I can get somebody that speaks German," and I went right around the corner, and I got Mr. Otto, that lives around the corner.

20 Q. Did he speak in broken English? A. It wasn't broken English, but it was with an accent to it.

Q. So you got Mr. Otto that lives around the corner? A. Yes, sir.

Q. Did he come around to talk to him? A. He came around to talk to him; as soon as he got through, he turned to me, Mr. Otto, and said—

Q. You cannot tell what Mr. Otto said to you. Mr. Otto repeated the conversation. A. Yes, sir; he repeated just what he said.

30 Q. Yes? A. Yes, he repeated just what he said; and Mr. Otto and Mr. Ley got in the car, and they drove down to the police station, they said, they were going to.

Q. Did you see this little girl that was on the stand this morning, Mary? A. Mary Dunshatt?

Q. She mentioned the name of the companion that was her girl friend; did you locate that companion? A. Yes, sir.

40 Q. Is she able to come to court here? A. She was not —

Mr. Markley: I object to this—

R. Louis Clarkson, direct.

Q. Did you make an effort to get her here? A. I did, and I served her with a subpoena, and I didn't think—

Mr. Markley: I object to what he thinks.

Q. Never mind what you think. 10

Mr. McGinnis: I consent to striking it out.

Q. Did she or did she not complain of sickness?

A. She did; she said the doctor wouldn't let her—

The Court: Don't tell that.

Mr. McGinnis: No; you may cross examine.

Cross examination by Mr. Markley:

Q. Did you pay all of these receipts? A. If I had the money; I didn't draw the check. 20

Q. Eh? A. I didn't draw the check.

Q. Who did? A. Mother.

Q. Your mother drew the checks? A. Yes, sir.

Q. Did you turn over the checks to the woman?
A. Yes, sir.

Q. And took back the receipts? A. Yes, sir; I made her sign the receipts as I give her the check.

Q. Are you the New York lawyer? A. Yes, sir. 30

Q. You live home? A. Yes, sir.

Q. Your mother did all of the housework? A. Yes, sir.

Q. You are sure about that? A. Yes, sir.

Q. She did all of the washing? A. Yes, sir.

Q. Did all of the cooking? A. Yes, sir.

Q. Did you have boarders there? A. No, sir; we have not had boarders—we never had boarders; we had lodgers about five years ago, which is when I got out of college. 40

James H. Brothers, direct.

Q. You had school teachers, didn't you? A. About five years ago we had school teachers.

Q. Where are these checks that your mother signed? A. Some of them are down at the house; some of them we have not got back yet.

10 Q. You have got them all back, excepting the ones you haven't paid? A. No, no; because we only have a small account, we get the bank balances about every six months.

Q. You always paid in cash? A. No, sir; paid in checks.

Q. Didn't pay party by cash? A. No, sir; not that I know of.

Q. Always by checks? A. The checks are down at the house; some of them.

20 Q. Why didn't you bring them here? A. Well, I have got the receipts.

Mr. Markley: That is all.

Mr. McGinnis: Plaintiffs rest.

The Court: Plaintiffs rest.

(PLAINTIFFS REST.)

DEFENDANT'S CASE.

30

JAMES H. BROTHERS, M. D., sworn.

Direct examination by Mr. Markley:

Q. Dr. Brothers, what is your profession? A. Physician and surgeon.

Q. Are you a graduate of any medical school?

A. Columbia; yes, sir.

Q. Hold any degrees? A. M. D.

Q. M. D. from Columbia? A. Yes, sir.

40 Q. How long have you been a physician and surgeon? A. Since 1914.

James H. Brothers, direct.

Q. Would you briefly give to the court and jury your experience with respect to injuries due to blows or trauma? A. I taught in the Post Graduate for about a year before I went to the war.

Q. You taught in the Post Graduate for about a year before you went to the war? A. Yes, sir. 10

Q. Where is that? A. 20th Street and Second Avenue.

Q. You mean the Post Graduate Hospital, in New York City? A. Medical School; yes, sir.

Q. Yes? A. I went with Base Hospital No. 8, and I was Chief of that Hospital for the last two months or so. I was connected with the S. V. D. Board, that being the main examination board for the A. E. F.; all of the men were sent to us for reclassification, and we would send them back to their original duties or to some other form of duty or home as unfit for any duty whatsoever. I was there with that board for twenty-two and a half months, and on coming back I became connected with St. Barnabas' Hospital in Newark, in a surgical capacity, and I have been there ever since. And since my return I have been associated with Dr. Lorenz, the Viennese surgeon, on his first two visits to this country. 20

Q. What other leading physicians have you been associated with? A. Dr. Albee. 30

Q. Fred Albee? A. Yes. Dr. Sewall of—

Q. Dr. Sewall of New York? A. Yes. Dr. Morehead of New York.

Q. Now, then, did you, during that experience that you have described, have occasion to see many fractures? A. Yes, sir; I have seen numerous fractures.

Q. Now, then, did you, at my request, make an examination of Mrs. Clarkson? A. I did. 40

James H. Brothers, direct.

Q. When did you make that examination? A. March 17th.

Mr. McGinnis: Of what year?

A. This year.

10 Q. March 17, 1928. Where was that made, Dr. Brothers? A. At her home, in Passaic.

Q. Who was present? A. Her son.

Q. The lawyer? A. Yes.

Q. Yes? A. Two women, as I remember it.

Q. Yes? A. And two doctors.

Q. Who were the doctors? A. The man who testified, and the X-rayist.

Q. That is, Dr. Terhune? A. And Dr. Van Schotte.

20 Q. And Dr. Van Schotte? Did you see the X-rays taken by Dr. Terhune? A. I did; yes.

Q. Did you examine those as well as examine Mrs. Clarkson? A. Yes, sir; I did.

Mr. Markley: I wonder if I might have that box put up there?

The Court: Certainly.

30 Q. Now, Doctor, won't you, in your own way, making use of the X-rays as you wish, show the jury just what you found, what your conclusions were?

The Court: When you use them, Doctor, refer to the exhibit number that is marked on them.

The Witness: Yes, sir.

40 Q. (Continuing.) And stand so the jury can see, so you won't have the jury behind you. The first two, P-2 and P-3 are the first two, in December. P-4 and P-5 are the two in March. I believe that is right.

Mr. McGinnis: Yes.

James H. Brothers, direct.

A. That is a view—as they are in pairs, I will just use one.

The Court: Exhibit what?

The Witness: This is P-3, is it?

Mr. Markley: P-3.

10

A. (Continuing.) These views are the same situation, so in talking of one we are talking of both of them. These views are used in a stereoscope, which is a machine something like you used to look at when you were children, at pictures of Niagara Falls. You looked through a long box and brought the picture back or forward, and it gave you three dimensions, so that it would not like looking at a flat picture, for it gave the depth, perspective and length, so that you had a round object to look at instead of a flat one. These pictures are used the same way, only we haven't the stereoscope here, so that we have to look at them in a flat position. P-3 shows a portion of the pelvis and the sacrum and the coccyx. Here are the two lateral walls of the pelvis. This bone here, this is the sacrum; on the end of the sacrum is the coccyx, which is the tip of your spine. This blackened object is a cast, possibly in the intestinal tract. This is the symphysis pubes, where the two front portions of the lateral walls of the pelvis come together. These are the rami of the pubes, this one being the (descending) ramus of the pubes, namely, where they come down in the front. This is the ascending ramus of the pubis here; this is the descending ramus, of the ischium. This is part of the ascending ramus of the ischium, which is the part that you sit on, that you can feel in your buttocks. These are the heads of the two bones of the upper leg, the thigh bones; this is a

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James H. Brothers, direct.

10 portion of the shaft. The crest on each side of the ilium, which are the lateral walls of the pelvis. And around in this picture, to go back, these are the sacro-iliac joints, where the ilium and the sacrum come together. This picture shows fractures of the rami of the pubes and the ischium. Here is the fracture here and here,—that dark line that you see there, in the ascending ramus of the ischium, right just beyond the junction there of the descending ramus of the ischium. It is in very good position. In fact, if you will contrast this bone here with that bone there, you will see that they look approximately the same. There isn't any distortion that I can make out. I am pointing that out to you so that you can make up your mind whether there is any—

20

Mr. McGinnis: I object to that; the doctor is now making a speech to the jury.

The Court: Do not tell us that; that is the jury's duty. Just tell us what you see.

Q. Don't tell us that; just tell us what you see, Doctor. A. Contrasting again the pelvic outline here, which is the true brim of the pelvis, which is this portion here, to my mind they are equal, or in a symmetrical position. Over here is another fracture, just like this one, but it does not show the separation that this fracture shows. See this dark mark. This one is hardly separated at all; in fact, there is no separation; they are closely united so that you do not get any transmitted light through that. Now, this dark mark here, this is a point that was designated some time before by a "T" on some picture, is a nubbin of loose bone, that is about as big as a split pea, and it is from evidently the superior portion of the acetabulum in which the head of the femur fits.

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James H. Brothers, direct.

It is loose there and it will be absorbed as time goes on. Now, looking to this area here, where the bulge comes around, and comparing it with the other side, you will see that there is a very slight loss of contour in this—viewing it in this angle.

10

Mr. McGinnis: I ask that the doctor testify more and do less lecturing. I ask that it be stricken out. Tell us what you find, and don't lecture so much.

The Witness: I do not know how I can do it otherwise, your Honor,—

The Court: Proceed, Doctor.

The Witness: —that to draw these comparisons.

20

A. (Continuing.) And comparing this general surface, it follows around this way, as is shown by this stressed point, which is the heavy point, which is—

Mr. McGinnis: There he goes again.

The Court: You can perhaps tell us that without doing that; just tell us what you see.

The Witness: To point this out, I have got to do it that way.

30

A. (Continuing.) Call it the white line here, which is on the picture—

The Court: Go ahead.

A. (Continuing.) Following the white line, here, which is the stressed point—

Mr. McGinnis: I object to that. The Doctor is lecturing again, and not testifying.

The Court: Tell us what you see, Doctor.

40

A. (Continuing.) Here you see a normal arc of

James H. Brothers, direct.

10 this stressed line; you see the same thing there. There is a little more roughening in this point, but I do not see any fracture at this spot. There is slightly more area there than there is here, but you see the same arc on both sides. The fractures are here and here and that slight nubbin there. This one is slightly separated but the bones are in perfect alignment. This one is in direct apposition with no light transmitted through, so that there is no separation.

Q. Suppose we look at P-4 for a moment. Does that show any different condition? A. It shows exactly the same thing as the other picture, except that this is healed up and callus formation subsequently; this one also.

20 Q. Wont you please tell what callus is, Doctor? A. First, callus is laid down the same as a plumber wipes a joint. In fact, this callus is, first, a connective tissue, and lime salts are deposited and it hardens and becomes bone. These are both healed up. This is the same nubbin as shows here.

Q. You say that will be absorbed in time? A. That will be absorbed.

30 Q. All right, doctor. (Witness resumes stand.) Now, Doctor, when you made your physical examination of Mrs. Clarkson tell, the jury what you found. A. The physical examination shows that this woman had a fracture of her pelvis—

Q. Yes? A. —on either side, almost at the junction of the descending and ascending rami of the ischium. She complained of tenderness on pressure, particularly over the right side, in the perineum, which is down here—

Q. Where? A. Right in here, in the crotch.

40 Q. Yes? A. She complained that she was tender to pressure over the right sacro-iliac joint, but on

James H. Brothers, cross.

testing there was no dislocating of that joint, so there is no sprain—not sprain, but she has no dislocation there that I can see. She told me that she could get around the house without the aid of a cane or crutch, and she did walk around the house without the aid of a cane or crutch for me. She said she had difficulty in getting up and down stairs at the time. I examined the lady by both standing on her feet and lying on the bed. I held my hand up two or two and a half feet above the level of her toes, and I asked her to kick with each foot, and she did so, and she hit my hand with each foot, showing that she had use of the hips. I could find some slight resistance on motion in the hip joint on each side, but there was no angulation of that joint, and the motion was very good, excepting the same resistance that you would expect to find in any patient who had had a pelvic fracture.

10

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Q. What would you say as to her recovery? A. This woman has made a very good recovery for a pelvic fracture.

Q. What have you to say as to whether she can walk unaided? A. I think she can; she did walk unaided for me.

30

Mr. Markley: Cross examine.

Cross examination by Mr. McGinnis:

Q. Doctor, do you find any difference between the X-rays that you first demonstrated with, taken in December, and the X-rays taken in March, outside of the lettering and the marks on them?

The Court: The first ones taken were P-2 and P-3; the second ones are P-4 and P-5.

40

James H. Brothers, cross.

A. I see the difference where you have an opening with transmitted light lines in this fracture here—

10 Q. Referring to—? A. —referring to P-3. That in P-4 was afterwards healed, and callus is present; and there is only new callus thrown out here, but here you have solidified callus.

Q. Is that the only difference? A. That is the only difference.

Q. Don't you find that there is a difference between December, when P-3 was taken, and March when P-5 was taken, that the separation increases? A. P-5 is the same as P-4, I gather. Now, we have P-5 and P-3.

20 Q. I am directing your attention to the separation indicated this morning by Dr. Terhune. A. I imagine he must have had the plate twisted, because it is separated in P-3 but it is not separated in P-5 or 4.

Q. It is not separated? A. No.

Q. In other words, as you read that X-ray, there was improvement in the sense that the separation had closed in March as compared with December?

30 A. It had been closed in part. It was fully closed in 4 and 5 and it shows the separation in 3, because there is no callus in 3.

Q. Never mind the reasons, Doctor. So that I understand you then, there was separation in P-3? A. Yes.

Q. Which is the picture taken in December? A. This one.

Q. But in 4 and 5, which are the pictures taken in March, you find that that separation is closed? Yes, or no. A. It is closed.

40 Q. Did you find in the examination of any of these pictures that there is pressure inward of the fractured bone? A. No, sir.

James H. Brothers, cross.

Q. You mean, you did not find it? A. I do not find it.

Q. As a matter of fact, it is hard to look at an X-ray, to say whether or not there is pressure inward? Or not? A. Not if you have pressure shown in the X-ray. You will see the depression that shows, if it is pushed in. 10

Q. Isn't it extremely difficult to show it, Doctor? A. Not if it is there, no.

Q. If there is pressure inward, will the X-ray show it? A. Certainly, it will; if you have a fracture and this callus here, the muscles and this fascia in these parts is jammed in, and if that is pushed in, you will see that pushed out.

Q. You are indicating, pushing to the left of this picture. I am talking of a pressure, Doctor, in and about, particularly, the point where she had the fractures. A. Because these are bone and callus, and if there is any pushing in, you can see it in the fracture, and it is not here in the fracture. 20

Q. In making these tests, you stood her on her feet, didn't you? A. Yes, sir.

Q. You say she did not complain of any pain? A. Oh, she did.

Q. You did ask her if she could walk, didn't you? A. Yes. 30

Q. She told you she could walk with difficulty? A. She told me she walked about the house, fixed up in her own room, but had difficulty to go up and down stairs.

Q. Didn't she tell you when she walked, it produced pain and tiredness? Yes or no. A. She did.

Q. Would walking about with an injury such as she had sustained produce tiredness or pain? A. I think it might. 40

James H. Brothers, cross.

Q. Would it make a difference in the patient, whether you are dealing with a young, slightly built person, or an old, heavily built person, with reference to pain? A. No.

Q. Or tiredness? A. No.

10 Q. It would make no difference whatever, whether you were dealing with a young woman of, say, 115 or 120 pounds, or an old woman of, say, sixty, 150 or 160 pounds? That would make no difference in your mind with respect to the pain that that person would suffer by attempting to make use of their legs, following injuries such as appears and are detailed here? A. No, sir; because the heavier person's bones are heavier, the same as the rest of their structure is heavier.

20 Q. Always? A. Yes, sir.

Q. In other words, take a person that may be carrying too much fat, or, in other words, a heavily built person, with too much meat on their frames, that wouldn't change it at all, as compared with a younger or more slightly built person that had suffered a fracture such as this involved here? A. Yes, see that every once in a while.

30 Q. No, plenty of times, Doctor, is that so? A. No, I won't say plenty of times. We see people who are very fat, that have glandular disturbances, and their bones do not unite. However, they are rare cases.

Q. Only once in a while they do that? A. They are rare cases.

Mr. Markley: He did not say once in a while.

Mr. McGinnis: Yes, he did, and he tried to make a speech instead of answering the question.

40

The Court: Proceed.

James H. Brothers, cross.

Q. Well, in these once-in-a-while or rare incidents of where people carrying too much meat on their frames, or fat, that would or would not make a difference, Doctor, if they had suffered a fracture such as we find involved here? A. It would make a difference that if they got up too early, they might dislocate that fracture and have more deformity at the fracture site, but as to pain it would have no influence whatsoever. 10

Q. Or tiredness? A. No, sir; if the fracture was healed, it would have no influence whatsoever.

Q. So that a slightly built person that could, as it were, figuratively, jump over three or four fat persons, they would be exactly on all fours with a person carrying too much weight, waddling around, as it were? Yes or no. A. They would be on the same parity as far as the pain is concerned, if that is what you are talking about. 20

Q. Pain and tiredness? A. Or tiredness. They would not be as agile as the other person, but they would be on the same parity as the other person would be.

Q. So that, assuming a person has a broken leg, that would make no difference as to either person, the amount of flesh they were carrying around, whether or not they would get tired? A. When it is healed? 30

Q. Yes. A. It would not. If it were not fully healed, they would have more pain.

Q. Of course, during the war, you saw lots of fractures of all kinds, didn't you? A. I certainly did.

Q. Certainly; got hard boiled about them, too, didn't you? A. I certainly did not, and I hope I never do get hard boiled. I have too much sympathy to get hard boiled— 40

James H. Brothers, cross.

Q. Don't make a speech.

The Court: Just answer the questions, Doctor.

