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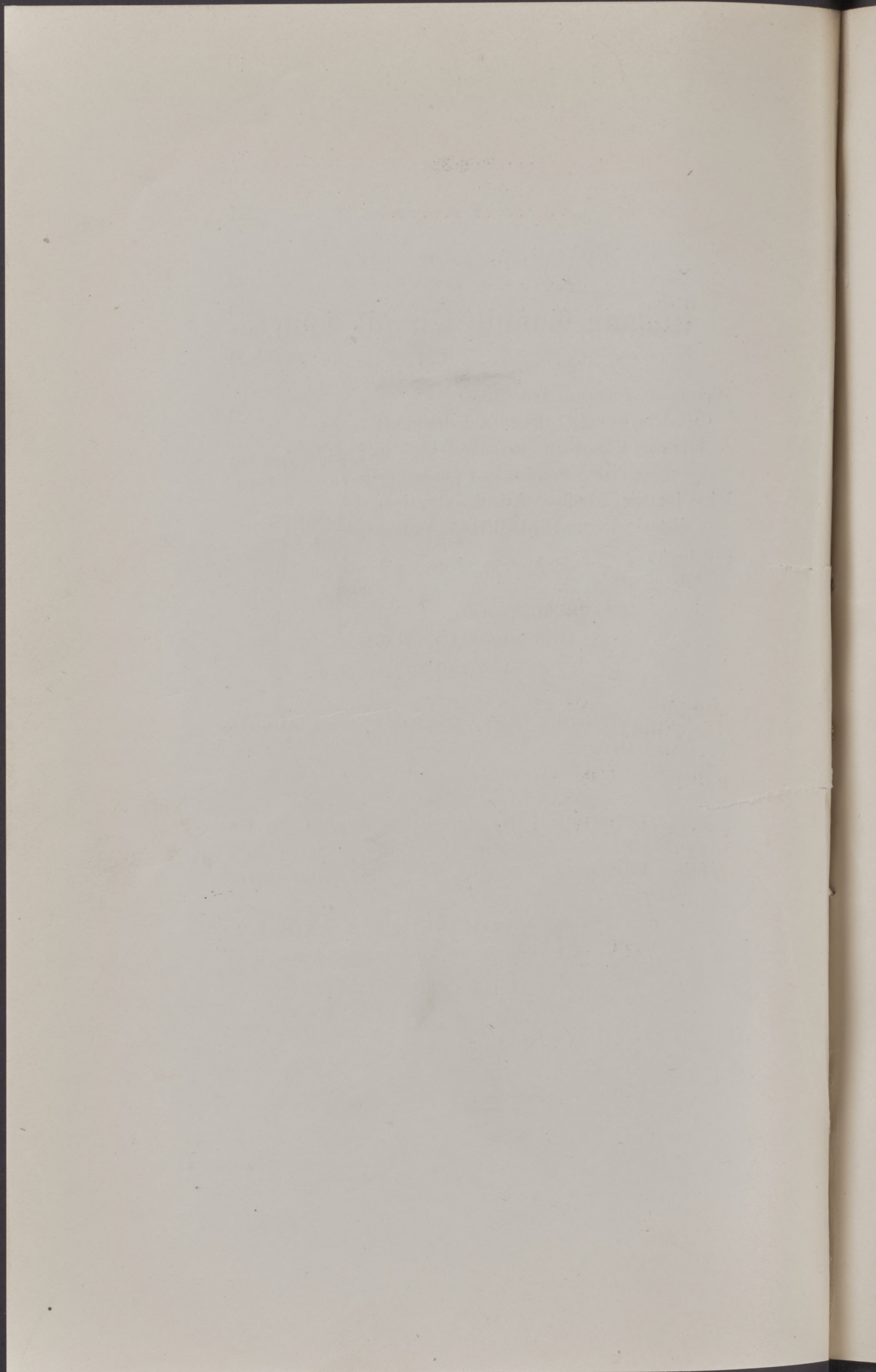
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Notice of Appeal.

(Filed January 23, 1918.)

10

Hudson County Circuit Court.

WILLIAM FERRIS, Administrator, etc.,
of Catherine Ferris, deceased;
HELEN FERRIS, who sues by her
next friend, WILLIAM FERRIS, and
WILLIAM FERRIS,

Plaintiffs-Appellees,

v.

FRANK MCARDLE,

Defendant-Appellant.

Action
at Law.

20

To John Warren, Esq., Attorney of Plaintiffs-
Appellee.

Sir:—

Take notice, that the defendant appeals to the
Court of Errors and Appeals of the State of New
Jersey, from the whole of the judgment entered
in this case.

30

POMEREHNE & LAIBLE,
Attorneys of Defendant-Appellant.

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Grounds of Appeal.

(Filed February 15, 1918.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

 WILLIAM FERRIS, Adm. of Estate of
 Catherine Ferris, deceased,
 Plaintiff-Appellee,

v.

 FRANK McARDLE,
 Defendant-Appellant.

 Action
 at Law.

20

The appellant states the following grounds for
 appeal in this case:

I. The trial court erred in refusing defendant's
 motion for a non-suit upon the following grounds,
 because,

(a) Plaintiff did not make out a *prima facie*
 case for the jury.

30

(b) Plaintiff's case was barren of any evidence
 sufficient to go to the jury as to the fact that
 the plaintiff's deceased met her death through
 the negligence of any act of this defendant.

(c) Plaintiff's case failed to show any negligence
 whatsoever on the part of the defendant.

(d) The court left the question to the jury
 as to whether or not plaintiff's deceased was on
 the cross-walk, when in fact the evidence in plain-
 tiff's case proved clearly that the accident was
 not on the cross-walk.

40

Grounds of Appeal.

(e) Plaintiff fails to prove any negligence or the particularized acts of omissions or commissions alleged in the complaint.

(f) Plaintiff's case showed that plaintiff's deceased, in crossing the street at a place other than a cross-walk, did so at her own risk.

10

2. The trial court erred in refusing defendant's motion to direct a verdict in favor of the defendant, because,

(a) There was no proof of negligence against the defendant in the entire case.

(b) The plaintiff's deceased, in crossing the street at a place other than at a cross-walk, did so at her own risk.

20

(c) The evidence showed clearly that the car was not being used or operated for or in behalf of the defendant, Frank McArdle at the time of the accident.

(d) The evidence in the case showed clearly that the relationship of master and servant did not exist at the time of the accident between the defendant Frank McArdle and the driver of the car.

30

(e) The driver of the car had and used the automobile upon a mission of his own, and was driving it for his own convenience at the time of the accident.

(f) At the time of the accident the car was being driven by the driver without the knowledge and consent of the defendant Frank McArdle.

(g) The driver of the car for his own personal uses and purposes, drove the car in the

40

Grounds of Appeal.

vicinity of the accident, not in the line of his employment and without any knowledge, consent or authority of the defendant, Frank McArdle.

10 (h) At the time of the accident the driver was not acting within the scope of his employment nor in the furtherance of that employment.

(i) At the time of the accident, the driver was not in the performance of any function for his master, and was not doing any act connected with the line of his employment nor for his master, McArdle.

2a. Because the court erred in refusing a non-suit at the close of the entire case.

20 3. Because the court erred in allowing evidence to be admitted over objection, as to how long after the accident George Harold Dentz was employed by the defendant, McArdle.

4. Because the court erred in allowing in evidence testimony relative to the defendant McArdle securing the parole of George Harold Dentz on the night of the accident, over objection of defendant.

30 5. Because the court erred in permitting evidence of George Harold Dentz, having been paroled in the custody of the defendant, over objection of the defendant.

6. Because the court erred in allowing in evidence, over the objection of the defendant, conversation between the defendant and George Harold Dentz after the accident.

40 6a. Because the court erred in allowing in evidence, over the objection of defendant, what George Harold Dentz told the defendant McArdle, as to the identity of the two ladies who were

Grounds of Appeal.

in the car at the time of the accident, and where they lived.

7. Because the court erred in refusing to admit evidence as to which of the girls George Harold Dentz intended to take home first.

10

8. Because the court erroneously allowed evidence as to the said George Harold Dentz having taken the car home and then to the garage to clean it, during his employment, prior to the accident, over objection of defendant.

9. Because the court erred in refusing to allow in evidence testimony showing where witness Clara Scott intended to go when she got into the automobile.

20

10. Because the court erred in refusing to allow in evidence the first and second paragraphs of the first count of the plaintiff's complaint.

11. Because the court erroneously charged the jury as follows:

"It is the duty of the driver of an automobile when the improved portion of a road is of sufficient width to drive his automobile to the right of the centre of the road except when passing a vehicle ahead."

30

12. Because the court erroneously charged the jury as follows:

"It is the duty of the driver of an automobile following any street car operated on tracks in the centre of the street when passing such car while it is stopped, to take on or discharge passengers, to only pass such street car on the right and at least eight feet from the right hand running board or lower step of said car, unless by reason of the presence of other vehicles at the

40

Grounds of Appeal.

10 place where such car is stopping, or by reason of the narrowness of the street, or for any other reason it is not possible to preserve such distance of eight feet, then the said driver shall bring his automobile to a full stop until the car shall have taken on or discharged its passengers and again started."

13. Because the court erroneously charged the jury as follows:

20 "An automobile proceeding in the same direction as a street car operated on tracks in the center of any public road or street must pass such car on its right unless when through narrowness of road or street or through a congestion of traffic standing at the curb or side of such road or street it is impossible or unsafe to pass such street car on its right, then by exercising exceptional caution the automobile may pass on the left of such street car."

14. Because the court erroneously charged the jury as follows:

30 "A pedestrian having the right of way over vehicles at any street crossing when the houses are on an average of less than one hundred feet apart, the necessity of constant observation to avoid injury is placed on the driver of an automobile approaching the crossing."

15. Because the court erroneously charged the jury as follows:

40 "Although the driver of an automobile may have done everything in his power to avoid injuring a pedestrian after it was possible to see him, this does not relieve him from liability if prior negligence on his part rendered it im-

Grounds of Appeal.

possible to avoid injury after becoming aware of the pedestrian's presence."

16. Because the court erroneously charged the jury as follows:

"The decedent Catherine Ferris, being a child five and a half years old, could not be guilty of contributory negligence." 10

17. Because the court erroneously refused to charge the jury as requested by the defendant, excepted as he had charged:

First:—"There is no evidence in this case which will justify the jury in finding that either the deceased, Catherine Ferris, or the plaintiff Helen Ferris had any right of way over the driver of the motor car in attempting to cross Ocean Avenue." 20

Second:—"There is no evidence in this case which will justify the jury in finding that the death of Catherine Ferris was caused by coming in contact with the automobile of the defendant McArdle."

Third:—"The plaintiff in the first action must show that Catherine Ferris was struck by a motor car while Catherine Ferris was lawfully crossing Ocean Avenue on the southerly cross-walk, the said cross-walk being a continuation of the southerly side-walk of Ege Avenue." 30

Fourth:—"There is no evidence in this cause which will justify the jury in finding that the death of Catherine Ferris was caused as a result of coming in contact with the automobile of the defendant McArdle, while she, Catherine Ferris, was lawfully crossing Ocean Avenue, on the 40

Grounds of Appeal.

southerly cross-walk; the said cross-walk being a continuation of the southerly side-walk of Ege Avenue."

10 18. Because the court erroneously modified the fifteenth request of the defendant to charge.

19. Because the court erroneously refused to charge the jury with the sixteenth request of the defendant to charge, except as modified.

20. Because the court erroneously refused to charge the jury with the seventeenth request of defendant to charge, except as changed:

20 Seventeenth request: "Neither permission expressed or implied from the defendant McArdle, to his driver Dentz, allowing the latter to drive home to his supper or acquiescence by the defendant McArdle in the practice of the driver Dentz of driving home to his supper in the motor car of the defendant McArdle will constitute Dentz the agent or servant of the defendant McArdle while so driving home; and if at the time of the accident the driver Dentz was thus driving home to his supper, the defendant McArdle is entitled to a verdict, even though he permitted his driver thus to drive home or acquiesced in the practice."

30

21. The court erred in charging the jury as follows:

40 "Dentz, the driver of the machine had the right to operate the automobile over and upon the street, but he had no right to do so in a reckless or careless manner. He was bound to obey the laws relating to the use of vehicles in the street. He had no right to operate his car at a greater rate of speed than prescribed by

Grounds of Appeal.

law, or at a greater rate of speed than was reasonable, having regards to traffic over this highway and the use of it by others. He had no right to operate his automobile so as to endanger the life, limb or property of other persons. He was required to keep his automobile under control, at such a rate of speed and to operate it in such a manner as a reasonable prudent man would exercise in operating an automobile under like circumstances."

10

22. Because the court erred in asking the following question of the jury:

"Does it appear that the driver of this car was driving in a reckless or careless manner? And could he have avoided the accident by using reasonable care in operating this automobile, as a reasonable prudent man would have done under the circumstances?"

20

23. Because the court erroneously charged the jury:—

"In order to recover the plaintiff must show that the accident was due to the negligence of the driver of this car."

24. Because the court erroneously charged the jury:

30

"If they were on the crossing as defined by this statute, they would have a right of way over vehicles being driven along that avenue."

25. Because the court erroneously charged the jury as follows:

"The driver's liability depends solely upon his negligence."

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Grounds of Appeal.

26. Because the court erroneously charged the jury as follows:

10 "If you find from the evidence that Dentz was the servant of the defendant, and was engaged in his master's business at the time of the accident; that the accident was caused by the negligence of the servant of the owner of the car, and that the girl Catherine was on the crossing described under the statute to which I have referred, you should proceed to determine the amount of damages you will award the plaintiff.

27. Because from the evidence of the entire case, it fails to show any negligence as a matter of law, on the part of the defendant.

20 28. Because in the entire case there is not a scintilla of evidence of negligence of this defendant as alleged in the complaint.

29. Because the evidence in the case shows clearly that the automobile, at the time of the accident, was being operated by the driver, who was not acting in the scope of his employment.

30 30. Because the evidence in the entire case shows conclusively that at the time of the accident the automobile was being driven by the driver, upon a mission of his own and for his own convenience.

31. Because there is not a scintilla of evidence in the case of the relationship of master and servant between the defendant and the driver at the time of the accident.

40 32. Because there is no evidence whatsoever in the case sufficient to bind this defendant.

Summons.

33. Because the verdict is contrary to the evidence.

POMEREHNE & LAIBLE,
Attorneys of Defendant-Appellant, Frank McArdle.

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PROOF OF SERVICE.

State of New Jersey, }
Essex County, } ss.:

Frederick G. Kautz, being duly sworn on his oath says, that he served a copy of the within grounds of appeal on February 14, 1918, by leaving a copy thereof at the office of John Warren, plaintiff's attorney, with his stenographer, and explained the contents to her.

20

FREDERICK G. KAUTZ.

Sworn before me this 15th }
day of February, A. D. 1918. }
Anthony J. Castellano,
An Attorney at Law of N. J.

Summons.

(Filed Aug. 31, 1916.)

THE STATE OF NEW JERSEY.

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To Frank McArdle and George H. Dentz: You are summoned to answer the annexed complaint of William Ferris, Administrator of the rights and credits, goods and chattels which were of Catherine Ferris, deceased, Helen Ferris who sues by William Ferris, her next friend and William Ferris, in an action at law in the Hudson County Circuit Court.

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And take notice that unless you file an answer

Complaint.

to said complaint with the Clerk of the Hudson
 County Circuit Court, at Jersey City, with-
 in twenty (20) days after service upon you of
 this writ and the annexed complaint, plaintiffs
 may proceed in the suit and judgment may be
 entered against you.

Witness, Luther A. Campbell, Esq., Judge of
 the Hudson County Circuit Court, at Jersey City,
 this Thirty-first day of August, A. D., Nineteen
 Hundred and Sixteen.

JOHN J. McGOVERN,
 Clerk.

JOHN WARREN,
 Attorney.

Complaint.

(Filed Aug. 31, 1916.)

HUDSON COUNTY CIRCUIT COURT.

WILLIAM FERRIS, Administra-
 tor, etc., of Catherine Ferris,
 deceased, HELEN FERRIS, who
 sues by her next friend, WIL-
 LIAM FERRIS and WILLIAM
 FERRIS,

Plaintiffs,

Action at Law.

v.

FRANK McARDLE and GEORGE
 H. DENTZ,
 Defendants.

Plaintiffs, who reside in the City of Jersey
 City, County of Hudson and State of New Jer-
 sey, say that:

Complaint.

FIRST COUNT:

1. On May 24, 1915, the defendant, George H. Dentz, was, as the agent and servant of Frank McArdle, driving a certain motor car or automobile in a southerly direction along Ocean Avenue, a public street or highway in the City of Jersey City aforesaid, at the southerly crosswalk of Ege Avenue, also a public street or highway in the City of Jersey City aforesaid, the said crosswalk being a continuation of the southerly sidewalk of Ege Avenue crossing Ocean Avenue.

10

2. Said defendant, George H. Dentz, while so in the employ and acting as a servant of the defendant, Frank McArdle, so carelessly, negligently, and unskillfully operated said automobile that he collided with, struck, and ran over Catherine Ferris, who was at the time lawfully crossing said Ocean Avenue on the southerly crosswalk, the said crosswalk being a continuation of the southerly sidewalk of Ege Avenue, in the said City of Jersey City.

20

3. Said defendant's negligence consisted in this: that he operated the said automobile in violation of an Act of the Legislature of the State of New Jersey, entitled, "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof: fixing rules regulating the use and speed of motor vehicles and registration fees; prescribing and regulating prices and the service thereof and proceedings for the violation of the provisions of the Act and penalties for such violations," approved April 12, 1906, and the acts amendatory thereof and supplementary

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Complaint.

thereto; and in violation of an Act of the Legislature of the State of New Jersey, entitled, "An Act providing for the regulation of vehicles, animals, and pedestrians on all public roads and turnpikes and prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations, and granting authority to towns, cities, boroughs and townships, under certain restrictions for the adoption of ordinances further regulating vehicles, pedestrians and animals, and designating the authorities to enforce its provisions, and defining their powers and their authority"; and of the ordinances of the City of Jersey City; and drove the same at an excessive and unlawful rate of speed, and at a speed greater than one mile in five minutes along Ocean Avenue at the place of the accident, being in the built-up portion of the City of Jersey City, where the houses are on an average of less than one hundred feet apart, and at a speed that was greater than reasonable having regard to the traffic and use of highways at Ocean and Ege Avenues, and so as to endanger the life and limb and to injure the property of the Catherine Ferris, without having said motor vehicle equipped with a plainly audible signal trumpet; and at the time of the accident, it being at the period between thirty minutes after sunset and thirty minutes before sunrise, and at a time when the fog rendered it impossible to see a long distance, did not exhibit two lighted lamps showing white lights visible at least two hundred and fifty feet in the direction toward which the said automobile was proceeding, and to exhibit white lights in

Complaint.

the direction in which the automobile was proceeding, the direct rays of which were projected at a greater height than a parallel of four and one-half feet from the road, without having the dazzle or glare of the same eliminated, and without having the said automobile equipped with at least two brakes, powerful in action, and separated from each other, without being one brake, acting directly on the drive wheel or on the parts of the mechanism which are firmly connected with the wheels, without having two brakes, each of which would suffice alone to stop the automobile, or a brake sufficient to stop the automobile within a proper time, which was so arranged as to be operated with the foot and without having the said motor vehicle's wheels fitted with chains at the time of the accident, the said highway at the point of the accident being at the time of the accident, slippery because of rain, and did not run said automobile to the right of the center of Ocean Avenue, Ocean Avenue being of a sufficient width at the point of the accident so to do, and did not permit said Catherine Ferris to have the right of way at the crossing of Ege and Ocean Avenue; and did not give to the said Catherine Ferris, audible signal of the approach of the automobile, and did not keep a proper lookout for pedestrians upon the roadway, and did not upon seeing the said Catherine Ferris on the roadway, stop the automobile within a proper distance, and ran the automobile at such a speed that it was impossible, considering the slippery condition of the roadway, to stop the automobile within a proper distance; and drove the automobile at an ex-

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Complaint.

cessive and unlawful rate of speed, considering the slippery condition of the roadway.

10 4. By reason of the aforesaid wrongful act and neglect of the defendant, Frank McArdle, by his agent, the defendant, George H. Dentz, the said Catherine Ferris was thrown to the ground, run over and killed by the said automobile.

20 5. Because of the wrongful act and neglect of the defendant, Frank McArdle, by his servant, the defendant, George H. Dentz, resulting in the death of the said Catherine Ferris, this action is brought by her administrator for the benefit of the next of kin of the said Catherine Ferris.

6. The said Catherine Ferris died on May 24, 1915, intestate, and on August 14, 1915, letters of administration were granted upon her estate by the Surrogate of the County of Hudson to William Ferris, and were accepted by him.

7. This action was commenced on August 31, 1916, within two years after the death of Catherine Ferris.

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SECOND COUNT:

1. Same as paragraph 1 in First Count.

40 2. Said defendant, George H. Dentz, while so in the employ and acting as a servant of the defendant, Frank McArdle, so carelessly, negligently and unskillfully operated said automobile that he collided with, struck and ran over plaintiff, Helen Ferris, who was at the time lawfully crossing said Ocean Avenue on the southerly crosswalk, the said crosswalk being a con-

Complaint.

tinuation of the southerly sidewalk of Ege Avenue, in the said City of Jersey City.

3. Said defendant's negligence consisted in this: that he operated the said automobile in violation of an Act of the Legislature of the State of New Jersey, entitled, "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules, regulating the use and speed of motor vehicles and registration fees; prescribing and regulating prices and the service thereof and proceedings for the violation of the provisions of the act and penalties for such violations," approved April 12, 1906, and the acts amendatory thereof and supplementary thereto; and in violation of an act of the Legislature of the State of New Jersey entitled "An act providing for the regulation of vehicles, animals and pedestrians on all public roads and turnpikes and prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations, and granting authority to towns, cities, boroughs and townships, under certain restrictions for the adoption of ordinances further regulating vehicles, pedestrians, and animals, and designating the authorities to enforce its provisions, and defining their powers and their authority"; and of the ordinances of the City of Jersey City; and drove the same at an excessive and unlawful rate of speed, and at a speed greater than one mile in five minutes along Ocean Avenue at the place of the accident, being in the built up portion of the City of Jersey City, where the houses are on an average of less than one hundred feet apart, and at a speed that was greater than reasonable having regard to the traffic and use

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Complaint.

of highways at Ocean and Ege Avenue, and so as to endanger the life and limb and to injure the property of the plaintiff Helen Ferris, without having said motor vehicle equipped with a plainly audible signal trumpet; and at the time of the
10 accident, it being at the period between thirty minutes after sunset and thirty minutes before sunrise, and at a time when the fog rendered it impossible to see a long distance, did not exhibit two lighted lamps showing white lights visible at least two hundred and fifty feet in the direction toward which the said automobile was proceeding, and to exhibit white lights in the direction in which the automobile was proceeding, the direct
20 rays of which were projected at a greater height than a parallel of four and one-half feet from the road, without having the dazzle or glare of the same eliminated, and without having the said automobile equipped with at least two brakes, powerful in action, and separated from each other, without being one brake, acting directly on the drive wheel or on the parts of the mechanism which are firmly connected with the wheels, without having two brakes, each of which would suffice alone to stop the automobile or a brake
30 sufficient to stop the automobile within a proper time, which was so arranged as to be operated with the foot, and without having the said motor vehicle's wheels fitted with chains at the time of the accident, the said highway at the point of the accident being at the time of the accident, slippery because of rain, and did not run said automobile to the right of the center of Ocean Avenue, Ocean Avenue being of a sufficient width at the point of the accident so to do, and did not
40 permit the plaintiff, Helen Ferris, to have the right of way at the crossing of Ege and Ocean

Complaint.

Avenue, and did not give to the plaintiff, Helen Ferris, audible signal of the approach of the automobile, and did not keep a proper lookout for pedestrians upon the roadway, and did not, upon seeing the plaintiff Helen Ferris on the roadway, stop the automobile within a proper distance, and ran the automobile at such a speed that it was impossible, considering the slippery condition of the roadway, to stop the automobile within a proper distance, and drove the automobile at an excessive and unlawful rate of speed, considering the slippery condition of the roadway. 10

4. That by reason thereof, the said plaintiff, Helen Ferris, sustained injuries in and about her head and body, and in particular as a result of said accident, the hearing of said plaintiff, Helen Ferris, has been and will in the future continue to be impaired; and ever since said time said plaintiff, Helen Ferris, has suffered and in the future will continue to suffer great pain, and has been and in the future will be prevented from performing the usual duties by her to be performed. 20

THIRD COUNT:

1. Same as paragraph 1 in Second Count. 30
2. Same as paragraph 2 in Second Count.
3. Same as paragraph 3 in Second Count.
4. Same as paragraph 4 in Second Count.

Said Helen Ferris, one of the plaintiffs herein, at the time of the said accident, was an infant under the age of twenty-one years, to wit, nine years, and as a result of said accident, plaintiff William Ferris, her father, lost, and in the future will lose, her services, and spent, and will in the 40

Answer.

future spend, large sums of money in and about endeavoring to cure the said Helen Ferris of her injuries sustained as aforesaid, to wit, the sum of five hundred (\$500) dollars.

10 Plaintiff William Ferris, administrator, etc., demands as damages, the sum of ten thousand (\$10,000) dollars on the first count.

Plaintiff Helen Ferris demands as damages the sum of five thousand (\$5,000) dollars on the second count.

Plaintiff William Ferris demands as damages the sum of fifteen hundred (\$1,500) dollars on the third count.

JOHN WARREN,
Attorney of Plaintiffs.

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Answer.

(Filed Sept. 22, 1916.)

HUDSON COUNTY CIRCUIT COURT.

30 WILLIAM FERRIS, Administrator,
etc., of Catherine Ferris, de-
ceased, HELEN FERRIS, who
sues by her next friend,
WILLIAM FERRIS, and WILLIAM
FERRIS,

Plaintiffs,

v.

FRANK MCARDLE and GEORGE
H. DENTZ,
Defendants.

Action at Law.

40

The defendant Frank McArdle who resides in the City of Jersey City, County of Hudson and

Answer.

State of New Jersey, answering the complaint of the plaintiff says:

1. He denies the allegations of the first paragraph of the first count of the complaint.

2. He denies the allegations of paragraph two of the first count of the complaint. 10

3. He denies the allegations of paragraph three of the first count of the complaint.

4. He denies the allegations of paragraph four of the first count of the complaint.

5. He has no knowledge or information sufficient to form a belief as to the allegations of paragraph six of the first count of the complaint. 20

ANSWER TO SECOND COUNT.

1. The defendant repeats the answers to the allegations of the first count of the complaint in answer to paragraph one of the second count.