Q. Who employed you to come here, Doctor?

10 A. Mr. Markley, of Collins & Corbin.

Q. You expect to be paid for your services to-day? A. Yes, sir.

Q. How much? A. \$50.00.

Q. \$50.00 for each day you are in court here?

A. I have only been here today.

Q. \$50.00 each day, Doctor? A. If I am here again, yes.

Q. Has Mr. Markley ever employed you before?

A. Oh, yes.

20 Q. Frequently, hasn't he? A. Yes.

Q. Very frequently, I should say. A. Not very frequently; occasionally.

Q. Usually for the defendant, Doctor? A. No, sir.

Q. No? A. No.

Q. Usually for the plaintiff? A. I should say, equally divided.

Q. Mr. Markley? Did you ever hear of Mr. Markley having plaintiff's cases? A. Oh, yes.

30

Mr. McGinnis: That is news to all of us.

Mr. Markley: I object to that remark, your Honor, and I ask to have it stricken out. If the Senator wants to testify, let him do so.

Mr. McGinnis: I will withdraw it.

Mr. Markley: It may be news to him, but it may not be news to somebody else.

40 Q. Your office is in Newark? A. 128 Broad Street, Newark, New Jersey.

James H. Brothers, redirect.

Q. It has been right along? A. For the last nine years.

Q. You testify, in addition to testifying in Newark, you come to Paterson? A. Oh, yes.

Q. Jersey City? A. Yes.

Q. New Brunswick? A. Yes. 10

Q. Camden? A. No, I have never been in—

Q. Trenton? A. —Camden; been in Trenton once; been in New York too.

Q. Over to Hackensack? A. Yes, over to Hackensack.

Q. In New York? A. Yes, in New York; I have a license in New York.

Q. Always in accident cases? A. Sir?

Q. Always in accident cases? A. Yes; I went once to Baltimore to testify in a case against the state that was not an accident case. 20

Q. You always do it for a monetary reward? A. Yes, sir; absolutely. I have to be paid for my time. If I am here, I am no other place.

Mr. McGinnis: That is all.

Redirect examination by Mr. Markley:

Q. You also practice your profession, do you not, Doctor? A. I certainly do. 30

Q. You operate? A. Yes, sir.

Q. Frequently? A. Yes, sir.

Mr. McGinnis: Suppose we let Mr. Markley testify.

Mr. Markley: I am not testifying; I am asking him.

The Court: Anything else?

Mr. McGinnis: Certainly very leading.

Q. How frequently do you operate, Doctor? A. Three or four times a week, at least. 40

Mr. Markley: That is all.

Leo H. Joyce, direct.

LEO H. JOYCE, M. D., sworn.

Direct examination by Mr. Markley:

Q. Dr. Joyce, what is your profession? A. Physician and surgeon.

10 Q. How long have you been such? A. Twenty-five years.

Q. Where do you practice, Doctor? A. Passaic, N. J.

Q. Have you any hospital connection? A. St. Mary's Hospital, Passaic.

Q. Did you, at my request, make an examination of Mrs. Clarkson? A. I did.

Q. How many examinations of her did you make? A. Two.

20 Q. Can you give us approximately when you made those? A. About a month after the accident—

Q. Yes? A. —And about four months thereafter.

Q. Won't you tell the jury, please, what you found? A. I found at the time that she had multiple body contusions, evidence of a laceration and contusion of the scalp, and what was evidently a fractured pelvis and contusions of the knee.

30 Q. On the second examination, what did you find? A. The contusions had disappeared—

Q. Yes? A. Then evidently the remains of the fracture of the pelvis.

Mr. McGinnis: I did not get that.

A. (Repeating.) Evidently remains of a fractured pelvis.

Q. Did you see these X-rays that Dr. Terhune took? A. I looked over the X-rays casually, yes.

40 Q. Of the both sets, the ones taken in December

Leo H. Joyce, direct.

as well as in March? A. I only saw the March set, but I saw the report of the other set.

Q. Report of the set taken in December? A. Yes.

Q. What did you find as to the union, apposition, alignment of the fragments of the fracture? 10

Mr. McGinnis: Basing the opinion on what, now?

The Witness: On the report of Dr. Terhune.

Mr. McGinnis: He has given what he found previously.

A. (Witness answering, interrupted by counsel.)

Mr. McGinnis (continuing): I submit that the witness ought to be confined to what he himself found. 20

Mr. Markley: Wait a minute, now. Let me ask the doctor a couple of questions.

Q. Did you read these X-rays of March of Dr. Terhune's? A. I did.

Q. Eh? A. I did.

Q. Did you reach a conclusion as to what they showed, with respect to the apposition—alignment—union? A. I did. 30

Q. Won't you tell us what your conclusion was?

Mr. McGinnis: I object to that, sir. I would like an opportunity to ask a few questions of the witness.

The Court: You may, Senator.

By Mr. McGinnis:

Q. Doctor, you also testified a moment ago, did you not, that you had the report of Dr. Terhune before you? A. I did. 40

Leo H. Joyce, direct.

Q. That is the report as to his views of these X-rays? A. Yes.

Q. That helped you to form your opinion, didn't it? A. Yes.

10 Q. You also testified that you made a casual examination on one of the X-rays? A. The first set.

Q. That is, the March set? A. First set.

Q. The first set? A. Yes.

Q. Which set was it that this report dealt with?
A. I read the report about both sets.

Q. They helped you to form your judgment? A. They certainly did.

20 Mr. McGinnis: I submit the witness has not qualified to answer the question, your Honor.

The Court: Read the question he was asked.

(Question repeated, as follows: Won't you tell us what your conclusion was?)

Mr. McGinnis: I object to that.

The Court: On what grounds?

30 Mr. McGinnis: Because he has formed that from the report of another physician, and that report is not in evidence.

The Court: He is not asked to give the report; he is asked to give what he concluded, what he found. He is asked what those X-rays showed. You may answer that question, Doctor.

Mr. McGinnis: Exception.

A. I reached the conclusion that the fracture had healed.

40 The Court: As to what they showed.
(No audible response.)

Leo H. Joyce, cross.

By Mr. Markley:

Q. The fracture had healed; what about the position of the fragments? A. Apposition was good.

Q. Union? A. Union was perfect.

Mr. Markley: Cross examine. 10

Cross examination by Mr. McGinnis:

Q. Was that what the report of Dr. Terhune said? A. Yes, I believe it was.

Q. Were you here this morning when Dr. Terhune testified? A. Yes, sir.

Q. Was there, or not, a difference between the pictures of December and the pictures of March? A. The latter picture showed better union.

Q. Didn't the latter picture, according to the testimony of Dr. Terhune, show a complete separation? 20

Mr. Markley: I object to that question, on the ground that the witness is not called upon to characterize Dr. Terhune's testimony.

The Court: You cannot ask "according to Dr. Terhune," Senator.

Mr. McGinnis: Your Honor, please, ordinarily no, but keeping in mind that this witness formed an opinion, he said, according to the report of Dr. Terhune—does your Honor overrule the question? 30

The Court: I overrule it.

Mr. McGinnis: Exception, sir.

Q. Do you remember the date in March you made this examination, this last examination? A. I do not.

Q. Pardon me? A. I do not. 40

Q. Had the second pictures been taken? A. Yes, they had.

Walter S. Robinson, direct.

Q. Who was present when you made this examination? A. Mrs. Clarkson and, I believe, there was another lady present; I do not know who she was.

10 Q. Examination took place at her house? A. At her home.

Q. Where did you see the X-rays; at the house also? A. Yes, sir.

Q. Have you seen those X-rays from that time to this? A. No, only here.

Q. Only here? A. In court.

Q. You say all of the contusions and bruises had cleared up? A. Yes, sir.

Q. For whom did you make those examinations, Doctor? A. For Collins & Corbin's office.

20 Q. Have you ever made examinations for them before? A. Yes, sir.

Q. You made that examination for the purpose of testifying in court? A. Why, I do not know, especially to testify, or not; he asked me to report to him, and no mention was made of testifying.

Q. Of course, you expect to be paid for this service today? A. I certainly do.

Q. How much? A. \$50.00.

30 Mr. McGinnis: That is all.

WALTER S. ROBINSON, sworn.

Direct examination by Mr. Markley:

40 Mr. Markley: This map (referring to map later marked Exhibit D-5) does not differ substantially from Senator McGinnis' map. I am putting it up for the purpose of asking a few questions on some points I wanted to clear up.

The Court: All right.

Walter S. Robinson, direct.

Q. Mr. Robinson, did you make this map? A. Yes, sir.

Q. From an actual survey? A. Yes, sir.

Q. Scale of one inch equals ten feet? A. Yes, sir.

Q. The way the arrow points is north? A. That is north, yes. 10

Q. Opposite would be south? East? West (indicating)? A. (No audible response.)

Q. Did you indicate on this map, from an actual survey, the slope of the street? A. The amount of fall in the street? No, I did not.

Q. No, I do not mean that way; it curves? A. It curves; yes, sir.

Q. Does that fairly and accurately portray that? A. That is accurate, the way that is portrayed there. 20

Q. Are you familiar with Lexington Avenue? A. Yes, sir.

Q. How long have you known Lexington Avenue? A. Well, I should judge, about five years, I have been going back and forth on it.

Q. Is that a much traveled street, or not? A. Why, it is one of the two main roads from Paterson to Passaic.

Q. Yes? A. There is quite a bit of traffic on it. 30

Q. Sir? A. There is quite some traffic on it.

Q. The Passaic station, Erie Railroad,—how far is that from Holdsworth Court and Lexington Avenue, would you say, approximately? A. About three-quarters of a mile.

Q. Does this road lead on down to the station? A. It leads on down to the station.

Q. You say this is one of the two main highways from Passaic to Paterson? A. Yes, sir.

Q. How far east of the railroad is it? First, let 40

George L. Mayer, direct.

me ask you this: Does that street parallel the Erie Railroad? A. No, the Erie Railroad parallels Main Street; this carries down more along the river.

Q. Generally parallel? A. Yes.

10 Q. The railroad is about a block, as I understand it? A. The railroad is a good bit away from that road; they come together.

Q. Yes? A. I guess, maybe three-quarters of a mile or a mile away.

Q. This house, 237, frame house, you have noted that one on here; that is the Clarkson house, I believe. A. Yes, sir.

Mr. Markley: That is all.

Mr. McGinnis: No questions.

20 Mr. Markley: Now, I will call the defendant, Mr. Ley. He does not speak English, your Honor, and I have brought here a French interpreter, who, I understand, is the French interpreter for the Grand Jury of Essex County. I am perfectly willing to have the Senator examine him.

Mr. McGinnis: My French is too poor quality, sir.

30 Mr. Markley: May I ask the Interpreter a couple of questions, your Honor, just to show he is disinterested? I do not know the gentleman.

GEORGE L. MAYER, not sworn.

Direct examination by Mr. Markley:

Q. Are you the official interpreter to the Grand Jury in Essex County? A. I am.

Q. You speak French? A. I do.

40 Q. And English? A. Yes, sir.

Q. You have never interpreted for me before?
A. I have not.

Louis Ley, direct.

Q. Have no connection with my firm? A. Never.

By Mr. McGinnis:

Q. May I ask who secured you for this case? A. A young man asked me if I would act as an interpreter in a case in Paterson, and I said that I would; that is all I know about it. 10

Mr. McGinnis: All right.

The Court: Swear him.

(Mr. Mayer was thereupon sworn as the Interpreter.)

LOUIS LEY, sworn through Interpreter.

Direct examination by Mr. Markley:

20

Q. Mr. Ley, where do you live? A. Passaic.

Q. What is your occupation? A. Assistant superintendent.

Q. Where? A. Forstmann & Huffmann Company, Passaic, New Jersey.

Q. Were you driving the automobile that had an accident with Mrs. Clarkson on December 3, 1926? A. Yes, sir.

Q. How old are you? A. Forty-nine and nine months. 30

Q. Which direction were you going on Lexington Avenue? A. I was coming from north to the south, from the city.

Q. Where were you going? To what place? A. I was going to the barber's to get my wife.

Q. Where was the barber's? How far away? How far south of Summer Avenue and Lexington Avenue? A. Opposite the National Bank.

Q. In Passaic? A. In Passaic.

Q. How fast were you going as you went along Lexington Avenue? A. (No answer.) 40

Louis Ley, direct.

Q. Before the accident, how fast were you driving your car? A. As it was bad weather, I was going very slow, fifteen miles an hour.

Q. Was it night time? Was it dark? A. It was about six-thirty.

10 Q. Was it dark? A. The lights were already lit.

Q. Were the lights lit on your car? A. Yes, sir.

Q. Which side of the street was your automobile? On its right side or left side? A. On the right side of the street.

Q. Now, then, won't you tell to the jury in your own way just how the accident happened? A. Before I reached Summer Street I had been driving my car continuously towards the right side of the road until I struck something. At this time I struck something—

20

The Interpreter: A lady, he says.

A. (Continuing.) At that moment immediately I applied my brakes, but as the weather was very slippery I was obliged to drag the lady a few feet. Immediately after I stopped my machine I got out and I took the lady and brought here to the sidewalk. I saw she was unconscious. In the meantime, others arrived and they also assisted carrying the lady to the interior of her home—to her home. After that I met a gentleman who speaks German, and with that gentleman I went to get my wife, and afterwards we went to the police to tell them of the accident.

30

Q. How long had you been driving before the accident? How many years? A. Two years.

Q. How was the weather at the time of the accident? A. It was snowing at the time.

40 Q. Did you see where this lady came from that was in the accident? A. I couldn't see her.

Louis Ley, direct.

Q. Why couldn't you see her?

Mr. McGinnis: I object to that.

Mr. Markley: Well, withdraw it.

Q. Were there any cars coming in the opposite direction? 10

Mr. McGinnis: That is leading,—object.

The Court: That is a little leading, whether there were any cars coming the other way.

Mr. Markley: I will reframe it, your Honor, or try to.

Q. Were there any other cars moving along there at the time of the accident? A. Yes, there was some traffic; not very much. 20

Q. Was there any traffic going in the opposite direction?

Mr. McGinnis: Same objection, very leading.

Mr. Markley: I do not think so.

The Court: I will permit it.

Mr. McGinnis: Exception.

A. There was always traffic in that street.

Q. No; I am asking at that time. A. Yes, sir; at that time. 30

Q. Well, did you notice whether or not this woman, Mrs. Clarkson, came out from between two cars?

Mr. McGinnis: I object to that, highly leading.

The Court: Sustain that; that is leading.

Mr. Markley: Trying hard to frame it properly. 40

Louis Ley, cross.

The Court: Ask him where she came from.

Q. Where did this woman come from?

Mr. McGinnis: If he knows.

10 Q. (Continuing.) If you know? A. The moment that I struck her, on the left side of my automobile, she came from the other side, opposite side.

The Court: Did you see her at all before you struck her?

The Witness: No, sir; just at the moment only.

20 Q. What part of your automobile was it that struck the lady? A. The left front.

Mr. Markley: Cross examine.

Cross examination by Mr. McGinnis:

Q. At the time of the accident, where were you living? A. 30 Idaho Street, Passaic.

Q. And how far was that street to the barber shop, where you were going, for your wife? A. Do you mean distance by automobile?

30 Q. Distance along the road by miles, yes. A. About four minutes', I should say, ride.

Q. Had you arranged before hand to meet your wife, or had she telephoned to you for you to come? A. No, I knew that before I left my home.

Q. Yes. Did your wife telephone up to the home for you to come down to get her? A. No, sir.

Q. You had arranged, then, beforehand, to meet her at this barber shop? A. Yes, sir.

40 Q. And you started from your home for her? A. No, I come from a visit.

Q. Where was this place that you started from,

Louis Ley, cross.

where you had been visiting? A. I went to get some gasoline first, and that is all.

Q. Is that what you mean by the visit you had made? A. Coming from my factory, I went to get some gasoline, and then I had arranged to meet my wife.

10

Q. Had you dined yet? A. No, sir.

Q. As soon as you would get your wife, it had been your plan to go home with her and have your dinner? A. No, we would go home then.

Q. Yes, and have your dinner at home? A. Yes, sir.

Q. Now, in coming down Lexington Avenue, you were coming down on the right side of the street—on your right side of the street, you say? A. Yes, sir.

20

Q. How near to the curbstone on your right was your car as you were coming along by Summer Street? A. Over near the curb.

Q. Can you indicate with your hand? A. (Witness indicated.)

Mr. McGinnis: About three feet?

Mr. Markley: I will agree to that.

Q. As you were coming along Lexington Avenue and passing Summer Street, you did not change the course of your car, did you? A. Always at the same speed, fifteen miles an hour.

30

Q. The course?

The Interpreter: I told him that, but he did not understand me.

A. I was always going straight ahead, on account of the—

Q. Were you looking straight ahead? A. Yes, sir.

40

Louis Ley, cross.

The Court: Where was Mrs. Clarkson with reference to the white line and the curb when you struck her?

The Interpreter: Pardon me? You mean the white line on the curb?

10 The Court: No, the white line to indicate the center of the street.

The Witness: It was three-quarters of the road, near the center of the road, where she was struck.

The Court: That is, between the white line and the curb?

The Witness: I don't understand what you mean by "white line."

20 The Court: Tell him the testimony shows that there is a white line in the center of the street. Had she crossed that white line yet?

The Witness: Yes, she must have passed

The Court: She was, then, between the white line and the curb—your right curb?

The Witness: Yes, sir.

The Court: All right; go ahead, Senator.

Q. You had driven along that avenue many times before, had you not? A. Every day.

30 Q. And you knew where Summer Street was? A. Yes, sir; perfectly.

Q. You knew where Holdsworth Court was? A. Yes, on the other side; yes, I know where it is.

Q. And, of course, you knew where Autumn Street was? A. Yes, sir.

Q. As you came along Lexington Avenue, all of this distance, you were going always fifteen miles an hour? A. I always follow the other car at that speed.

40 Q. And on this occasion, were you going fifteen miles along Lexington Avenue? A. Yes, sir.

Louis Ley, cross.

Q. Were your brakes in good order? A. Perfect condition.

Q. Your tires in good condition? A. My machine was nearly new.

Q. Had you what they call "non-skid tires"? A. It is the regular tires that are on all of the machines; I do not know. 10

Q. Did you have chains on? Yes or no. A. No, it was not snowing at the time I left.

Q. It was not snowing when you left? A. (Question not interpreted; no answer.)

Q. As you were driving along the vicinity of Summer Street, your eyes were straight ahead; were they? A. Always.

Q. Didn't even look up Summer Street, for instance, to see if there might be a car coming out of there? A. We always pay attention. 20

Q. Did you look up Summer Street to see if there might be a car coming out? A. Yes, sir; I did.

Q. Did you look up Holdsworth Court to see if there might be a car coming out? A. I always pay attention.

Q. Then, I mean. Were you looking then? A. I did the best I could; I gave my attention at that time. 30

Q. Did you? A. Absolutely.

Q. Eyesight good? A. Very good.

Q. The first that you knew of this accident was when you felt that you had struck something? A. Yes, sir.

Q. Then you discovered it was a lady that you had hit? Yes or no. A. Yes, sir; it was then I recognized it was a lady.

Q. How far did your car go before it stopped, after it struck the lady? A. Distance of five feet or more. 40

Louis Ley, cross.

Q. Wasn't the rear of your car past where the lady lay? A. I could only tell you, five feet.

Q. My question is: Wasn't the rear of your car past where that lady lay? A. No, sir.

10 Q. How quickly could you stop your car, going fifteen miles an hour, and traveling on the level road?

Mr. McGinnis: Instead of "how quickly," I will say, "in what distance."

A. If the road is not slippery, it can stop half the distance of the automobile.

Q. And if it is slippery, how much distance? Do you know? A. It would depend on how slippery.

20 Q. Well, such a night as you were driving along at the time of this accident, such conditions as that was. A. About ten feet.

Q. About ten feet, traveling on a night like that. How long is your car? A. I never measured it.

Q. Give us your best judgment. A. About three meters.

Mr. McGinnis: "Three meters"; he doesn't mean that.

The Interpreter: He says "three meters."

30 Q. Three meters is less than ten feet, isn't it? A. I don't know; I never measured it.

Q. What is the make of your car? A. Nash sedan.

Q. Now, when you felt this crash against the front corner of your car, then you reached for what? Your brakes? Or what did you do? Show us the motions you went through to stop your car. A. I immediately applied my brakes as much as I could.

40 Q. What else? A. And my car skidded, because it was bad weather.

Louis Ley, cross.

Q. How much did it skid? A. I think it was about the same distance as the length of my car.

Q. That was a little more than five feet then?

Mr. Markley: I object to that; he did not say five feet.

10

Mr. McGinnis: He said before, he stopped in five feet.

The Interpreter: He said ten.

Mr. McGinnis: Just a minute.

Mr. Markley: He said ten feet before, Senator.

Q. Was there an electric light burning on the corner there, on the street? A. I think so.

Q. Don't you remember? A. No, not quite; I do not remember.

20

Mr. McGinnis: That is all.

By the Court:

Q. Was it snowing? A. It was snowing.

Q. Had it snowed long? A. No, sir.

By Mr. Markley:

Q. About how long? A. Maybe half an hour.

Mr. Markley: That is all.

30

By Mr. McGinnis:

Q. It started to snow after you left your factory, didn't it? A. First it started to rain and then it started to snow when I left my factory.

Mr. McGinnis: That is all.

Mr. Markley: That is our case, your Honor.

The Court: Defendant rests.

40

(DEFENDANT RESTS.)

Defendant's Motion for Direction of Verdict.

The Court: Any rebuttal?

Mr. McGinnis: We have no rebuttal.

(BOTH SIDES REST.)

DEFENDANT'S MOTION FOR DIRECTION OF VERDICT.

10

Mr. Markley: I would like to move, at this time, your Honor, for a directed verdict in favor of the defendant, on the ground that the plaintiff, as a matter of law, is guilty of contributory negligence, in that she did not look at all or make any observations after she left the curb and was four feet distant from the curb on the east side of the street. She said she did not observe or make any observations at all to her right, that when she was four

20

feet from the curb, on the east side of the street, the side from which she left to go to her home, that she looked and saw this car to her left, down in front of the second house, which the engineer said was 110 feet away.

The Court: Not away from her; 95 feet.

Mr. Markley (continuing): She made no observation of the automobile from that point until she was struck, never again looked to the right.

30

The Court: I think it is a jury question in view of what she said that she assumed, from that distance, that she had plenty of time, and in view of what she said, that she was on the cross-walk—on the imaginary cross-walk. I think that is a jury question.

Mr. Markley: Your Honor will allow me an exception on that, and will instruct the jury that it is purely a fact question, not to take the denial of the motion against me, on the fact.

40

The Court: Yes.

Mr. Markley: Your Honor will allow me an exception to your denial of that motion.

The Court: Yes.

The Court's Charge.

Mr. Markley thereupon summed the case to the jury on behalf of defendant.

Mr. McGinnis thereupon summed the case to the jury on behalf of plaintiffs.

Thereupon, the Court charged the jury as follows: 10

Mr. Markley: Your Honor, my map was not formally offered. May I do so now?

Mr. McGinnis: No objection.

The Court: Let it be received and marked.

(Marked Exhibit D-5 in Evidence.)

The Court's Charge.

Members of the Jury: 20

This is an action brought by Lillie Clarkson and Rutgers Clarkson, her husband, against Louis Ley, to recover damages which these plaintiffs allege they suffered because of the negligent operation of an automobile by the defendant, on December 3, 1926, at about 6:30 P. M.

You will note that there are two plaintiffs, viz., Mr. and Mrs. Clarkson. Therefore, it will be necessary for you to render two separate and distinct verdicts, or one verdict which disposes of both causes of action. If your verdict is for the plaintiffs, it will be for damages for each plaintiff; or, if your verdict is for the defendant you may say no cause of action as to both plaintiffs. 30

The plaintiffs in this case claim that on this occasion Mrs. Clarkson had been shopping in the downtown section of Passaic; that she was a passenger upon a bus which was proceeding northerly along 40

The Court's Charge.

Lexington Avenue, and when it reached the corner of this street, known as Holdsworth Court, she alighted from the bus to the sidewalk on the south-easterly corner of that street intersection with Lexington Avenue; that after the bus had left her, she
10 proceeded to walk across Lexington Avenue to her house, crossing that street, as she says, on what would be a cross-walk; that she had proceeded across the white line which marked the middle or center of Lexington Avenue, and that she had crossed beyond the white line three or four or five feet,—several steps,—when she was struck by the car operated and driven by the defendant, going in a southerly direction on Lexington Avenue towards Passaic; that the car went about, as I recall
20 it,—you must be the judges,—thirty or forty feet, and that then she was dropped off the car, and that the car thereafter continued for a further space of about ten feet before the car was brought to a stop; that on that occasion there had been some little snowfall just before the accident. She alleges that, at that time, she received the injuries of which she now complains and for which she seeks compensation, and that her husband, because of those injuries, suffered certain consequential damages.

30 The defendant in this case denies that there was any negligence on his part. He says that he did not see this plaintiff, Mrs. Clarkson, until he struck her with his automobile. You have heard the direct examination and cross examination as to the details in both respects.

40 Now, wherever there are any disputed questions of fact, which it becomes essential for you to determine to pass upon the question of negligence, that presents a question for your determination. The Court has nothing to do with the determination of

The Court's Charge.

the facts. The Court gives you the law which must guide you in your deliberations, and you must accept the law as the Court gives it to you. If the Court is mistaken as to its conclusions, as to what the law is, that mistake may be corrected by the party that feels himself to be aggrieved in an appellate court. But the facts, and the inferences that are to be drawn from those facts, rest solely with you, and you are the sole judges of that. 10

The first rule of law to which the Court wishes to direct your attention is that before the plaintiffs in this case may recover, they must satisfy you by a fair preponderance of the evidence, that is, the greater weight of the evidence, that the defendant in this case was negligent, that is, that he failed to exercise reasonable care, and that his failure to exercise such reasonable care was the proximate cause of the plaintiff's injury. 20

Now, I said that they must establish that by a fair preponderance of the evidence. That is not necessarily controlled by the number of witnesses, but it is directed more particularly at the weight of the evidence in the case. You have seen and heard the witnesses and the weight which you will give, or the credibility which you will give, to any particular witness rests solely with you. 30

There has been some testimony in this case that Mrs. Clarkson was crossing this street on what is called by the plaintiff a "cross-walk"; and the testimony shows, by the maps produced, that the houses in that section where the accident occurred are less than 100 feet apart, and that it was in the City of Passaic. Now, of course, the parties must exercise reasonable care, and I shall speak to you in a moment about the care which the plaintiff herself was obliged to exercise. I am now giving 40

The Court's Charge.

you the rule of law as to the conduct of the defendant with regard to the plaintiff, who was a foot passenger upon this cross-walk.

10 Now, it does not appear in the evidence that this Holdsworth Court crosses the street; but, nevertheless and notwithstanding, that it does not cross the street, and that there is another street, Summer Street, further up, which likewise does not cross the street but comes in from the opposite direction, it was a cross-walk where she was crossing, if she was crossing within the confines of what I shall define as a "cross-walk."

20 Now, a cross-walk is that portion of the street which would be embraced within the boundaries of the lines of the sidewalk, if they were continued straight across the street; and in that situation the law has defined the duty of the automobilist as follows:

30 "When a pedestrian and an automobile moving in different directions approach such a crossing at the same time or in such a manner that if both continue their respective courses there is danger of a collision, then the pedestrian is entitled to first use the crossing, and it is the duty of the driver of the automobile to stop or to so reduce speed as to give such pedestrian a reasonable opportunity to pass in safety, and to that end to have such automobile under such control as to enable him to do so."

Now, that is the duty which the law casts upon the automobilist. Concerning the pedestrian I will speak to you in a few moments.

40 I have said that the plaintiffs in this case cannot recover merely upon the fact that there was in-

The Court's Charge.

jury to Mrs. Clarkson; but their right of recovery must be based upon the fact that the defendant was negligent, that is, that he did not exercise reasonable care, and that such failure to exercise reasonable care was the proximate cause of her injuries. But the plaintiff herself must also exercise reasonable care for her own safety. 10

Now, in this case there was a motion made for the direction of a verdict in behalf of the defendant, which motion the Court, in its wisdom or lack of wisdom, undertook to deny, in view of the fact that in the judgment of the Court it was a question for the jury's determination rather than a question of law for the Court to decide. But, of course, that must not influence you in any way as to what your judgment should be as to the negligence or contributory negligence, if any, of the plaintiff. The Court denied the motion, as I have said, merely as a matter of law, on the theory that it was a question for the jury to say, as a matter of fact, rather than one for the Court to decide, as a matter of law. 20

Now, the defendant in this case contends that the plaintiff herself was guilty of contributory negligence, that is, that she did not exercise reasonable care for her own safety, the burden of proving that by a fair preponderance of the evidence resting upon the defendant, taking into consideration all of the evidence in the case. 30

Contributory negligence is such negligence that if it had not existed, she would have received no injury from any negligence on the part of the defendant.

Now, as I have said, the law casts upon Mrs. Clarkson the duty of exercising reasonable care 40

The Court's Charge.

for her own safety, and it is contended by the defendant that she did not do so.

10 You have heard the evidence in the case as to the various distances, and you will have the maps before you for your own observation. My recollection is—you, of course, must be the judges as to all the facts in the case regardless of what the Court says—that it was approximately 250 feet from the place where she crossed the street to where she says the car was coming south on Lexington Avenue. She also says, however, that she made no further observation of its approach after she had gone about four feet; and from that it is argued by the defendant that she herself did not exercise reasonable care for her own safety and
20 was, therefore, guilty of contributory negligence.

I have stated to you the rule of law at a cross-walk, where the houses are less than 100 feet apart, as to the duty of the automobilist. I will now state to you the duty of the pedestrian.

30 “Under similar circumstances as to her or his duty, the right of way over an automobile approaching such crossing at the same time does not relieve him (or her) of the legal duty to use reasonable care to avoid colliding with such automobile, should its driver disregard such right.”

40 And, as I have said, it is contended by the defendant that she disregarded her duty to make reasonable observations and exercise reasonable care for her own safety, and that, therefore, her right of action is defeated by her contributory negligence. And, of course, if her right of action is defeated by her own contributory negligence, that likewise would defeat the right of action of her husband,

The Court's Charge.

because all of his damages are what we call consequential damages because of the injury to his wife, and if she could not recover because of her own contributory negligence for her injuries, then neither could her husband recover for his damages because of such injuries.

10

Of course, the question of contributory negligence of the plaintiff and the question of negligence of the defendant are questions of fact for your determination and solution, because the law could not and cannot undertake to lay down any hard and fast rule as to what constitutes contributory negligence or what constitutes negligence on the part of the defendant. They are both questions of fact for your determination.

20

If the accident was the result of the negligence of both Mrs. Clarkson and the driver of the defendant's automobile, that would defeat the right of action of both plaintiffs; and your verdict should be no cause of action as to both plaintiffs.

Now, if your verdict is in favor of the plaintiffs, then you take up for consideration the question of damages to which each would be entitled. I shall merely outline the injuries in general, and will not undertake to detail them.

30

Mrs. Clarkson alleges that the injuries she suffered are two fractures of the pubic bones and one fracture on the articular surface of the right hip joint, which, I think, the doctor said was not of as great importance as the others; that she was confined home, in bed, thereafter for a period of fourteen weeks, that she then started to use two crutches for several months, that she was downstairs after Easter; both knees were injured, injury to her spine, pains on sitting down, I think, and had trouble in going up and down stairs. There

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The Court's Charge.

has also been some mention about trouble to her eyes. I am not undertaking to give you in detail the injuries of which the plaintiff complains, but I am giving them to you in general. You must be the judges of what the facts are as to what they consist of.

Having ascertained the nature and the extent of her injuries, she would be entitled to reasonable compensation for any pain and suffering which she has undergone as the result of the injuries which she received in the accident. Of course, they are denied,—that is, the extent of them is denied. The defendant says that the injuries are greatly magnified, and that she has not suffered the injuries, or all of the injuries or to the extent of which she now complains.

In addition to reasonable compensation for pain and suffering, she contends that she has suffered permanent injuries that are part of her condition as a result of the accident, and that they will remain permanent. To the extent to which such injury is permanent or semi-permanent, she would be entitled to reasonable compensation for such permanency or semi-permanency.

Now, as to the husband, the duty is cast upon him by the law of providing medical attention and care for his injured wife. He says that because of her condition he was obliged to employ two nurses, one at \$45.00 a week for four weeks and one at \$40.00 a week for ten weeks; and the extent to which he has been obliged to hire nurses, and to the extent that such service has been rendered reasonably necessary because of her injuries, he would be entitled to compensation.

He says he was also obliged to hire a house-keeper because she could not fulfill her duties in

The Court's Charge.

that respect, as she had done before her injury, and that he was obliged to pay \$80.00 a month since fourteen weeks after the accident; and the hiring of a washerwoman for 78 weeks at \$4.00 a week. Now, of course, to the extent which the hiring of a housekeeper or washerwoman was made reasonably necessary because of her injuries, and for such sum as is reasonable, the husband would be entitled to recover. 10

He also alleges that to aid his wife in her recovery he was obliged either to pay or to incur indebtedness to Dr. Van Schotte of \$131.00, Dr. Terhune of \$30.00, ambulance of \$24.00, and drugs and medicines, about \$150.00. To the extent of the reasonableness of any such charges that were made reasonably necessary because of her injuries he would be entitled to recover. 20

Then it is further charged that the husband has lost the society of his wife, because of her injuries, known in the law as consortium. Now, to such extent as his consortium has been interfered with by her injuries, he would be entitled to reasonable compensation.

Those are the elements of damages which each party would be entitled to recover if they recover. Whether they shall recover, or not, and to what extent, rests solely with you, dependent upon the facts as you find them, and the application to those facts of the few rules of law which the Court has given you for your guidance. 30

The case is of importance to both sides, so the Court urges upon you that you give it your most careful and earnest consideration.

(Side bar discussion between counsel and the Court.) The Court continues: 40

Defendant's Exceptions to the Charge.

10 If her injury has any degree of permanency or semi-permanency, and that interferes with her ability to perform her services in the future, to that extent which it will deprive her of her ability to render services in the future, the husband will be entitled to recover reasonable compensation for reasonable services, in that respect, which he will be obliged to incur expenditures for in the future.

The amount sued for has been mentioned, which, of course, is not evidential, and is not binding upon you. They have a right to mention it, but you do not have to find that much, because the determination of the extent of the damages rests solely with you.

20 You may retire.

The jury retires.

DEFENDANT'S EXCEPTIONS TO THE CHARGE.

Mr. Markley: I respectfully pray an exception to that part of your Honor's charge wherein your Honor said that the plaintiff was a foot passenger on a cross-walk, and the language used in connection therewith.

30 I except to that part of your Honor's charge in which your Honor sought to determine what is known legally as a crosswalk, wherein the pedestrian has the right of way over approaching vehicles.

I also note an exception to that part of your Honor's charge wherein your Honor said that it was the duty of the automobilist, that is, the defendant in this case, because the plaintiff was on a crosswalk to allow the pedestrian, that is, the plaintiff, to first use the crosswalk and have his automobile under such control as to permit her

40

Postea.

to do so; and that the duty of the plaintiff, in the exercise of reasonable care, was merely to exercise reasonable care to avoid the acts of the defendant in failing to recognize the plaintiff's right of way.

May I have those exceptions? 10

The Court: Certainly.

Mr. Markley: Thank you.

Postea.

(Filed June 15, 1928.)

NEW JERSEY SUPREME COURT,

PASSAIC COUNTY.

LILLIE CLARKSON and RUTGERS
CLARKSON, her husband,
Plaintiffs,

v.

LOUIS LEY,
Defendant.

Action at Law.
Postea.