2. He denies the allegations of paragraph two of the second count of the complaint.

3. He denies the allegations of paragraph three of the second count of the complaint. 30

4. He alleges that he has no knowledge or information sufficient to form a belief as to the alleged injuries of the plaintiff Helen Ferris.

ANSWER TO THIRD COUNT.

1-4. He repeats all the answers to the allegations of the first and second counts in answer to paragraphs 1, 2, 3 and 4 of the third count.

5. He alleges that he has no knowledge or information sufficient to form a belief as to the 40

Answer.

second portion of paragraph four of the third count wherein it alleges that the plaintiff, William Ferris, has lost, and in the future will lose the services of the said Helen Ferris nor as to the allegations of said paragraph as to the expenditures of money, in the sum mentioned.

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6. He denies that the plaintiff William Ferris as administrator, etc., is entitled to \$10,000, or any other sum as damages from this defendant.

7. He denies that the plaintiff Helen Ferris is entitled to damages in the sum of five thousand (\$5,000) dollars, or any other sum from this defendant.

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8. He denies that the plaintiff William Ferris is entitled to damages in the sum of fifteen hundred (\$1,500) dollars, or any other sum, from this defendant.

FIRST SEPARATE AND DISTINCT DEFENSE
TO THE COMPLAINT OF THE PLAINTIFFS.

30

1. For a separate and distinct defense the defendant alleges that at the time of the accident the automobile was not under the control of this defendant, nor was the said automobile being used with the consent of this defendant, nor was the said automobile being used in the time of the accident on any business, purpose, or agency of this defendant, nor was the party driving the said automobile acting as a servant or agent of this defendant at the time of the alleged accident, and defendant further alleges the said automobile was being operated by said George H. Dentz for his own business and purpose, and on no business or upon any duty for this defendant whatsoever.

40

*Answer.*SECOND SEPARATE AND DISTINCT DEFENSE
TO THE COMPLAINT OF THE PLAINTIFFS.

1. Upon information and belief this defendant alleges that the said Catherine Ferris, deceased, and Helen Ferris crossed the public street or highway known as Ocean Avenue at a place other than a cross walk, and therefore did the same at their own risk.

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2. This defendant re-alleges all the allegations of the foregoing answers to all the accounts and denies each and every allegation of the plaintiffs' complaint except as heretofore admitted or denied.

GEORGE P. LAIBLE,
Attorney of Defendant
Frank McArdle.

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Reply.

(Filed Sept. 28, 1916.)

HUDSON COUNTY CIRCUIT COURT.

10

WILLIAM FERRIS, Administrator,
etc., of Catherine Ferris, de-
ceased, HELEN FERRIS, who
sues by her next friend,
WILLIAM FERRIS and WIL-
LIAM FERRIS,

Plaintiffs.

v.

FRANK McARDLE and GEORGE
H. DENTZ,
Defendants.

20

Action at Law.

Plaintiffs, by way of reply to the answer of
the defendant, Frank McArdle, say that:

They deny the allegations of the first and
second separate defenses in the said answer.

JOHN WARREN,
Attorney of Plaintiffs.

30

40

Joseph A. Corr, direct.

HUDSON COUNTY CIRCUIT COURT.

WILLIAM FERRIS, Admr. of Estate of Catherine Ferris, deceased, HELEN FERRIS by next friend, and WILLIAM FERRIS, individually

v.

FRANK McARDLE and GEORGE H. DENTZ,

Action at Law.

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Tried January 3rd, 4th and 7th, 1918, before Hon. WILLARD W. CUTLER, J., and a Jury.

JOHN WARREN, Esq., for Plaintiffs.

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J. EMIL WALSCHEID Esq., for Defendants (Jos. A. Corr, Esq., of Counsel).

Jury Sworn, 12.10 P. M.

Mr. Warren: Mr. Corr.

JOSEPH A. CORR, sworn.

Direct examination by Mr. Warren:

Q. Where do you reside, Mr. Corr? A. 106 Northern Avenue, Manhattan.

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Q. Where are you employed? A. Employed by Herrick C. Allen.

Q. Who is Mr. Herrick C. Allen?

Mr. Walscheid: I object to that as immaterial and irrelevant.

The Court: It is proper to ask where a man resides and his employment—

Mr. Walscheid: He has made him is own witness, and he is now putting this

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Joseph A. Corr, direct.

witness through cross examination for the purpose of affecting the credibility of his own witness, asking him what the employment of his employer is—

The Court: Not his own employment—

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Mr. Walscheid: Not his own employment; he has told counsel that he was employed by a man named Herrick C. Allen.

The Court: Why do you think it is competent as to his employment?

Mr. Warren: Because it will show his own employment.

The Court: You have asked him who Mr. Allen is?

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Mr. Warren: Read the question.

(Question read by the stenographer.)

Mr. Walscheid: Now, I desire at this time to raise the further objection that even his own employment is immaterial to the issues in this case, and that if the question is permitted to be answered and the answer should produce something detrimental to the defendant in this case, I may be forced to move for a mis-trial of this cause, and I desire to warn counsel of that now.

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The Court: I do not think it is competent.

Q. What work do you do, Mr. Corr?

Mr. Walscheid: I object to that—

The Court: I think that is proper.

Mr. Walscheid: Immaterial, irrelevant and incompetent.

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The Court: I will allow that.

Mr. Walscheid: I pray an objection.

Joseph A. Corr, direct.

Mr. Warren: Read the question.

(Question read by the stenographer.)

A. Assisting him in his law practice.

Q. What is your employment in Court to-day, if you are so employed?

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Mr. Walscheid: I object to that is immaterial, irrelevant and incompetent.

The Court: Objection sustained.

Q. Do you know Mr. Frank McArdle?

Mr. Walscheid: I object to that as immaterial, irrelevant and incompetent.

The Court: Oh, yes; I will allow that.

A. I do not.

Q. You in your—in the capacity in which you are employed have possession of a statement signed by Mr. McArdle in connection with the accident which resulted in the death of Catherine Ferris?

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Mr. Walscheid: I object to that as incompetent, immaterial and irrelevant—immaterial.

The Court: How is it competent?

Mr. Warren: For the purpose of proving the ownership of the automobile.

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The Court: You cannot get it that way.

Mr. Warren: What was that?

The Court: Can you prove it in that way?

Mr. Warren: I think so, sir.

The Court: How would it be competent?

Mr. Warren: Suppose that he testified that he had a statement in his possession from Mr. McArdle in which Mr. McArdle said that he was the owner of this auto-

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Joseph A. Corr, direct.

mobile; suppose he said that is so in response to that question, that would be an admission from Mr. McArdle, who is the defendant in this case, as to the ownership of this car.

10 The Court: Wouldn't that be competent, for that purpose?

Mr. Walscheid: I think not; I do not think it would be material; suppose Mr. McArdle did say he owned the car, how would it be competent?

The Court: Isn't that competent to go before the jury?

Mr. Walscheid: I think it is immaterial to the issues, sir.

20 The Court: It would not be material unless he connected it further, step by step; I will allow that question to be asked.

Mr. Walscheid: I wish to call your Honor's attention to this fact, that this witness is sitting at my table assisting me in the trial of this case; he is, himself, a lawyer, and I may have to ask him, under the circumstances, how he came into possession of those papers; and, again, it may raise questions thereby which may become detrimental to this defendant before this jury, and may result in my having to demand a mistrial of the cause.

30 The Court: If you bring out something that is detrimental—

Mr. Walscheid: I may be forced to do so.

The Court: I do not think you can take advantage of that—

40 Mr. Warren: Will you admit the ownership of the car?

William Ferris, direct.

Mr. Walscheid: I will admit that Mr. McArdle owns a car.

Mr. Warren: I mean the car.

Mr. Walscheid: No.

The Court: What is the question?

(Question read by the stenographer.)

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A. I do not, no.

Q. Have you ever seen the statement signed by Mr. McArdle? A. I have not.

Q. Do you know Mr. George Dentz? A. Yes.

Mr. Walscheid: I object to that as immaterial and irrelevant,—

The Court: I will let that stand.

Mr. Walscheid:—and incompetent. I pray an objection.

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The Court: Take your objection.

Q. Did you ever have any conversation with Mr. Dentz?

Mr. Walscheid: I object to that as immaterial—

The Court: Objection sustained.

Mr. Warren: That is all.

Mr. Walscheid: No examination, sir.

(Witness excused.)

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WILLIAM FERRIS, sworn.

Direct examination by Mr. Warren:

Q. You are the administrator of your daughter Catherine's estate? A. Yes, sir.

The Court: Is there any objection to the admissibility of that, that he was the administrator?

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William Ferris, direct.

Mr. Walscheid: I suppose the proper way is to produce the documents.

The Court: That is why I am raising the question.

10 Mr. Walscheid: I thought he was going to do that.

Mr. Warren: I have got them here; do you want them?

Mr. Walscheid: Because since this action was started the form of starting suits by an administrator has been changed.

The Court: It would not affect any suit started before.

Mr. Walscheid: This suit was started before; no objection.

20 Mr. Warren: I offer the letters of administration in evidence.

The Court: No objection; it may be marked.

(Document marked Exhibit P-1.)

Q. On the 24th day of May, 1915, Mr. Ferris, how old was Catherine? A. Five years and six months.

Q. What was the condition of her health?

30 Mr. Walscheid: Object—calling for conclusion.

The Court: Yes, what do you know about her health?

Mr. Walscheid: Object.

Q. What do you know about her health?

Mr. Walscheid: Object—

A. She was good and healthy—

40 The Court: Now, on the same conclusion, he could tell us what he knows about it.

William Ferris, direct.

Mr. Walscheid: Your Honor, I understand, has allowed the question?

The Court: Yes, I will allow that question.

Mr. Walscheid: Then, your Honor will allow me an objection? 10

The Court: Yes, sir.

Q. What do you know about her health?

Mr. Walscheid: Same objection.

A. She was going to school, and she was a healthy child.

Q. Are you married, Mr. Ferris, at this time?

A. Yes, sir.

Q. Your wife alive? A. Yes, sir.

Q. Was your wife alive on the 24th of May, 1915? A. Yes, sir. 20

Q. At that date did you—how many other—did you have any other children?

Mr. Walscheid: Object—immaterial; well, I suppose that time is all right; withdrawn.

The Court: Proceed; what is the answer?

A. Five.

Q. Five other children? A. Yes, sir.

Q. What were their names and what were their ages at that time? 30

Mr. Walscheid: I object to that as immaterial, irrelevant and incompetent.

The Court: You are bringing this suit, are you, under the Death Act?

Mr. Warren: Yes, sir.

Mr. Walscheid: Yes, sir.

The Court: Do you think the father is the only one who can recover?

Mr. Walscheid: And the mother. 40

Mr. Warren: And the children.

William Ferris, direct.

The Court: Is that your theory?

Mr. Warren: Yes.

The Court: I will allow that.

A. There was James, Helen, Catherine, Edward and Willie.

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By Mr. Walscheid:

Q. What was the last? A. Willie.

By the Court:

Q. Willie? A. Willie.

By Mr. Warren:

Q. How old was James at the time of the accident? A. About eight years, something like that; between seven and eight years.

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Q. Is James still alive? A. Yes, sir.

Q. What do you know about his health?

Mr. Walscheid: I object to that.

The Court: You see, you are asking questions as to that, and the witness says, "good health" or something of that kind. You may show the condition of the children, and it is for the jury to say what the condition of health was. I have allowed you to ask the general question, but evidently this witness cannot answer without simply making the general statement of "good health" or something like that.

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Mr. Walscheid: Is the condition of the health of the other children material?

The Court: I think it may be; it may be competent to go before the jury. Suppose they were in bad health, wouldn't it be a question for the jury to say whether they would have derived any benefit from the life of this person?

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William Ferris, direct.

Mr. Warren: That was my purpose in asking the question.

The Court: I will allow that—

Mr. Walscheid: Pray an objection.

The Court: —you may have your objection.

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Q. Answer yes or no; do you know what the physical condition of James was at the time on May 24, 1915?

Mr. Walscheid: Same objection.

The Court: Yes, I will sustain that as to this answer; you may show the condition.

Q. Did James go to school at that time? A. Yes, sir.

Q. Go regularly? A. Yes, sir.

20

Q. Did he play? A. Yes, sir; sure.

Q. Play with the boys? A. Certainly.

Q. What is he doing now? A. He goes to school—

Q. Regularly? A. Regularly.

Q. And your next child is Helen, next oldest? A. Yes, sir.

Q. How old was she at the time of the accident? A. Seven years.

Q. How? A. Seven years.

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Q. At the time of the accident? A. Yes, sir; around seven years.

Q. Did she go to school then? A. Yes, sir.

Q. Did she play with the other girls? A. Sure.

Q. Does she go to school now? A. Yes, sir.

Q. Does she play around? A. Yes, sir.

Q. Is there anything the matter with Helen now?

Mr. Walscheid: Object, calling for a conclusion.

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William Ferris, direct.

The Court: Yes, that calls for his conclusion; strike that out.

Q. How old was Edward at the time of the accident, May 24, 1915? A. He was only about a year or so, like that, a year or two years.

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Q. A year or two at this time? A. Yes, sir.

Q. Is Edward still alive? A. Yes, sir.

Q. I don't suppose he goes to school yet, does he? A. No.

Q. Does he play around? A. Yes, he plays around.

Q. How old was Willie at the time of the accident? A. Willie was about three years old; Willie was older than Edward.

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Q. Did he play around at the time of the accident? A. Yes, sir.

Q. Does he go to school now—Willie? A. No.

Q. Does he play around? A. He plays around.

Q. On May 24, 1915, did you see Helen—or did you see Catherine? A. No, sir; I was just coming from work when she was taken away in the automobile.

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Q. Didn't you see her at all after that? A. No, when he brung her home I did—I had the undertaker bring her home after.

Q. When was that? A. That was around eleven o'clock at night.

Q. Same night? A. Same night.

Q. She was brought to your home? A. Yes, sir.

Q. You saw her in your home at that time? A. I was at the hospital to see her and I had the undertaker take her to the house around eleven o'clock.

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Mr. Warren: That is all.

Mr. Walscheid: No examination.

(Witness excused.)

Helen Ferris, direct.

HELEN FERRIS, sworn.

Direct examination by Mr. Warren:

(Witness stated her age to be ten years.)

Q. Helen, where do you live? A. 17 Ege Avenue.

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Q. Was that your papa that was on the stand a moment ago? A. That was my father.

Q. Speak a little bit louder so all of the jurymen can hear you? A. Yes, sir.

Q. Do you go to school? A. Yes, sir.

Q. Do you remember anything happening to your sister Catherine and yourself a couple of years ago? A. Yes, sir.

Q. Where was it that something happened? A. On the corner of Ocean Avenue.

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Q. Ocean and what? A. Ocean and Ege Avenue.

Q. How far is that away from your home, Helen? A. Well, it is four houses and then the saloon comes and across the street—

Mr. Walscheid: What was that last?

(Answer read by the stenographer.)

Q. Helen, what side of the street do you live on on Ege Avenue, going towards Ocean Avenue; is it on your left hand or your right hand side? Which is your right hand, Helen?

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(Witness indicates.)

Q. When you are going down toward Ocean Avenue from your house, which side of the street are you on? A. The right hand side.

Q. Now, the day that you and Catherine were hurt, had you been going home? A. Yes, we just came from the butcher's, and then we went in to see a lady friend of ours.

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Helen Ferris, direct.

Q. Where was the butcher's? A. He is on Forrest and Jackson.

Q. Where was the old lady that was a friend of yours? A. She was in the fourth house, right near the saloon.

10 Q. On Ocean Avenue? A. On Ocean Avenue.

Q. Was that up to your right from Ocean Avenue, or was it down across Ege Avenue? A. To the right.

Q. Now when you got—did you come back from the old lady's house with Catherine? A. No, sir.

Q. Did you leave the old lady's house with Catherine? A. Yes, sir.

20 Q. Then where did you go? A. We turned around and walked up to the corner, we were going around the block.

Q. You went to the corner of—what corner was that? A. Ocean and Ege.

Q. What is there on that corner there? A. A beer saloon.

Q. Now, when you got to the corner what happened; did you see anybody? A. A little friend of me and my sister's called across the street.

30 Q. Across what street, Helen? A. On Ocean and Ege, across on the other side.

Q. Across Ocean Avenue? A. Across Ocean Avenue.

Q. Now, does Ege Avenue go all of the way across Ocean Avenue or does it stop at Ocean Avenue? A. Well, it goes across—

Q. I mean, is there any Ege Avenue on the other side of Ocean Avenue? A. There is another Ege Avenue down in Jackson Avenue.

40 Q. Yes, but I mean on the other side of Ocean Avenue, is there any Ege Avenue? A. No.

Helen Ferris, direct.

Q. Ege Avenue ends at Ocean Avenue, doesn't it? A. Yes.

Q. And when this little girl—you say a little girl who is a friend of yours and your sister's called to you? A. Yes.

Q. You say she was on the other side of the street? A. Yes, sir. 10

Q. When she called to you, what did she do, if you remember? If you do not remember, say so? A. Well, I do not really remember that.

Q. Well, as the result of having seen her and having the little girl call to you, what did you and Catherine do? A. We were going to run over there to her and play with her.

Q. Now, did you know this little girl's name? A. No. 20

Q. You do not know her name? A. No, I do not know that.

Q. Where did you get to know this little girl? A. You see, every time she used to pass our house she used to say "Hello" to me and she used to play with me.

Q. Did she live in the neighborhood there? A. No; she would live on Ocean Avenue, on the other side, in the hat store; her aunt owned the hat store. 30

Q. Now, did you go across the street? A. Yes, sir.

Q. Now, where were you when you started to cross the street? A. Right at the corner of Ege and Ocean.

Q. On the corner? A. Of Ege and Ocean.

Q. Did you go—start to go straight across Ocean Avenue? A. Straight across.

Q. Or did you start to go to one side? A. Straight across. 40

Helen Ferris, direct.

Q. I see. Now, did you look as you started across? A. Yes, sir.

Q. Did you see anything? A. No, sir; I did not.

10 Mr. Walscheid: I object to the leading; there is no reason for that.

The Court: Yes, be careful with the child.

Q. Didn't you see anything at all? A. No, I didn't see nothing at all, but there is coal wagons that was there, but they had stopped putting in coal.

20 Q. Where were they? A. That was on Dr. Decker's side and the other was at one of the flats.

Q. The flats are on what side of Ocean Avenue—I will withdraw that. A. I think it is on the left hand side.

Q. Never mind. Did you look toward Jersey City? A. Yes, sir.

Q. Well, when you looked towards Jersey City—

Mr. Walscheid: I object to the leading, Mr. Warren.

30 Mr. Warren: I will withdraw that.

Q. Where is Dr. Decker's house or was it; was that towards Jersey City or off towards Bayonne? A. Right down Ege Avenue there is a doctor's house too, and I do not know his name, but right next to that Dr. Decker's house, but Dr. Decker is not there now.

40 Q. Was where Dr. Decker lived at this time towards Bayonne or towards Jersey City? A. Towards Jersey City.

Helen Ferris, direct.

Q. Now, when you looked down in the direction of Dr. Decker's house—

Mr. Walscheid: I object; she said she did not know where his house was.

The Court: Find that out; we will take a recess now until two o'clock gentlemen.

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(Noon Recess.)

HELEN FERRIS, resumed stand.

Direct examination by Mr. Warren, continued:

Q. You said that you saw a coal wagon, did you not? A. Yes, sir.

Q. Where did you say you saw that coal wagon, Helen? A. Sir?

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Q. Where did you say that the coal wagon was? A. One was at Dr. Decker's side and one at the flat side.

Q. When you saw the coal wagon that was on Dr. Decker's side, were you looking in the direction of Jersey City or the direction of Bayonne? A. Well, I looked at both sides, Jersey City and Bayonne.

Q. How far away from Ege Avenue is Dr. Decker's house? A. How far?

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Q. Oh, I do not mean in feet—how many blocks? A. Well, it is about a half a block.

Q. Now, when you looked down in that direction, did you see anything else on the street besides the coal wagon? A. No, sir.

Q. Did you see anything beyond Dr. Decker's house, that is nearer Jersey City or nearer the Ferry than Dr. Decker's house? A. No.

Q. You did not. Did you see anything coming towards you at all? A. Yes, sir.

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Helen Ferris, direct.

Q. Where was it? A. Coming towards Jersey City.

Mr. Walscheid: What was that?
(Answer read by the stenographer.)

10 Q. Did you say "coming towards Jersey City"?

A. Towards Jersey City.

Q. From where? A. From Bayonne.

Q. Did you see any other trolley cars? A. No, sir.

Q. Now, when you and Catherine went across the street, were you on her right or her left side? A. I was in back of her.

Q. In back of her? A. Huh-huh.

20 Q. Did you walk across or did you run across or what? A. We ran across.

Q. You what? A. Ran across.

Q. Ran across? A. Yes, sir.

Q. Who was in front, you or Catherine? A. Catherine was in front.

Q. All of the time? A. All of the time going across.

Q. Where were you when anything happened while you were going across?

30 Mr. Walscheid: I object to that as suggestive and leading the witness.

Mr. Warren: I will withdraw it.

Q. Did anything happen after you started to go across the street? A. Yes, sir.

Q. How? A. Not that I seen.

Q. The day that we are talking about, that you were going across the street, did you go home with Catherine? A. No, sir; I did not.

40 Q. You went home by yourself? A. I went home by myself.

Q. Where was Catherine when you went

Helen Ferris, direct.

home? A. I didn't go home until she was knocked down.

Q. Now, just tell us about that; just tell us, Helen, about Catherine being knocked down?

A. Well, the auto came suddenly—we didn't know it was coming—and she was knocked down and I got up and went home and told my mother.

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Mr. Walscheid: What was that answer?
(Answer read by the stenographer.)

Q. How far away from the other side of the street, that is the east side of Ocean Avenue, was Catherine when she was struck by the automobile? A. Well, she was near the curb almost.

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Q. How far behind her were you? A. Well, I was not much away from her when she was knocked down; she was under the automobile but I was not; I was just knocked down.

Q. Did you hear the automobile coming? A. No, sir.

Q. Did you hear any sounds? A. No, sir.

Q. Just before you were struck? A. No, sir.

Q. Didn't hear a horn? A. No, sir.

Q. Where was Catherine when you ran home? A. I didn't know really where she was then because I got up and ran home and I didn't know where she was.

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Q. You do not know who was driving the car, do you, Helen? A. No, I didn't see the one who was driving the car.

Q. Did anything happen to you? A. No, only I was knocked down.

Mr. Warren: Cross examine.

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Helen Ferris, cross.

Cross examination by Mr. Walscheid:

Q. Where do you live, Helen? A. 17 Ege Avenue.

Q. Same place where you did live? A. Yes, sir; we are living in that place nine years.

10 Q. How? A. Nine years.

Q. How old are you now? A. In January I will be ten.

Q. Will be ten in January? A. Yes, sir.

Q. Do you know where north and south is? A. Yes, sir.

Q. Have you ever been taught what north and south is? A. No, sir.

Q. You haven't been told that? A. No, sir.

Q. Or what east and west is? A. Yes, sir.

20 Q. Have you been told that? A. Well, we are just showed where the places were.

Q. How? A. We were just showed where the places were.

Q. Who showed you? A. The sisters in school.

Q. How? A. The sisters in school.

Q. The sisters in school? A. Huh-huh.

Q. You mean they took you out and showed you places? A. In the class room.

30 Q. In the class room they said to you one side is north— A. And the other is south and east and west.

Q. Do you know whether Bayonne is to the north or to the south of where you live? A. Well—

Q. If you do not know, say so? A. Well, I think it is to the south.

Q. You think it is south? A. Yes, sir.

40 Q. Coming out of Ege Avenue onto Ocean Avenue, on which side of you is Bayonne; is it

Helen Ferris, cross.

to the right or to the left as you come out on Ege Avenue towards Ocean Avenue? A. I do not know that.

Q. You do not know that? A. No, sir.

Q. On which side is Jersey City coming out from Ege Avenue, from your house, out to Ocean Avenue; is that on the right or the left; do you know that? A. Coming from Jersey City or going? 10

Q. No, no; coming out of your house and walking out towards Ocean Avenue, when you got to Ocean Avenue and are still facing Ocean Avenue? A. We cross the street to get the car.

Q. Just before you cross the street; on what side is Jersey City; is it to the right or to the left, do you know? A. On the left, I think. 20

Q. To the left? A. I think.

Q. But you do not know whether Bayonne is to the right or to the left, is that right? A. That is right.

Q. That is right. Now, what time of day was it when you and your sister came out to Ocean Avenue that day? A. Well, I think it was around five o'clock.

Q. Five o'clock in the afternoon? A. Yes, sir.

Q. Were you going any place? A. No, we were just going around the corner to take a walk and we saw this little girl across the street. 30

Q. You were going around the corner to take a walk? A. Huh-huh.

Q. Around which corner? A. Ocean Avenue.

Q. You were going to turn— A. We were just—

Q. You were going to turn Ocean Avenue, on towards your right, and go down on Ocean Avenue towards your right; is that right? A. I 40

Helen Ferris, cross.

do not know really which way we were going at that time.

10 Q. You do not know whether you were going to the right or to the left when you go out towards Ocean Avenue? A. We were going down to where the Bayonne cars come, but we were not going so far, just to take a walk.

Q. How far were you going down towards the Bayonne side? A. Well, we were going to keep walking down until we got to Grant Avenue and come home again.

Q. Now, Grant Avenue is the next block below Ege Avenue, is it? A. No.

Q. How many blocks down is it? A. Four blocks down.

20 Q. Four blocks down, four blocks towards where the Bayonne car comes from? A. Yes.

Q. Four blocks down that way? A. Huh-huh.

Q. You and your sister came out of your house and walked to Ocean Avenue? A. Huh-huh.

Q. Then you turned the corner and started down Ocean Avenue towards Grant Avenue, did you? A. Yes, sir.

Q. Just taking a walk? A. Just taking a walk, and we saw her across the street.

30 Q. Then, while you were walking down the street, Ocean Avenue, you heard a little girl across the street, did you? A. Yes.

Q. How? A. Yes.

Q. Now, how far had you gone down Ocean Avenue from the corner of Ege Avenue where you heard the little girl, how many houses, do you know? A. Just about the corner.

Q. Just about the corner; just starting to go down? A. Yes, sir.

40 Q. Where was the little girl? A. Right across the street.

Helen Ferris, cross.

Q. She was in front of a bakery shop, wasn't she? A. No, she was in front of the hat store.

Q. Where was the hat store in relation to where you were; was it toward Bayonne, towards where the Bayonne cars come from? A. Yes, sir. 10

Q. How far down towards where the Bayonne cars come from—three or four houses? A. Right across there was a house and then next to it was the hat store.

Q. Next to it? A. Huh-huh.

Q. You mean to say that there was a house directly across the street from where you were? A. You see, there was only the vestibule right there and the house was over the hat store too. 20

Q. Then, on the side to your right, as you were facing across Ocean Avenue, was this house, wasn't it, where this little girl was? A. Yes, sir.