20

This case was tried before Judge Clifford L. Newman, with a jury, at the Passaic Circuit, on June 1st, 1928. 30

The jury rendered a verdict of \$12,500.00 in favor of the plaintiff, Lillie Clarkson, and a verdict of \$2,500.00 in favor of the plaintiff, Rutgers Clarkson, against the defendant.

CLIFFORD L. NEWMAN,
Judge.

40

Rule to Show Cause.

(Filed June 6, 1928.)

NEW JERSEY SUPREME COURT,
PASSAIC COUNTY.

10

LILLIE CLARKSON and RUTGERS
CLARKSON, her husband,
Plaintiffs,

v.

LOUIS LEY,
Defendant.

Action at Law.
Rule to Show
Cause.

20

On due application;

ORDERED that the plaintiffs show cause before the above named Court at the next stated term thereof why the verdicts rendered in their behalf against the defendant on June 1, 1928, should not be set aside and a new trial ordered.

30

And it is FURTHER ORDERED that all objections or exceptions taken by the defendant during the course of the trial be and the same hereby are reserved to the defendant for argument on appeal.

CLIFFORD L. NEWMAN,
Circuit Court Judge.

Rule actually entered this 6th day of June, 1928,
on motion of

COLLINS & CORBIN,
Attorneys of Defendant.

40

Reasons.

(Filed August 8, 1928.)

NEW JERSEY SUPREME COURT,

LILLIE CLARKSON and RUTGERS CLARKSON, her husband, <i>Plaintiffs,</i>	}	Action at Law. Reasons.	10
v.			
LOUIS LEY, <i>Defendant.</i>			

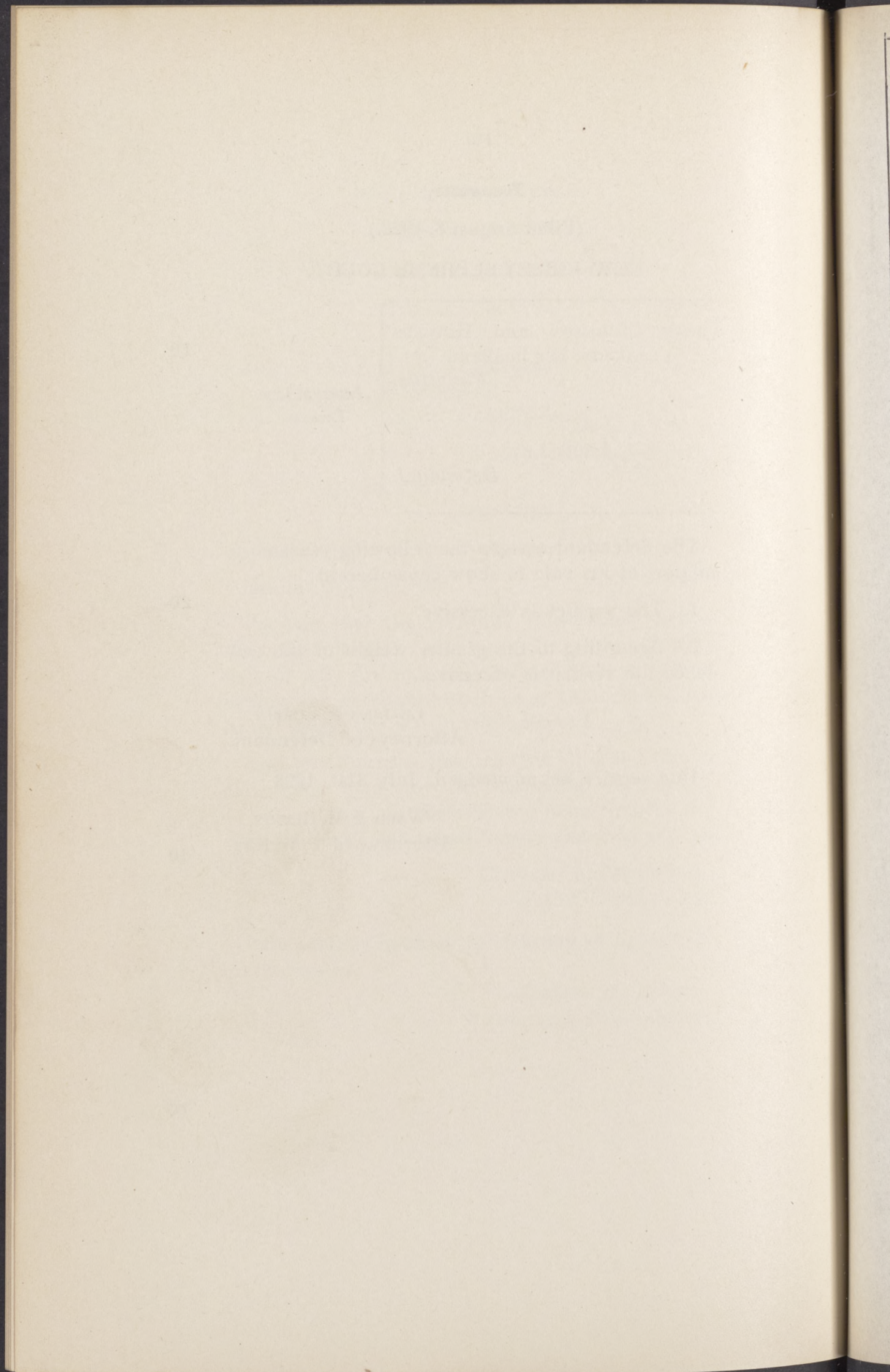
The defendant assigns the following reasons in support of his rule to show cause herein:

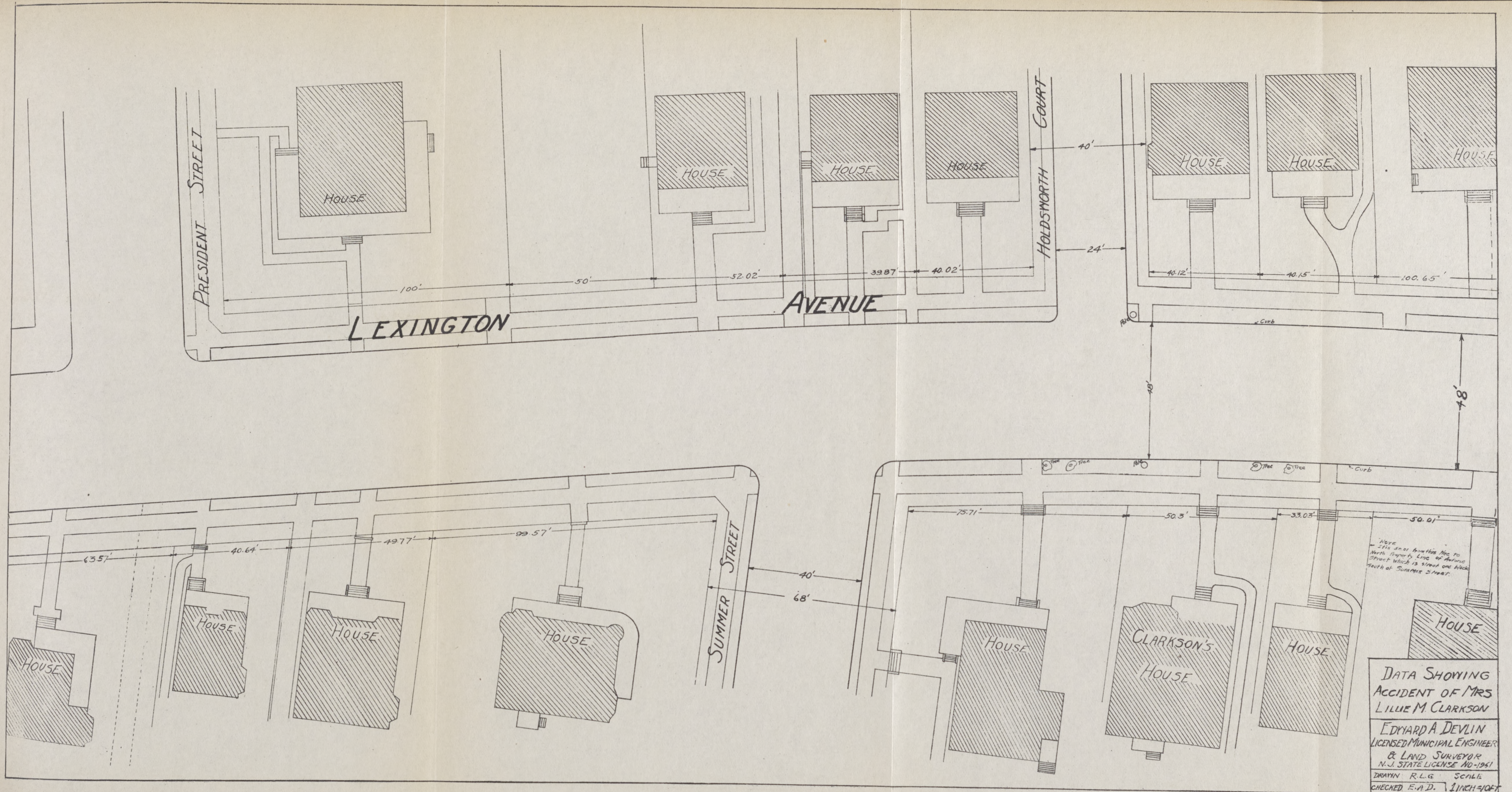
1. The verdict is excessive. 20
2. According to the greater weight of the evidence the verdict is excessive.

COLLINS & CORBIN,
Attorneys of Defendant.

Due service acknowledged, July 31st, 1928.

WARD & MCGINNIS,
Attorneys of Plaintiffs. 30





D. Er



HEINRICH'S
PATERSON, N. J.

3/31/28
H.B.

Exhibit D-1.

Dr 66

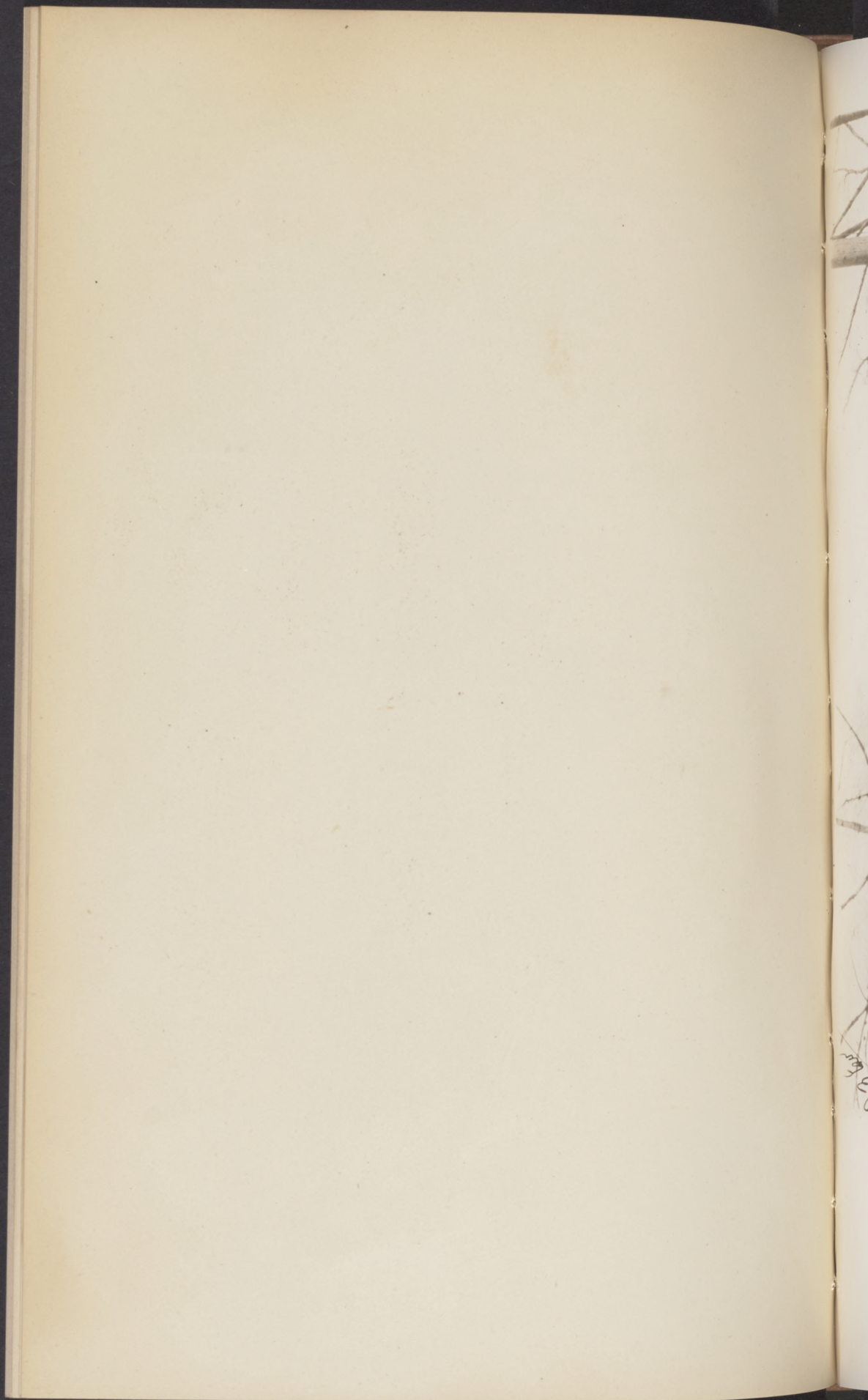
D 7 60



HEINRICH'S
JEFFERSON

3/21/25
W.B.

Exhibit D-2.



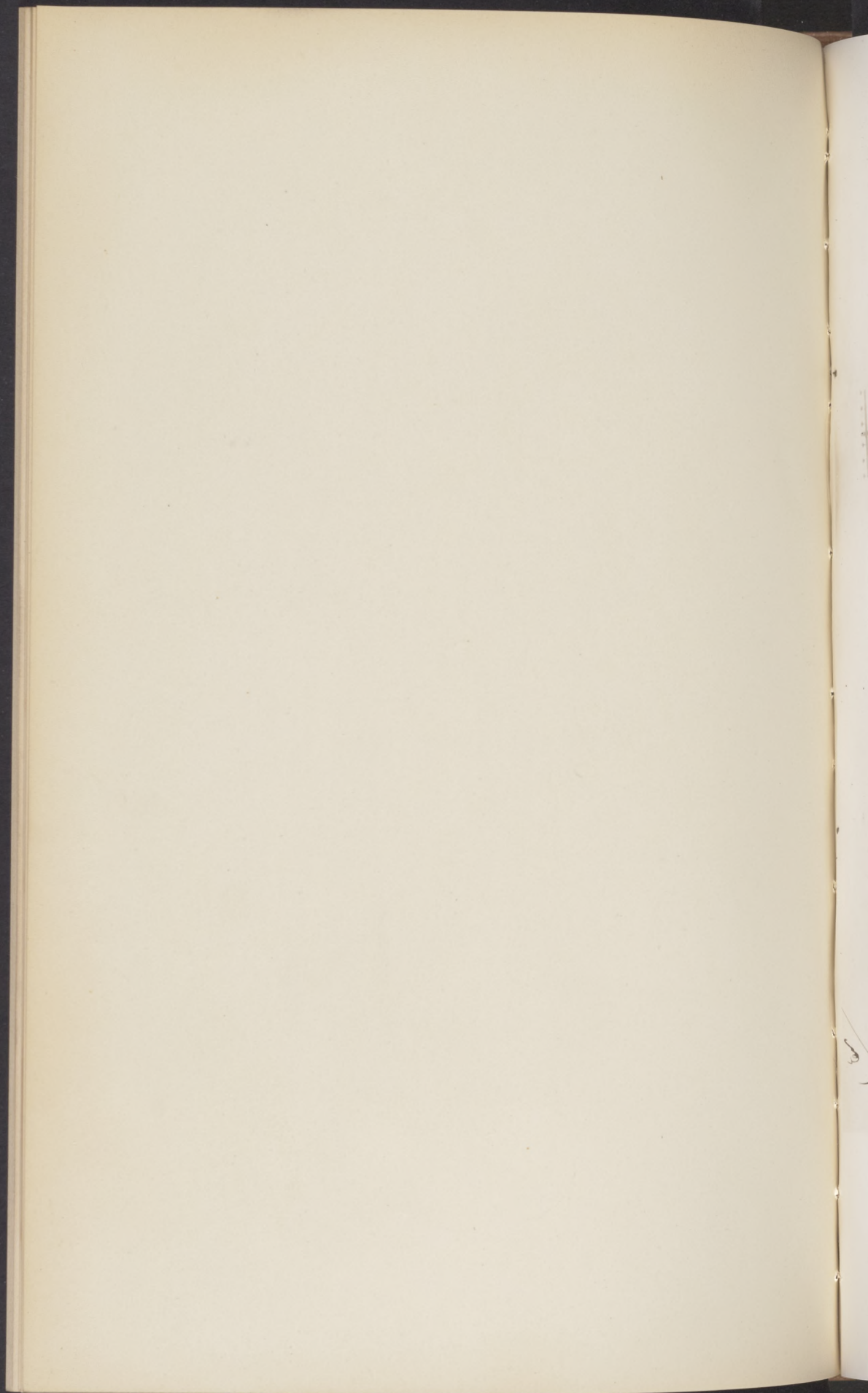
D3 ^{car}



HEINRICHS
PATERSON N.J.

3/31/28
H.P.

Exhibit D-3.