Q. That was to your right? A. Huh-huh.

Q. How many houses down to your right from the corner of Ege Avenue would you say this house was? A. I do not know.

Q. Four houses, about the middle of the block? A. Yes, sir.

Q. So that the little girl was standing about the middle of the block, between Ege Avenue and the next street, towards Bayonne, but on the other side of the street? A. We were at the other side of the street from Ocean Avenue. 30

Q. Yes? A. Yes.

Q. But about in the middle of the block? A. No, not quite near the middle.

Q. Not quite near the middle? A. Huh-huh.

Q. But when you say in the middle of the block, you mean the middle of the block between Ege Avenue and the street that comes in 40

Helen Ferris, cross.

next, going towards Bayonne; that is right? A. Yes, sir.

Q. She called to you, didn't she? A. Yes, sir.

Q. How many times did she call? A. Well, she only calls once.

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Q. Called you once? A. And we heard her.

Q. What did she say? A. She said, "Come on over here."

Q. Is that all she said? A. Well, she called us by our names.

Q. Is that all she said, "Come on over here?" A. Yes, sir.

Q. And with that you started to go over there, didn't you? A. Yes, sir.

Q. And you went directly towards her, didn't you? A. Yes, sir.

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Q. Directly towards her, so that you started across the street diagonally? A. Yes, sir.

Q. You know what "diagonally" means, don't you? A. Yes, sir.

(Answer repeated by witness, "No, sir.")

Mr. Walscheid: I thought she said, "Yes, sir."

Q. You went across the street in a sort of a slant, towards her? A. Yes, sir.

30

Q. You know what that means? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. And you started to run across the street, didn't you? A. Yes, sir.

Q. Both you and your sister? A. Yes, sir.

Q. Then you ran out into the middle of the street, didn't you? A. Yes, sir.

Q. When you got to the middle of the street, both of you stopped, didn't you? A. Yes, sir.

Q. And you ran back again to the sidewalk?

40

A. And we ran back again.

Helen Ferris, cross.

Q. Then, when you ran back again, you ran back to the sidewalk of Ocean Avenue, that is, on your side of Ocean Avenue? A. No, when we got to the middle we wanted to run on the curb and we ran back again and the auto was trying to get out of the way.

10

Q. Then the auto was trying to get out of your way? A. It was going to go straight over.

Q. And you ran back again? A. And we ran back again.

Q. Then when you ran back again it hit you? A. Yes, sir.

Q. So that you had started to run across this street on a slant? A. Yes, sir.

Q. I suppose you were both running as fast as you could? A. Well, we were running like anything.

20

Q. Then, when you got to the middle of the street, there were two car tracks, weren't there? A. Yes, sir.

Q. And you saw a Bayonne car coming towards you, didn't you? A. Yes, sir.

Q. And if you had run any further that Bayonne car would have run you down, wouldn't it? A. It was not so close.

Q. But you were afraid it would, weren't you? A. Huh-huh.

30

Q. So that you saw this Bayonne car was likely to hit you—don't look at Mr. Warren, look at me—isn't that so? A. Yes, sir.

Q. When you saw that this Bayonne car was likely to hit you, both of you stopped? A. No, we started to run across and tried to get ahead.

Q. Tried to get ahead of the— A. The car.

Q. Tried to get ahead of the trolley car? A. We tried to get across before that, and we didn't see any automobile that time.

40

Helen Ferris, cross.

Q. Didn't you see any automobile at all? A. No, we didn't see any automobile at all.

Q. You didn't see any automobile at all? A. No, sir; no automobile.

Q. No automobile? A. No.

10 Q. You do not know then that an automobile hit you? A. I didn't know until I got up and I saw the automobile.

Q. Then you saw the automobile was standing there? A. I didn't see it coming.

Q. You do not know that it was an automobile that hit you until after you had been hit? A. Until I got up.

Q. Then the only reason you say that an automobile hit you is because it was standing there?

20 A. Well, I couldn't truly say, but I saw a man get out of the automobile.

Q. You saw what? A. I saw a man get out of the automobile.

Q. You saw a man get out of the automobile? A. And I got up and I ran home and across the street in a hurry.

Q. You ran right across the street to go home? A. Yes.

30 Q. I see, so you started to go home, and you do not know—even know what became of your sister? A. I do not know what became of my sister.

Q. And you did not see your sister struck by the automobile, did you? A. No, sir.

Q. Now, to get back again to you and your sister's crossing this street; you started across that street on a slant towards this house, didn't you? A. Yes, sir.

Q. Where this little girl stood? A. Yes, sir.

40 Q. Both of you were running? A. Yes, sir.

Helen Ferris, cross.

Q. Then you got to the middle of the street, did you? A. Yes, sir.

Q. When you got to the middle of the street, there were two street car tracks there, weren't there? A. Yes, sir.

Q. One for the cars going towards Bayonne, which was the track near your side, isn't that right? A. There was one near our side. 10

Q. That was the track trolley cars go on towards Bayonne? A. No, coming down.

Q. Coming down from Jersey City? A. Sir?

Q. Yes? A. That was (one) goes up towards Jersey City.

Q. That goes up towards Jersey City? A. Yes, sir.

Q. Now, you stopped running, did you not? A. No, we kept running. 20

Q. Yes, then you stopped when you got to the middle of the street, so you said before? A. Yes, we stopped.

Q. Now, I do not want to mislead you; I want you to tell me just what you know? A. Yes.

Q. Did you stop when you got to the middle of the street? A. Yes, then we started—

Q. Now, when you stopped running in the middle of the street were you on one of the car tracks? A. No, I do not know. 30

Q. Had you reached the car tracks? A. Yes, I was past the first two car tracks.

Q. You had reached the first two car tracks and you stopped when you reached the first two car tracks? A. We had passed it.

Q. So that your sister passed the first two? A. Yes, she was right first ahead of me.

Q. She was right ahead of you, wasn't she? A. Yes, sir. 40

Q. Then you were going onto the second two car tracks, weren't you? A. Yes, sir.

Helen Ferris, cross.

Q. Then you saw the car coming from Bayonne? A. Yes, sir.

Q. That was coming towards you? A. Yes, sir.

10 Q. You seen that and you stopped, and you were afraid and you ran back to the corner? A. Yes, we got frightened.

Q. You got frightened at that, and both of you turned around and ran back towards the sidewalk, didn't you? A. Yes, sir.

Q. As soon as you turned around and started to run back towards the sidewalk, something hit you? A. Yes, sir.

Q. That is the way it happened, isn't it? A. Yes, sir.

20 Q. You do not know what hit you? A. No, I did not.

Q. When you were struck in that way, you were running pretty fast? A. Yes, sir.

Q. And your sister was running pretty fast, too, wasn't she? A. Yes, sir.

Q. You were both trying to get back to that sidewalk? A. Yes, sir.

Q. Because you were frightened? A. Yes, sir.

Q. Now, this little sister of yours was younger than you are? A. Yes, sir.

30 Q. That is right? A. Yes, sir; she was younger than I am.

Q. How much younger than you are? A. She was two years younger than I am.

Q. How? A. She was five and I was seven.

Q. Now, when you ran back again from in front of this Bayonne trolley car, when you ran back towards the sidewalk, you ran back toward the side that you came from, didn't you? A. No, we tried to run to the other side.

40 Q. That is when you started out? A. Yes, sir.

Q. But after you stopped running, did you start

Helen Ferris, cross.

to come back towards the side that you came from? A. Yes, sir.

Q. That is so? A. Yes, sir.

Q. Was your little sister in front of you when you began—when you ran back that way? A. No.

Q. Was she alongside of you? A. No, she was still there. 10

Q. She was behind you? A. Yes, sir.

Q. When you started to run back then she was behind you? A. Yes, sir.

Q. But did you see her come running back too? A. No, sir.

Q. You didn't see her coming running back with you? A. No, sir.

Q. Now, about how near the curb were you—how near the curb of Ege Street, that is the side that you came from—how near to that side were you when you found that something hit you? A. Well, out in the middle of the block, middle of the car tracks, or a little further than that second track. 20

Q. In the middle of the street, was that? A. Not the first two car tracks, in the middle of the next two.

Q. In the middle of the two car tracks that go towards Bayonne? A. Towards Jersey City at that time. 30

Q. When you were hit, I mean? A. When I was hit, when the car was going to Jersey City.

Q. Now, what do you mean by that? A. Well, the first two car tracks, I was not there; I was on the second two.

Q. That was when you turned around, you say? A. No, but when I got hit I was there.

Q. You were still there? A. When I was still there upon the car tracks, the second two car tracks, in the middle. 40

Helen Ferris, cross.

Q. In the middle—but when you were hit, you say you were between the two car tracks? A. Yes, sir.

10 Q. Well, but you said to Mr. Warren, if I am not mistaken, that you were a short distance from the curb when you were hit? A. Yes, from the other curb, I was a short distance from that curb.

Q. What curb do you mean—the curb? A. At the other side.

Q. You do not mean the curb that the little girl stood on? A. Yes, from that curb where the little girl stood.

Q. How could you get over there if you started to run back? A. I didn't run back until I got up—until I got up—and I didn't.

20 Q. Now, tell me where you were in the street when you got up? A. When I got up?

Q. If you do not know, say so? A. I do not know that.

Q. You do not know where you were? But what you mean to say now is that after you did get up you ran over toward the other curb where that little girl friend was? A. No, when I got up I was running home.

30 Q. Then you went home? A. When I got up that there trolley car was just going back again; that was just after coming.

Q. That was in back of you? Huh-huh.

Q. The Bayonne trolley street car was in back of you? A. The one that was going up towards Jersey City.

Q. You are sure you do not know where you were when you got up after being knocked down? A. No, I am not sure.

Q. Sure of that? A. No.

40 Q. You know what right and left is, don't you? A. Yes.

Helen Ferris, cross.

Q. And if you were facing at the corner of Ege Avenue and Ocean Avenue, where you lived, if you were facing across the street across Ocean Avenue, looking across there, can you understand what I mean? A. Yes, sir.

Q. How far to your right from that point were you when you turned around to run back to the side that you came from; you said you ran across the street in a slanting fashion, didn't you? A. Yes, sir. 10

Q. Now, how far had you gotten to the right—how many houses, we will say, had you gotten down beyond Ege Avenue when you turned around to run back with your little sister? A. Well, I do not remember that.

Q. Well, was it more than one house—do you know how wide a house is? A. Yes, sir. 20

Q. How wide is it?

The Court: Do you think that is a fair question?

Mr. Walscheid: No.

The Court: Ask her first whether she knows.

Mr. Walscheid: She said "yes."

Q. Do you know how wide houses usually are? 30

Mr. Warren: I object to what width they usually are.

The Court: I think you had better go at it differently.

Mr. Walscheid: I think we have an average width of about twenty-five feet.

Mr. Warren: Well, the lots may be.

Mr. Walscheid: So, usually, are the houses. 40

Helen Ferris, cross.

Q. Well, do you know what a lot is on which a house is built in the city here?

The Court: How wide those lots are along there?

10 Q. Do you know how wide your house is that you live in? A. Yes, sir.

Q. How wide is it? A. Well, from the corner there to that door.

Q. From where to where? A. From that corner to there.

Q. From that corner over to the— A. Door.

Q. Over to the door? A. Yes.

Q. About that? A. Huh-huh.

Q. About that width? A. Yes, sir.

20 Q. I suppose you do not know how many feet that is, do you? A. No, I do not know how many feet that is.

Q. Don't know that? A. No.

Q. Had you gotten down beyond the crossing of Ege Avenue as far as the width of your house when you stopped and turned around—do you understand what I mean? A. No, sir.

30 Q. When you do not understand, say you do not understand, if you do not. You say you started across the street from the corner, going out on a slant? A. Yes, sir.

Q. So that you got further and further to the right of Ege Avenue, didn't you? A. Yes, sir.

Q. Now, can you tell me when you stopped and turned around and your little sister and both of you started to run back to the sidewalk, can you tell me whether or not you had gotten the length of your house beyond Ege Avenue? A. No.

40 Q. You had not, had you, or had you? A. No, we were only at the corner that time.

Q. You were not at the corner when you were

Helen Ferris, cross.

in the middle of the street? A. No, but I mean at the middle of Ocean Avenue.

Q. What was that? A. I was at the middle of Ocean Avenue; the corner is where I left on Ege Avenue.

Q. But on Ege Avenue there is a cross-walk crossing over from the side of Ocean where you lived there at this time? A. Yes, sir. 10

Q. Cross-walks? A. Yes, sir.

Q. Two of them or one? Now, let's see, do you know what I mean by a cross-walk? A. Crosses the street.

Q. That crosses the street? A. Yes.

Mr. Warren: She said crosses the street.

Q. What do you mean that goes across the street by a cross-walk—well, you know what side-walks are, don't you? A. Yes, sir. 20

Q. At Ege Avenue are there narrow stones like sidewalks laid across the street? A. Yes, sir.

Q. They are there, aren't they? A. Yes, sir; at the corner of Ocean.

Q. At the corner of Ocean? A. Yes, sir.

Q. That you can get across the street, on the other side of Ocean Avenue, without stepping on the cobblestones? A. Yes, sir. 30

Mr. Warren: Objected to; his leading the witness.

Mr. Walscheid: I am trying to be fair, and I appeal to the discretion of the Court.

The Court: You may proceed.

Q. Now, how many of these narrow cross-walks or side-walks are there from the corner of Ege Avenue across the street; are there one or two? A. Well, there is two—like when you go up towards the corner and one down that way; 40

Helen Ferris, cross.

there is one going up and across the street there is one.

10 Q. So that there is one crossing Ocean Avenue, across to the other side of Ege Street, and there is one on Ocean Avenue, to cross Ocean Avenue? A. Yes, sir.

Q. Now, remembering that line, the line of that cross-walk, which goes across Ocean Avenue from Ege—in mind—keeping that as your starting point, how far to the right of that line were you and your little sister when you stopped running in the middle of the street?

Mr. Warren: Objected to, calls for an unwarranted assumption of fact.

20 The Court: No, you cannot ask her that.

Mr. Walscheid: She has testified to that.

The Court: You had better ask her in reference to that line where she was; she said she went on a slant, but she doesn't give how much of a slant it was.

Mr. Walscheid: That is what I am trying to get at.

The Court: Try to find that out.

30 Q. Were you on the right hand side of these car tracks when you stopped? A. (No reply).

Q. Let me ask you another question; was your little friend on the other side of that street? A. Yes, sir; right hand on Ocean Avenue.

Q. Was she to the right hand side of this cross-walk? A. Yes, sir.

Q. And how many houses down on the right hand side of this cross-walk? A. Oh, I do not remember.

40 Q. You said before, about the middle of the block, is that right? A. Yes, sir; about the middle of the block.

Helen Ferris, redirect.

Q. Now, you were going towards your little friend, weren't you, when you left the sidewalk?

A. Yes, sir.

Q. And you went over in a sort of a slant? A. Yes, we were going that way (indicating).

Q. Did you go straight towards your little friend? A. Yes, sir. 10

Q. And when you stopped in the middle of the street, were you running straight towards your little friend on the other side? A. Yes, sir.

Mr. Walscheid: That is all.

Redirect examination by Mr. Warren:

Q. Now, wait a minute, Helen. When you were on the corner of Ege and Ocean Avenue, by the saloon, before you started across the street, was Catherine to your right hand or to your left, in front of you or behind you? A. She was in front of me. 20

Q. She was in front of you? A. Yes, sir.

Q. Did you have hold of her hand as you walked across the street? A. No, I had hold of her coat.

Q. Had hold of her coat? A. Of her coat.

Q. What part of her coat did you have hold of? A. Back of her coat. 30

Q. And you went across the street, and you say that you stopped? A. Yes, sir.

Q. Did you have hold of her coat at that time—I will withdraw that—You said that as you were going across the street you saw this trolley car coming from Bayonne? A. Yes, sir.

Q. Then you stopped? A. Yes, sir.

Q. Did you have hold of Catherine's coat at that time or not? A. I had hold of her coat. 40

Helen Ferris, redirect.

Q. At that time? A. Well, when we got to the middle of the street, I did not have hold of her coat.

10 Q. That is what I wanted to know. When you got to the middle of the street, you did not have hold of her coat? A. No.

Q. So that when you stopped, when you saw the trolley car coming, you did not have hold of her coat? A. No.

Q. Now, when you stopped, how long did you stop; was it a long time or a short time? A. Well, I do not remember that, really how long it was.

20 Q. When you stopped and when you saw the trolley car, then what did you do? A. I did not know what to do; I didn't know whether to run, or stand there or do what.

Q. But you did run some place, didn't you? A. No—yes, I ran.

Q. Which way did you run; do you understand what I mean, Helen? A. Back of the sidewalk.

Q. How? A. Tried to run back towards the sidewalk.

30 Q. Which sidewalk? A. The other side.

Q. Was that the one where the little girl is, or the other? A. Yes.

Q. Where the little girl was? A. Yes, but the car was in sight at the time we ran there; that is what she told me.

Mr. Walscheid: "That is what she told me."

The Witness: That is what she told me, but I do not know.

40 Mr. Walscheid: I would suggest that the witness ought to be instructed by the court to tell only what she herself knows.

Helen Ferris, redirect.

Mr. Warren: Perfectly satisfactory to me.

The Court: Go ahead; of course, you are both trying to find out just exactly what took place.

Mr. Walscheid: But, of course, the little girl does not know the limitations. 10

Q. Helen, you will only, of course, tell me what you know; you cannot tell me what the little girl or anybody else told you; do you understand what I mean? Anything that you saw or heard at the time, why, of course, you can tell me, but do not say anything that somebody else told you afterwards, that is, on some other day. Do you understand what I mean?

A. Yes, sir. 20

Q. Now, at the time that you stopped, do you know whether or not Catherine stopped? A. No.

Q. You do not know? A. No.

Q. Did you see Catherine when you got up? A. No.

Q. You did not. Do you know how long it was from the time that you stopped when you saw the trolley car nearing you to the time that you were struck; was it right afterwards, just as soon as you stopped, or was it a little while? A. Well, about the time we stopped. 30

Q. How? A. But the car wasn't there until we got up; I didn't see the car until we got up and it was in back of me then.

Q. You didn't see the car until you got up—

Mr. Walscheid: She means the automobile.

Q. Which car didn't you see until you got up, 40

Helen Ferris, redirect.

the automobile or the trolley car? A. The trolley car was then in back of me at that time.

10 Q. I thought you said that when you got to the middle of the street you saw this trolley car coming from Bayonne and that you were frightened and stopped and didn't know what to do? A. Yes, but it was not so near us, and I thought it came sudden to us and knocked us down but the automobile knocked us down.

Mr. Walscheid: Now, the reason for that—I won't ask that it be stricken out.

20 Q. Does Ege Avenue go across Ocean Avenue, Helen; I mean, on the other side of Ocean Avenue, does Ege Avenue run; do you understand what I mean? A. Yes, sir.

Mr. Walscheid: She has testified that it did not.

Mr. Warren: I did not understand it.

Mr. Walscheid: Yes, she has testified that Ege Avenue did not continue beyond on the other side.

30 Q. Now, in answer to Mr. Walscheid's question, you told him about a cross-walk; now, just what is a cross-walk, Helen? A. A cross-walk—it is like a sidewalk.

Q. Where is it? A. Where are they?

Q. Yes. A. There is one going this way and one this way out (indicating).

Q. At Ege Avenue and Ocean? A. Yes, there is—

40 Q. One of them goes across Ege Avenue? A. Yes, at the crossing of Ocean, it goes across like that, and the other one goes across like that (indicating).

Q. That is at the corner where you were

Helen Ferris, redirect.

standing before you started to cross the street?

A. Yes, sir.

Q. There is a cross-walk then at the corner?

A. Yes, sir.

Q. Where you were standing? A. Yes, but we are not on the cross-walk, we were at the west side of it.

10

Q. I see; how wide is the cross-walk?

Mr. Walscheid: I might object to that on the ground that she evidently is not qualified; she could not tell that before.

The Court: She has already testified that she did not know it, hasn't she?

Q. Can you show me how wide is the cross-walk there; can you hold up your hands and show me how wide the cross-walk is, Helen?

20

A. I think it is about that wide (indicating).

Q. About that wide (indicating)?

Mr. Walscheid: Indicating about eighteen inches, is that right; is that about eighteen inches?

Mr. Warren: I think it might have been a little more; the jury will remember that.

The Court: Yes; find out whether that sidewalk is crossing Ocean Avenue, starting from the same side of the street as that beer saloon; you ought to find out that.

30

Mr. Warren: I thought she did say—

The Court: No, it has not been stated; you have one crossing at Ege Avenue, as I understand it, and the other at Ocean Avenue at the side of Ege Avenue; it is not clear.

40

Helen Ferris, redirect.

Q. Now, Helen, you were on the right-hand side of Ege Avenue, at the corner there, weren't you? A. Yes, sir.

By the Court:

10 Q. Is there a beer saloon on that corner? A. Yes, sir; there is a beer saloon on that corner.

Mr. Walscheid: At the corner where the beer saloon is?

Mr. Warren: Yes.

By Mr. Warren:

Q. Now, what is on the other corner of Ocean Avenue and Ege, on the left-hand corner? A. Towards Jackson?

20 Q. No, down towards Jersey City, there is a building on that corner, is there not? A. Yes, sir; there is a building and the hat store.

Mr. Walscheid: What was that?

Mr. Warren: A hat store.

Q. Now, this cross-walk that you said went across Ocean Avenue, was that from the corner where the hat store is or the corner where the beer saloon was? A. Well the—it is a little further up than the beer saloon is.

30 Q. A little further out? A. Yes, sir.

Q. Further out which way? A. Like the beer saloon was there and the cross-walk is up further.

By Mr. Walscheid:

Q. In other words, it is not exactly on the corner of the street? A. You see, the beer saloon is further in the corner.

Q. Further in from the corner—

40

Helen Ferris, redirect.

Mr. Warren: Further in from the corner.

By Mr. Warren:

Q. Does the cross-walk run from the corner where the beer saloon is or the corner where the hat store is, do you know? A. I did not hear what you said. 10

Mr. Walscheid: She did not understand what you said.

Q. You know the two different corners, the one where the hat store is and the other where the beer saloon is, Helen, do you? A. Yes.

Q. There was a saloon there— A. At the other side crosses Ocean Avenue, not where the beer saloon is; at the other side there is no like cross the street. 20

Q. You mean there is no cross-walk there? A. There is not like crossing walk like Ege Avenue is.

Q. Not like at Ege Avenue, you can cross Ege Avenue; you mean it is not like it is going down Ocean Avenue across Ege Avenue, is that what you mean? A. Yes, sir

Q. Now, is it so, that the same thing is at the corner where the beer saloon is? 30

The Court: Same thing as at what?

Mr. Warren: As at the other corner where the hat store is.

A. What is that?

Mr. Warren: I will withdraw it.

Q. Tell me, Helen, do you say that there is no cross-walk going across Ocean Avenue from the hat store corner? A. Yes, there is, but I 40

Helen Ferris, redirect.

mean like there is no crossing where wagons can turn by or anything like crossing the street like a block; it is just straight across where automobiles come out.

10 Mr. Walscheid: Mr. Warren, your standing up there destroys the effect of the testimony as far as I am concerned.

(Answer read by the stenographer.)

Q. Helen, you have told us what a cross-walk was, didn't you? A. Yes.

Q. Now, is there a cross-walk going across Ocean Avenue at the corner where the hat store is? A. Yes.

Q. There is a cross-walk there? A. Yes, sir.

20 Q. And is there a cross-walk going across Ocean Avenue at the corner where the beer saloon is, do you know? A. No.

Q. Now, when you said that this little girl was in the middle of the block, you did not mean the middle of the block between the street toward Bayonne and the street south—

Mr. Walscheid: Objected to—

Mr. Warren: I will withdraw it.

30 Q. When you said that the little girl was about in the middle of the block, what do you mean, Helen? A. Well, she was standing in front of the hat store, that is not quite near the middle of the block.

Q. When you say the middle of the block, what do you mean; do you mean the middle of that building there; what do you mean by block there? A. Well, like in the middle from Ege to Carteret Avenue on the other side.

40 Q. You did not see this little girl after you got up— A. No, I didn't.

George H. Boyd, direct.

Q. —did you? A. No.

Q. When you left the corner where the beer saloon is, you say you ran straight towards the little girl? A. Yes, sir.

The Court: Anything further?

Mr. Warren: That is all.

10

Mr. Walscheid: That is all.

The Court: Call your next.

(Witness excused.)

GEORGE H. BOYD, sworn.

Direct examination by Mr. Warren:

Q. Mr. Boyd, where do you live? A. 5 Virginia Avenue.

20

Q. Do you remember anything happening at or near the corner of Ege and Ocean Avenues on May 24, 1915? A. I was coming on the car, coming towards Jersey from work.

Q. Do you remember anything happening there? A. Yes, sir.

Q. You were on the trolley car, you say? A. Yes, sir.

Q. Coming from work? A. From Gates Avenue, Jersey City.

30

Q. Where did you live at that time? A. I think it was 5 Virginia Avenue.

Q. What time of the day or night was this? A. I should judge about five-fifty to five-fifty-five.

Q. Virginia Avenue is where in relation to Ege Avenue? A. Next corner.

Q. North or south of Ege? A. Going towards Jersey City.

Q. Was this an open car you were on or closed car? A. Open car.

40

George H. Boyd, direct.

Q. Where were you sitting in the car? A. I was sitting in the front seat but I was on the running board getting out—well about Carteret Avenue, getting ready to get off the next corner.

10 Q. Did you see anything happen at Ege and Ocean Avenues? A. No, I did not.

Q. Ege and Ocean Avenues? A. Yes, sir; I was on the running board of the car and the motorman said, "He got another victim."

The Court: Strike that out; what the motorman said, of course, was immaterial.

Mr. Walscheid: I did not ask that it be struck out.

The Court: Do you want it to stand?

Mr. Walscheid: Yes, sir.

20 A. (Continuing.) The motorman said, he got another victim, and the little girl got up, so he said at that time; the larger girl got up and beat it away and she goes down on the corner; and the chauffeur gets out of the car, stoops down, gets underneath the automobile and pulls out this little girl, this little child.

30 Q. Little girl? A. He takes her to a place there was that in the neighborhood there; there was nobody in and he runs over to the drug-store.

Q. That is all about that. Did you see the automobile before it struck the girl? A. No.

Q. When you saw the automobile, where was it? A. It was diagonally across the two car tracks.

Q. Where was the front of the automobile? A. Toward the south bound street car track going towards Jersey City.

40 Q. How far away from the curb, that is the east curb, was the front of the automobile? A.

George H. Boyd, cross.

About in the middle of that south bound car track.

Q. You mean between the track and the curb or between the car tracks? A. No, between the car tracks, the other car track going to Jersey City.