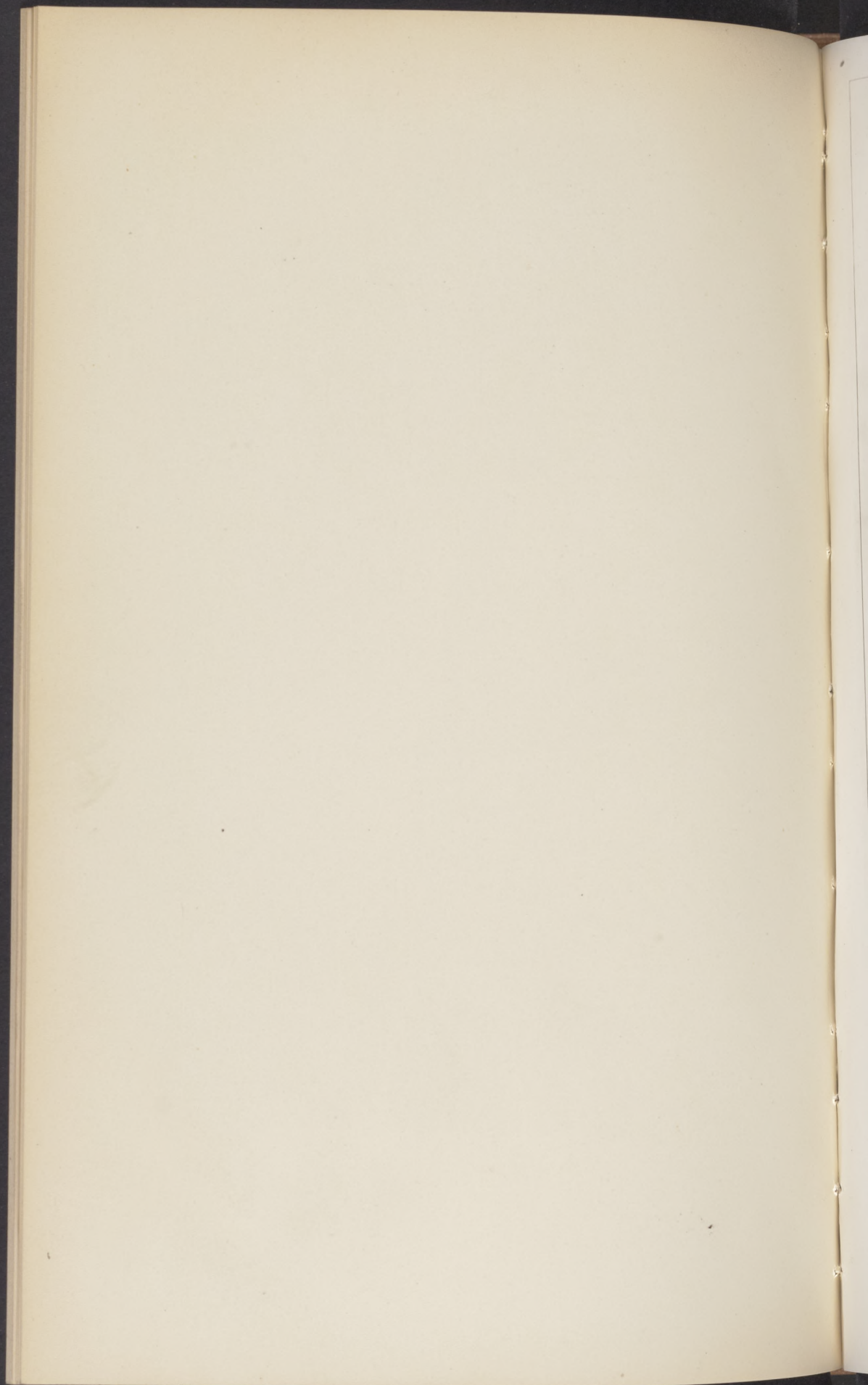
194



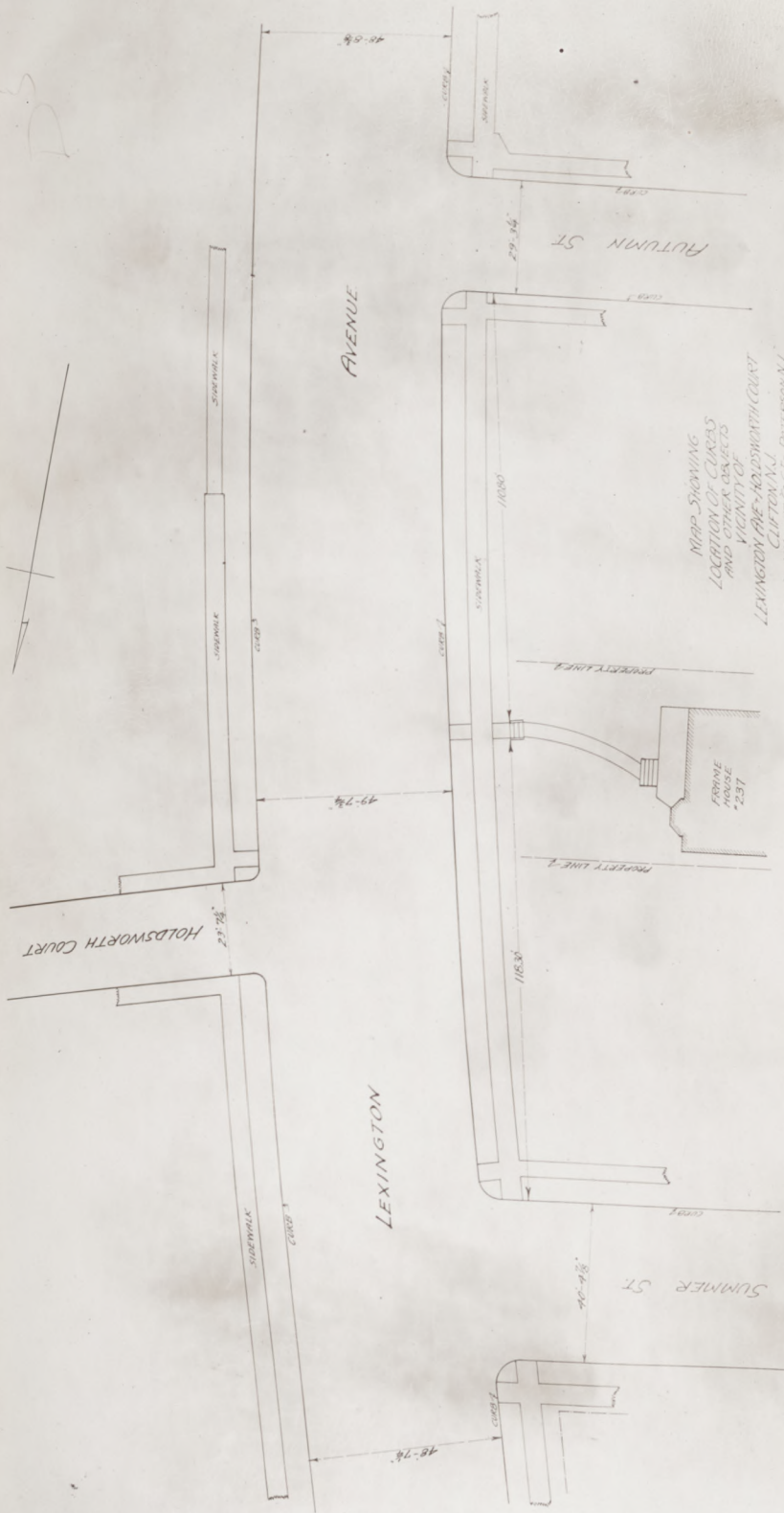
HEINRICHS
PATERSON, N.J.

3/31/28
H.B.

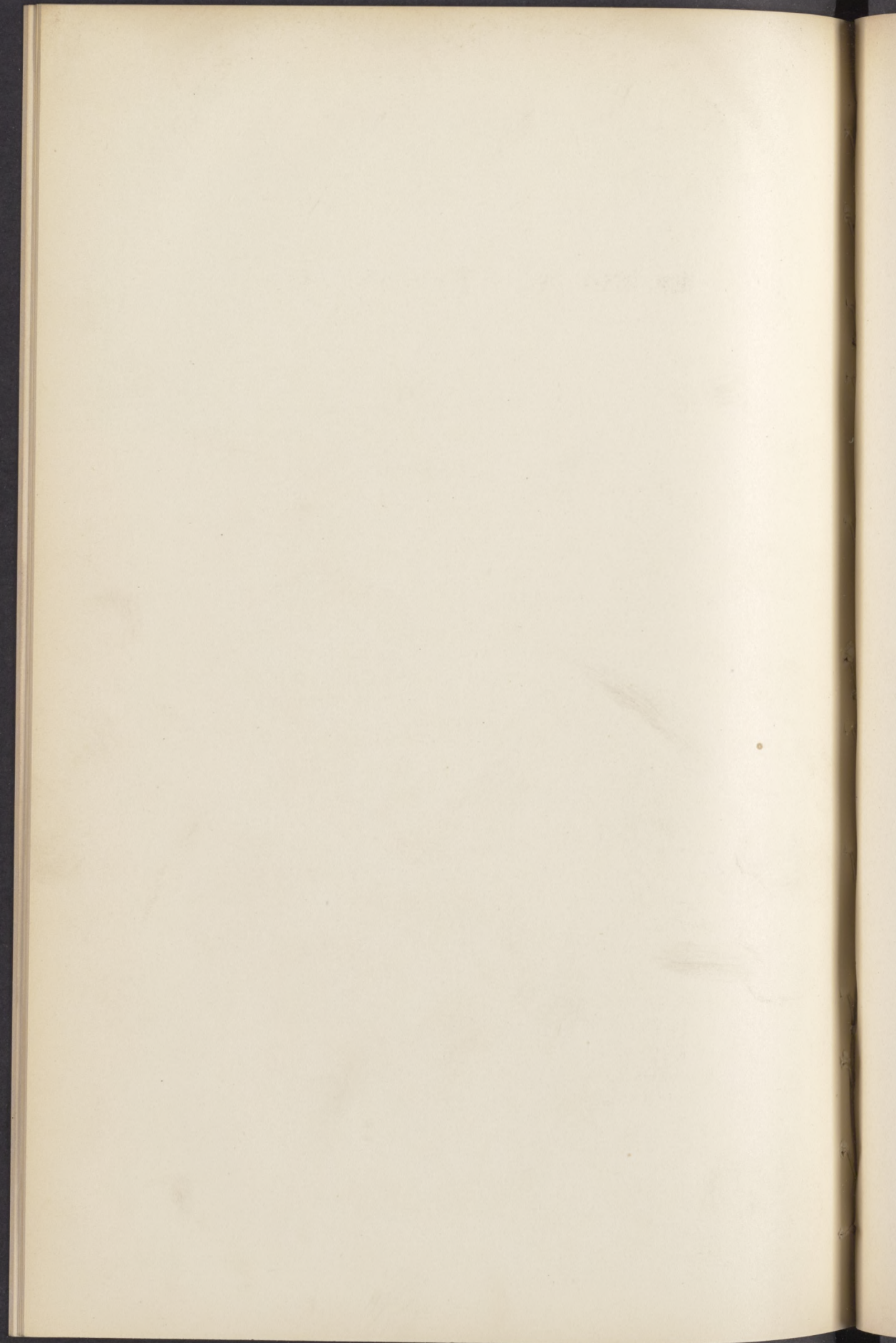
Exhibit D-4.



DS



MAP SHOWING
 LOCATION OF CURBS
 AND OTHER OBJECTS
 VICINITY OF
 LEXINGTON AVE - HOLDSWORTH COURT
 CLIFTON, N.J.
 FRED J. WRIGHT CO. - PATERSOWN, N.J.
 APRIL 9, 1928 SCALE 1" = 40'



New Jersey Court of Errors and Appeals

LILLIE CLARKSON and RUTGERS
CLARKSON, her husband,
Plaintiffs-Respondents,

v.

LOUIS LEY,
Defendant-Appellant.

Action at Law.

On Appeal from
Supreme Court.

BRIEF IN BEHALF OF THE APPELLANT.

(1)

Statement of the Case.

This appeal brings before this Court for review, a judgment of the Supreme Court wherein the plaintiff Lillie Clarkson recovered \$12,500, and the plaintiff Rutgers Clarkson \$2,500, in an action brought to recover damages for personal injuries alleged to have been suffered by the female plaintiff as a result of colliding with the automobile of the defendant. Her husband sued to recover damages for the losses suffered by him as such.

The action was tried at the Passaic Circuit before Circuit Judge NEWMAN and a jury on June 1, 1928 (p. 8).

At the close of the case counsel for the defendant moved for a direction of verdict on the ground that the plaintiff Lillie Clarkson was guilty of contributory negligence as a matter of law (p. 128).

The automobile which the defendant owned and operated at the time of the accident on December 3, 1926, was proceeding in a southerly direction on Lexington Avenue in the City of Passaic. The plaintiff was crossing Lexington Avenue on foot from east to west. Lexington Avenue was straight for a very considerable distance and the plaintiff had an unobstructed view of the defendant's automobile as it approached.

The plaintiff, Lillie Clarkson, testified that after she had proceeded but four feet from the curb on the east side, she did not again look for the vehicular traffic. She admitted that she made no observation thereafter. She further admitted that when she looked, when she was only four feet from the curb on the east side, that she saw the defendant's car approaching on her right and that she paid no further attention to it and did not again see it or know of its presence until she was struck. The Trial Court refused to direct a verdict because the plaintiff said she assumed that she had time to cross the street, notwithstanding that she saw the approach of the automobile. Upon the denial of the motion an exception was duly allowed (p. 128).

The case was then submitted to the jury and the jury brought in verdicts upon which the foregoing judgment was entered, in favor of the plaintiffs. It is from that judgment that the present appeal is taken (p. 1e). We shall hereinafter refer to the respondents as plaintiffs, and to the appellant as defendant.

(2)

Grounds of Appeal.

The grounds of appeal are five in number (p. 1f). The first is direct to the refusal of the Trial Judge to grant the defendant's motion for a direc-

tion of verdict. The remaining four grounds (2 to 5 inclusive) deal with errors in the charge of the Trial Judge to the jury (pp. 1f-1h).

(3)

BRIEF OF THE ARGUMENT.

I.

The Trial Court should have directed a verdict in favor of the defendant because the plaintiff, Lillie Clarkson, was guilty of contributory negligence as a matter of law.

The motion for a direction of verdict in favor of the defendant was specifically put on the ground that the female plaintiff was guilty of contributory negligence as a matter of law (p. 128). The motion was denied and exception was duly noted (p. 128, line 40). This exception is preserved in the first ground of appeal (p. 1f, lines 20-30). Annexed to the state of case will be found the exhibits, consisting of two maps and four photographs, which clearly present the scene of the accident. The defendant's map D-5 (the last exhibit in the book) shows that Lexington Avenue is almost 50 feet wide from curb to curb and runs in a general northerly and southerly direction. The width of this highway according to the plaintiff's map (the first exhibit in the book) is 48 feet. The photographs D-1, 2, 3 and 4 show that Lexington Avenue is a well paved highway from curb to curb. It is not only well paved but well lighted, and the houses on the street stand way back from the sidewalk. Exhibit D-2 plainly shows Summer Street at the right-hand side, and across Lexington Avenue can be seen Holdsworth Court which runs into Lexington Avenue from the east but does not

cross. The plaintiff claimed that she was crossing near the corner of Holdsworth Court after she had alighted from a bus and that she was about to cross the street to go to her home which was on the opposite side of the street, that is, on the west-erly side. Her house, on the plaintiff's map, is marked with her name, and it will be found that the entrance to her house is not opposite the corner of Holdsworth Court at all but considerably to the south thereof. This is also apparent from the de-fendant's map, which designates the house No. 237. Both maps show the walk leading from the curb to the entrance to the house. If the plaintiff was crossing Lexington Avenue at a point directly opposite the walk leading from the curb to the en-trance to her house, she could not have been any-where near the corner of Holdsworth Court. If she was crossing from the corner to her home, then she must have been crossing in a diagonal direc-tion and not straight across the street. As a matter of fact, there was no crosswalk of any kind physically located or marked off by white lines on the ground. Holdsworth Court admittedly does not go from the east side of Lexington Avenue to the west, but terminates on the east side and there is an unbroken line of curb on the west side of Lexington Avenue at the point where Holdsworth Court would cross had it not terminated on the east side.

Whether or not the plaintiff was guilty of con-tributory negligence depends on her testimony. She testified that she resided at 237 Lexington Avenue, Passaic (p. 16). On the date of the acci-dent, December 3, 1926 (p. 17, lines 20-30), at about 6:30 in the evening (p. 18, lines 1-10), she was re-turning to her home after doing some shopping (p. 18, lines 10-20). She had boarded a bus in the business section of Passaic, which bus proceeded

north along Lexington Avenue toward her home, and when it arrived at Holdsworth Court she alighted with other passengers. She had a number of bundles in her arms (containing food for her evening meal). After she alighted she waited for the bus to proceed on its way (in a northerly direction). She stood at the curb and after the bus had proceeded on she then started to cross the street. It was dark at the time and she alleged that she was right at the corner of Holdsworth Court at the point where had there been a crosswalk across Lexington Avenue she would have been within it (pp. 18-19). There were three electric lights in the immediate vicinity: one on the corner of Lexington Avenue and Summer Street; one on Holdsworth Court; and the other at Lexington Avenue and Autumn Street. These streets all appear on the defendant's map D-5. These electric lights are large city lights as can readily be determined from Exhibit D-1 which plainly pictures one of these lights. The plaintiff admitted that the street was very well lighted at the time (p. 20, lines 10-15). As she started across she looked south and saw a car coming from that direction and then she looked north and saw the defendant's car coming from the north and proceeding south (p. 20, lines 20-30). She said that the car to her right coming from the north (the defendant's car) was about in front of the second house beyond Summer Street. Summer Street plainly appears on both maps. On plaintiff's exhibit is shown the distance from that house to the corner. The record indicates quite clearly that it was 110 feet from Summer Street to the south side of the house and 160 feet to the north side of the house (p. 21, lines 10-30). Seeing this automobile of the defendant approaching opposite the second house, she nevertheless went directly across

the street. When she was about five feet past the white line in the center of the street, she was struck (p. 22). When she saw the defendant's automobile approaching, the headlights were lighted (p. 22, lines 20-25). The defendant's car, as well as the car coming in the opposite direction, both had bright headlights (p. 22, line 30). The automobile that she saw coming from her right was the automobile which struck her, namely, the defendant's (p. 23, lines 1-10). The foregoing was the plaintiff's testimony on direct examination.

On cross examination (p. 28) the plaintiff testified that the bus stopped at the southeast corner of Holdsworth Court, which would be the near corner as the bus proceeded north (p. 28, line 20). As shown above, after the bus stopped the plaintiff walked to the rear of the bus before she attempted to cross the street (p. 19, lines 20-30). Also, the bus must have been a fairly large bus because a large number of people alighted at Holdsworth Court (p. 18, lines 30-35); and furthermore, it is undisputed that Lexington Avenue is one of the main highways leading from the City of Passaic to the City of Paterson, and only a very large bus would be used on such a through thoroughfare. The plaintiff admitted it was a "long" bus (p. 28, line 35). At least five persons alighted at Holdsworth Court (p. 29, lines 10-20). She did not look at all until she had stepped off the curb; then she looked to her left and saw the car approaching from her left. It was one short block away (p. 30, lines 1-30). The headlights were burning on that car and were extra bright (p. 31, line 10). She did not wait to permit it to pass, but proceeded across the street in front of it. After she had walked four feet from the curb she saw the defendant's car approaching from her right. In short, she still had to walk from 44 to 46 feet

to reach the far curb on the easterly side of the street to which she was approaching (p. 31, lines 20-30). At that time the car was in front of the second house on the far side of Summer Street. The headlights were lighted on the defendant's automobile and she had no trouble in seeing them (p. 31, lines 30-40). It was in plain view and at that time she had only proceeded four feet across this much traveled highway, which was 50 feet wide from curb to curb. She walked across Lexington Avenue, passed over the white line in the center of the highway, and was three or four steps beyond the white line in the center of the highway, or about five feet beyond it, when the accident happened. She walked 21 feet from the only time when she looked to her right and observed the approach of the defendant's automobile until she was struck. During that period while she was crossing 21 feet of this main highway, she made absolutely no observation at all of any kind to her right (p. 32, lines 30-40). In addition, she was in a hurry so as to avoid the defendant's automobile. Her testimony about her observation is important. We therefore quote it verbatim (p. 32, line 25, to p. 33, line 15).

"Q. So that you had crossed from your position on the easterly curb, you had gone across the center line of the street, and you were five feet on the other side of it? A. Yes.

"Q. Before the accident happened? A. Yes.

"Q. Well, did you make any observation of this automobile that was in the accident with you from the time you first saw it four feet from the curb? A. I made no observations, no definite observations, because I had made my calculation, that I had ample time, I could cross.

"Q. I understand that, Mrs. Clarkson; but you made no other observations then, did you? A. No.

"Q. So that from that point, four feet, you proceeded across to the place that you had your accident? A. Yes.

"Q. And you didn't look again? A. No, I didn't look again.

"Q. Did you look again to your left? A. No.

"Q. You only made one observation to your left? A. I didn't look again to either side.

"Q. Weren't you in a little bit of a hurry, Mrs. Clarkson? A. Yes, I was in a hurry.

"Q. You wanted to get your dinner ready? A. No, we don't have our dinner until half past seven.

"Q. You say you were in a little hurry; what for? A. I was in a hurry to get across the street.

"Q. For what? A. So as to avoid any of those cars."

She at no time changed the "gait" of her walk as she crossed the street (p. 35, line 25).

The testimony of Robinson, the engineer who made the defendant's map from actual survey (p. 117), shows that Lexington Avenue was and is a much traveled highway, being one of the two main roads for traffic from Paterson to Passaic. It leads to the Erie Station in Passaic and parallels the Erie Railroad (pp. 117-118).

Devlin, the engineer who made the plaintiff's map, testified that Summer Street was 40 feet wide (p. 9); Holdsworth Court was 24 feet wide; the sidewalk is 8 feet wide. Lexington Avenue is paved with asphalt and the white line in the center is a traffic line put there by the Police Department (p. 9). Devlin measured the distance from Summer Street to the second house north thereof on the west side of the street (the house opposite which the defendant's automobile was when the plaintiff started to cross from the east to the west side of Lexington Avenue). He said it was 110

feet from Summer Street to the south side and 160 feet to the north side of that house. The automobile, therefore, was approximately 120 feet north of Summer Street when the plaintiff observed it. The distance from the south side of Summer Avenue to the north side of Clarkson's house, is approximately 95 feet, and the north side of Clarkson's house is about opposite the southeast corner of Holdsworth Court, where the bus stopped. The distance from the northerly curblines of Summer Street to the northerly line of Holdsworth Court (if both curblines were extended across Lexington Avenue) would be 95 feet (p. 11). Devlin also proved the defendant's photographs and testified to the view given by each (p. 12, *et seq.*).

The question presented is whether the plaintiff was guilty of contributory negligence. Counsel for the plaintiff will argue that the plaintiff "thought" that she had time to cross the street, notwithstanding that she saw the imminent approach of the defendant's automobile as she started across Lexington Avenue. The plaintiff had no right to entirely disregard the approach of the defendant's automobile which she admitted she was trying to beat across the highway (p. 33, lines 1-15). The plaintiff had no right to proceed across this much traveled main highway without making any observation at all after her first observation which was made only four feet from the east curb, the curb from which she started. She admittedly walked from that point four feet from the east curb, for a distance of 21 feet to a point five feet beyond the center of the street and in the direction of the west curb, without paying the slightest attention to the automobile which she knew was approaching from her right (p. 32, line 20, to p. 33, line 20). Not only did she walk across the street in front of the defendant's automobile com-

ing from her right, but admittedly she crossed in front of another automobile approaching from her left, which likewise was only a few feet away when she proceeded ahead of it in a hurry to pass in front of both these automobiles, according to her admission made on the witness stand (pp. 32-33).

The attempt to excuse her grossly negligent conduct by saying that the defendant's car was so far away that she did not have to pay any attention at all to it, answers itself. She had no right to entirely disregard its presence. Taking the plaintiff's testimony in its most favorable light, the defendant's automobile was in front of the second house on the west side of Lexington Avenue north of Summer Street. The distance from in front of that house to the point where the plaintiff was struck was 95 feet plus 120 feet, or approximately 215 feet. The plaintiff walked 21 feet, according to her own testimony, while the automobile was covering approximately 215 feet. Even assuming that the automobile traveled 250 feet while the plaintiff walked 21 feet, it is apparent that the automobile could not have been going very fast, because the plaintiff was proceeding, according to her testimony, at an ordinary walk. At any time, while the plaintiff traversed that 21 feet with the defendant's automobile in plain view, she could have avoided this accident by merely stopping. According to her own testimony, she made no observation at all while she walked the 21 feet (pp. 32-33).

Was the conduct of the plaintiff, under the circumstances, the conduct of a reasonably prudent person? The facts are undisputed and uncontradicted, and a legal question is presented. Her home was on Lexington Avenue right at the point where the accident happened. She knew it was a main highway and a much traveled highway. Although it was dark, she admitted that the place

was brightly lighted by the street lights and she plainly saw the defendant's automobile which also had its headlights lighted. The adjudicated cases in this State hold that the female plaintiff was guilty of contributory negligence as a matter of law.

In the recent case of *Cady v. Trenton & Mercer, etc., Traction Co.*, 104 N. J. L. 572, this Court sustained a judgment of nonsuit where the facts proven were substantially the same as those in the case at bar. In that case, the plaintiff, Jennie Cady, was crossing from the south to the north side of State Street in the City of Trenton, at or near the point where the street is intersected by Chancery Lane, another public highway. As she was crossing, she was struck by a west-bound trolley car. As she started to cross she looked to see whether any vehicle was coming and, seeing none, proceeded to cross the street at the crosswalk. After she had crossed the first track and had crossed one of the rails of the second track, she was struck, and that is all she knew. She further testified on cross examination that she looked to the east and to the west and saw no car or machine on the street and after she started to cross she never looked again for vehicles in the street. State Street at the point where the accident occurred was 36 feet wide from curb to curb. The Trial Judge granted the nonsuit on the ground that the plaintiff, under the evidence adduced by her, was guilty of negligence contributing to her injury and therefore was barred of any recovery. This Court, in a unanimous affirmance, speaking through KALISCH, J., at page 574, held (*italics ours*):

“For the appellant it is argued that this judicial action of the trial judge was erroneous, because the question, whether or not the appellant was guilty of negligence contributing to

her injury under the evidence in the cause, was a factual question for a jury to determine. In support of this contention counsel cites numerous cases of negligence decided by this court, as holding, under such circumstances as were developed by the testimony in the instant case, that the question of the negligence of the plaintiff was for the decision of a jury. The facts of the cases cited and relied on by counsel of appellant are not parallel to the facts of the present case, and are readily distinguishable therefrom.

"The legal rule which must control is, that where the facts and circumstances are of such a character that reasonable minds may reasonably differ as to the fair inferences or conclusions to be drawn from such set of proven facts or circumstances, as to whether or not plaintiff exercised reasonable care for his or her own safety, a question is invariably presented for decision by a jury. *Mumma v. The Easton and Amboy Railroad Co.*, 73 N. J. L. 653. This was not the situation of the present case on review.

"The sixth headnote of the case of *James v. Delaware, Lackawanna and Western Railroad Co.*, 92 N. J. L. 150, a case decided by this court, reads: 'Contributory negligence is present in a given case when the injured person by his own negligence has contributed to the injury in such a way that, but for his negligence, he would have received no injury from the negligence of the other party.'

"So, in the instant case, it is quite clear that if the appellant had paid due regard to her own safety and had not walked blindly across the street, she would have observed the oncoming car, before she reached and crossed the first track, and thus have avoided being injured through the negligence of the respondent's servant."

So in the case *sub judice*, it is quite clear that if the female plaintiff had paid due regard to her own safety and had not walked blindly across the

street, she would have continued to observe the oncoming car which she had previously seen before she reached and crossed the center of the street and taken three or four steps, beyond the center, and thus she would have avoided being injured through the negligence of the defendant.

The plaintiff in the case at bar is being judged, as the plaintiff in the *Cady* case was, by her own testimony of what she did. That testimony is undisputed and uncontradicted.

In *Morril v. Morril*, 104 N. J. L. 557, this Court reiterated the well-settled rule that where in the trial of an action for negligence there are no disputed facts, there is nothing of an issuable character for the jury to decide and it devolves upon the Court to declare the judgment which the law imposes. In another recent case, *Sharpe v. P. S. Ry. Co.*, 103 N. J. L. 583, the Supreme Court sustained a judgment of nonsuit where the plaintiff testified that as he was riding a motorcycle toward the intersection of two streets, "he kind of looked to the right" and sounded a little exhaust whistle that he had rigged up temporarily on his motorcycle. Without looking to the south in the direction from which the trolley car was approaching, he proceeded to cross the intersecting street without stopping or reducing his speed. He was proceeding west while the street car was proceeding north so that he had the right of way. Nevertheless, the plaintiff was nonsuited. The point we make with respect to this case is that because of the lack of observation it was held that the plaintiff was guilty of contributory negligence as a matter of law. The Court reiterated the settled rule in the leading case of *N. J. Express Co. v. Nichols*, 33 N. J. L. 434, that if upon the evidence adduced it shall clearly appear that such (contributory) negligence does exist and that it has a causal

relation to an injurious accident, the question becomes one of law for the Court. The case now before the Court is stronger than either of the foregoing cases, because here the plaintiff admitted that she saw the approach of the defendant's automobile and that she was in a hurry to get across the street ahead of it, and notwithstanding that she saw it approaching and was hurrying to get across ahead of it, she never looked in the direction it was approaching from, after she first observed it when she started to cross the street. Her testimony, uncontradicted, is that for approximately twenty to twenty-one feet she proceeded across this much traveled highway without looking to the right (or the left, for that matter) in the face of the danger which she saw and appreciated, and she admitted she was hurrying to avoid it. As Justice KALISCH says in the *Cady* case, *supra*, had she used reasonable care, she would "have avoided being injured through the negligence of the defendant."

Still another case directly in point is *Hubbard v. Atlantic Coast Electric Co.*, 91 N. J. L. 299, where the plaintiff testified that he first looked to the south and then to the north before crossing. He did not again look to the south and was struck by a vehicle coming from the south. It was held by this Court that a court question and not a jury question was presented and that the plaintiff was guilty of contributory negligence as a matter of law. This Court in a unanimous opinion reversing the Trial Court, speaking through BLACK, J., at page 300, held (*italics ours*):

"How long the plaintiff continued to look north, after looking south, before he proceeded to cross the track does not appear, but it must have been some little time. It was long enough for him, watching the approaching car

from the north, and unable to decide from its speed whether it would stop or not, to see it reduce its speed and come to a stop, at the switch, and long enough for a car approaching from the south to have come within his range of observation if he had looked in that direction. The track was comparatively straight at that point for a considerable distance, and *certainly a sufficient period had elapsed to have required another observation to the south before attempting to cross the track. This duty he failed to perform. We think his conduct was not that of a reasonably prudent man concerned for his personal safety, and this is the measure of his duty. He must use his powers of observation before crossing a trolley track, which is a place of danger.* There being no disputed fact, and giving to the plaintiff's testimony the most favorable conclusion that may be drawn from the facts, we think a court question and not a jury question was presented, that the plaintiff was clearly guilty of contributory negligence. It was, therefore, error for the trial court to refuse the defendant's motions."

The duty cast upon a pedestrian crossing a highway in the face of approaching vehicular traffic has been repeatedly defined by this Court. In *McGrath v. North Jersey St. Ry. Co.*, 66 N. J. L. 312, 313, this Court reiterated the rule in the following language:

"The trial judge took a correct view of the legal rule. A pedestrian, while walking in the highway, is bound to be careful. The law is settled, though its application is not always easy. In *Newark Passenger Railway Co. v. Block*, 26 Vroom 605, a case decided in 1893, Mr. Justice MAGIE, in delivering the opinion of this court, said:

"We must recur to the general rule which requires one, in exercising his lawful rights in a place where the exercise of like rights

by others may put him in peril, to use such precaution and care for his safety as a reasonably prudent man would use under the circumstances. From this rule it may be said in general that one who passes on foot along a sidewalk or path of a highway must use his powers of observation in respect to other passers thereon, and a reasonable judgment to avoid collision. In crossing the roadway a foot passenger must likewise use his powers of observation to discover approaching vehicles, and a like judgment when and how to cross without collision. In the latter case doubtless the degree of care required exceeds that required in the former case, not because the right of the foot passenger and the right of the driver of a vehicle differ, but because of the circumstances. The vehicle usually travels at a greater speed—it cannot be so quickly stopped or diverted from its course; a street car cannot deviate from its track; while the passer on foot may quickly stop, turn aside, or even retrace his steps.

“The rule thus stated governs the relation of a pedestrian to all vehicles. It is true that a trolley car has characteristics of its own. It is a large, smooth-running vehicle of great weight. Its momentum is therefore high, even when its velocity is low. On the one hand, it cannot deviate from its track. On the other hand, its rate of speed is under prompt control. These peculiarities, however, are not criteria by which trolley cars are set apart, for legal treatment, in a class by themselves. They are merely circumstances that have sometimes to be taken into account in applying the general rule to a particular case.”

Later cases are *Pool v. Brown*, 89 N. J. L. 314, 316, 317; *Ervin v. Traud*, 90 N. J. L. 289, 290.

We therefore respectfully submit that in the case at bar the Trial Judge erred in refusing to grant the defendant's motion for a direction of verdict.

II.

The Trial Court erred in instructing the jury that at the time the plaintiff was injured she was, as a matter of law, upon a crosswalk, if she were within the confines of that part of the highway which would be embraced within the boundaries of the lines of the sidewalk, if continued across the street.

The instruction complained of is as follows (p. 131, line 40, to p. 132, line 20) :

"I am now giving you the rule of law as to the conduct of the defendant with regard to the plaintiff, who was a foot passenger upon this cross-walk.

"Now, it does not appear in the evidence that this Holdsworth Court crosses the street; but, nevertheless and notwithstanding, that it does not cross the street, and that there is another street, Summer Street, further up, which likewise does not cross the street but comes in from the opposite direction, it was a cross-walk where she was crossing, if she was crossing within the confines of what I shall define as a 'cross-walk.'

"Now, a cross-walk is that portion of the street which would be embraced within the boundaries of the lines of the sidewalk, if they were continued straight across the street;
* * *"

Exception was duly noted to this part of the Trial Court's charge (p. 138, lines 25-35). This exception is preserved in the second, third and fourth grounds of appeal (p. 1f, line 30, to p. 1g, line 20).

It will be noted that in the first paragraph the Trial Judge said that he was giving the jury the rule of law as to the conduct of the defendant with regard to the plaintiff "*who was a foot pas-*

senger upon this cross-walk." The previous references to cross-walk in the Court's instructions are brief. In the beginning of the charge in reciting the facts, the Trial Judge said that the plaintiff claimed "after the bus had left her she (the female plaintiff) proceeded to walk across Lexington Avenue to her house crossing that street as she says on what would be a cross-walk" (p. 130, lines 1-10). Then just before the quoted part of the charge, *supra*, the Trial Judge said to the jury (p. 131, lines 30-40):

"There has been some testimony in this case that Mrs. Clarkson was crossing this street on what is called by the plaintiff 'a cross-walk.'"

These are the only previous references in the charge to "this cross-walk." The physical conditions prevailing at the scene of the accident are completely covered in Point I. The photograph D-1 plainly shows the white line painted in the center of Lexington Avenue which admittedly was there. Devlin, the plaintiff's engineer, testified to this photograph as truly representing the condition prevailing at the time of the accident (p. 12, lines 20-40). The picture gives a view in a northerly direction, the direction from which the defendant's automobile approached and the automobile in the photograph D-1 is proceeding as the defendant's automobile was proceeding at the time of the accident. The intersecting street to the left of the picture is Summer Street (p. 12, lines 15-35). The photograph D-2 shows Lexington Avenue through the center of the picture with Summer Street on the right side and Holdsworth Court on the left and the picture is a fair representation of the locality according to plaintiff's engineer (p. 13, lines 1-20). That picture gives a view south

toward the City of Passaic. Exhibit D-4, a photograph, shows Holdsworth Court on the left of the picture and likewise shows the heavy white line painted in the center of the street (p. 15, lines 1-10). The two maps, Exhibit D-5 and Exhibit P-1, also show Holdsworth Court, a twenty-four foot street from curb to curb, which comes at right angles to the easterly side of Lexington Avenue, but does not cross, and both maps also indicate quite clearly that on the west side of Lexington Avenue directly opposite Holdsworth Court, there is no intersecting street at all, but an unbroken line of curb. Photograph D-4 also shows this very clearly. No claim is made that there was any white line or lines or any other physical condition on the ground to indicate any cross-walk continuing the line of sidewalk of Holdsworth Court across Lexington Avenue from the east side thereof to the west side thereof. On the contrary, the pictures and photographs and testimony are uncontradicted that there was no such physical evidence of a cross-walk.