10

Q. You say the front of it, though, was faced towards where? A. That way, towards that south bound car, headed this way, like this, going towards Bayonne, see, diagonally, this way, but on the south bound track, on the front of the crossing (illustrating).

Q. Where in relation to Ege Avenue was the automobile? A. Just right in the car tracks crossing Ege.

Q. Where was the child at the time that you first saw it? A. Which child?

20

Q. The little girl. A. That was killed?

Q. Yes. A. The driver picked her up from under the automobile.

Mr. Warren: Cross examine.

Cross examination by Mr. Walscheid:

Q. Where did you board this car? A. Gates Avenue, Jersey City.

Q. Where were you going? A. To Virginia Avenue, right near Ocean Avenue.

30

Q. In what general direction was the car going in which you were? A. South.

Q. Going south? A. To get to Virginia Avenue from Bayonne.

Q. You were going south toward Bayonne—going south on Ocean Avenue? A. Yes, sir; coming home from work.

Q. You were getting off at Virginia Avenue? A. I was getting off at Virginia.

40

George H. Boyd, cross.

- Q. And Virginia Avenue is— A. Another block.
 Q. To the north of Ege Avenue? A. No, south.
 Q. To the south of Ege Avenue? A. Going towards Jersey City; well, that is north, I guess.
 Q. Now, which was it? A. Going towards Jersey City.
- 10 Q. Going towards Jersey City? A. Yes, sir.
 Q. Then, Virginia Avenue is to the north of Ege Avenue? A. Yes, sir.
 Q. Then you got off that car before you reached Ege? A. Well, the car stopped for someone to get off.
 Q. Did you— A. No, I did not get off the car.
 Q. Oh, you got on at Virginia Avenue? A. I was going to Virginia Avenue.
- 20 Q. Now, is Virginia Avenue to the north of Ege Avenue? A. Well, Virginia Avenue is to the north.
 Q. It is to the north? A. Yes, sir.
 Q. You were going to get off there? A. At Virginia Avenue; yes, sir.
 Q. You got on at Gates Avenue? A. Yes, sir; at Gates Avenue.
 Q. Where is Gates Avenue from there? A. That is the car barns.
- 30 Q. At the car barns? A. Yes, sir.
 Q. Then, from the car barns you traveled south, and you were going to get off at Virginia Avenue? A. Yes, sir.
 Q. Did you live at Virginia Avenue? A. Yes, sir; 5 Virginia Avenue.
 Q. No. 5 Virginia Avenue? A. Yes, sir.
 Q. You know that Ege Avenue is beyond Virginia Avenue, traveling on this car? A. Yes, sir; one block.
- 40 Q. Where were you when you saw the accident?

George H. Boyd, cross.

A. I was just by about to the avenue; that is just a short space.

Q. Then you passed Virginia Avenue, didn't you? A. No, no, no, sir.

Q. Where is Virginia Avenue? A. Virginia Avenue is going down towards south one block further than Ege. 10

Q. Then you were opposite Carteret Avenue when you saw the accident? A. About that; yes, sir.

Q. And the accident happened about opposite Carteret? A. No, Ege Avenue.

Q. Well, but Carteret is beyond Ege Avenue? A. No, sir; it is above.

Q. What is your name? A. George Boyd.

Q. Mr. Boyd, let me show you something just to refresh your memory, when you got onto the car at Gates Avenue, where were you coming from? A. Work. 20

Q. From work; where did you work? A. Eagle Printing Ink Company.

Q. What did you do there? A. Ink grinder.

Q. Ink grinder? A. Yes, sir.

Q. Now, you are sure that you were opposite Cartaret Avenue when the motorman said to you— A. He didn't say it to me. 30

Q. He said something; let's see what he said; the motorman said, they got another victim? A. Yes.

Q. Then you looked? A. Huh-huh.

Q. Up to that time you had not looked at all? A. No.

Q. But you looked towards Bayonne? A. No, towards Jersey.

Q. Now, let's see— A. No, the car I was on comes from Bayonne to Jersey City, and that is the way I faced. 40

George H. Boyd, cross.

Q. Oh, you were on a car bound up from Bayonne towards Jersey City? A. Yes, sir.

10 Q. Now, you tell me that Carteret Avenue is to the north of Ege Avenue? A. Going towards Bayonne, I cannot say whether that is north or south; I do not know, that is going to Bayonne.

Q. Oh, Mr. Boyd, going towards Bayonne means nothing in relation—well, you know where Ege Avenue is, don't you? A. Yes, sir.

Q. And Ege Avenue does not run across Ocean Avenue, does it? A. No, sir.

Q. Do you know what is north and south at that point? A. Well, I never took notice of anything else.

Q. Do you know? A. I think Bayonne is south.

20 Q. Do you know that the car— A. Jersey City—

Q. Don't talk so fast.

Mr. Warren: I object—

Mr. Walscheid: But, your Honor, he won't listen to the questions.

Mr. Warren: I object to Mr. Walscheid's cutting him off.

The Court: Let him put another question.

30 Q. Now, listen to the question— A. Yes, sir.

Q. —and then answer it. A. Yes, sir.

Q. We will get through much faster. You do know that Ege Avenue does not cross Ocean Avenue? A. Yes, sir.

Q. And you know the name of the street nearer to Bayonne, immediately on the side, running parallel to Ege Avenue— A. On the same side with Ege Avenue or where Ege Avenue ends?

40 Q. Yes. A. I think that is Kearney Avenue.

George H. Boyd, cross.

Q. Kearney Avenue? A. On the same side where Ege Avenue is.

Q. That also ends on Ocean Avenue? A. Yes, sir; it also ends on Ocean Avenue.

Q. Now, between Ege Avenue and Kearney Avenue, on Ocean Avenue, on the other side of the street, in the middle of the block, is where Cartaret Avenue comes in, is that right? A. Yes, sir. 10

Q. And that does not go beyond Ocean Avenue there, does it? A. No, sir; that ends there—starts there.

Q. So that you were on the running board on that street car coming up Ocean Avenue— A. From Bayonne.

Q. What part of the running board were you on? A. On the front. 20

Q. Front, back or middle? A. Towards the motorman.

Q. Towards the front? A. Yes, sir.

Q. Where was this conductor? A. I could not tell you.

Q. How do you know it was the conductor that said this? A. No, no, the motorman; big fat fellow.

Q. He shouted out? A. Yes, sir. 30

Q. Then the accident was right ahead of you, wasn't it? A. Yes, sir.

Q. How many feet ahead of you? A. I should judge that is about two hundred feet—

Q. How many feet ahead of you was the accident? A. Just right ahead of me; I don't know how many feet.

Q. Just right ahead of you? A. Yes, sir.

Q. Just right— A. Just right up from the front there. 40

George H. Boyd, cross.

Q. Then where you were was opposite Cartaret Avenue? A. Just about, yes.

Q. So that the accident was right to the north of Cartaret Avenue, wasn't it? A. Going towards Jersey City; yes, sir.

10 Q. Going towards Jersey City; you are sure of that? A. Yes, sir.

Q. So that from where you were on this trolley car, you say you saw the automobile turned around cross-wise on the street, facing with its front towards the track upon which you were traveling? A. Yes, sir; the front of the car, the automobile, was on the track that was—it was facing towards Bayonne.

20 Q. On the track that you were on? A. No, it was partly on that track and partly on this track and partly on the other track.

Q. As if he had swung around there? Could you see that? A. No, sir; I didn't.

Q. You didn't look at the car to see how he had swung around there? A. No, sir.

Q. Didn't see that? A. No, sir.

Q. Do you know how wide Cartaret Avenue is, about? A. Pretty wide street; I don't know how wide that is.

30 Q. Is it thirty* feet? A. I guess a little more than that.

Q. In relation to the south side of that street, the side nearest Bayonne, in relation to that side of the street, where were you; were you to the north of the south side of that street or to the south of it, when you heard this remark, they have got another victim? A. I was on the running board close to the motorman.

40 Q. Yes, I know you were there. A. I was getting off at Virginia.

George H. Boyd, cross.

Q. You were on the car? A. Yes, I was on the car.

Q. Supposing that they extended the southerly line of Cartaret Avenue, which is the line nearest Bayonne—suppose they extended that across Ocean Avenue, did that come through your trolley car? A. Yes. 10

Q. Would you be nearer Jersey City or would you be nearer Bayonne? A. Nearer to Jersey City.

Q. How many feet nearer Jersey City would you be? A. I could not say.

Q. Well, five or ten? A. Well, five, about that.

Q. Five or ten feet north? A. Going towards Jersey City. 20

Q. Just for a moment, don't be so hasty; you saw this accident here, or what you did see; now, just think how far north were you? A. I guess it was about five feet.

Q. About five feet? A. Yes.

Q. From where you were, how much further north, how much further toward Jersey City, was this automobile, how many feet? A. I should judge about two hundred—a hundred feet maybe; I don't know how many. 30

Q. You do not know whether it was a hundred or two hundred? A. No, I do not know how close it was; I didn't measure it.

Q. Why were you standing on the running board of this car? A. That is just a force of habit, getting ready to alight at the corner.

Q. Getting ready to alight at the corner? A. At Virginia Avenue, sure; maybe the car was crowded that day, I don't know.

Q. When had you gotten onto that running board? A. I don't know that question; I might 40

George H. Boyd, redirect.

have just gotten down on it; maybe I was on it for several blocks.

Q. But you were going to get out at the next corner? A. Yes, sir.

10 Q. Don't you know that Virginia Avenue is two blocks up—between two blocks and one block from Cartaret Avenue? A. It is about a block and a half, isn't it?

Q. You live there, don't you? A. Sure, I do.

Q. See whether I can help you any (showing diagram to the witness); here is Cartaret Avenue, isn't it; see that? A. Yes.

Q. Then, here is Ege Avenue, isn't it? A. Yes.

20 Q. Ege Avenue then is the next beyond Cartaret? A. You don't call that a block.

Q. You don't call that a block? A. No.

Q. After that comes Virginia Avenue? A. Yes, sir; sure.

Q. So that you were two blocks from Virginia, weren't you? A. No, I don't call it two blocks.

Q. You don't call that two blocks? A. No, I don't call that two blocks.

30 Mr. Walscheid: That is all.

Redirect examination by Mr. Warren:

Q. In other words, on your right hand, between Cartaret Avenue and Virginia there was no intersecting street, was there? A. No, no.

Q. On your left hand was Ege Avenue? A. Sure.

Mr. Warren: That is all.

The Court: Call your next.

40 (Witness excused.)

Alexander Goodside, direct.

ALEXANDER GOODSIDE, sworn.

Direct examination by Mr. Warren:

Q. Where do you reside, Mr. Goodside? A. 693 Ocean Avenue.

Q. Where is that in relation to Ege Avenue? A. Sir? 10

Q. Where is that in relation to Ege Avenue? A. It is the fourth door from the corner, that is three doors before me; my house is the fourth.

Q. What side of the street are you on? A. I am on the west side of the street.

Q. Do you know what a cross-walk is, Mr. Goodside? A. I think I am old enough.

Q. Well, assume that you do; is there a cross-walk running from the Carlos corner, that is the saloon corner of Ocean Avenue and Ege, across Ocean Avenue? A. I do not think so. 20

Q. How long have you been in this store? A. Oh, I am there for the last three and a half years, I guess.

Mr. Warren: That is all.

Mr. Walscheid: Are you through?

Mr. Warren: Yes.

Cross examination by Mr. Walscheid: 30

Q. You didn't see this accident, did you?

Mr. Warren: Objected to as not proper cross-examination.

The Court: No, that is not cross-examination; objection sustained; he has only asked him in reference to the cross-walk.

Q. How long have you lived at this place? A. I think about three and a half years. 40

Alexander Goodside, cross.

Q. About three and a half years? A. Yes, sir.

Q. When did you move in? A. I will tell you the truth, I don't know, but I do know next year it will be four years.

10 Q. Where do you live? A. I live 289 Jackson but this is the store there.

Q. Jackson? A. Yes, sir.

Q. Didn't you live at Ege Avenue? A. I used to live at Ege Avenue; yes, sir.

Q. At Ege Avenue? A. Yes, sir.

Q. And you were in—you had your place of business on Ocean Avenue, didn't you? A. Yes, sir.

Q. And your place of business was— A. 693.

20 Q. Third house from the corner? A. Yes, sir; third house from the corner.

Q. Third house from that beer saloon? A. No, the second house from that saloon.

Q. Towards Bayonne? A. Towards Bayonne.

Q. Now, did you ever look for a cross-walk over Ocean Avenue there? A. I couldn't tell you.

Q. Of course —A. I couldn't tell you whether there is a cross-walk there or not.

30 Q. You do not know whether it is there or not? A. I do not know; I am almost sure it is not.

Q. What makes you say that? A. Because I have gone across near there lately.

Q. And you cross here pretty often? A. Yes.

Q. And you think that is the reason why you can tell that there is no cross-walk? A. Yes, sir.

Mr. Walscheid: That is all.

40 Mr. Warren: That is all.

(Witness excused.)

Robert Dunkanson, direct.

ROBERT DUNKANSON, sworn.

Direct examination by Mr. Warren:

Q. Mr. Dunkanson, where do you live? A. 111 Randolph.

Q. Where is your place of business? A. 695 Ocean Avenue. 10

Q. Where is that in relation to Ege Avenue? A. The next door.

Q. What is your business? A. Printer.

Q. Do you remember the day there was an accident at or near Ege Avenue and Ocean? A. I was coming up on the car.

Q. You were on a car going which way? A. Going to Bayonne, south.

Q. Where did you get on the car? A. Jersey City ferry. 20

Q. What part of the car were you sitting in? A. Rear end.

Q. Facing in what direction? A. Towards Jersey City ferry.

Q. Did you notice—was there anything following you that day? A. Yes, sir; an automobile.

Q. Do you know what automobile it was? A. It was in the accident.

Q. Did you recognize the driver of the automobile? A. No, I did not recognize him until I met him in court. 30

Q. Is he in court now? A. No, sir.

Q. Was he in court this morning? A. No, yesterday.

Q. Or yesterday? A. I met him about a year ago on the same case.

By Mr. Walscheid:

Q. What was that, you hadn't seen him since? A. I met him about a year ago on the case. 40

Robert Dunkanson, direct.

By Mr. Warren:

Q. Where was it that you first noticed this automobile? A. At Henderson Street.

Q. That was Henderson Street and what? A. And Grand Street.

10 Q. Where did you last see it? A. At Virginia Avenue.

Q. What became of it then? A. Our car stopped and he turned to go on ahead of our car.

Q. Which way did he turn, to the right or to the left of your car? A. He turned to the left.

Q. Where were you getting off that day? A. At Ege Avenue, next block.

20 Q. When did you next see this automobile? A. When I was off the car, straddling the two tracks.

Q. Where was that in relation to the north side of Ege Avenue? A. Well, in about the center of the street, between the north side of Ege Avenue and the other; between the saloon and the empty store.

Q. Between the saloon and the empty store? A. Yes, sir.

30 Q. Where was the empty store? A. On the other side, going north, towards Jersey City.

Q. You mean on the other corner of Ege Avenue? A. On the other corner of Ege Avenue.

Q. Where was Dr. Mutard's house? A. Opposite.

Q. Right opposite where? A. Ege Avenue.

40 Q. And in relation to the north side of Ege Avenue or the south side of Ege Avenue, if it were extended across Ocean, where would that driveway of Dr. Mutard's house be? A. About five feet further—five feet south—his house is

Robert Dunkanson, cross.

right opposite—directly opposite—and on the side is—he has got about an eight foot driveway.

Q. At which side of the house? A. On the south side.

Q. And where in relation to the south side of Ege Avenue, if it was cut right through, where would that driveway be? A. At the south side. 10

Q. Would it cut through the driveway or would it be north or south; I mean the curb line of Ege Avenue if it went across the street? A. It would be on the south side.

Q. The driveway? A. The driveway.

Q. Would the curb line intersect the driveway if it were extended? A. It would, one side would if it was extended. 20

Q. What about the south side of Ege Avenue if that were extended—would that intersect the driveway of Dr. Mutard's house? A. From where one of the lines go—what was that—his house is right opposite; here is the driveway here (illustrating), if you run it straight across, it would hit on one of the sides.

Q. Where was the front of the automobile when you saw it, in relation to Dr. Mutard's driveway? A. Opposite Mutard's. 30

Q. Opposite the house or opposite the driveway? A. Between Mutard's house and the driveway.

Mr. Warren: That is all.

The Court: Any cross-examination?

Mr. Walscheid: Yes, sir.

Cross examination by Mr. Walscheid:

Q. You were sitting in the trolley car? A. In the back of the open car. 40

Q. While your car was traveling south you

Robert Dunkanson, cross.

say this automobile traveled south with you?
A. Yes, sir.

Q. Alongside of your trolley car? A. In back
of our car.

Q. In back of you? A. Yes, sir.

10 Q. You saw it there until you got off the car?
A. Until I got one block from Ege Avenue.

Q. What block is that? A. Virginia Avenue.

Q. Virginia Avenue? A. Yes, sir.

Q. Did you get off at Ege Avenue? A. No, the
next block.

Q. At Ege Avenue? A. At Ege Avenue.

Q. Now, when you reached Virginia Avenue,
where did the automobile go? A. He cut out.

20 Q. He cut out? A. He went in the center of
the other car track, up to the other corner.

Q. Then you lost sight of him for the mo-
ment? A. Until I got off at the next block.

Q. Now, while that car was coming down this
day, he was behind your car? A. It turned out
from behind our car to get in front of it.

Q. Did it go along the right side of the car
or did it go ahead? A. He go right behind,
switched over on the other track, on his left
hand side.

30 Q. How fast was that automobile going there?
A. He could not go very fast if he traveled with
the car all of the way up.

Q. Well, was it going more than eight miles
an hour? A. Well, about ten miles an hour, Mr.
Walscheid.

Q. About ten miles an hour it was traveling?
A. Yes, sir.

Q. You testified in another case in relation to
this matter, didn't you? A. Yes, sir.

40 Q. You were there asked, how fast was the car

Robert Dunkanson, cross.

going when it attempted to pass the trolley car on your left? A. Yes, sir.

Q. You then said, about eight miles an hour? A. Eight to ten, about.

Q. You mean it was going eight to ten miles an hour? A. Yes, sir; between.

10

Q. Then, you got off at Ege Street? A. Yes, sir.

Q. What side of Ege Street, do you know? A. Of Ege Avenue.

Q. North or south? A. North side.

Q. So that you got off on the north side of Ege Street? A. Yes, sir.

Q. Then the car went on, or did it? A. No, sir; the car stopped.

Q. Then when the car had stopped, did you see the automobile? A. I seen the automobile then .

20

Q. Then it was ahead of you down on Ocean Avenue? A. It was straddling the two car tracks then.

Q. You didn't see the accident happen? A. No, sir.

Q. The accident had happened? A. Yes, sir.

Q. Your car then—how much beyond Ege Avenue—how much beyond the south crossing over Ocean Avenue of Ege Avenue was that? A. The trolley car?

30

Q. The automobile? A. It was in the middle of the street.

Q. I know, it was in the middle of Ocean Avenue. A. If Ege Avenue was cut straight through in the middle, it would be in the middle of Ege Avenue.

Q. Now, just listen to this; you testified in relation to that matter—just to refresh your memory—and when it turned up, speaking about this

40

Robert Dunkanson, cross.

automobile, and "when it turned out at the left, where did it go? A. To the right side.

Q. How far did it go before anything occurred?

A. I got off at Ege Avenue, and the automobile turned right at Dr. Mutard's, about one hundred feet ahead of my car." Is that right? A. It was about a hundred feet ahead of my car.

Q. Now, your car was stopping on the north side of Ege Avenue? A. Yes, sir.

Q. Ege Avenue is about thirty-five feet wide, isn't it? A. Yes, sir.

Q. Is that right? A. About thirty to thirty-five feet.

Q. So that as a matter of fact this automobile was not in Ege Avenue, if it was extended, was it? A. Well, he was not a hundred feet.

Q. Well, you said a hundred feet on this occasion when you testified about a year ago, didn't you? A. It is only a hundred feet from Carteret Avenue to Ege Avenue.

Q. Well, I am not interested in that; you said that the automobile was a hundred feet, to read it to you: "I got off at Ege Avenue, and the automobile turned right at Dr. Mutard's house, about one hundred feet ahead of my car." Was it a hundred feet ahead of your car? A. No, I don't see where it could be a hundred feet.

Q. Well, were you wrong then or are you wrong now? A. I was wrong then when I said a hundred feet.

Q. Well, in relation to the south cross-walk of Ege Avenue, or the south line of Ege Avenue extended, isn't it a fact that the automobile was beyond, to the south of that line? A. of where?

Q. Of the extension of Ege Avenue across Ocean Avenue? A. If it was extended across?

Robert Dunkanson, cross.

Q. If you drew a line on the south house line of Ege Avenue across Ocean Avenue, draw a line across there; then this automobile was south of that line and towards Bayonne? A. No, sir; it was not south of it.

Q. How near to Cartaret Avenue was it? A. 10
It was this side of Cartaret Avenue.

Q. Yes, and how near to Cartaret Avenue? A.
It was this side of the corner because if he was on the other side he would be right in front of my place.

Q. Now, you are trying to reason this thing out. When you say because it would be some place else, it must have been in front of my place. I don't want you to reason; all I want from you is your recollection, if you have any. 20
Now, a year ago, you testified that he was a hundred feet beyond you, and now you testify that he was within thirty-five feet of you; was your memory any better a year ago than it is now? A. I do not know.

Q. How? A. I do not know.

Q. I suppose you haven't thought of this matter at all since then, have you? A. No, I never thought it would ever come up again.

Q. What you are giving is just your present recollection now? A. Well, my memory is what I am giving, I don't think of everything— 30

Q. Of course, you didn't; and may not this story be just as true, may not it be a block down, this story that you told a year ago that it was a hundred feet away from you,— A. It may have been, but here is—a hundred feet is a distance from Ege Avenue to Cartaret Avenue.

Q. You knew that a year ago, too, when you said so, didn't you, that that was a bit of distance; I suppose, as a matter of fact, you don't 40

Robert Dunkanson, redirect.

just exactly know where that car was, isn't that so? A. What, the motor car?

Q. The automobile? A. Where I told you.

10 Q. I mean, you don't know just how far down that street it was, you didn't know at that time a year ago where it was, and at this moment you don't know where it was? A. I know about where the place was because somebody asked me to pull the car out of there and I wouldn't do it because I had no license—

Q. You mean the car was standing there? A. Yes, sir; the car was standing there I would not pull it out.

20 Q. If I told you that Dr. Mutard's is almost down to Carteret Street and beyond Ege Avenue, would you believe that if I told you? A. That the motor car was beyond Ege Avenue? No, Mutard's is about opposite of Ege Avenue.

Mr. Walscheid: All right; that is all.

Redirect examination by Mr. Warren:

Q. Mr. Dunkanson, at the time that the automobile hit the child, you do not know how fast it was going? A. No, sir.

30 Q. Do you recollect testifying to a hundred feet on the other trial? A. No, I did not.

Q. The only information that you have is from something that Mr. Walscheid is reading? A. That is the only information that I have of a hundred feet; I don't remember saying that.

Mr. Warren: One other question that I forgot to ask on direct, if your Honor please.

40 Q. Did you see the child—any child picked up that day? A. No, sir.

Robert Dunkanson, recross.

Q. You didn't see the little girl that was hurt?

A. No, sir.

Q. You did not? A. No, sir.

Mr. Warren: All right; that is all.

Recross examination by Mr. Walscheid:

10

Q. You didn't see the child hit, did you? A. No, sir.

Q. But you did see the car—you did see the car in question when it swung out upon the center of the street, didn't you? A. See the car?

Q. The automobile? A. When I seen him half turned around?

Q. You saw him make that half-turn, didn't you? A. That half-turn?

Q. You saw him make that half-turn, as you call it, as if he was trying to turn the car all of the way around to avoid an accident? A. Tried to turn around to go down towards the city again.

20

Q. Tried to swing the car completely around? A. Or to go up Mutard's driveway.

Q. As if he was trying to get out of the way of something? A. I seen him switch his car around. I didn't know if he hit anything or not.

Q. That was very sudden when he did that? A. It was all of a sudden.

30

Q. I mean this switching around was a very sudden thing, wasn't it? A. Yes, sir.

Q. It was a very sharp turn that he made, wasn't it? A. It was a very sharp turn that he made; he had a big car to manage.

Q. And then right after he made this sharp turn suddenly, and that is when the car stopped there? A. Yes, sir.

Mr. Walscheid: I guess that is all.

40

Benjamin Levy, direct.

Redirect examination by Mr. Warren:

Q. Do you know what kind of a car it was?

A. The name of it?

Q. Yes. A. I couldn't tell you the name of it, but it was a big seven passenger car.

10 Q. You do not remember the license number?

A. No.

Mr. Warren: That is all.

The Court: Call your next.

(Witness excused.)

Mr. Warren: If your Honor please, I have got one witness. I have not heard his story, but his testimony would be very short; may I have an opportunity to consult him?

20

Mr. Walscheid: Is he under subpoena?

Mr. Warren: He is under subpoena, but I have never spoken to him, and I would like to have the opportunity—it will only take me a moment.

The Court: All right.

BENJAMIN LEVY, sworn.

30 Direct examination by Mr. Warren:

Q. Where is your place of business, Mr. Levy?

A. Corner of Ocean and Ege, right on the corner.

Q. On the corner? A. First house from the saloon; first, the saloon, and then my store, next door.

Q. Do you remember an accident happening there in May, 1915, on the 24th? A. Yes, sir; I remember that.

40 Q. You did not see the automobile hit anybody, did you? A. No, sir.

Benjamin Levy, direct.

Q. You did not see the accident happen? A. No, sir; I did not see the accident happen. When I came around from the store I seen a lot of people standing around, and I came round and I find the big motor car was standing right on the middle of both tracks there and that is all; when I come there I didn't see the—the child had been picked up. 10

Q. Never mind what you didn't see, where was the automobile when you saw it? A. On the middle of the street, and then he come right over from Ege Avenue, because he was right in the middle of Ege Avenue and he stopped right in the middle of Ocean Avenue between the two tracks.

Q. Do you know where Dr. Mutard's house is? A. Yes, sir. 20

Q. Where was the automobile on Ocean Avenue in reference to Dr. Mutard's? A. It was right on the driveway where Dr. Mutard comes in; it was right on that.

Q. Now, you picked up the—did you do anything there that day? A. Well, I came over, and I heard the accident—I didn't see the accident but I heard it—so I come around and I seen a big crowd there and I seen a hat laying down—it was muddy and raining—and I picked up that hat—I seen that little girl—she was right there on the other side, like the car was here and she was on the other side; the car was just standing there and the people there looking it over, but she ran away, she was so excited, and that hat was in my hand—and I seen some neighbors on the other side and I handed it to her—That was all I know. 30

Q. Where was the hat when you picked it up? A. Right in front of the car. 40

Frank J. Lynch, direct.