No unsuspecting automobile operator proceeding south on Lexington Avenue at night on the westerly half of that main busy thoroughfare, which half is approximately twenty-five feet wide, would have the slightest notice or warning or indication that he was coming to a "cross-walk." On the contrary, the cross-walk is entirely "theoretical," and not physically existent. The highway was paved with asphalt upon which there was no marking of any kind indicating a cross-walk. In the next point we deal with the instructions of the Trial Court that at this theoretical cross-walk the plaintiff had the right of way over vehicular traffic and the defendant was bound to stop his car, if necessary, in order to grant the plaintiff that right. To impose upon the unsus-

pecting motorist such a severe duty with respect to a cross-walk that does not physically exist, is unreasonable and the law should not impose such a duty unless it cannot be avoided.

The Traffic Act of this State defines the word "crossing." This accident happened on December 3, 1926. The said Traffic Act (Chapter 156, Laws of 1915, p. 286) in Part 1, Par. (4), provides the following definition for the word "crossing."

"(4) The word 'crossing' includes all duly indicated crossings marked by a pavement or otherwise, and the most direct route from curb to curb at the intersection of streets."

In the case at bar there are no "duly indicated crossings marked by a pavement or otherwise." Also, there is no intersecting street on the west side of Lexington Avenue so that there cannot be any route to such intersecting street as required in order to make a "crossing" under the second provision of Paragraph 4, *supra*. On the west side of Lexington Avenue there is no continuation of the sidewalk which exists on the east side of Lexington Avenue over Holdsworth Court. Certainly the Trial Court's definition of a crosswalk or a crossing is not that given in the statute, for in the quotation, *supra*, the Trial Court instructed the jury that a crosswalk is that portion of the street which would be embraced within the boundaries of the lines of the sidewalk if they were continued straight across the street. This definition does not come within either provision of the statute with respect to a crossing. On the contrary, it is directly opposed to the definition of the statute. Under it, if the sidewalk on an intersecting street is fifteen feet wide, then the pedestrian has the right to cross on any part of the highway intersecting for a width of fifteen feet and still be

within the so-called crossing or cross-walk, whereas the statute says the pedestrian must take the most direct route from the curb at the intersection of the street—not for the full width of the sidewalk of the intersecting street. The pedestrian under the Traffic Act (Chapter 24, P. L. 1916, p. 49) has the right of way over vehicles at any street crossing where the houses are on the average less than one hundred feet apart. In the case at bar the houses were on an average of less than one hundred feet apart and the plaintiff would have had the right of way if she were on a “crossing.” We therefore respectfully submit that the Trial Court erred, first, in holding that the plaintiff was a foot passenger upon a cross-walk if the plaintiff was within the boundaries of the lines of the sidewalk of Holdsworth Court if they were continued straight across the street, because that is not a proper definition of a crossing within the meaning of the statute which applies to cases of this kind so as to give the plaintiff the right of way as a pedestrian over vehicular traffic; secondly, we submit that no cross-walk in fact existed at the point of the accident, first, because no such crossing was “duly indicated or marked by a pavement or otherwise”; and since Holdsworth Court did not cross Lexington Avenue, it could not be said that there was a crossing within the meaning of the statute, from curb to curb of the intersecting street. Thirdly, we contend that if it could be said that there was in fact a cross-walk within the meaning of the statute, which we deny, the proof was not uncontradicted that the plaintiff was on the cross-walk, but on the contrary there was ample proof to make that question one of fact for the jury. Therefore the Trial Court should not have said as a matter of law,

"I am now giving you the rule of law as to the conduct of the defendant with regard to the plaintiff *who was a foot passenger upon this crosswalk.*"

With respect to this phase, the plaintiff's own testimony showed that the bus stopped at the southeast corner which would be the near corner as the bus proceeded north (p. 28, line 20); that the plaintiff started to walk toward the rear of the bus after she alighted (p. 19, lines 20-30). The bus was a "long" bus (p. 28, line 35). Allowing for the length of the bus and the fact that it stopped at the southeast corner and that the plaintiff proceeded toward the rear in order to cross the street, the jury might very well have found that the plaintiff was not on any crosswalk even if one existed, and therefore the Trial Court should have submitted to the jury that question of fact and not have merely limited his charge as a matter of law to the plaintiff's theory of the case that she was upon a cross-walk, for it is settled that if she was not on a cross-walk, that the right of the plaintiff as a pedestrian and the right of the defendant operating a motor vehicle *were equal* on the highway. Under those circumstances the plaintiff did not have the right of way.

In *Pool v. Brown*, 89 N. J. L. 314, this Court, speaking through KALISCH, J., at page 316, said:

"At the very outset it is highly important that it should not escape observation that the situation, presented by the facts under consideration, relates to a pedestrian in the exercise of a lawful right to cross a public highway and the driver of a vehicle who had no superior legal right in the use of the street. Under such circumstances the law imposes reciprocal obligations. Those reciprocal obligations are the offspring of elementary and familiar legal principles, which, by reason of

their soundness and wisdom, have become firmly imbedded in the law. In fact, it is a strict observance of those legal principles that tends to make our public highways passable and safe to the drivers of vehicles and pedestrians alike. The circumstance that new elements of locomotion, such as electricity, steam, &c., have been added to vehicles using public highways, has not wrought any modification of those legal principles."

It is respectfully submitted that the Trial Judge erred in his foregoing charge to the jury for the reasons stated.

III.

The Trial Court erred in instructing the jury that if the plaintiff was upon a crosswalk, it was the absolute duty of the defendant to stop or so reduce the speed of his automobile as to permit the plaintiff to pass in safety.

The Trial Court's charge in that respect was as follows (p. 132, lines 15-35):

"When a pedestrian and an automobile moving in different directions approach such a crossing at the same time or in such a manner that if both continue their respective courses there is danger of a collision, then the pedestrian is entitled to first use the crossing, and it is the duty of the driver of the automobile to stop or to so reduce speed as to give such pedestrian a reasonable opportunity to pass in safety, and to that end to have such automobile under such control as to enable him to do so."

"Now, that is the duty which the law casts upon the automobilist."

Exception was duly noted to this instruction (p. 138, lines 30-40). This is the fourth ground of ap-

peal (p. 1g). It will be noted that this instruction places an *absolute* duty upon the motorist to stop or to so reduce the speed as to permit the plaintiff to cross in safety. In short, if a pedestrian happens to be on a crosswalk, the motorist is an insurer of the safety of the pedestrian. The Court did not limit the duty of the defendant *to the exercise of reasonable care in the operation of the automobile*, but imposed the absolute duty to stop or to reduce speed irrespective of whether or not reasonable care was exercised to observe and to avoid colliding with the plaintiff. Also, this instruction imposes the absolute duty upon the defendant to observe the manner and speed with which the pedestrian crosses and compels the defendant to so gauge the speed of his automobile as to stop it or reduce its speed, irrespective of the manner in which the plaintiff may cross or the time consumed in crossing. In short, if the pedestrian comes to a crosswalk and proceeds to run across regardless of vehicular traffic, the motorist must observe the pedestrian and determine absolutely upon the penalty of being guilty of negligence, whether or not the pedestrian and the automobile will collide, and, if he concludes that they will, he must stop and give the pedestrian the right of way. Such an instruction is clearly erroneous. It disregards entirely the duty of the pedestrian to exercise reasonable care for his own safety. It imposes upon the motorist a control of the automobile which is impossible. It imposes upon the operator of an automobile, the absolute duty of stopping at all crosswalks, or, as an alternative, makes him an insurer against any accident that might occur.

In the leading case of *Pool v. Brown*, 89 N. J. L. 314, 316, this Court, through KALISCH, J., held (*italics ours*):

“The driver of the automobile *was under a legal duty to use reasonable care* to avoid colliding with other vehicles or persons in the public highway. His duty was to be on the alert to observe persons who were in the street or about to cross the street and to *use reasonable care* to avoid colliding with them.”

This is quite different from the absolute duty imposed by the Trial Judge upon the defendant, namely, “that the duty of the driver of the automobile was to stop or to so reduce speed as to give such pedestrian a reasonable opportunity to pass in safety.”

In *Winch v. Johnson*, 92 N. J. L. 219, 220, and *Healey v. Braested*, 98 N. J. L. 520, this Court points out that even a violation of the Motor Vehicle Law does not *per se* charge a defendant with negligence. Such a violation is merely a circumstance entering into the question whether or not the defendant did or did not exercise reasonable care under all the circumstances of the case. We therefore respectfully submit that the Trial Court erred in giving the foregoing instruction to the jury.

IV.

For these reasons we respectfully submit that the judgment below should be reversed and a *venire de novo* ordered.

Submitted October Term, 1929.

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New Jersey Court of Errors and Appeals

Lillie Clarkson and Rutgers Clarkson, her husband, Plaintiffs-Respondents, vs. Louis Ley, Defendant-Appellant.	}	On Appeal from Supreme Court.
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Brief on Behalf of Plaintiffs- Respondents

STATEMENT OF FACTS

This case was tried at the Passaic Circuit of the Supreme Court and resulted in a verdict in favor of the plaintiffs, Lillie Clarkson and Rutgers Clarkson, her husband. A rule to show cause was obtained with exceptions reserved. The rule was discharged and the case now appears in this Court on the reserved exceptions. (145 Atl. Rep. p. 471.)

The injuries that the plaintiff, Lillie Clarkson, received were due to being run down by an automobile, operated by the defendant. Mrs. Clarkson, at the time of the accident, was crossing Lexington Avenue in the City of Passaic, going from the easterly side to the westerly side over the public cross-walk, and had almost reached the opposite side of the street when run down.

Lexington Avenue runs generally north and south, and the testimony of Mrs. Clarkson was

that after leaving the curb on the easterly side of the street, she made an observation, walked out in the street about four feet, made another observation, and then walked across. That at that time a car, apparently that of the defendant's, was north at a point of approximately one hundred to three hundred feet up the street, indicated by her as at the second house above Summer Street. (See map.) The driver of this car had not yet reached Summer Street, and between the point where he was, when observed by the plaintiff, not only did Summer Street intervene, but also another cross street, called Holdsworth Court, which runs east out of the easterly side of the street.

The defendant in his brief argues:

(1) That the plaintiff, Lillie Clarkson, was guilty of contributory negligence as a matter of law, and:

(2 and 3) That the Court erred in certain instructions to the jury with reference to the use of the side-walk.

These points will be considered in their order.

POINT 1.

LILLIE CLARKSON WAS NOT GUILTY OF CONTRIBUTORY NEGLIGENCE AS A MATTER OF LAW.

The physical situation appears clearly set out in plaintiff's map, which forms part of the State of Case, and which was made by Edward A. Devlin,

C. E., and the photographs also in the State of Case.

Lexington Avenue is a connecting thoroughfare between the City of Paterson and the City of Passaic, and runs generally north and south. The scene of the accident was on the cross-walk, which extended from the southerly side of Holdsworth Court across to the westerly side of Lexington Avenue, in a direct line with the Clarkson house. North of the scene of the accident were two streets, Holdsworth Court, referred to above, which runs easterly from Lexington Avenue, and Summer Street further north which runs westerly from Lexington Avenue. The street is macadamized or paved, and there was no cross-walk in the sense of a flagging road across the street.

The plaintiff's story as to the happening:

The accident happened on December 3, 1926, at about 6:30 P. M. Mrs. Clarkson had been riding in a bus on Lexington Avenue going north. When the bus got to the street called Holdsworth Court, it stopped and she and other passengers got off. The bus stopped at a point so that the passengers getting out would alight on the sidewalk as it would cross Lexington Avenue (p. 18, l. 30 to bottom). Plaintiff got off the bus first and helped two other ladies off, and for that purpose put her bundles down on the sidewalk. Then she picked up her bundles as the bus started on its way and waited for it to get out of her way before attempting to cross (p. 19, l. 10-18). She stood until the bus pulled off (p. 19, l. 25-30).

Q. "Did you then start across the street?" A. "Oh, not without looking."

Q. "Never mind that; did you start across?" A. "Oh, yes."

Q. "Can you tell us where it was that you started to cross, when you stepped off the curb?" A. "Well, right at the crossing, or, not at the crossing—I mean where the sidewalk comes to the curb."

Q. "In other words, you mean if there were a crosswalk across the street there, you would have been on it?" A. "Yes."
(P. 19, l. 30-38.)

It was dark, but there was three electric lights in the vicinity p. 19 at bottom, p. 20-at top); the reflection of which she describes (p. 20, l. 5-10); the result of which was that the street was well lighted.

Q. "Tell us what you did from there, when you started across the street; tell us from there on what your actions were?"

A. "I took—I stepped to the curb and stepped down on the gutter; then **I took my calculation of how I was crossing the street.**"

Q. "What observations did you make?"

A. "Why, there was one car coming—"

Q. "What observations did you make? Which way did you look? What did you do?" A. "I looked first down the street, that is, south; I saw a car near the side of Harrison Street."

Q. "Harrison is two blocks down?" A. "It is about a block from where I was, I imagine."

Q. "When you looked south—" A.

(Interrupting) "Then I looked north, and I saw the other car coming from the north."

Q. "Yes?" A. "And I **calculated** that I had plenty of time to go across there."

Q. "Yes, where were you, first, when you looked to your right and saw this car up the street? Where were you?" A. "In the gutter, near the curb."

Q. "How far out from the curb were you in the street?" A. "About four feet."

Q. "Where was this car that was coming from the north? Where was it at that time?" A. "It was about in front of the second house beyond Summer Street."

(P. 20, l. 15 to bottom; p. 21, l. 1-15.)

The Court then asked the question as to how far that would be away, and it developed that from where plaintiff crossed to the north side of Summer Street was 160 feet (P. 21, l. 20-30). Plaintiff however, testified that this oncoming car was two houses still north of Summer Street, which would add approximately another 100 feet to distance. After this, the plaintiff having made the observations, as given above, walked directly across in a straight line, and had gotten to a point of five feet past the middle line of the street, (which middle line is indicated by a white painted strip) when she was struck, or in other words, she had travelled approximately 20 feet to the middle of the street, and then five feet beyond, or 25 feet in all, while the defendant's car had travelled consider-

ably over 200 feet. No horn was blown, and she was struck so hard that she was tossed in the air and hurled to the sidewalk, a distance of 15 feet (P. 22, l. 15-20).

On cross examination, at page 31, she repeated that she had gone out about four feet in the street when she made in fact what would be her second observation up the street (P. 22, l. 3-15). Of course in her fixing this distance of four feet, she not only used the word "**about**", but as it appears in her testimony at page 32, line 20, she said she had taken three or four steps, which three or four steps she estimated as being about five feet. So that, when she states she was only four feet from the curb, if we take her judgment of measurements as just indicated, she must have been more than four feet from the curb out in the street when observation was made. However, she further testified that she had made her **calculations** and figured that she had ample time to cross (P. 32, 33-36).

Her husband, RUTGERS CLARKSON, who stood at his house waiting for his wife, testified that he saw the bus come to Holdsworth Court, stop, and then go on. He saw his wife on the other side of the street, and then observed her starting to cross (P. 37, l. 20-25). When asked as to what he observed, he said,

"Well, she started across the street, she first looked south and then north. Q. When she looked south, which, of course, would be to her left about how far off the curb was she? A. I should judge two or

three feet. Q. Then when she looked to her right, how much further had she gotten out into the street? A. Well, she might have gotten a step or so." (P. 27, l. 38 to bottom; P. 38, l. 1-8.)

There were no cars in the immediate vicinity, other than one going north and one going south; he saw the car going south which struck his wife. He also fixed defendant's car as being a house or two above Summer Street, that is, north of Summer Street, at the time his wife was attempting to cross (P. 38, l. 30-32). His testimony, with respect to this car of defendant, is important as he saw it come down "pretty fast." He was asked,

"As it came along past Summer Street on, did it change its speed anyway? A. It seemed to me, after he passed Summer Street, which is on the north, that **he had stepped on the gas, because the car picked up so quick after that.**" (P. 39, l. 25-32.)

He repeated this at page 39 at bottom and 40 at top.

"Q. So that, after the car passed Summer Street, it seemed to go faster? A. Seemed to go faster. Q. Much faster? A. Yes sir; it seemed to be picking up. Q. Then what happened? A. Why, then it hit her. Then it hit my wife." (P. 40, l. 15-20.)

Then the car continued 15 feet further on before it stopped (P. 40, l. 35).

This is important as showing the great speed in which the car was going; important because of the fact that the car had picked up speed after passing Summer Street and when almost on top of the

plaintiff. He testified generally (at page 56 and 57 entire) as to the condition of the lights in the vicinity, so as to fully light up the scene of the accident. This of course may be observed by looking at the photograph attached to the State of Case.

GUSTAV OTTO, whose testimony begins at page 61, did not see the accident, but testified that he acted as an interpreter, and that Mr. Ley, the defendant, had told him that he was going to see his wife, and that "He didn't see this woman whom he hit, whom he addressed as 'That woman' until his fender had hit her and then he couldn't immediately stop his car and he had to drag her along" (P. 61, l. 39 to bottom; P. 62, l. 1-3.)

He was not cross examined and it subsequently turned out, the defendant's testimony was practically an admission of the truth of this story.