Q. How far in front of the car, Mr. Levy? A. Oh, it was pretty near, by the wheels.

Mr. Warren: That is all.

Mr. Walscheid: That is all.

10

(Witness excused.)

(Discussion between Counsel and Court)

The Court: Gentlemen, you may be excused until tomorrow morning at ten o'clock promptly.

(Adjourned.)

January 4, 1918; 10.00 A. M.

20

Court met pursuant to adjournment.

FRANK J. LYNCH, sworn.

Direct examination by Mr. Warren:

Q. You are a sergeant of the Jersey City Police Department? A. Yes, sir.

Q. Where? A. Fifth Precinct; stationed at Cartaret Avenue and Ocean Avenue Police Station.

30

Q. You were so stationed there on May 24, 1915? A. Yes, sir.

Q. On May 24, 1915, in the station, what were your duties?

Mr. Walscheid: I object to that as immaterial, irrelevant and incompetent.

The Court: Let us get right down to the question and see whether he knows anything about this accident.

Mr. Warren: He does not, Sir.

Mr. Walscheid: He does not?

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Mr. Warren: He does not know anything about the accident, itself.

Frank J. Lynch, direct.

The Court: Is this something concerning the accident?

Mr. Warren: Yes, your Honor.

The Court: I will allow it.

A. At the time, Desk Sergeant.

Q. In the day time or the evening? A. In the evening.

10

Q. Do you know the defendant, Frank McArdle? A. Yes, sir.

Q. Do you know one G. Harold Dentz? A. No, I do not know him, only he was brought in the night of the accident.

Q. Did you see Frank McArdle the night of the accident? A. Yes, sir.

Q. Where did you see him? A. At the Fifth Precinct Station.

20

Q. Who was there with him? A. Mr. McArdle was there and also the chauffeur.

Q. What was the chauffeur's name? A. He gave his name as Dentz at that time.

Q. Did you have any conversation that night with Mr. McArdle? A. Only in regards to the owner of the automobile.

Q. What did Mr. McArdle say? A. He said it was his automobile.

Q. The ownership of the automobile—

30

Mr. Walscheid: I object to that; it calls for the conclusion of this witness.

The Court: Yes, you may tell what the conversation was.

Q. What did Mr. McArdle say about the automobile, about whose automobile it was?

The Court: No, only what the conversation was; he can tell us that.

40

Frank J. Lynch, direct.

A. He said he came there to get the man released, that it was his automobile, and he, Dentz, was his chauffeur; that was the substance of the conversation.

10 Q. In the presence of Mr. McArdle, did Mr. Dentz say anything about the accident? A. Only related the facts—

Mr. Walscheid: I object to that as immaterial, irrelevant; not part of the *res gestae* and incompetent.

The Court: How do you think that is competent?

20 Mr. Warren: If your Honor please, this is the evening of the accident, when the chauffeur was under arrest, and when Mr. McArdle was in the Station House for the purpose of securing the chauffeur's release, a statement was made; if a statement was made concerning the ownership of the automobile—if I can establish the ownership of the automobile by the chauffeur in the presence of Mr. McArdle, and Mr. McArdle either said something or remained silent, I think it is very pertinent to the issue.

30 The Court: Well, you have already got the statement Mr. McArdle said it was his machine; now, you are asking the statement that this driver made in the presence of the officer, how is that competent; suppose he gave a statement that was untrue as to the accident, it would not bind him. No, I cannot permit that.

Mr. Warren: All right, Sir.

40 Q. Do you know what the number of the ma-

Frank J. Lynch, direct.

chine was? A. I have that in my hat, on a slip of paper there

The Court: You may go and get it.

A. On the brown piece of paper. (Hat handed to the witness.)

10

Mr. Walscheid: One moment; might I interrogate this witness, your Honor?

The Court: Yes, sir.

By Mr. Walscheid:

Q. Did you see this machine? A. No, sir; I did not.

Q. You did not? A. No, sir.

Q. You did not take this number from the machine yourself, did you? A. No, sir; I took it from the card of the chauffeur.

20

Mr. Walscheid: I object to his giving the number which he took from the card of the chauffeur as being the number of the machine which he did not see.

The Court: Isn't that point well taken?

Mr. Warren: I do not think so, Sir; this happened immediately after the accident; the chauffeur produces his car, showing his authority to drive, his own personal driver's license card and the license card of the automobile which he was driving; Mr. McArdle was there at the time, and I think it is proper to prove what was on this card.

30

The Court: You have not shown that Mr. McArdle saw the card so far.

By Mr. Warren:

Q. Was Mr. McArdle present when Mr. Dentz produced his license card? A. I couldn't say that.

40

Frank J. Lynch, cross.

Q. What license cards did the chauffeur produce?

(Objected to; objection sustained.)

10 Q. Did Mr. McArdle arrive there by himself or did he arrive with somebody else at the station?

Mr. Walscheid: I object to that as immaterial, irrelevant and incompetent.

The Court: All right; you may answer that.

Mr. Walscheid: Objection.

A. He came there himself.

Q. Was that before or after Mr. Dentz got there? A. After.

20 Q. Had you taken any statement from Mr. Dentz before Mr. McArdle got there?

Mr. Walscheid: I object to that as immaterial, irrelevant and incompetent.

The Court: Objection sustained.

Mr. Warren: That is all.

The Court: Mr. Dentz is not a party to this suit as it stands now?

30 Mr. Warren: He is not a party, but he is a defendant.

Mr. Walscheid: He is not a party to this suit at this time.

Mr. Warren: That is all.

Cross examination by Mr. Walscheid:

Q. Officer, what hour did you go on duty that night? A. Five P. M.

Q. How long did you remain on duty? A. To 11.45.

40 Q. During all of that time, you were at the desk, I imagine? A. Yes, sir.

Frank J. Lynch, cross.

Q. This man Dentz was brought in, wasn't he? A. By a police officer; yes, sir.

Q. By a police officer? A. Yes, sir.

Q. And brought before you? A. Yes, sir.

Q. And you committed him, didn't you, or held him? A. Yes, sir. 10

Q. You held him in the station house? A. Yes, sir.

Q. Locked him up, did you? A. No, sir.

Q. What hour did Dentz come in? A. I am not sure, around six o'clock or a little after six.

Q. How much later than that did Mr. McArdle come in? A. About an hour; I would say.

Q. About seven o'clock? A. Yes, sir.

Q. Then, you say that you and Mr. McArdle had a conversation? A. Only in regard to the accident; he wanted to know what was the matter and I told him. 20

Q. He asked you about the accident, didn't he? A. Yes, sir.

Q. He asked information from you? A. Yes, sir; what the trouble was, and I told him.

Q. Why this man was arrested? A. Yes, sir.

Q. Then he told you that this man was his chauffeur? A. Yes, sir. 30

Q. And he told you that this man was in the habit of driving the machine— A. No, he didn't say that; he said he was his chauffeur.

Q. He didn't go out and look for any machine? A. Not while I was there; no, sir.

Q. There was no automobile there? A. No, I couldn't say.

Q. Upon the police premises? A. On the police premises?

Q. There was no car there? A. That I couldn't say. 40

Frank J. Lynch, redirect.

Q. You don't know that? A. That I don't know; no, sir.

Q. Now, what did you say Mr. McArdle said about the machine, about the automobile? A. It was his auto.

10 Q. What was his auto? A. The automobile that Dentz—

Q. Was driving? A. Was driving.

Q. In other words, he told you that Dentz was his chauffeur and that Dentz was in the habit of driving his auto? A. He didn't say that; he said Dentz was his chauffeur.

Q. Yes? A. And he was driving for him.

Q. And he was driving for him? A. Yes.

20 Q. That is what he said; he didn't tell you that the machine which had been in that accident was his car, did he? A. He said it was his machine.

Q. What was his machine? A. That Dentz was driving at the time of the accident.

Q. At the time of the accident? A. Yes, sir.

Q. Did he say, at the time of the accident? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

30 Q. Officer, will you please stay here half an hour more? A. Yes, sir.

Mr. Walscheid: I am through with the witness.

Mr. Warren: I just want to ask Mr. Lynch a couple more questions.

The Court: All right.

Redirect examination by Mr. Warren:

Q. Was Mr. Dentz paroled or bailed that night?

40 A. He was paroled in care of Judge Sullivan of High Court.

Argument.

Q. In care of Judge Sullivan? A. In care of Judge Sullivan.

Mr. Walscheid: You mean Dentz?

Mr. Warren: Yes.

Q. In whose custody was he paroled?

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Mr. Walscheid: Objected to as immaterial, irrelevant and incompetent.

The Court: How is that competent?

Mr. Warren: Interest of the defendant in this case in the accident.

The Court: No, I do not think so; I sustain your objection.

Mr. Warren: Exception. (To the witness) All right, Mr. Lynch.

(Witness excused.)

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Mr. Warren: Mr. Dunham, the engineer, was to be here.

Mr. Walscheid: He did not see the accident, did he?

Mr. Warren: No, sir; but he testifies on occasions, and we are endeavoring to subpoena the defendant—

Mr. Walscheid: I object to that statement.

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The Court: No, no; if you had subpoenaed a person and he does not appear, then it is proper to make the statement to the Court.

Mr. Warren: I will withdraw it.

Mr. Walscheid: I object to that statement and ask the Court to direct a mistrial of this case because of a statement prejudicial to the interests of the defendant.

The Court: No, I will refuse that.

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Argument.

Mr. Walscheid: Objection, if your Honor please.

The Court: Yes, take your objection.

Mr. Warren: The defendant, however, has promised to be here at eleven o'clock.

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Mr. Walscheid: I object to that statement.

The Court: No, I won't take any notice of that.

Mr. Walscheid: —and again ask your Honor for a mistrial.

The Court: No.

Mr. Walscheid: I pray an objection.

The Court: Take your objection. Now, call your next.

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Mr. Warren: Those are my two witnesses that I desire to produce; they are not here; if your Honor insists, I will have to close my case without them.

The Court: What do you want to prove by your engineer?

Mr. Warren: I want to prove by the engineer the location, the angle of the streets, whether or not there are cross-walks there, width of the street.

The Court: Is there any objection?

30

Mr. Walscheid: I will tender you two maps to prove that for all except the cross-walks.

The Court: Perhaps counsel can agree as to the location on the maps that you have put in.

Mr. Warren: This map that Mr. Walscheid produces, the survey, is all right so far as it goes.

Mr. Walscheid: Excepting that the arrow is wrong.

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Mr. Warren: I wanted my engineer to

Argument.

locate the driveway concerning which there has been testimony.

The Court: You might use that map and put your engineer on so far as that is concerned to prove the location; I see no objection to that. 10

Mr. Walscheid: I am offering both together; I want both maps so as to show the general location.

The Court: Well, gentlemen—that is an official map?

Mr. Warren: I will object to this because it is not.

The Court: You do not have to put it in.

Mr. Walscheid: I tender the two together; if you want to put in you— 20

The Court: No, counsel does not accept it.

Mr. Warren: I will have to ask leave to put on Mr. Dunham when he arrives.

The Court: With the exception of Mr. Dunham, the case of the plaintiff is closed.

Mr. Walscheid: And his testimony is limited to the—

The Court: Limited entire to the location of the particular spot where the accident occurred. 30

Mr. Warren: Certainly.

The Court: That is all.

(Plaintiff Rests.)

Mr. Walscheid: Now, then, I desire to move a non-suit on the ground that there has been no negligence shown in the driving or management of this car, nor has there been any negligence whatsoever shown in the happening of this accident so far as the operation of this car is con- 40

Argument.

cerned; in fact, nothing has been shown excepting that an accident happened. It is incumbent upon the plaintiff to show the particular negligence to which that accident is ascribed before he can recover.

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The Court: I will hear the other side. What is there in this case that I can leave it to the jury that the defendant was liable.

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Mr. Warren: In the first place, the defendant in this case, or the chauffeur in this case, according to the testimony, was on the wrong side of the street; he was proceeding towards Bayonne; he had passed a trolley car going south on the east side, which took him over to the wrong side of the street; he was across the north bound track at the time of or immediately after the accident. The little girl testified that she was struck and fell; she was in the north bound track, which, of course, is on the east side of Ocean Avenue. Besides being on the wrong side of the street, the chauffeur had a clear view, so far as the testimony is concerned, because the view could be had down as far as Dr. Decker's house, at least half a block away, according to the testimony; and he should have so controlled his car as to have prevented an accident, particularly in view of the fact that these children were young children and were crossing from one side of the street to another at a corner; it is the duty of the chauffeur to control his car so that under all ordinary circumstances he will be able to prevent an accident; it is his duty also to drive upon the right hand side of the street.

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Argument.

The Court: Let me ask, what was his duty when he passed a trolley car, to go on which side of the car?

Mr. Warren: To go on the right side of the car.

The Court: That was his duty, had he passed the car? 10

Mr. Warren: Yes, sir; in any case, when he went—you mean in passing the car?

The Court: Yes?

Mr. Warren: I think it was his duty to go on the right hand side.

The Court: What does the statute say in reference to that?

Mr. Warren: Wherever passing—in passing any vehicle you must pass upon the right of the vehicle; you must keep to the right of the center of the road. 20

The Court: What is the answer to that?

Mr. Walscheid: Overtaking a vehicle, you mean?

Mr. Warren: Except that where it is impossible, he may pass to the left.

Mr. Walscheid: In overtaking a vehicle, you pass to the left.

Mr. Warren: Overtaking—

The Court: What was his duty and did the statute require him to pass to the left of that vehicle. (To the Clerk.) Get the Laws of 1915. 30

Mr. Walscheid: If your Honor pleases, that happened a block below Ege Street, where he turned.

Mr. Warren: Just exactly what I was going to call to your Honor's attention: It seems to me that it is immaterial whether he passed on the right or the left side of 40

Argument.

the car at the point that he did because he had plenty of opportunity to pull over, as he was required to do.

The Court: But you made the statement that he passed on the wrong side of the car.

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Mr. Warren: I said he passed on the east side of the car, which brought him on the wrong side of the street. I stated that to account for his presence on the wrong side of the street at the time of the accident or immediately succeeding. Of course, this is one of those cases where there are no actual eye witnesses that the plaintiff can produce as to the actual happening of the accident. I mean who saw the thing in its full light exactly as it happened, but we have shown that he was at a point between Virginia and Ege Avenue; in that one block, on the left hand side of the street, he had passed the car according to the testimony of our witnesses, and after he passed the car he should have immediately turned onto the right side of the street; the law obligates him so to do. Nevertheless, on the opposite of the street from which he was going that was the opposite side of Ege Avenue, we find the two children on the north bound car track, that is on the north side of the street. It seems to me that the testimony clearly makes out a *prima facie* case of negligent driving in that he was driving on the wrong side of the street and secondly, he did not have his car under such control that he could have prevented the accident, particularly in view of

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Argument.

the fact that these children were crossing the street at a crossing.

The Court: Did he have time to get on the other side of the street after he had passed this car before the accident occurred?

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Mr. Warren: The testimony is, Sir, that when the car stopped at Virginia Avenue, he immediately pulled out to the left and passed it; the trolley car stopped so that he had—he runs off—passed it while the car was stopping, and he had the whole field almost to get into the right side of the street again; you must remember this particular, the car, under the laws, for near side stops, so that he must have passed that from that near side, that is the near side of Virginia Avenue, so that he was ahead of the car from Virginia Avenue for that entire block.

20

The Court: There is no evidence that the car stopped at Virginia Avenue.

Mr. Warren: Yes, sir; Mr. Dunkanson testified that the car stopped at Virginia Avenue; it was at that point that this car drove around to the left side of the trolley car.

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Mr. Walscheid: Now, if your Honor please, on the question, first, of this driving of the automobile around the car; there is absolutely no evidence in this case as to where that machine was being driven after it passed that trolley car; the man who testified to that fact was sitting in the rear seat of a south bound car and that for some blocks that car, that motor car,

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Argument.

10 had been traveling alongside of the trolley car at a rate of eight miles per hour, eight to ten miles per hour, traveling on the left of the trolley car; as the trolley car reached Virginia Avenue, which was one block to the north of Ege, or between Virginia Avenue and Forrest, Forrest being two blocks north of Ege, the motor car passed out to the left and goes around the trolley car, and at that point the witness testifies he lost sight of the car. This witness was sitting in that car, not paying any attention to it; and he lost sight of it. Then he gets off at Ege Avenue, and as he gets off at Ege Avenue, he sees the

20 motor car ahead of him in the center of the street, where it at all times had a right to be, with its front wheels—sharply turned towards the north bound track, straddling over the center line, after the accident, Sir; it is no evidence as to how it got there. The inference is that it got into that position by being suddenly swung around as if he was trying to avoid something; that is in their case, this Mr.

30 Dunkanson testifies that, that it was suddenly swung around with its front wheels on the north bound track, perhaps across the center line, but the body of the motor car still on the center line. Now, supposing that that is so, can it be contended that the fact that this man drove around that car, around that trolley car, as Dunkanson testifies, that that is the primary cause of this accident. I say it is not a

40 cause at all; it is merely one of the con-

Argument.

ditions, one of the circumstances surrounding that particular accident. The fact that he went around that car did not cause the accident, had nothing to do with the accident; the fact that the automobile was found straddled across those tracks after the accident in that manner was not the cause of the accident, nor has your Honor a right to draw the inference from that that the accident occurred in a particular way. There is only one witness in this case who testifies to the occurrence of the accident, and that is that little girl, and her testimony is that she started across the street slantingly, veering up from the cross-walk; that when she was struck she reached the north bound track; she saw a south bound trolley car approaching her, she was frightened, her little sister was frightened, and they both started to run back; and that after they had started to run back to the same side of the street she started from something struck her. There isn't any evidence in this case that this automobile struck anybody, excepting the fact of the result—something evidently struck this dead child—and I think it is a fair inference that the child was struck by this automobile.

The Court: Yes, no use of arguing that she was not.

Mr. Walscheid: But the question is really under what circumstances. There is not a scintilla of evidence to show that this man was doing any wrong whatsoever, and there is this substantial point,

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Argument.

10 Sir, in this case, if the story of this little girl is true, that she and her sister crossed this road at a slant, veering off from that corner that they left in a slant, then they were off the crossing; and then, under the Act of 1915, which was only in force for that year, they assumed the risk of crossing at that point, and that independent of their age because after the—

The Court: What was the date of this accident?

20 Mr. Walscheid. In May, 1915. Your Honor will remember that in 1915 this act was passed, in which it states that a person assumed the risks when crossing a street at any other point than a crossing, no restriction as to the age, that was the law for that year, and during that year in this County a case was tried before Judge Swayze, and Judge Swayze ruled that the party did assume the risk, and that went to the Court of Errors and it was sustained. I think you will find it in Section 2.

Mr. Warren: Section 4.

30 Mr. Walscheid: Is it? You know what I mean.

Mr. Warren: Where is the report of the Court of Errors?

Mr. Walscheid: I haven't the citation now; I can get it for you, something about assuming the risks of crossing streets. Will Your Honor look at that—it is in the 97th Atlantic, 781.

40 The Court: That is by Judge Swayze, as I recall it, holding that the owner of the machine is not liable.

Frederick Dunham, direct.

Mr. Walscheid: Under these circumstances at all, that the statute had, under those circumstances, imposed a rule of conduct which was binding upon everybody.

The Court: Get the 97th Atlantic please. 10

Mr. Walscheid: Now, on that point that case will decide that. As to another point, if Mr. Warren can point out anything which this man did which caused the accident, I say he is entitled to go to the Jury, but the only thing that he can show is that an accident happened; that is my view of the case.

Mr. Warren: If your Honor please, would you mind reading under Section 3, Paragraphs 10 and 11; I have checked them? 20

The Court: Yes. Has your engineer come in?

Mr. Warren: Yes, sir; he has.

The Court: I will let you put it in now, I will let you get your whole case in.

FREDERICK DUNHAM, sworn. 30

Direct examination by Mr. Warren:

Q. Mr. Dunham, what is your profession? A. Civil Engineer.

Q. How long have you been a civil engineer? A. For the past thirty years.

Q. And in that time, what work in connection with surveying and laying out streets and roads have you had? A. Well, I have been engineer of the Hudson Boulevard in Hudson County for 40

Frederick Dunham, cross.

eight years; at the present time, I am employed by the City of Jersey City.

Q. Did you at my request make a survey of the location of the corner of Ege and Ocean Avenues? A. I did.

10 Q. And this is the result of your survey (referring to drawing)? A. Yes.

Q. Calling your attention to the place marked "driveway" on the east side of Ocean Avenue, and Dr. Mutard's name alongside, would that north side of the driveway be to the north or the south of the south curblin of Ege Avenue, if extended? A. The north side of the driveway is exactly on a line with the south curb extended; the driveway itself is directly opposite and even with the southerly sidewalk of Ege Avenue.

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Q. By that you mean that the sidewalk, if produced and extended across the street, would take in the driveway? A. Yes.

Q. The limits of the driveway? A. Yes, that exactly.

Q. Where it touches the curb? A. Yes, sir; right at the curb.

Mr. Warren: That is all.

30

Cross examination by Mr. Walscheid:

Q. That is so provided you run out the cross-walk at the angle at which Ege Avenue runs into Ocean Avenue? A. Ege Avenue is not exactly square with Ocean Avenue.

Q. But if you run the cross-walk out at right angles to Ocean Avenue, then the cross-walk comes to the north of the driveway, doesn't it? A. There is no cross-walk there.

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Q. If it were laid? A. It if were laid as you

Frederick Dunham, redirect.

stated, it would come north; that is; if it were laid at right angles.

Q. If it were laid at right angles? A. If it was laid on a continuation of the sidewalk, it would exactly strike the driveway.

Q. You have considerable experience in municipal engineering, haven't you? A. Yes. 10

Q. And you know that where streets run into large main arteries, such as this, at an angle, that the cross-walks are always laid at right angles to the large main artery? A. That is not so.

Mr. Warren: Objected to on the ground that there is no cross-walk here, according to his testimony.

Mr. Walscheid: All right; that is all. 20
Not by way of cross-examination—

The Court: Making him your witness?

Mr. Walscheid: Yes, with the permission of the Court.

The Court: No, close the case as it stands; the witness may remain and you may call him afterwards.

Mr. Warren: Just one question.

Redirect examination by Mr. Warren: 30

Q. Are there crosswalks along Ocean Avenue there, Mr. Dunham, or not? A. No crosswalk.

By the Court:

Q. So that there are no cross-walks? A. No, sir.

By Mr. Warren:

Q. There are no cross-walks along Ocean Avenue, around that point, Cartaret or Ege Avenue, are there? A. None at all, as I remember. 40

Argument.

By the Court:

10 Q. How about the other side of Ege Avenue, where the hat store was, on that side, on the opposite side of that driveway? A. There is none crossing Ocean Avenue in that neighborhood that I can find.

Q. Was there any there in 1915? A. Well, that I could not say, but as I recall it there has been no changes in conditions there for some years.

Mr. Walscheid: I ask that the latter part of the answer be stricken out; he said he could not say.

20 Mr. Warren: I think it was responsive; he testified to his recollection.

The Court: I will let that stand.

Mr. Warren: I will offer this in evidence.

Mr. Walscheid: No objection.

(Exhibit marked Exhibit P-2.)

(Witness excused.)

30 Mr. Walscheid: I might include that in my objection, the statute as it existed then and as I believe it still exists, the mere necessity of laying the flagging as at a cross-walk or a crossing is not essential to make it a cross-walk; in other words, the point where a street intersection is, at the usual point of crossing, that is the cross-walk, whether there is an actual stone cross-walk laid there or not.

40 The Court; Now, Judge Warren, how can I leave that to the Jury under the strength of that opinion of Judge Swayze?

Argument.

Mr. Warren: Yes; can your Honor say that this child was not on a cross-walk?

The Court: There is no evidence that she was.

Mr. Warren: I direct your Honor's attention to this, which is now in evidence; this is the corner from which these children started; that is the testimony of the girl who was in court, that she was running on a slant, she was between the automobile and the trolley when she got up; her sister according to the testimony of Boyd, was taken out from underneath the automobile; the testimony of Boyd and Dunkanson is that the front of the automobile was directly in front of this driveway—

The Court: Yes.

Mr. Warren: So that you can as easily say, and perhaps more easily say that the child was here in line with the sidewalk of Ege Avenue, if produced, was on a cross-walk, if such a thing existed; but it did not exist, but was on a crossing, as you can safely say it was not. There are two sections—two paragraphs there—it says, that any place where the houses are on an average of less than a hundred feet apart—and so on. The testimony is that the buildings went one right after another there on Ocean Avenue, so that this child, according to that, had the right of way, under the first section of that first paragraph of Part IV, had the right of way at a street crossing. Now, certainly that was a street crossing. Now, the second paragraph—

Argument.

The Court: Which way do you understand that the automobile was going?

10 Mr. Warren: The automobile was coming this way (indicating); it was going towards the south, that is all of the testimony so far, and went up in front of this driveway in this track, across this track. The second section is that a person crossing a street at a point other than a cross-walk—there is no cross-walk there—

The Court: Put yourself in one position or the other, that there was no cross-walk or that there was a cross-walk. Now, which do you stand on?

20 Mr. Warren: I say that she was where she was protected by the first section of the act, and that was at a street crossing; the first section of the act does not say anything of the cross-walk.

The Court: What is the next section?

Mr. Warren: The next section is that any person crossing a street at any point other than a crossing or a cross-walk does so at his own risk.

30 Mr. Walscheid: You will find a definition there of what a crossing is and a cross-walk is; you will find that they are identical—

Mr. Warren: In this act?

Mr. Walscheid: As I remember it.

Mr. Warren: Now, let's see.

Mr. Walscheid: I haven't looked at the act in a long while.

40 Mr. Warren: The word "crossing" includes all duly indicated crossings marked

Argument.

by a pavement at the intersection of streets.

Mr. Walscheid: The most direct route from curb to curb, which is a point exactly as this.

Mr. Warren: There is no intersection of the east side of Ocean Avenue by Ege Avenue; Ege Avenue stops here; there is no indicated crossing there nor is there any intersection of that street, of that space there, on that side of the street. 10

The Court: Then, the child would not have any right of way, would she, if there was no crossing, no sidewalk?

Mr. Warren: If there was no crossing, no intersection, there, it does not come under that act; she would be left and the defendant would be left just as though the act had never been passed. Of course, that can only apply in case they come within the wording of the act. 20

The Court: Now, supposing the man crossed past the car on the wrong side of the car; is there anything in this case that I can leave to the jury to say that the passing of the car on the wrong side of that road was the proximate cause of this injury, of this death? 30

Mr. Warren: The passing of the car? No, sir.

The Court: What is there that I can say to this jury—suppose the defendant stops when you stop now, what is there that I can point out to the jury and say that is the cause of the accident that holds the defendant liable in this case? 40

Argument.

Mr. Warren: The driving of the car on the wrong side of the street.

The Court: There is no evidence as to that that that was the proximate cause of the accident.

10 Mr. Warren: The position of the car after the accident.

The Court: Let me ask you another question right there. Is there any evidence as to what part of the road the accident actually occurred on, the condition of the car and the condition of the people after the accident? There is no indications of where the accident occurred; the location of the car afterwards is only an approximation of the location of the car at the time of the accident, because the car was moving. Now, you saw this child was underneath the car when the car stopped. Now, where did the accident occur; that is the point we are working at? And, then, what have you to show negligence on the part of somebody in order to recover? I cannot say to the defendant, "You have got to pay," if you have not shown negligence.

20

30

Mr. Warren: But the testimony of that child, is, if your Honor please, that at the time of the crossing, this little sister of hers, who was killed, was ahead of her, and she was nearer north—she was farther to the north—

The Court: She started to run back.

Mr. Warren: She said that she had stopped—

40 The Court: She said she started to run

Argument.

back, and she never saw her sister after that.

Mr. Warren: If your Honor please, she was confused at that time, I think your Honor will recall, and she then testified in the examination of Mr. Walscheid and myself that she stopped when she saw the car, when she saw the car she ran back; she meant that she kept on running to the curb; if you turn back to her testimony, you may find that.

10

The Court: You may turn back to that because that is the only evidence that there is.

Mr. Walscheid: So far as this child is concerned, she distinctly testifies she does not know what struck her, but from her story where she was struck I cannot find what part of the road she was in, except that she was moving back to that curb she came from.

20

The Court: If you have any doubt about that testimony, I will let you have the stenographer turn back to that.

Mr. Warren: My recollection is as I have stated.

30

The Court: You may have the stenographer turn back; I dislike very much to take a case from the jury; you may turn back to that, if you think that will throw any light on it.

(Portions of testimony of Helen Ferris and Robert Dunkanson read to the Court and counsel by the stenographer.)

(It was suggested that Helen Ferris be recalled and examined as to portions of the testimony.)

40

Helen Ferris, direct.

The girl is here, let us find out just that one thing, as to where she was, as near as you can, when the accident occurred; don't go into anything else.

Mr. Warren: Yes, sir.

10

HELEN FERRIS, recalled.

Direct examination by Mr. Warren:

Q. Now, Helen, when you were crossing the street this day with Catherine, you said you saw a trolley car coming? A. Yes, sir.

Q. Now, speak so the jurors can hear you? A. Yes, sir.

20

Q. That was coming from where? A. Jersey City.

Q. Coming from Jersey City? A. Yes, sir.

Q. Are you sure, Helen?

Mr. Walscheid: Let her tell her story.

The Court: I am going to suggest to counsel to let her tell the story in her own way from the time the little girl called to her until she was struck.

30

Q. Just tell these gentlemen, Helen, what you did after the little girl called to you and Catherine, what happened?

By Mr. Walscheid:

Q. Only what you know, Helen, not what anybody else told you, understand, just what you saw? A. I went up to cross over to her and we got to the second two car tracks, and then we were knocked down.

40

The Court: You may ask her any other questions, if you want to.

Helen Ferris, cross.

Mr. Warren: That suffices, as far as I am concerned; Mr. Walscheid may be the one that wants to ask her some questions.

Cross examination by Mr. Walscheid:

Q. Helen, before you were knocked down, did you see the trolley car? A. Yes, sir. 10

Q. You and your little sister were right close together then, were you? A. No, I had hold of her coat in back.

Q. You had hold of her coat. And that trolley car was going towards Jersey City or coming from Jersey City? A. When I got up there was a Jersey City car in back of me.

Q. Oh, when you got up there was a Jersey City car in back of you. Now, before the accident happened, you saw a trolley car, did you? A. Yes. 20

Q. Where was that trolley car coming from, Helen? A. Coming from Jersey City.

Q. Coming from Jersey City? A. Yes, sir.

Q. Do you know where Cartaret Avenue is? A. Yes, sir.

Q. Was the car coming from Cartaret Avenue or was it coming from Virginia Avenue,—I mean the car before the accident, not the one that you saw after the accident? A. (No reply). 30

Q. Did you see two trolley cars that day? A. Yes, sir.

Q. And the first of those trolley cars, where did that come from, what direction? A. Well, one was coming from Bayonne and the other was coming from Jersey City.

Q. Now, which one of these two trolley cars did you see first? A. The one from Jersey City.

Q. The one from Jersey City? A. Yes, sir. 40

Helen Ferris, cross.

Q. Were you on the track of the Jersey City car? A. Yes, sir.

Q. You were on the track of the car coming from Jersey City? A. Yes, sir.

10 Q. And did you start to run from off that track? A. No, sir; not until I got up; then I runned.

Q. Until you got up? A. After I got hit.

Q. After you got hit. Well, yesterday, you said that you ran out to the track, and that then you saw the—that you had hold of your little sister's coat, and that while you were on that track you saw this car, and you were afraid of it, and you started to run back to the sidewalk from which you had come; do you remember saying that?

20 A. Yes, sir.

Q. Now, was that so or wasn't that so, of your own knowledge; now, just what is in your own mind, was that so or wasn't that so? Did you start to run back towards that side or didn't you? A. No, sir.

Q. Now, you say you didn't? A. I was going to run over to the other side.

30 Q. That is the main point you were going to; we know you wanted to go over to see the little girl, but you got upon the track in which the Jersey City car was? A. Yes, sir.

Q. What did you do; did you start to run back or what did you do? A. I stood still.

Q. Have you talked to anybody about this case since last night? A. No, sir.

Q. And about your testimony? A. No, only I was up at the corner to look for the cross-walks last night, and I didn't see none.

40 Q. You didn't see none; who went with you? A. My father and the Judge.

Helen Ferris, cross.

Q. And the Judge, and you talked about what you said yesterday, didn't you? A. Yesterday?

Q. Was anything said to you about what you said yesterday? A. No, sir.

Q. You say you did talk about what you said yesterday; tell us what was said? A. That was said yesterday? 10

Q. You say that last night you and your father and Judge Warren went to the corner and that you talked about what was said in Court here yesterday? A. I only told them that I went to slant across and I showed them where I started to go across.

Q. You told your father where you were when you started to go across? A. And my father went with me to the other side and I showed him the place where the girl was standing. 20

Q. Then you and your father went over that whole scene yesterday? A. Yes, sir.

Q. And Judge Warren went over it with you? A. Yes, sir.

Q. Did your father make any suggestions about where you were standing? Do you know what I mean by suggestions? A. No, sir.

Q. Well, say so. Did your father say anything about where you were standing? A. No, sir. 30

Q. Nothing at all? A. No, sir.

Q. And you got into the middle of this track coming from Jersey City? A. Yes, sir.

Q. And said that was where you were standing? A. Yes, sir.

Q. When you were struck? A. Yes, sir.

Q. Now, you were not standing when you were struck, you were running. A. I was running after. 40

Q. Were you running or standing—were you

Helen Ferris, cross.

running when you were struck or were you standing still? A. I was running.

Q. And your sister was running? A. Yes, sir.

Q. And you didn't see the automobile? A. No, sir.

10 By the Court:

Q. Which way were you running when you were struck? A. Running over towards her?

Q. Over towards the little girl? A. Yes, sir.

Q. Now, how far did you get before you were struck on this track where the car was coming from Jersey City—when you were running on towards the little girl, how far did you run? A. I was struck in the middle of the two tracks.

20 Q. Between the two tracks? A. The two tracks.

Q. You hadn't got to the other track yet? A. In the last two car tracks I was then.

Q. You were then on the last two car tracks? A. Yes, sir.

Q. When was it that you saw the other trolley car, you saw one—when did you see the other trolley car? A. When we were up.

Q. You didn't see it before or until after you got up? A. No, sir.

30 By Mr. Warren:

Q. How far away was this car coming from Jersey City when you saw it? A. I don't remember how far away it was then.

The Court: Anything further?

Mr. Warren: That is all.

Witness excused.

40 Mr. Walscheid: I would like to add this thought to what I have said to Your Honor, that this little girl ran across the street, and even though this automobile came up be-

Argument.

hind, that is no evidence of any negligence on the part of the driver; he had a right to drive down the center of the street and the evidence is that he swung his car around toward Mutard's as if in order to avoid an accident; now they are plainly under the obligation of the assumption of risk; there is no evidence that this car was across the center line of the street—the motor car—when the accident started; in fact, the evidence would be to the contrary, considering the place where he stopped because he swung around. 10

The Court: You cannot apply the rule of assumption of risk to a child five years old, can you? 20

Mr. Walscheid: Yes, sir; I can apply that to absolutely everybody under that statute, that is just what I am contending, and I will show you where Judge Swayze says that, if you have the section (reading portions of statute and case cited). That is the only thought that I desire to give to your Honor, that the age of this child would not affect the statutory regulation.

The Court: Now, is it clear in this case that the accident did not occur at or on a crosswalk where the crosswalk would be if one were put down there? 30

Mr. Walscheid: Yes, sir; that is clear in this case; the crosswalk, if there is one, is what runs between these two streets, and according to the little girl's testimony, she ran across the street on a slant. The motor car was swung, according to Dunkanson's testimony, between the house and the driveway it was straddling these tracks, with its 40

Argument.

10

front towards Mutard's driveway, that is the best that they can do. Now, evidently, these children had run across this way; the car was coming down, it attempted to avoid the collision, and the collision evidently happened, not on this crosswalk but away from it, in that manner and it swung in in that manner; now, what evidence is there that there is any negligence?

Mr. Warren: You are dodging the question.

The Court: The question is, really, is there any evidence that the child was not on a cross-walk?

20

Mr. Walscheid: Why, the testimony that she left this corner to go along that course, from that side of the street to the other side of the street where that little girl friend of theirs stood, is absolute testimony that she must have gotten off the shortest line across the street, from this side of the street to the other side of the street, which is what constitutes a cross-walk, that is the shortest line; I do not care how they go, if they are going across, under that statute, they must have gone across on the shortest line to be within the law, but according to the little girl's testimony, she must have gone across something like that.

30

The Court: What do you say, Judge Warren, on that one point?

40

Mr. Warren: It seems to me that if your Honor will look at this (indicating p. 2) the distance from there to there, being to that line of that sidewalk, if it was carried out, is the shortest point between the two points.

Argument.

Mr. Walscheid: Take a rule, set it at right angles, and you cannot get away from it; set it on like that.

The Court: I will hear what Judge Warren has to say.

Mr. Warren: The most direct route, it says, from curb to curb. Now, the most direct route is the most direct convenient route, the natural one, a person walking down this street, going over to here, would walk on a line, would go over like that (illustrating). Now, they must have been within this line, in front of this driveway or to the left of that, from the testimony of our witnesses, as this is where the girl was at the time that she was picked up, so that they were on this car track directly in front of this driveway. There is no crossing indicated, so that as this statute says, the most direct route from curb to curb at the intersection of streets, the most direct route would be over toward that driveway. 10
20

The Court: The most direct route would be the shortest route, would it not?

Mr. Warren: It might and it might not; suppose, if your Honor please, that there was a great big telegraph pole here— 30

Mr. Walscheid: But it is not.

Mr. Warren: And the shortest route would be from her directly to that telegraph pole, you would not expect a man to go over here and go up to the curb and go around it—

Mr. Walscheid: You do not have to indicate one. 40

Mr. Warren: And another thing I want

Argument.

10 to call to your Honor's attention is this, that is the most direct route from curb to curb at the intersection of streets; now, that is a street intersection and this, of course, on this side, there isn't any street intersection there.

The Court: No.

Mr. Warren: Now, if there is no street intersection there, does the statute apply to that?

The Court: It appears to from Judge Swayze's opinion, that would seem to be his holding.

20 Mr. Warren: Isn't it a question of fact, if your Honor please, as to what is the most direct route under the circumstances.

The Court: I do not see how it can be left to the jury to say; the Court would like to shift the responsibility and throw it on to the jury if he could, but I do not see how I can; and it seems to me as the evidence stands now that there is nothing to show that child was on the sidewalk or on the cross-walk; in other words, she said she went diagonally to a spot in the middle of the block. Now, if her story is true, she could not have been on this sidewalk, where the sidewalk would be.

30 Mr. Warren: Suppose she did go diagonally; suppose she was on this corner, she went over like this (illustrating), she would be—

Mr. Walscheid: Taking things into this case that are not yet here; you are supposing.

40 Mr. Warren: Her testimony is that she went from this corner like this on a slant.

Argument.

Now, the degree of that slant is evidenced by the position of the children after the accident and the position of the girl with whom she was running, that is the little girl who was killed, who was under the car in front of Dr. Mutard's driveway. 10
 Now, if your Honor please, what is the width of the crossing, just how wide should it be, where there is no crossing indicated nor marked; is it a tapeline, is it a foot, eighteen inches or two feet; is it the width of one person or is it a space for two or three people to walk, according to the number crossing at the time that can walk across?

The Court: I do not know. 20

Mr. Walscheid: If your Honor please, I will answer that question.

Mr. Warren: Just pardon me a few moments.

The Court: Yes, Judge Warren, one at a time.

Mr. Warren: Now, the point I make is this, that while that may be from here to here, while that is without question the shortest route, there is a question as to 30
 the width of that shortest route for people who are passing at this particular place. Now, can your Honor say what the width of that cross-walk is where there is none indicated?

Mr. Walscheid: Now, I will indicate to your Honor where I think the limit of the cross-walk is; assuming that this is drawn to scale, that would be the absolute limitation of it. In other words, I am 40
 giving the full benefit of extending this

Argument.

10 sidewalk to the curb line; I am then pursuing the statute and drawing it at right angles to the street crossed. What he would do is to take that line straight across. Why, the very fact that we are arguing this question really indicates where your Honor really stands on that matter.

Mr. Warren: It may indicate where your Honor really stands, but you must remember where I really stand; I am representing my clients here, it is not a joke, it is a serious thing, somebody has been killed, the Statute of Limitations has passed now and a new suit could not be instituted; your Honor has before you as to what a crossing means, whether or not it was on a crossing. If that street was produced, the intersection would be here, it would not be here; the intersection would be there, and the sidewalk would be over on the other side of the driveway.

Mr. Walscheid: The trouble is—

Mr. Warren: Pardon me.

The Court: One at a time.

30 Mr. Warren: Furthermore, the natural thing is when a person is hit is to be dragged or to be moved; now, this child was underneath the automobile, the front of that automobile was here and she was underneath it, and she must have been carried—

The Court: That is what has been bothering me.

40 Mr. Warren: She must have been carried in order to reach that point; she did not get to that point under the automobile here; the automobile either passed over

Frank McArdle, direct.

her, leaving her underneath, or it dragged her. In either case, she must have been upon a crossing, if your Honor holds that there is any crossing where there is no intersection of crossing streets.

Mr. Walscheid: If your Honor please, just as soon as you do that, you are going to draw inferences on matters which are not before you in this case. 10

The Court: I have got to see in this case before I can grant your motion that that child is not on the cross-walk, and I have got to leave that to the jury; I do not see that there is any evidence that she was not on that cross-walk; it is a question for the jury, I think, to say where she was. 20

Mr. Walscheid: If your Honor please, just this thought, that it is incumbent upon the plaintiff, first, to prove their case, to show that she was on the cross-walk in crossing that street under that statute, as a matter of law.

The Court: I am going to leave that to the jury to say whether they have established that fact or not.

Mr. Walscheid: I pray an objection. 30

The Court: You may make your objection; the motion is refused.

FRANK McARDLE, sworn.

Direct examination by Mr. Walscheid:

Q. Mr. McArdle, you are the defendant in this case? A. I believe so.

Q. On May 24, 1915, were you the owner of an automobile? A. Yes.

Q. What kind of a car was it? A. A Packard. 40

Frank McArdle, direct.

Q. Do you or do you not know its license number of that year? A. I do not know it.

Q. At that time, on that day, did you employ anybody as a chauffeur; was anybody in your employ as a chauffeur? A. Yes, sir.

10 Q. What was his name? A. Harold Dentz.

Q. Dentz? A. Dentz.

Q. Do you, of your own knowledge, know that this automobile of yours was in an accident on that day? A. No.

Q. Do you, of your own knowledge, know whether that automobile was at the corner of Ege and Ocean Avenues that day? A. No.

Q. In Jersey City? A. No.

20 Q. Did you instruct your chauffeur to drive to Ege Avenue—

Mr. Warren: Objected to.

Q. —and Ocean Avenue that day?

Mr. Warren: Objected to.

The Court: Why?

Mr. Warren: On the ground that it makes no difference as to whether he instructed the man on that very day to go to that very place or not.

30 The Court: I think it does.

Mr. Warren: Will your Honor allow my objection?

The Court: Yes, sir.

A. Did I instruct him on that day?

Q. Yes. A. Why —

Q. Yes or no. A. No.

Q. Did you have any business for that particular motor car at Ege and Ocean Avenues on that day? A. No.

40 Q. Did you know a Miss Scott? A. No.

Q. Do you know a Miss Scott? A. No.

Frank McArdle, direct.

- Q. Did you know a Miss Edwards? A. No.
- Q. Do you know a Miss Edwards? A. No.
- Q. On that day, do you know whether Dentz had been driving that car for you and in your business or for your purpose? A. No, I do not know. 10
- Q. Well, had he been using the car for you or for your family that day? A. Well, he could have without me knowing it.
- Q. Without you knowing it? A. Surely.
- Q. Where do you live? A. 137 Mercer Street.
- Q. 137 Mercer Street; who lives there with you? A. My mother and my sisters.
- Q. Where is your garage? A. Why, it is in the rear of 167 Clinton Avenue.
- Q. Where is that? A. On Oxford Avenue. 20
- Q. On Oxford Avenue, near the Hudson Boulevard? A. Yes.
- Q. Where is your place of business? A. 19 Newark Avenue.
- Q. 19 Newark Avenue. Was Dentz driving you that day? A. No.
- Q. He was not driving you that day. If Dentz on the afternoon of May 24, 1915, drove your motor car from your home in the afternoon at about five o'clock to Mercer Street and about the Public Library Building there,—that is on Mercer Street, is it not? A. Yes. 30
- Q. (Continuing): —for the purpose of picking up Miss Scott and Miss Edwards, and for the purpose of driving those two ladies home; and if he did meet those two ladies and took them into his car, and drove with them on that day onto Ocean Avenue and south along Ocean Avenue to Ege Street at which point, with those two persons in the automobile, he had an accident, 40

Frank McArdle, direct.

was he, if he did that, at that time upon any mission or any business of yours?

10 Mr. Warren: Just a moment; I object, if your Honor please, on the ground that it not only calls for a conclusion but it is assuming a number of things which are not in this case.

The Court: I will allow that question; if it is not—if that does not appear, it does not affect you at all.

Mr. Warren: May I ask my objection to be entered?

The Court: Yes, he cannot put the case all in at once. (To the witness): You may answer.

20 Q. Do you understand the question? A. I think I do; of course, I would assume the only business he would be on for me at that time—

Mr. Warren: Object to your assumption.

The Court (to the witness): Can you answer it or not? If you can, answer it.

Q. Was he on your business with those girls, or wasn't he? A. With those girls, no.

30 Q. Where is 137 Mercer Street, between what streets? A. Varick and Jersey Avenue.

Q. That is in lower Jersey City, isn't it? A. Yes, sir.

Q. Do you know where Dentz lived at that time? A. Not exactly, about.

Q. About where did he live? A. Why, somewhere down beyond Ege Avenue, I guess.

Q. You guess; well, then, if you do not know— A. I do not know.

40 Q. —say so. Where is the garage in relation

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to your residence; describe the shortest route from your residence to your garage?

Mr. Warren: I object to the question, if your Honor please, as to the shortest route to the garage.

10

Mr. Walscheid: I am laying the foundation, sir.

The Court: I will allow the question; if the witness knows, he can tell.

Mr. Warren: I pray an objection.

A. Well, the shortest way would be to turn right around Mercer Street and go up Mercer Street to Bergen Avenue, and through Bergen Avenue straight down to Oxford.

Q. From Bergen Avenue, where did you turn off on Bergen Avenue? A. Why, you would turn to the left.

20

Q. Turn left? A. South.

Q. Turn south, and how far south do you go? A. To Oxford Avenue.

Q. How far is that, how many blocks; two or three? A. Oh, more than that.

Q. How far is it? A. I do not know; I would have to count them.

Q. Well, see whether you can count them? A. Why, I will say it is more than a dozen blocks.

30

Q. A dozen blocks? A. More than a dozen blocks.

Q. Then you turn west again to the Hudson Boulevard? A. No, you do not cross the Boulevard.

Q. Between what streets is the garage? A. Between Bergen Avenue and the Boulevard.

Q. What are the other two streets to make up the block? A. Making up what block?

40

Q. You have only given me two sides of the

Frank McArdle, direct.

block within which the garage is located? A. The Boulevard and Bergen Avenue.

Q. That is the east and the west sides? A. Yes.

Q. Now, what is the south side of that square?

A. The south would be Lexington, and Clinton.

10 Q. And the north would be Clinton? A. Yes, sir.

Q. That is, it is in that square bounded by Lexington Avenue, Hudson Boulevard, Clinton and Bergen Avenue; that is right? A. Yes, sir.

Q. Now, do you know where Ege Avenue is or don't you know?

The Court: If this witness does not, let him say so, that he does not know.

20 Q. If you know; say so; if you don't say so. A. I know about where it is.

Q. You know generally? A. I know generally where it is.

Q. That is all I wanted to know. I have here a diagram of Jersey City, Hoboken and Bayonne (referring to paper); can you locate upon that your place of business?

Mr. Warren: Is that the one you showed me before?

30 Mr. Walscheid: Yes.

Mr. Warren: I object to that diagram, because it is not accurate.

The Court: It is not competent unless it is going to be offered.

Mr. Walscheid: I intend to—

The Court: Unless it is offered, it should not be used.

40 Mr. Walscheid: I intend to offer this as a diagram of Jersey City, not as a map; I intend to offer this as a diagram, just

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as if I drew it here to show the general locations.

The Court: All right, if that is what your object is.

Mr. Walscheid: Yes, sir.

Mr. Warren: May I enter my objection? 10

Mr. Walscheid: I do not intend to have the measurements shown.

The Court: Why?

Mr. Walscheid: Why, upon that diagram he can locate his residence.

Mr. Warren: My objection is that I only looked at one particular point, but it is not correct as to the streets as to this point.

The Court: He may answer that question, as to whether he can locate his residence upon that diagram. 20

A. Between Jersey Avenue and Varick (indicating).

Q. Would you put a cross at the point where you say your residence would be located approximately; make it a heavy cross; is it where that little round dot is? A. Why, it is on that side of the street.

Q. On that side? A. It is where I make that cross. 30

Q. I am going to make that cross heavier so I can find it. Now, can you give us upon that diagram the location of the Library Building?

Mr. Warren: If your Honor please, my objection would be as to all testimony relating to this map.

The Court: Yes; I am going to allow him to locate it; it will probably be connected up. 40

Frank McArdle, direct.

Q. You say that green spot is the Library Building? A. Yes, sir.

By Mr. Warren:

Q. Do you know that? A. The library is there.

10 By Mr. Walscheid:

Q. What streets is it at? A. It fronts on Jersey Avenue, part on Mercer Street, part on Montgomery, and the front part on Jersey Avenue.

Q. Which side of the park is it on, on the north side of the park? A. It is on the north side.

Q. Is that the square it would be in then? A. I think so; yes.

Q. I am going to a "1" there, a figure "1"; that is the location of the library? A. Yes.

20

Mr. Warren: I object, if your Honor please, to Mr. Walscheid's making any marks or testifying as to what he is going to do.

Mr. Walscheid: I am not testifying.

The Court: Proceed, gentlemen.

Q. Now, will you find for me, if you can, the location of your garage? A. Here is Clinton Avenue (indicating); that is the Hudson County Boulevard (indicating).

30

Q. Which side of the Boulevard? A. Across the Boulevard.

Q. Here is Oxford (indicating). A. Here is—right here would be Oxford (indicating).

Q. This (indicating)? A. Yes, it is right here (indicating).

Q. Indicating where I shall a "2"? A. Yes.

Q. "2" is the location of your garage? A. Yes, sir.

40

Frank McArdle, cross.

Mr. Walscheid: I offer this map for identification at this time.

The Court: Yes, mark it for identification.

Marked Exhibit D-1 for identification.

Mr. Walscheid: Cross examine.

10

Cross examination by Mr. Warren:

Q. Mr. McArdle, what kind of a car was it that you owned in May, 1914? A. Packard.

Q. How long prior to May 24, 1915, had you had Mr. Dentz in your employ? A. Why, 1915—three or four years.

Q. How long after the accident did you have him in your employ?

Mr. Walscheid: I object to that as immaterial, irrelevant and incompetent.

20

The Court: How is it competent?

Mr. Warren: It has a bearing as to whether or not this man was actually in the employ of this defendant at the time of this accident.

The Court: He said so.

Mr. Warren: Acting for him.

The Court: Does it make any difference how long he was there afterwards?

30

Mr. Walscheid: Does your Honor overrule the question?

The Court: I am going to allow him to answer that question.

Mr. Walscheid: I pray an objection.

The Court: Yes, sir.

Q. Answer the question? A. Yes, sir; in January, 1915, I think.

Q. January what? A. January, '15.

Q. January— A. January, '16; January, 1916.

40

Frank McArdle, cross.

Q. Now, when you say that you did not know of your own knowledge that there was an accident or that your car was in an accident, what did you mean, by your own knowledge?

Mr. Walscheid: I object to that.

10

The Court: Answer the question.

A. I didn't see it.

Q. You don't mean that you hadn't heard of it?

Mr. Walscheid: I object to that—

A. I meant, that I didn't see it.

Mr. Walscheid: —immaterial whether he heard it or not; immaterial, irrelevant and incompetent.

20

The Court: Proceed; this is the defendant, produced as a witness; he may cross examine him.

Mr. Warren: What was his answer.
(Answer read by stenographer.)

Q. You did not mean that, that you did not hear about the accident at the time, Mr. McArdle?

30

Mr. Walscheid: I object, immaterial, irrelevant and incompetent.

A. I mean that I did not see the accident.

The Court: He understood your question, he says so.

Q. Did you hear about the accident the night of the accident?

Mr. Walscheid: Same objection.

40

The Court: He may answer that question.

Frank McArdle, cross.

A. Why, I heard there was an accident.

Q. From whom did you hear that there was an accident?

Mr. Walscheid: I object; immaterial, irrelevant and incompetent.

The Court: What difference does it make? 10

Mr. Warren: I will withdraw the question.

Q. Did you at any time after five-thirty o'clock on May 24, 1915, have any conversation at all with Dentz concerning this accident?