MARY DUNSHATT, a witness for the plaintiff, was a passenger on this bus. She had gotten off the bus first and had walked across the street from the easterly to the westerly side, and noticed as she had gotten about half way across, the defendant's car up at about two or three houses north of Summer Street, coming south (P. 63, l. 15-25.) This car was going very fast, and witness and a friend accompanying her, jumped to the sidewalk, and heard the crash behind her, and when she turned they saw "the woman up in the air." (P. 63 at bottom; P. 64, l. 1-14.) She placed the point of accident between the westerly curb

and a white line in the middle of the street (P. 64, l. 20).

We submit that this evidence disclosed no contributory negligence on the part of the plaintiff. Summarizing the evidence, it shows that the plaintiff made her observations, or as she puts it, her "calculations," before leaving the sidewalk; that she then walked out **about** four feet making the observation to her left at that time. As we have pointed out elsewhere she was very conservative in estimating the length of her steps.

It may be reasonably argued from Mrs. Clarkson's evidence that she really made three observations, one on the sidewalk, the second when she stepped down in the gutter and then "took my calculations," and the third when she made further observation about four feet out in the street. Her husband's evidence corroborates her story in this respect. He noticed her making her observation when she started to cross, and when she looked south, the second or left, when she was two or three feet out from the curb, and then when she looked north to her right, that is the direction from which defendant's car was coming, she had taken another step or so. The story of what she did in making the observations, the character of the judgment exercised by her as to whether it was safe to cross or not, must be considered in the light of the actions of the defendant. When she made this observation to the north, defendant's car was then at the second house above Summer Street. We again by looking at the Devlin map note that the distance to Summer Street is 160 ft.

and from Summer Street to the beginning of the second house is 99.57 more, while the entire length of the second house occupied a frontage of 44.77.

Plaintiff, therefore, when she made this observation, was observing a car approximately a city block away. She had the right to consider in her calculations (a) that the defendant might turn into Summer Street; (b) that he might turn into Holdsworth Court, and in either of which events he would not have reached the point of her crossing; (c) that he would exercise reasonable with regard to her safety by maintaining his car at a reasonable speed; (d) that she had every right, as a matter of law, to assume that when the defendant had crossed Summer Street, and with plaintiff crossing in plain view, that he would not deliberately accelerate his speed, and this he did according to the testimony.

If, of course, defendant had turned into either Summer Street or Holdsworth Court, the accident would not have happened. If, after passing Summer Street he had not accelerated his speed, the accident probably would not have happened. The jury at least were justified in finding this as a matter of fact, if they would take into consideration that plaintiff was already three quarters of the way across the street, and that two passengers who had gotten off ahead of her had just reached the curb, a distance of approximately 10 feet ahead of her, when she was struck.

If, in the last analysis, the cause of the accident was an acceleration of speed, then of course it was a question for the jury, with regard to whether or

not her conduct was proper under all the circumstances. It is true that plaintiff saw the defendant's car as we have pointed out, a distance of several hundred feet up the street approaching her, but that of course did not prohibit her from crossing the street. If, in the exercise of ordinary care she judged that the car as it approached her would run at a lawful rate of speed, and that she would add to that assumption, that the defendant would operate his car, not only lawfully with regard to speed, but with due regards to her rights, can it be then said, as a matter of law, the fact that she was four or five or six feet out in the street, that her failure to make further observation to the north, would be contributory negligence?

As a matter of fact, if while making observations to the north, she had been struck by a car coming from her left, might it not then have been argued that she was not making proper observations, as traffic going north would have come from her left. Assuming that she ought to have made further observations to the north or right after passing the middle of the street, we have the fact, that almost instantly after clearing the middle of the street she was struck.

Considering her actions in connection with the speed of the defendant, the jury had before them the fact while she travelled approximately 30 feet from the easterl yside of Lexington Avenue to the point of the accident, the car had travelled from about the second house north of Summer Street, or nearly 300 feet. This would have made the defendant travel ten feet to the plaintiff's one. The plaintiff testified she walked directly across, and

estimating her speed at three miles an hour, the ordinary rate of speed, the defendant's car would have travelled thirty miles an hour. Under the law he was entitled to travel fifteen miles, except when crossing Summer Street and Holdsworth Court, when he should have reduced his speed to twelve miles an hour. Had he been travelling at this rate of speed, his car would have been 150 feet north from the point of contact, when plaintiff was thirty feet out in the street from her starting point.

In connection with all of the above, it should be borne in mind, that the plaintiff was crossing at or over, what in law would be a cross-walk, and in connection with her calculations as to the extent of the care she should use, she had the right to take into calculation, the right which the law gave her as a pedestrian, a superior right over the approaching vehicle.

It cannot be said as a matter of law, that a pedestrian has no right to cross the street, if there are any approaching vehicles in sight. Such a rule would practically prohibit, in our larger municipalities, a pedestrian from crossing, the greater part of the day, on any of our ordinary or well travelled public streets or highways.

Defendant in his brief lays great stress on the case of *Cady v. Trenton & Mercer Traction Co.*, 104 N. J. L., 572, and states that the facts were substantially the same as in the case at bar. This is not so, there is a great difference between the cases. In the *Cady* case, plaintiff attempted to

cross the street in a heavy downpour of rain, carrying an umbrella; the weather conditions were that the rain came down in a heavy downpour, so that it compelled her to seek shelter. The only observation she made according to her testimony, was before she left the side-walk. As Justice Kalisch pointed out in his opinion:

"She looked to see whether any trolley or automobile was coming, and seeing none proceeded to cross the street on the cross-walk."

Again:

"She looked to the east and west and saw no car or machine on the street, and after she started to cross never looked again for vehicles, in the street."

Three witnesses produced by her all testified that she made no observation whatever. To quote from the opinion, "That she had her umbrella down in such a position that it obscured her vision in the direction from which the car came that struck her." (P. 104, N. J. L., p. 574, l. 1-4.)

That one of her three witnesses testified that he observed the approaching car and called a warning to her, to which she paid no heed, but proceeded on and was struck, and that the car was going at a slow rate of speed,

Observe the differences between the two cases. In the Cady case, no observations were made by the plaintiff. In the case at bar, the plaintiff made two if not three observations. In the Cady case the plaintiff made no observation after leaving the sidewalk; in the case at bar plaintiff made an observation out in the street a distance of four or more feet, or to take her husband's testimony,

a step or two beyond the four feet. In the Cady case, the plaintiff walked across in the midst of a tremendous downpour of rain, undoubtedly blocking her vision, and held her umbrella in such a way as to prevent her from seeing the approaching car; in the case at bar, the plaintiff was in plain view, and made an observation and calculation. In the Cady case, the car was approaching at a slow rate of speed, so that the accident would not probably have happened, were any observations on the part of Mrs. Cady made; in the case at bar, defendant's car was travelling at an excessive rate of speed, and in the final analysis caused the accident, by without warning, accelerating his speed, as he had gotten almost on top of the plaintiff. In the Cady case, her own witnesses had seen her danger and warned her, and she paid no heed to their warning. No such thing happened in the case at bar.

We are content with the rule laid down in the Cady case by Justice Kalisch as follows:

"The legal rule which must control is, that where the facts and circumstances are of such a character that reasonable minds may reasonably differ as to the fair inference or conclusions to be drawn from such set of proven facts or circumstances, as to whether or not plaintiff exercised reasonable care for his or her own safety, a question is invariably presented for decision by a jury. *Mumma v. The Easton and Amboy Railroad Co.*, 73 N. J. Law, 653. This was not the situation of the present case on review." (104 N. J. Law, p. 574.)

In concluding the opinion, the Court plainly pointed out that the cause of the accident was that Mrs. Gady had "walked blindly across the street."

Counsel in his brief at page 12, argues that the plaintiff walked blindly across the street, and if she had paid regard to her own safety the accident would not have happened. Let us see, however, in analyzing her testimony further:

Defendant said as he was traveling along Lexington Avenue he had been going fifteen miles an hour. If that were his speed at the time he was up at the second house north of Summer Street, when the plaintiff observed him, and she was four feet out from the curb, he would still have been well north above Summer Street by the time she reached the middle of the street. Her observation at that point therefore, would not have shown her in any element of danger of the approaching car. If the car were going nearer thirty miles an hour than fifteen, an observation by the time she got to the middle of the street, would have still shown the car no nearer to her than Summer Street. If, at that point, at the speed he was then travelling she could have crossed in safety, can it be said as a matter of law, that she was guilty of contributory negligence, if she was only struck because the defendant accelerated his speed after crossing Summer Street? This the jury had before them, and the jury had the right to infer that this was done, both from the testimony of Rutgers Clarkson and indirectly from the testimony of Mary Dunshatt.

From the southerly line of Summer Street to the point of the accident, is a distance of approximate-

ly 100 feet as would appear from the Devlin map. It was after passing Summer Street, that the defendant picked up his speed and went very fast (P. 39 at bottom). At thirty miles an hour the defendant would have covered this distance in two and one half seconds; at twenty miles an hour he would have covered it in a little over three seconds. According to contention of counsel for defendant, it would be the failure of the plaintiff to make the observations during these two or three seconds, and thus observe that the defendant was picking up his speed, that constitutes the contributory negligence.

An examination of the authorities of this State, show clearly as a matter of law, that the plaintiff was not guilty of contributory negligence. We refer to the following:

Thomas vs. Metzendorf, 101 N. J. Law, P. 346 (Court of Errors and Appeals), a case very similar to the case at bar. There the plaintiff, according to the evidence, before leaving the curb looked up and down the street, saw one automobile and waited for it to pass:

“That he then took two steps off the curb and looked again, both ways, and seeing no automobile he proceeded to cross the street (which was fifty or sixty feet wide), and had reached a point about fifteen feet from the opposite curb when he was suddenly confronted by the glare of the headlights of the defendant’s automobile, which he had not seen before.” (Then he was struck.)

Note, in the case cited, the plaintiff took two steps, looked and made an observation, and then crossed the street, which was 50 or 60 feet wide, yet the Court refused to say that the plaintiff was guilty of contributory negligence.

"The mere fact that the plaintiff, an elderly man, failed to observe the defendant's automobile approaching about 'a block away,' when he looked in that direction as he started (in the night time) to cross the street at a proper cross-walk, does not, as a matter of law, render him guilty of contributory negligence when struck near the opposite curb by such automobile." (101 N. J. Law, p. 348.)

In that case it might well have been argued that the plaintiff ought to have seen the approaching automobile, if he looked as he said.

In the case of *Hyman vs. Atlantic City and Shore Railroad*, 101 N. J. Law, P. 124, Justice Min-turn, speaking for the Court, at page 126 said:

"Whether having seen the approaching car at what to him, under the circumstances, seemed to present a reasonable opportunity to enable him to cross, in the absence of clear negligence, equivalent to manifest indifference to the inevitable result, and harboring as he might a reasonable expectation that the car would, at least, lessen its speed, as it approached the crossing, it cannot be declared as a matter of law that the case was not for the jury. Our decisions are to the contrary."

Purcell vs. Pollock, (Court of Errors and Appeals), 143 Atlantic, P. 426. The defense of contributory negligence was charged based upon the following facts.

“Defendant further contends that the Court should hold as a matter of law that a man who is approaching a street intersection down which he can see 190 feet and sees nothing coming, and then goes 65 feet without making an observation, and is hit by a motor vehicle which he has not observed at all, is guilty of contributory negligence. We have, however, heretofore held that the mere failure to observe an automobile approaching an intersection, but at a considerable distance away therefrom, does not render one who starts to cross the intersection in such a situation guilty of contributory negligence. *Thomas v. Metzendorf*, 101 N. J. Law, 346, 128 A. 162.” (143 Atl. P. 427.)

In the case of *Pool vs. Brown*, 89 N. J. Law, page 314 (Court of Errors and Appeals), the Court said, speaking through Justice Kalisch; and with reference to the plaintiff charged with contributory negligence:

“He had a right to rely on the driver of the automobile respecting his, the appellant’s, equal right in the street, and that the driver would control his car accordingly, and would use reasonable care to avoid running it against the appellant.”

The case of Hubbard vs. Atlantic Coast Electric Railway Company, 91 N. J. Law, P. 299, cited by counsel for defendant in his brief is not in point. From a reading of the opinion, it appears that the plaintiff in that case was struck by a trolley car, which was going from five to eight miles an hour. That he made his observation to the south from which this car was approaching when within five feet of the track, and then looked north and never again looked south. The Court pointed out that the track was comparatively straight for a considerable distance, in other words, if he looked, he was bound to see the approaching car. This of course is an entirely different situation from the case at bar where the plaintiff was crossing at a street crossing or a public highway, and where the approaching automobile was so far away that in the exercise of reasonable care, she would have been justified in crossing. In other words, in the case at bar the plaintiff did look and did see a car upwards of 300 feet away.

This presented a jury question as to whether or not she was careful or careless in crossing under the circumstances. Either this view must be taken, or a rule adopted that a person is not entitled to cross a public highway if an automobile is in sight at all. The Court also in that opinion pointed out that the crossing of the trolley track was a place of special danger. In the case at bar, of course the plaintiff was not crossing a trolley track, nor was she struck by a trolley car. One part of the public highway was no more dangerous than the other. Nor should it be forgotten the other factors present in the case at bar, which make it dif-

ferent from the trolley case, viz., the fact that the car of the defendant, in the case at bar, might have turned into Holdsworth Court or Summer Street before reaching plaintiff; that he might have turned more to the center of the street and just pass her in safety, and the fact that the defendant suddenly accelerated his speed after passing Summer Street and when almost upon her.

In the last discussed case the facts are not in point with the case at bar, and with the principle of law laid down, we have no fault to find. It is the application of the principle to the various cases that give rise to discussion.

We think that the correct statement as to the manner in which the law should be applied is best set out in *Napodensky v. West Jersey R. R. Co.*, 85 N. J. Law, p. 338, where the Court said:

“Negligence is not an *ex cathedra* pronouncement with which an act may be arbitrarily branded in the abstract as the judicial eye may conceive it.”*****

“This rule of substantive law has been the subject of frequent reiteration by this court to the effect that where the plaintiff has rested his case, and the evidence leaves the question of his contributory negligence in doubt, the determination of the question of the negligence of the defendant presents an issue of fact which must be submitted to the jury. *Brewster v. New York City Central Railroad Co.*, 51 Vroom 447.”

POINT II.

THE COURT DID NOT COMMIT ERROR IN DEFINING A CROSS-WALK.

This brings up the question raised in point two of defendant's brief, with reference to the instructions the Court gave as to what constituted a cross-walk. Lexington Avenue is paved with an amesite pavement, upon which no flagstones are laid. At the point, however, where the plaintiff crossed the street it was in a direct line with the southerly side of the street, known as Holdsworth Court. That is, if the side-walk were continued across Lexington Avenue, until it reached the westerly side thereof, it would have constituted a cross-walk in the old fashioned meaning of the term, when flag stones were laid across a street. Along this line or cross-walk, as representing a direct line from curb to curb, the plaintiff passed.

We contend that this direct line, that is, the line which extended from the southerly side of Holdsworth Court directly west to the westerly side of Lexington Avenue, constituted a cross-walk within the meaning of the law. The Court, we submit, must recognize the fact that all modern streets laid with cement, amesite or other patented pavement, present an absolutely smooth surface. No flag stones by way of cross-walks are laid in the street. This type of roadway has been in existence for the past twenty or twenty-five years, and certainly was in common use when the Traffic Act was passed in 1915, and hence the Legislature must have contemplated such a cross-walk, as we contend existed at the point of this accident,

and that they did not intend to restrict the term to flag stones being placed across the street.

The Court's instruction which the defendant complains of was that the Court charged that the **plaintiff was a foot passenger upon this cross-walk**, and appears at Page 131 l. 40 of the State of Case.

Plaintiff distinctly points out at the bottom of page 18 of her testimony, that the bus so stopped that the passengers alighting therefrom would land on the sidewalk of Holdsworth Court, and that she crossed directly from Holdsworth Court sidewalk to the other side of the street. Q. "In other words, you mean if there were a cross-walk across the street there, you would have been on it? A. Yes." (P. 19, l. 30-38.) Reverting to the definition of what constitutes a cross-walk, the Traffic Act of 1928 defines a cross-walk as:

"That portion of the roadway ordinarily included within the prolongation of curb and property lines at street intersections, or that portion of a roadway clearly indicated for pedestrian crossing by lines marked on the surface of the roadway."

This bears out our contention that the Legislature always had in mind this so called imaginary line at the intersection of streets constituting a cross-walk.

POINT III.

THE COURT DID NOT COMMIT ERROR IN INSTRUCTING THE JURY AS TO THE RIGHTS OF A PEDESTRIAN AT A CROSS-WALK.

The Court charged that at a cross-walk the respective rights of an automobilist and pedestrian were as follows:

“When a pedestrian and an automobile moving in different directions approach such a crossing at the same time or in such a manner that if both continue their respective courses there is danger of a collision, then the pedestrian is entitled to first use the crossing, and it is the duty of the driver of the automobile to stop or to so reduce speed as to give such pedestrian a reasonable opportunity to pass in safety, and to that end to have such automobile under such control as to enable him to do so.”

The Trial Court charged the above quotation from the case of, *Venghis v. Nathanson*, 101 Law, page 110, at page 112 (Court of Errors and Appeals case). This quotation was also cited with approval in the case of *Bora v. Yellow Cab Co.*, 103 N. J. Law, page 379.

Both before and after the matter quoted above, the Court instructed the jury, that in any event, plaintiff was bound to use reasonable care.

“Now, of course, the parties must exercise reasonable care.”

(P. 121, l. 30-35.)

Again:

“Now, as I have said, the law casts upon Mrs. Clarkson the duty of exercising reasonable care for her own safety.”

(P. 133 at bottom.)

The Court also charged correctly as to what constituted contributory negligence.

We therefore submit, that those parties of the charge complained of by the defendant, and to which exceptions were taken, were without error, and that there was no error in refusing to charge as a matter of law that plaintiff was guilty of contributory negligence.

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