Mr. Walscheid: I object, immaterial, irrelevant and incompetent.

The Court: How does it throw any light on the subject; how is it competent? 20

Mr. Warren: It throws light on the subject as to the car that was actually used, and as to Dentz being in his employ at that particular time; I am seeking to show that this man was acting there within the scope of his employment.

The Court: I think that question is incompetent.

Mr. Warren: You Honor will enter an objection? 30

The Court: Yes, sir.

Q. You stated that you did not instruct Dentz to go to Ege Avenue that day; that was because you didn't see Mr. Dentz that day—isn't that so? A. Why, I never instructed him hardly any day where to go—

Mr. Walscheid: I object—

Q. But you didn't see Mr. Dentz that day of the 40

Frank McArdle, cross.

accident, did you, Mr. McArdle? A. Yes, I saw him that night.

Q. Oh, and where did you see him? A. At the police station.

10 Q. What time of night was that, about? A. Why, after eight o'clock, I think.

Q. And your car and Dentz were at the police station at the time you got there? A. Why, I do not know about the car; I do not remember, but I know Dentz was there.

Q. What were you doing at the police station?

Mr. Walscheid: I object, immaterial, irrelevant and incompetent.

The Court: Yes, immaterial.

20 Mr. Warren: Will your Honor admit my objection to be noted?

The Court: Yes, sir.

Q. At the police station, Mr. McArdle, at least you stayed at the police station until such time as Mr. Dentz was paroled, did you not?

Mr. Walscheid: I object, immaterial, irrelevant and incompetent.

The Court: How do you think that throws any light at all?

30 Mr. Warren: If your Honor please, I propose to show, although I am having very great difficulty, because of your Honor's rulings, that this man, after the accident, did certain things for this man Dentz, things that were absolutely, to my mind and I hope to bring to the Jury's minds, things that a man would not do for a chauffeur who was driving a car without the owner's consent and permission
40 and acquiescence; I think these matters

Frank McArdle, cross.

are material and competent; and that is the purpose of my examination along this line, and I hope I may be entitled to ask that question.

The Court: Read the question.

(Question read by the stenographer.) 10

A. No.

Q. How long did you stay there?

Mr. Walscheid: I object, immaterial, irrelevant and incompetent.

The Court: I think that is immaterial.

Mr. Warren: Enter my objection?

The Court: Yes, sir.

Q. You endeavored that night to secure his parole, did you not, Mr. McArdle? 20

Mr. Walscheid: I object, immaterial, irrelevant and incompetent.

The Court: Allow that.

Mr. Walscheid: I pray an objection.

A. Answer?

The Court: Yes.

A. Yes, I believe I did.

Q. You tried to get in touch with Judge Sullivan to try and secure a parole? 30

Mr. Walscheid: That is objected to.

The Court: Yes, sustained.

Q. As a matter of fact, Mr. Dentz was paroled into your custody, wasn't he?

Mr. Walscheid: I object, immaterial, irrelevant and incompetent.

The Court: Answer the question.

A. Why, I believe he was. 40

Frank McArdle, cross.

Q. When the case come up in the Police Court in Oakland Avenue, the case against Mr. Dentz, you were present in court, weren't you, Mr. McArdle?

10 Mr. Walscheid: I object, immaterial, incompetent and irrelevant, calling for an assumption of fact.

The Court: I do not see how that will throw any light on the subject, although the fact of his parole and his case and his custody did come up afterwards, that has not got anything to do with this case.

20 Mr. Warren: If your Honor please, it seems to me that what this man did in connection with this man, in connection with the chauffeur, who was arrested because of this accident, is material, as evidencing whether or not this particular man was acting for this defendant at the time of the accident. A number of things could happen after that, showing his ratification or his approbation of the act of this defendant and—or the act of the chauffeur.

The Court: No.

30 Mr. Warren: Suppose, if your Honor please, that this man hired a lawyer to represent the chauffeur.

The Court: Proceed.

Mr. Warren: Will your Honor enter my objection?

The Court: Yes.

Q. Do you know Mr. William R. Gannon?

40 Mr. Walscheid: I object, immaterial irrelevant and incompetent.

The Court: He may answer that.

A. Yes.

Frank McArdle, cross.

Mr. Walscheid: Objection noted?

The Court: Yes.

Q. He is an attorney of this State? A. I believe so.

Mr. Walscheid: I object to that; may I have an objection? 10

The Court: Yes.

Mr. Walscheid: To this whole line of examination.

Q. He has been in some matters your attorney, has he not?

Mr. Walscheid: I object; immaterial, irrelevant and incompetent.

The Court: Immaterial; strike it out. 20

Mr. Warren: Objection.

The Court: Note your objection.

Q. Did you or did you not secure the services of Mr. Gannon to represent Mr. Dentz in his defense at the Criminal Court on Oakland Avenue, arising out of his arrest because of the accident?

Mr. Walscheid: I object—

The Court: Objection sustained. 30

Mr. Warren: Your Honor will enter my objection?

The Court: Yes.

Q. Do you recollect having met Mr. Ferris and myself in the Court house one day on which the Dentz case was down for trial? A. Why, yes—

Mr. Walscheid: I object—one moment.

The Court: Is there any question as to that? 40

Frank McArdle, cross.

10 Mr. Walscheid: I desire to object to that for it calls for an unwarranted assumption of fact that there was a Dentz case which was set down for trial; there is nothing in this case to show that there was a Dentz case.

The Court: Fix the time; that is all there is to that.

Q. Do you know whether or not Mr. Dentz was tried in the Criminal Court of this county?

Mr. Walscheid: I object, immaterial.

The Court: Yes, that is immaterial.

20 Mr. Warren: Mr. Walscheid is objecting to the other question for the reason that it is not a correct statement of the facts, an unwarranted assumption.

The Court: I have allowed you to ask that question.

Mr. Warren: I thought—I understood it was answered.

The Court: I struck the answer out.

Mr. Warren: I ask that the witness be directed to answer.

30 The Court: Ask the question that I have allowed, whether he had a conversaton, that the defendant had a conversation.

By the Court:

Q. Did you have a conversation? A. Yes; I had met him.

The Court: I have allowed you to ask a question because the conversation might be competent.

By Mr. Warren:

40 Q. Do you remember the conversation? A. No.

Frank McArdle, cross.

Q. Do you recollect, Mr. McArdle, having said to Mr. Ferris and myself, or having said to Mr. Ferris in my presence, that it would not do him any good if this man went to jail and why didn't he settle this case?

Mr. Walscheid: I object, immaterial, irrelevant and incompetent. 10

The Court: Objection sustained.

Mr. Warren: Will your Honor please enter my objection?

The Court: Yes.

Q. Now, at the police station, you saw Dentz the night of the accident, did you not?

Mr. Walscheid: He said that. 20

A. Yes.

Q. What were the duties of Mr. Dentz as your employee?

Mr. Walscheid: I object; immaterial, irrelevant and incompetent.

The Court: He may answer the question; at the time of this accident, the question is modified by that, however.

Mr. Warren: No, sir; I do not care to modify it; I would rather have the question overruled than to ask the question in any other way. 30

The Court: I will overrule it, but not as to that particular time.

Mr. Warren: Oh, to that time, yes; I thought your Honor was limiting the question to that particular time of day. Yes, I mean about that time of 1915.

The Court: He has not said he has been in his employ for several years. 40

Frank McArdle, cross.

The Witness: What is the question.

Mr. Warren: Read the question.

(Question read by the stenographer.)

The Court: At that time.

10 A. Why, they were general duties, as they always had been.

Q. What do you mean by "general duties", Mr. McArdle? A. General duties.

Q. He drove the car? A. Yes.

Q. Did he keep it in repair? A. Yes, if necessary.

Q. Did he wash the car? A. When necessary.

Q. Did he use his own discretion as to when he would wash the car? A. Yes.

20 Q. When did he generally wash the car, in the day time or the night? A. Whenever he felt like doing it, I guess.

Q. Do you remember what kind of a day May 24th was? A. No.

Q. Do you remember that it had been wet, don't you? A. No.

Q. You don't remember that; you don't remember that it had been raining and the pavement wet? A. No.

30 Q. At that time don't you recollect that Mr. Dentz lived in Wilkinson Avenue? A. Somewheres down there.

Q. It was quite often Mr. Dentz would take the car, after finishing up, driving for one of your family, up to his dinner, and then go to the garage and wash the car, would he not?

Mr. Walscheid: I object to that unless this man was there with him.

40 The Court: If he knows; he can answer the question, if he knows.

Frank McArdle, cross.

A. Why, I wasn't with him.

Q. Oh, I know,—

Mr. Walscheid: Well, how do you know?

Q. You said that you were not with him, didn't you, because of the objection of Mr. Walscheid? 10

A. Why, no.

Q. Don't you know whether or not he ever did that? A. Do I know personally? No.

Q. Don't you know, or did you tell me, or didn't you tell me, over the 'phone night before last that Mr. Dentz would drive home, have his supper, and go to the garage with the car and wash it there whenever it may be necessary to be washed? A. I said he may have.

Q. Didn't you say that he did? A. No, I didn't say that. 20

Q. Mr. McArdle— A. Not, of my own personal knowledge.

Q. Where did you get that information? A. What information?

Q. That he did this at times? A. Why, he may have told me himself.

Q. He did tell you, didn't he? A. Perhaps, if he felt like that.

Q. And he did tell you that night that that was what he was doing on that particular night, isn't that so? A. Yes. 30

Q. He was going home to get his supper and then he was going to go over to the garage to wash the car? A. That is what he told me.

Q. That is what he did tell you that he had done before—didn't he ever tell you before that he had done that? A. If he felt like it, I suppose he did.

Q. That was satisfactory to you? A. I accepted it as a matter of fact. 40

Frank McArdle, cross.

Q. As a part of his employment? Did Mr. Dentz tell you that night that he had met his sister-in-law and another girl friend of hers down town and was taking them home?

10 Mr. Walscheid: I object; immaterial, irrelevant and incompetent.

The Court: I do not see how it would throw any light on the subject what he told him.

Mr. Warren: If your Honor please, on direct examination, Mr. McArdle has testified that Mr. Dentz in driving the car with these two people in it was not acting for him. Now, I want to show the attitude of Mr. McArdle himself about that very thing. I have a right to cross-examine this man on that point.

20

The Court: The two ladies that you you referred to?

Mr. Warren: Yes, sir.

The Court: You may ask him about it.

Mr. Walscheid: I pray an objection.

The Court: Yes.

Mr. Warren: Read the question.

(Question read by the stenographer.)

30

A. Yes.

Q. You didn't raise any objection as to that, did you, Mr. McArdle?

Mr. Walscheid: I object; immaterial, irrelevant and incompetent.

The Court: Yes, what he did after the accident occurred.

Mr. Walscheid: What did the witness say?

40

(The question was not answered.)

Frank McArdle, cross.

Mr. Warren: Now, if your Honor please, whether or not he said anything or what he did at that time throws light as to whether or not the man was acting for him, within the scope of his employment at that particular time that the accident happened. Suppose that this man said that that was all right.

10

The Court: If he did, would that bind him?

Mr. Walscheid: That would not place him within the scope of his employment.

The Court: The question is whether he had authority to do it prior to the time; it is not what he said afterwards.

Mr. Warren: Suppose that this man had done it, or by his actions or words afterwards had shown that regardless of what he said that the man was not acting within the scope of his employment, that as a matter of fact he was acting within the scope or with permission of the defendant.

20

The Court: What he said afterwards won't make any difference.

Mr. Warren: Will your Honor please enter my objection?

30

Q. Do you know who those two ladies were, Mr. McArdle? Did Mr. Dentz tell you who they were?

Mr. Walscheid: I object, immaterial—

The Court: Yes, I will allow that because you went into that question.

Mr. Walscheid: Not as to his conversation afterwards.

40

Frank McArdle, cross.

The Court: No, but you may find out about those two ladies.

Mr. Walscheid: I pray an objection.

The Court: Yes. (To the witness.)
You may answer.

10 A. He told me that one was his sister-in-law and a friend of hers.

Q. And he told you also, didn't he, that the sister-in-law lived in the same house he did?

Mr. Walscheid: I object, immaterial.

The Court: I will allow that.

Mr. Walscheid: I pray an objection.

A. I believe he did.

20 Q. Did you at any other time know of Mr. Dentz on his way home taking his sister-in-law for a ride with him—

Mr. Walscheid: I object, immaterial.

The Court: Prior to the time?

Mr. Warren: Prior.

The Court: I will allow that.

Mr. Walscheid: Objection noted.

The Court: Yes, sir.

A. No, not that I can recall.

30 Q. Didn't you know—do you know where his sister-in-law worked? A. No.

Q. Or his friend? A. No, I do not know anything about that.

Mr. Walscheid: Is that the answer, "don't know anything about that"?

A. No.

40 Q. You do know, Mr. McArdle, did you not, that Mr. Dentz had several times on his way home given people a lift in his car?

Frank McArdle, cross.

Mr. Walscheid: I object, immaterial.

The Court: Suppose he did, what difference does it make?

Mr. Walscheid: Oh, that is a different thing, the mere knowledge of it.

The Court: Isn't that one step? 10

A. No.

Q. You do know that at different times when going on your errands around the city, Mr. Dentz had given lifts to different people, do you not?

Mr. Walscheid: Same objection.

The Court: I will allow that.

A. Is the question I did or didn't know?

Q. You did know? A. No, I didn't know. 20

Q. You had no objection to Mr. Dentz on his way home permitting a member of his immediate family and a friend of hers to ride home with him just to the point where he was going?

Mr. Walscheid: I object; immaterial. irrelevant and incompetent; this witness cannot now say whether he did have any objections.

The Court: No, that is incompetent. 30

Mr. Warren: Will your Honor enter my objection?

The Court: Yes.

Q. Mr. McArdle, how long had you known Mr. Dentz before he worked for you?

Mr. Walscheid: I object; immaterial.

The Court: Read the question.

(Question read by the stenographer.)

The Court: Immaterial.

Mr. Warren: Objection noted. 40

Frank McArdle, cross.

Q. You live on which side of Mercer Street, Mr. McArdle? A. South side.

Q. And in order to have the automobile in stopping at your door to be on the right side of the street, it has to face the east? A. Yes.

10 Q. And it is just as short a course up to your garage around by way of the Library and up Montgomery Street as it is by way of Mercer Street, isn't it? A. Just as short?

Q. Yes. A. No, it would not be as short, the shortest route.

Q. Montgomery Street is just one block nearer to your garage than Mercer Street? A. Yes, but the house is on Varick Street on—

20 Q. Varick Street is poorly paved? A. Why, I guess you would call it that.

Q. You had a long car, long wheel base?

Mr. Walscheid: I object; immaterial, irrelevant and incompetent.

Q. The natural way for Mr. Dentz to go to his home was down around by the Public Library, wasn't it?

Mr. Walscheid: That calls for conclusion.

30 The Court: Yes.

Q. Wasn't that the shortest way?

Mr. Walscheid: I object; this witness doesn't even know where he lived.

The Court: Yes.

40 Q. If Mr. Dentz lived on Wilkinson Avenue, at No. 113, at that particular time, and left your home at 137 Mercer Street, what would be the shortest way and best and easiest way for him to get there?

Frank McArdle, cross.

Mr. Walscheid: I object; calls for a conclusion.

The Court: If he knows the shortest way, he may answer that question.

Mr. Walscheid: Yes, but he wants the shortest and best and easiest way. 10

Mr. Warren; Suppose we leave it the shortest way so that there will be no question about it.

By Mr. Walscheid:

Q. Do you know? A. The shortest way to Wilkinson Avenue?

By Mr. Warren:

Q. At 113? 20

By the Court:

Q. From your house? A. Why, Mercer, turn around Mercer Street, go up Mercer Street to Bergen Avenue, down Bergen Avenue to Wilkinson Avenue.

By Mr. Warren:

Q. Don't you know, Mr. McArdle, that Bergen Avenue and Mercer Street run at right angles? 30

Mr. Walscheid: I object, immaterial.

The Court: Yes.

The Witness: I know what you asked me was the shortest way that I would go—it would be to turn around Mercer Street and go up Bergen Avenue and down Bergen Avenue to Wilkinson Avenue.

Q. Well, is that because you looked at the diagram or is it because it is actually the shortest route? 40

Mr. Walscheid: I object—

George Harold Dentz, direct.

A. I have never measured which is the shortest way, but that is the way that I would go.

Q. That is the way you would go; you have never measured the distance to your garage, the shortest way?

10

Mr. Walscheid: I object, immaterial.

Q. As a matter of fact, Grand Street goes in a slanting way through Jersey City from Jersey Avenue on up to Greenville? A. I do not know; I am not familiar with the streets.

Q. How long have you lived down in Jersey City? A. All of my life.

Mr. Warren: That is all.

Mr. Walscheid: That is all.

20

Witness excused.

GEORGE HAROLD DENTZ, sworn:

Direct examination by Mr. Walscheid:

Q. Mr. Dentz; where do you live? A. 113—now?

Q. Yes. A. 82 Bidwell Avenue.

Q. Jersey City, N. J.? A. Yes, sir.

30

Q. On May 24th, 1915, where did you live? A. 113 Wilkinson Avenue.

Q. 113 Wilkinson Avenue, in Jersey City? A. Yes, sir.

Q. On that date for whom did you work? A. Mr. McArdle.

Q. The witness who was just on the stand ahead of you? A. Yes, sir.

Q. How long did you work for him? A. Three or four years.

40

Q. What were you doing for him? A. Driving his car.

George Harold Dentz, direct.

Q. What were your duties as driver? A. Why, the general duties of driving the family and himself.

Q. Driving the family, did you say, and driving Mr. McArdle, and taking care of the car, I suppose? A. Yes, sir.

10

Q. Where was the car stored? A. Oxford Place.

Q. Where, on Oxford Place, between what streets? A. Between Bergen and the Boulevard.

Q. On this particular day, May 24th, had you been driving a car? A. Yes, sir.

Q. How long did you drive it that day? A. I do not recollect whether it was all day out, out all afternoon.

Q. Did you drive it in the afternoon? A. Yes, sir.

20

Q. Who were you driving? A. Mrs. McArdle and the daughters.

Q. Where did you leave them? A. 137 Mercer Street.

Q. Is that the McArdle residence? A. Yes, sir.

Q. What time did you leave there on that day? A. About half past five.

Q. When you left them, did you receive any instructions as to where you were to go or what you were to do? A. No, sir.

30

Mr. Warren: Objected to—all right.

Q. You hadn't any? A. No, sir.

Q. Where did you go from that residence? A. Where did I go?

Q. Yes, with that car? A. I went down Mercer Street to Jersey Avenue.

Q. Went down Mercer Street to where? A. To Jersey Avenue.

40

George Harold Dentz, direct.

- Q. In which direction does Jersey Avenue run?
A. East and west.
- Q. East and west? A. Yes.
- Q. When you got to Jersey Avenue, which direction did you turn? A. South.
- 10 Q. Turned south? A. Yes, sir.
- Q. Jersey Avenue runs east and west, you say?
A. I beg pardon; I misunderstood you.
- Q. Won't you talk up a little bit—take that gum or whatever you have out of your mouth so that we can hear you talk. Now, then, you drove down Mercer Avenue to Jersey, did you?
A. Yes, sir.
- Q. And when you reached Jersey Avenue, in which direction did you turn, right or left? A.
20 Right.
- Q. Where did you go to? A. To Grand Street.
- Q. What did you go there for? A. To go home.
- Q. To go home? A. Yes, sir.
- Q. Was that on your way home? A. Yes, sir.
- Q. When you got to Grand, did you meet anybody? A. Yes, sir.
- Q. Well, did you go to meet anybody when you left the McArdle home? A. No, sir.
- Q. Didn't go to meet anybody? A. No, sir.
- 30 Q. Where did you meet those persons that you did meet? A. Corner of Grand and Jersey Avenue.
- Q. I cannot hear you? A. Corner of Grand and Jersey Avenue.
- Q. Met them there by chance? A. Yes, sir.
- Q. Who were they? A. One was my sister-in-law and a friend of hers.
- Q. What is your sister-in-law's name? A.
Miss Edwards.
- 40 Q. Her full name? A. Miss Grace Edwards.

George Harold Dentz, direct.

Q. And the other lady's full name? A. Miss Clara Scott.

Q. What did you say to them? A. Asked them if they were going up home.

Q. Asked them whether they were going up home; what did you do? A. I motioned to them. 10

Q. What did you say? A. I didn't say anything to them.

Q. What did you do? A. Just motioned for them to come over.

Q. Where were they when you first saw them? A. Standing on the corner waiting for the car.

Q. Were you across the street on the other side? A. Yes, sir.

Q. Motioned for them to come over to the car? A. Yes, sir. 20

Q. When they came over to your car, did you say anything to them? A. I do not know whether I did or not.

Q. Did you do anything? A. I opened the door.

Q. Of the tonneau? A. Yes, sir.

Q. What then happened? A. Took them up to Grand Street.

Q. Did the two ladies get in? A. Yes, sir.

Q. And you took them up to Grand Street? A. Yes, sir. 30

Q. For what purpose did you drive them up to Grand Street? A. To assist them home.

Q. To drive them both home? A. Certainly.

Q. To drive both of them home. Now, where did your sister-in-law live? A. Same house that I lived.

Q. That is 137 Wilkinson Avenue? A. 113.

Q. Where did the other lady live? A. On Ocean Avenue. 40

George Harold Dentz, direct.

Q. On Ocean Avenue, where on Ocean Avenue? A. Corner of Bidwell.

Q. Corner of what? A. Corner of Bidwell.

10 Q. Now, in order to get to the corner of Bidwell Avenue and Ocean Avenue, did you or did you not have to go beyond Kearney Avenue? A. Yes, sir.

Q. You did have to go beyond Kearney Avenue? A. Yes, sir.

Q. Did you have an accident that day? A. Yes, sir.

Q. Where did you have that accident? A. At the corner of Ege Avenue.

Q. Corner of Ege Avenue and what? A. And Ocean.

20 Q. Is Ege Avenue and Ocean—is that corner beyond Wilkinson Street coming from Grand Street? A. No, sir.

Q. It is not beyond? A. No, sir.

Q. Wilkinson is still further down? A. Yes, sir.

Q. Which one of the two girls were you going to take home first?

Mr. Warren: Object to as immaterial.

30 The Court: What difference does it make?

Mr. Walscheid: Pray an objection.

Q. Now, when you came to the point of the accident, what happened there? Now, tell us what happened so far as the accident was concerned? A. Why, two little girls were on the corner.

Q. Two little girls were on the corner? A. Yes, sir.

40 Q. You have a good voice, haven't you? A. Yes.

Q. Then speak up big so that you can hear it

George Harold Dentz, direct.

in the court room. Two little girls were on the corner? A. Yes.

Q. Where were you when you first saw them?

A. In the car.

Q. Where were you with your car? A. On Ocean Avenue. 10

Q. On what part of Ocean Avenue? A. About midway of Ege.

Q. Midway of Ege and what? A. Ocean Avenue.

Q. On Ocean Avenue. What do you mean by midway of Ege Avenue? A. Midway between the opening of the street.

Q. Midway between the north and south line of Ege Avenue? A. Yes, sir.

Q. What side of Ocean Avenue were you on? 20
A. Right-hand side.

Q. How fast was your car going? A. About ten miles an hour.

Q. When you first saw those children, what were they doing? A. Standing on the corner between the telegraph pole.

Q. Beyond the telegraph pole—were they on the corner? A. No, sir.

Q. Were they south of the corner? A. Yes, sir. 30

Q. How far south of the corner about, in feet? A. Fifteen or eighteen feet.

Q. How far? A. Fifteen or eighteen feet.

Q. Fifteen or eighteen feet. And how far away from them were you then? A. Twenty-five.

Q. About twenty-five feet. What did the children do at that time? A. As I approached them they stepped down into the gutter.

Q. What next? A. I blew my horn and 40
slowed the machine.

George Harold Dentz, direct.

Q. And did what? A. Slowed down the machine.

Q. Yes? A. And they made the attempt to go back on the sidewalk.

10 Q. Yes. A. And as I approached them, immediately, I guess, they pushed out into the street.

Q. Ran out into the street? A. Yes, sir.

Q. Then what happened? A. I swung the machine and put the brakes on.

Q. You swung the machine? A. Yes, sir.

Q. In which direction did you swing it? A. To the east.

Q. To the east? A. Yes, sir.

Q. And put the brakes on? A. Yes, sir.

20 Q. Well, what happened then? A. Well, one of them girls disappeared from sight; the other one ran away.

Q. Did you see your car strike the little girl who disappeared from sight? A. No, sir.

Q. Can you say yourself—was she struck with the front of your car? A. No, sir.

Q. She was not? A. No, sir.

Q. Or, if she was struck by your car, she was struck by the side? A. Yes, sir.

Q. But you didn't see it? A. No, sir.

30 Q. How far away were you from these two little girls after they again started to run out into the street there? A. About ten feet.

Q. About ten feet, is that what you say? A. Yes, sir.

Q. How far from the curb—right-hand curb—were you when you turned out? A. On the car tracks.

Q. How? A. I was astraddle of the southbound car tracks.

40 Q. Astraddle of the southbound car tracks when you started to turn out? A. Yes, sir.

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Q. Where were you when you stopped? A. Crossways of the street.

Q. Crossways of the street with your car facing what way? A. East.

Q. Who was with you in the car at the time? A. My sister-in-law and her friend. 10

Q. The two ladies that you had found at Grand Avenue? A. Yes, sir.

Q. Had you any business of Mr. McArdle that you were on in driving down to Wilkinson Avenue or to the other avenue where this other girl lived?

Mr. Warren: I object to that as calling for a conclusion, and incompetent, and an unwarranted assumption of fact.

The Court: I will allow that question. 20

Mr. Warren: Enter my objection.

The Court: Yes.

The Witness: What was the question?

Q. (Question read by the stenographer.) A. Yes, sir.

Q. What business did you have down there of his? A. Driving the car.

Q. Just driving the car? A. Yes, sir.

Q. Were you doing anything for him when you drove down that way? A. Yes. 30

Q. What were you doing for him? A. Driving the car.

Q. Just driving the car? A. Yes.

Q. Had you any instructions to drive down there? A. No, sir.

Q. Had you any instructions to drive those girls home? A. No, sir.

Q. Were you driving them home because you wanted to drive them home? A. Yes. 40

George Harold Dentz, direct.

Q. And is that the only reason you were driving them home? A. Yes.

Q. Did Mr. McArdle know anything about your driving those girls home that night? A. No, sir.

10 Q. Did any of the McArdle family know anything about your driving those girls home that night? A. No, sir.

Q. Now, the garage, Mr. Dentz, was located where? A. Oxford Place.

Q. Oxford Avenue—was it necessary for you, in going from Mercer Street, the home of McArdle, to the garage, to go by way of Wilkinson Avenue? A. Was it necessary?

Q. Yes. A. Yes.

20 Q. It was necessary? A. Yes.

Q. What was the shortest way of going— A. The shortest way of going would be to turn around and go up Mercer Street.

Q. Then, if you were through with your work that day and were taking your car home by way of the shortest route, you would go up Mercer Street, wouldn't you? A. Yes, sir.

Q. How far up Mercer Street would you go? A. To Bergen Avenue.

30 Q. Then which way on Bergen Avenue would you go? A. South.

Q. To Oxford? A. Yes, sir.

Q. Then, it was not necessary to go by way of Wilkinson Avenue if you were through and were taking your car home? A. Certainly.

Q. Why was it necessary if you had nothing else to do excepting to take your car home to go down to the other avenue that you lived on? A. Wilkinson.

40 Q. Why was it necessary to go down there if all you had to do that day was to take the

George Harold Dentz, direct.

car home? A. That is where I lived—I didn't live at the garage.

Q. You were driving these girls home? A. Certainly, I was going to.

Q. You were driving yourself home, too? A. Yes, sir. 10

Q. Bidwell Avenue is where the other lady lived, isn't it? A. Yes, sir.

Q. Where is Bidwell Avenue in relation to Oxford Street? A. South.

Q. South; it was not necessary to go to Bidwell Avenue, was it? A. I was not going to go to Bidwell Avenue.

Q. Weren't you going to take Miss Scott home? A. Well, yes, I was taking the two girls home, to the home of my sister-in-law; she lived at the same house that I did. 20

Q. Who did? A. My sister-in-law.

Q. And the other lady lived at Bidwell Avenue? A. Yes.

Q. You were going to take her to Bidwell Avenue? A. No; I was not going to take her to Bidwell Avenue.

Q. You were going to take her where? A. With my sister-in-law.

Q. To your sister-in-law's home? A. Certainly. 30

By the Court:

Q. That is the same house where you lived? A. Yes, sir.

The Court: We will take a recess until two o'clock, gentlemen.

Noon Recess.

George Harold Dentz, cross.

GEORGE HAROLD DENTZ resumed the stand.

Direct examination by Mr. Walscheid continued:

10 Q. Mr. Dentz, when you left Mrs. McArdle at her home that afternoon, did you have anything else to do for Mr. McArdle or for any of the McArdle family on that day? A. No, sir.

Q. Do you know whether or not Mr. McArdle knew these two ladies that you took up?

Mr. Warren: Objected to—I will withdraw the objection.

Q. Do you know it or do you not? A. (Witness nods head.)

Q. What does that mean, you do not know? A. I do not know.

20

Mr. Walscheid: Cross examine.

Cross examination by Mr. Warren:

Q. Where are you employed now, Mr. Dentz?

A. Where am I employed now?

Q. Yes. A. At the Brooklyn Navy Yard.

Q. Working for the Government? A. Yes, sir.

Q. As you came up from the south along Grand Street, were you riding on the car tracks? A. Yes, sir.

30

Q. Speak a little bit louder, please? A. Yes, sir.

Q. And also when you went from Grand Street into Ocean Avenue, you kept riding on the car tracks? A. I guess so.

Q. Just speak a little louder? A. I do not remember.

Q. Ocean Avenue, Mr. Dentz, is a continuation of Grand, is it not? A. Yes, sir.

40

Q. It is the most direct route from lower

George Harold Dentz, cross.

Jersey City up to the Greenville section? A. Yes, sir.

Q. And Wilkinson Avenue is in the Greenville section? A. Yes, sir.

Q. And where the McArdle home is is in the lower Jersey City section? A. Yes, sir. 10

Q. Don't nod your head, please, because the stenographer cannot hear you. A. Yes, sir.

Q. Where was it that you got behind—first got behind this car? A. I do not know as I got behind at any time.

Q. Do you remember seeing a car bound towards Greenville in front of you at any time on your way uptown that night? A. Yes, sir.

Q. Where was it that you first saw that car? A. There was several cars ahead of me on the way up. 20

Q. Did you pass them all? A. Not all of them.

Q. How many did you pass going ahead of you on the way up? A. I do not recollect.

Q. How many cars were ahead of you on the way up after you turned into Grand? A. That I do not know.

Q. How many cars did you see ahead of you, do you recollect? A. One.

Q. One? A. Yes. 30

Q. Where was it that you first saw that car? A. Along around Varick Street, somewhere.

Q. Did you continue in the rear of that car all of the way up to the hill? A. No, sir.

Q. What did you do? A. Passed it.

Q. Where did you pass it? A. I do not recollect just where I passed it.

Q. Was that the only car going in the direction of Greenville that you saw in front of you that night? A. No, sir. 40

Q. Where was the next—withdraw that—how

George Harold Dentz, cross.

did you pass that car, on the right or the left?

A. Right-hand side.

Q. Where was the next car ahead of you when you first saw it? A. Somewhere along Fairview Avenue.

10 Q. You do not mean Fairview—you mean Fairmont? A. Fairmont, yes, sir.

Q. That is down pretty near to the foot of the hill? A. Yes, sir.

Q. When you caught up to that, did you pass it? A. No, sir.

Q. Well, when did you pass it—or where were you when you passed it? A. Barr Street.

Q. Now, when you got to Fairmont Avenue, how far ahead of you was the trolley car? A. About a half block.

20 Q. Do you know how fast the trolley car was going? A. No, sir.

Q. You were not paying any attention to the trolley car, were you? A. No, sir.

Q. You had your sister-in-law and a friend in the car? A. Yes, sir.

Q. And you were talking with them? A. No, sir.

Q. Didn't say a word to them? A. No, sir.

30 Q. Had you ever seen this friend of your sister-in-law before? A. Yes, sir.

Q. How long had you known her? A. Well, that I could not say.

Q. How long before this had you last seen her? A. I do not recall.

Q. You saw your sister—you did, at that time, see your sister-in-law every day? A. Mostly every day.

40 Q. You did not say a word to them when you—when they got into the car, only beckoned to them to come? A. No, sir.

George Harold Dentz, cross.

Q. Did you say a word to them when they got in? A. No, sir.

Q. You did not say a word to them while they were in the car, now? A. No, sir.

Q. Are you saying that because you do not remember what you did say, or that you did not say anything? A. I did not say anything. 10

Q. You mean to say that you merely beckoned to these two girls to get into the car and after they got in you took them from lower Jersey City, Jersey Avenue to Grand Street, all of the way up to Ege and Ocean Avenue, and never said a word to either one? A. Yes, sir.

Q. When they got into the car, did they say anything to you? A. No, sir.

Q. Did they say anything from the time they got into the car until you got to Ege Avenue? A. No, sir. 20

Q. Did they say anything to one another? A. Why, I guess they did.

Q. Well, what did they say? A. I do not know.

Q. Were they talking all of the time? A. I was not paying any attention to them, whether they were or not.

Q. Were they talking all of the time? A. I do not know. 30

Q. Did they talk at all? A. Yes.

Q. Were they talking as you approached Ege Avenue? A. I do not recollect.

Q. You do not recollect? A. No, sir.

Q. Where is Forrest Street in relation to Ege Avenue? A. Two blocks north.

Q. Two blocks north; there is a little break in Ocean Avenue there, is there not, about the railroad track? A. A slight turn—yes, sir. 40

Q. What was the condition of the weather

George Harold Dentz, cross.

the evening of the accident? A. What was the condition of the weather?

Q. Yes. A. It was cloudy.

Q. It had been raining that day, had it not?

A. Yes, sir.

10 Q. How fast were you going, Mr. Dentz, at the time that you first saw that an accident might happen and endeavored to prevent it? A. About ten miles an hour.

Q. What kind of a car were you driving? A. Packard.

Q. I assume that it was equipped with brakes? A. Yes, sir.

Q. Were the brakes in good working order at that time? A. Yes, sir.

20 Q. It was your duty to look out for the brakes, was it not? A. Yes, sir.

Q. When, before that, had you last tested the brakes, if you remember? A. Tested the brakes?

Q. Yes. A. Off and on all of the way up Grand.

Q. I see, as it was necessary to slow up or stop, you used the brakes? A. Yes, sir.

Q. What brakes did you use as you came up Grand? A. Foot brake.

30 Q. There is another brake on the car, is there not? A. Yes, sir.

Q. That is what? A. Emergency.

Q. That is operated by— A. Hand.

Q. Which hand? A. Right hand.

Q. Was this a right or a left drive car? A. Right hand.

Q. On your way up Grand Street, had you operated the emergency brake at all? A. No, sir.

40 Q. When you endeavored to stop the car at

George Harold Dentz, cross.

Ege Avenue, just tell the jury what you did?

A. Applied the brakes and stopped the car.

Q. Just tell them how you did what you did do? A. Why, I released the clutch and put on the foot brake and pulled up on the emergency brake.

10

Q. By releasing the clutch, you mean what? A. Disengage the motor from the gears.

Q. That releases the motor from the gears and causes the car really to coast? A. Yes, sir.

Q. Which did you do first, put on the foot brake or the emergency? A. All three almost at once.

Q. With which hand were you steering at the time? A. Left hand.

Q. Was it with the left hand—was it only with the left hand that you drove the car around? A. Yes, sir.

20

Q. Now, Mr. Dentz, the pavements that night were wet, were they not? A. Yes, sir.

Q. Did your car have chains on it? A. Yes, sir.

Q. On what wheel? A. Both rear wheels.

Q. Both rear wheels? A. Yes, sir.

Q. Were you riding on the car track at the time that you started to pass the car? A. No, sir.

30

Q. You were on the cobblestones at that time? A. Yes, sir.

Q. Ocean Avenue at that place is paved with cobbles, is it not? A. Yes, sir.

Q. Going ten miles an hour, Mr. Dentz—withdraw that—how long had you been driving that particular car? A. Three or four years.

Q. And you were thoroughly familiar with it? A. Yes, sir.

40

Q. And you knew just within what space you

George Harold Dentz, cross.

could stop when going at ten miles an hour, or at any other speed, didn't you? A. No, sir.

Q. You did not? A. No, sir.

Q. Did you ever use your emergency brake before? A. Yes, sir.

10 Q. Many times? A. Yes, sir.

Q. Any driver of a car driving has to use the emergency a number of times, doesn't he? A. Yes, sir.

Q. You had done that? A. Yes, sir.

Q. So you knew what the car would do when the emergency brake was put on, did you not? A. Yes, sir.

Q. What does a car, going ten miles an hour, on a wet pavement do when the—withdraw that
20 —when you put on the brakes, both the foot brake and the emergency brake, what happened to the rear wheels? A. The rear wheels locked.

Q. That means that they became stationary, doesn't it? A. Yes, sir.

Q. They do not revolve? A. No, sir.

Q. That is, if the brake is in good condition? A. No, sir.

Q. Now, you knew at that time what would happen, if, going ten miles an hour, the brakes,
30 both emergency and foot brakes were put on at once, jammed on, didn't you? A. Yes, sir.

Q. What would happen? A. The car would lock and skid.

Q. What do you mean by a car skidding? A. Sliding of its own accord.

Q. How does it skid; I mean, if you are going along the street and your car skids, what do you mean by that, which way does it slide? A. Whichever way the front wheels are headed, reversing them; it is just the opposite way the front
40 wheels are pointed.

George Harold Dentz, cross.

Q. The reverse of the way your front wheels are pointed? A. Yes, sir.

Q. So that if your front wheels are pointing to the left the rear of your car will swing which way? A. To the right.

Q. And if the front wheels are turned to the right, the rear of your car will swing to the left; that is so, isn't it? A. Yes, sir. 10

Q. When you were going ten miles an hour, on a wet pavement, such as was there, on a wet cobbled pavement, and you jammed on your emergency and foot brakes and cut off your engine, the front of your car practically stops, does it not, or does it? A. No, not at all times.

Q. In other words, the car has such momentum that even though the foot and hand brake was jammed on at once that the car will still continue to proceed in the direction in which it was going at the time you applied the brake? A. Yes, sir. 20

Q. Yes. Now, how far would the car go under ordinary conditions on a cobble pavement, such as was there at Ege and Ocean Avenues, if the car was going ten miles an hour prior to the time of the application of the brakes after the emergency and foot brakes were jammed on? A. I do not know. 30

Q. Did you at that time, May 24, 1915, have any idea as to the distance in which you could stop your car going at ten miles an hour, if you put on the emergency and hand brakes when you were riding on that kind of a pavement, wet cobbled pavement? A. I do not understand your question.

Mr. Warren: Just read it to him—

40

George Harold Dentz, cross.

Q. —and then tell me what it is you do not understand?

(Question read by the stenographer.)

A. Yes, I had an idea.

10 Q. Well, within what distance could you stop that car? A. Within her own length.

Q. Now, what was the length of that car? A. Twelve feet.

Q. Twelve feet? A. About.

Q. About; do you know what the wheel base was? A. No, I do not recollect it now.

Q. Was this a five or seven passenger Packard? A. Seven.

20 Q. One of their big heavy cars, isn't it? A. Yes, sir.

Q. How much did the car weigh? A. 4,800.

Q. That was without any people in? A. With the driver.

Q. With the driver? A. Yes, sir.

Q. Now, you know Mr. Gannon, don't you, William R. Gannon? A. Yes, sir.

Q. He was your attorney at one time, was he not? A. Yes, sir.

Q. Who employed Mr. Gannon? A. I did.

30 Q. Through whom? A. Recommended from Mr. McArdle.

Q. Mr. McArdle introduced you to him? A. No, sir.

Q. Sent you to him? A. No, sir.

Q. How did you get to Mr. Gannon, through Mr. McArdle? A. Well, he didn't mention his name, he didn't speak to a lawyer; I had to get a lawyer and I did not know of any.

40 Q. Your duty—you were on duty practically all of the time as chauffeur for Mr. McArdle, were you not? A. Yes, sir.

George Harold Dentz, cross.

Q. And subject to call at any time for the pleasure of Mr. McArdle and his family; you went out nights for Mr. McArdle, did you,—drive him out nights with his family? A. Yes, once in a while.

Q. How long had this car been traveling on that day—I mean, how long had you had it out before the accident? A. I had it all afternoon. 10

Q. And having been wet pavements the car was dirty, was it not? A. Yes, sir.

Q. And it was your duty to wash the car? A. Yes, sir.

Q. And you always had your car looking in good condition when you brought it around to the McArdles to ride out in, didn't you? A. I tried to. 20

Q. That was your job when you had worked there for some years? A. Yes, sir.

Q. And that night in question, you were going to take the car to the garage and wash it up, Mr. McArdle says you told him? A. Yes, sir.

Q. That is what you were going to do, wasn't it? A. Yes, sir.

Q. You did that quite often, did you not, after riding the family of Mr. McArdle in the afternoon, if the car needed cleaning and you brought them home about dinner time, you would go home, have your dinner, and then take the car to the garage and wash it for the next day? A. Yes, sir. 30

Q. And Mr. McArdle and the family knew that, or Mr. McArdle knew that? A. I do not know whether he did, or not.

Q. If he said he did, he did, didn't he? A. I suppose so, if he said he did.

Q. You were not joy riding this night in question, were you, Mr. Dentz? 40

George Harold Dentz, cross.

Mr. Walscheid: I object to that.

Mr. Warren: I will withdraw that question.

10 Q. You had not taken this car without the owner's consent, had you? A. No, sir.

Mr. Walscheid: I object to that.

The Court: The question has been answered before you objected; it may stand.

Q. You knew, Mr. Dentz, didn't you, that it was a crime to take an owner's car and driving it for your own pleasure without his consent?

Mr. Walscheid: I object to that as immaterial, incompetent and irrelevant.

20 The Court: Yes, immaterial.

Mr. Warren: Your Honor will permit my objection to be noted?

The Court: Yes, sir.

Q. When you saw these children they were near the corner, you say? A. Yes, sir.

Q. About how far away from the corner? A. Eighteen feet.

30 Q. When you speak of the corner, what do you mean, the place where the two curb lines come together or where the point is? A. The crosswalk.

Q. The crosswalk; now, what crosswalk are you talking about? A. Why, the crosswalk across Ocean Avenue.

Q. You say a crosswalk crosses Ocean Avenue, didn't you? A. Yes, sir.

Q. How long have you been driving over Ocean Avenue, Mr. Dentz? A. Over Ocean Avenue?

40 Q. Yes, at that point back and forth in an automobile—don't you know that there isn't any crosswalk at all there? A. No, sir.

George Harold Dentz, cross.

Q. You do not know whether there is or not, do you? A. Yes, sir.

Q. You say there is one? A. Yes, sir.

Q. When did you last see it? A. Last night.

Q. And you saw a crosswalk last night, going across Ocean Avenue to Ege? A. Yes, sir. 10

Q. What time of the night were you there, Mr. Dentz? A. Half-past eight.

Q. Who was with you? A. Nobody.

Q. All by yourself? A. Yes, sir.

Q. What took you to that particular point last night? A. Walking home.

Q. Walking home from where? A. From my brother's.

Q. Where is your brother's? A. Ocean and Forrest Street. 20

Q. What number Bostwick Avenue do you live? A. 82.

Q. That is near what street? A. Jackson.

Q. Near Jackson Avenue? A. Yes, sir.

Q. Where does your brother live on Forrest Street? A. He does not live there.

Q. Where did you say he lived? A. He has a store there.

Q. Where? A. Ocean and Forrest Street.

Q. Ocean and Forrest Street? A. Not on the corner, about three doors from the corner. 30

Q. East or west? A. North.

Q. Oh, on Ocean Avenue? A. Yes, sir.

Q. North of Forrest? A. Yes, sir.

Q. On which side of Ocean Avenue? A. Right hand side.

Q. Going towards Greenville? A. Yes, sir.

Q. What kind of a store? A. Paper store.

Q. You say it was north of Forrest? A. Yes, sir. 40

Q. How long did you stay around Ege and

George Harold Dentz, cross.

Ocean Avenue, Mr. Dentz? A. Just walked right by.

Q. Just walked right by? A. Yes, sir.

Q. Did you look for a crosswalk? A. Did I look for one?

10 Q. Yes? A. I do not know as I looked for one.

Q. But you saw one? A. I walked across it.

Q. Oh, you walked across it? A. Yes, sir.

Q. Now, which side of Ocean Avenue were you on when you started to walk across it? A. Right hand side.

Q. Which side were you on when you finished? A. On the other side.

20 Q. In other words, you are talking about a crosswalk across Ege Avenue, aren't you? A. That is the Ocean Avenue crosswalk, isn't it?

Q. That is the one you are talking about, the one that crosses Ege Avenue? A. Yes, sir.

Q. Is there any crosswalk across Ocean Avenue? A. No, I did not see any.

Q. There isn't any there, is there? A. It is covered with snow now; I do not know whether there was one.

30 Q. It was not covered with snow—I mean the one crossing Ege Avenue—was it? A. Yes, sir.

Q. Was it? A. Yes, sir.

Q. Now, how far back from the curb were these two children when you first saw them? A. About a foot.

Q. About a foot. What is there on the corner of Ege Avenue, there where they were? A. Saloon.

Q. Now, were they in front of the saloon? A. Yes, sir.

40 Q. Were they in front of the door of the saloon? A. No, sir.

George Harold Dentz, cross.

Q. Which child was nearer you, the tall one or the short one? A. The shortest one.

Q. The shortest one. You say they started to run across the street? A. Yes, sir.

Q. Now, just where were you when they started to run across the street? Where was the front of your automobile when they stepped off the curb? A. Why, the front of the automobile must have been almost in line with Ege Avenue south sidewalk. 10

Q. You say, "must have been"—what do you mean by that? A. Well, I was not in the line of—

Q. You were not what? A. I was not in the line of the sidewalk but the front of the car must have been; I was about five or six feet the other way. 20

Q. You were about five or six feet north of the curb line of Ege Avenue? A. Yes, sir.

Q. And they were fifteen or eighteen feet south of the curb line? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. So that they were from twenty to twenty-five feet from you— A. Yes, sir.

Q. —and the front of the car was only about fifteen or eighteen feet away from them? A. Yes, sir. 30

Q. Now, did they run very fast as they came on off the sidewalk? A. No, sir.

Q. How did they go? A. Went back on the sidewalk again.

Q. How far away were they before they went back? A. Well, I—before they went back, it must have been less than that; it was about twelve or fifteen feet; it was about twelve feet.

Q. They had gone about ten or fifteen feet? A. They are that far away from me then. 40

George Harold Dentz, cross.

Q. How? A. They are that far away from me at that time.

Q. I mean how far away from the curb had they gotten before they started back again? A. About two or three feet; about two feet.

10 Q. About two feet—what did they do, stop?
A. They just stepped down right off the curb with their backs to me.

Q. How? A. They just stepped down.

Q. They stepped down into the curb with their backs to you? A. Yes, sir.

Q. Now, do you mean their backs to Ocean Avenue or their backs down towards Jersey City? A. Backs towards Jersey City.

20 Q. Did they both get off the curb at the same time? A. One right after the other.

Q. What did they do, step sideways? A. I do not know.

Q. How did they get off the curb, if the backs were towards you? A. I say they were not looking at me, the backs were towards the corner, we will say.

Q. Backs toward the corner. You could see their backs? A. Yes, sir.

Q. Could you see their backs before they stepped off the curb? A. No, sir.

30 Q. How wide—could you see them at all before they stepped off the curb? A. No, sir.

Q. How wide is Ege Avenue between the curbs there? A. About thirty feet.

Q. You testified in your direct examination, did you not, that you were midway between the north and south sides of Ege Avenue when you first saw the children? A. Yes, sir.

40 Q. So that you were about fifteen feet away from the south curb line, when you saw them?
A. About.

George Harold Dentz, cross.

Q. And they were fifteen or eighteen feet away, is that right? A. Yes, sir.

The Court: Away from where?

Mr. Warren: Away from the south curb line; thank you.

Q. So that you were about thirty to thirty-three feet away from them when you first saw them?

10

A. Yes, sir.

Q. How far is it from where you sat to the front of your automobile? A. About five feet.

Q. Five feet, so the front of the car then was about twenty-five or twenty-eight feet away from them? A. Yes, sir.

Q. Were they looking down your way? A. No, sir.

Q. Were they standing there talking? A. I do not know whether they were talking or not.

20

Q. How? A. I do not know whether they were talking or not.

Q. What attracted your attention to them? A. Seeing them.

Q. Yes I know, but you see lots of people on the sidewalks, don't you, Mr. Dentz, as you drive along? A. Yes, sir.

Q. How wide is Ocean Avenue there? A. Thirty-five feet.

30

Q. Thirty-five feet? A. About that.

Q. Were they standing there when you first saw them? A. Yes, sir.

Q. Which way were they facing? A. I could not say which way they were facing.

Q. Did you see them standing there at all? A. Yes, sir.

Q. What part of them did you see? A. Dresses.

Q. How many dresses? A. I could only see one dress.

40

George Harold Dentz, cross.

Q. One dress—that was when you were in the middle—at a point opposite the middle of Ege Avenue? A. Yes, sir.

Q. Then what did you do? A. When I saw them?

10 Q. Yes. A. I sounded my horn.

Q. How many times? A. Two or three times.

Q. Do you remember whether it was two or three times? A. I do not remember whether it was two or three or not.

Q. Then what did you do? A. I released my clutch.

Q. Then what did you do? A. Sheered my car.

20 Q. What? A. Gave my car a sheer to the left.

Q. Put on your brakes? A. No, sir.

Q. Gave your car a sheer to the left? A. Yes, sir.

Q. Where were you when you started to sheer your car to the left? A. Well, I was about opposite the corner about then.

Q. About opposite the corner? A. Yes, sir.

Q. You or the front of the car? A. Me.

Q. How? A. Myself.

30 Q. But you said, Mr. Dentz, that as soon as you saw the children on the sidewalk, you blew your horn and started to sheer the car to the left, so that did you start sheering the car to the left when you started blowing your horn? A. Yes, sir.

Q. While you were blowing your horn? A. Yes, sir.

Q. And as soon as you started to blow your horn, is that right? A. Almost as soon.

40 Q. Yes, so that as soon as you saw these two children, or you saw a dress,—you did not see

George Harold Dentz, cross.

the children—you simply saw a dress on the sidewalk—you started to blow your horn and sheer your car to the left? A. No.

Q. That is not so. Now, let us go back again; when you first saw something on the sidewalk, you saw a dress? A. Yes, sir. 10

Q. Then you say you blew your horn? A. Yes, sir.

Q. And you also say that when you saw that you were about the middle—you were about the point opposite the middle of Ege Avenue? A. Yes, sir.

Q. And that as soon as you started to blow your horn you started to sheer your car to the left, you said that, didn't you? A. I did.

Q. Then as soon as you saw this dress, you started to blow your horn and sheer your car to the left, didn't you? A. Yes, sir. 20

Q. Where were you riding on the street on Ocean Avenue at the time you started to sheer your car to the left? A. Where was I?

Q. Huh-huh; right on the car track? A. No, sir.

Q. Where were you? A. Astraddle of the south-bound car track.

Q. Astraddle of that, what does that mean? A. One wheel on the wagon side and the other wheel between the two tracks, not riding in the tracks. 30

Q. Not riding on the tracks? A. No, sir.

Q. You had been riding in the tracks before you passed the car, you said? A. Yes.

Q. You did not go into the tracks again? A. No, sir.

Q. You did not? A. No.

Q. Coming up from the city, did you ride most of the way on the tracks? A. Most of the way. 40

George Harold Dentz, cross.

Q. When you were not passing a car you were riding on the tracks, weren't you? A. Yes, sir.

Q. And you did that because—well—it is the easiest riding when you have a cobbled street, isn't it? A. It is the only place to ride.

10 Q. When you have a cobbled street and you have got a good car? A. No, no, the driving is easier.

Q. What? A. You cannot ride anywheres else.

Q. Why not? A. There was wagons coming up Grand, trolleys coming around on the other side; you have to go into the tracks in order to navigate.

20 Q. You can ride a few inches one way or the other, can't you? A. If you do not mind hitting the hood of the car by the trolley or the wagons passing by the tracks; by riding on the tracks you can pass wagons and are not bothered with them.

Q. After you passed the junction, you were riding in the tracks, weren't you, until you got up from behind the car? A. I do not remember.

30 Q. You do not remember. How is it that you recollect so distinctly at this particular time you were not riding in the car tracks when you cannot remember whether or not you were riding on the car tracks a couple of blocks away? A. How can I remember?

Q. How is it that you remember that at this particular time when you were at Ege and Ocean Avenues you were not riding on the car tracks, when you cannot remember whether you were or were not riding on the car tracks when you were a few blocks away? Can you tell us that? A. Why, because I know when I turned my machine I was not in the track.

40

George Harold Dentz, cross.

Q. How do you know that? A. Because she sheered with me.

Q. If she was in the car tracks what would happen? A. She was liable to stay in there.

Q. That is, the rear wheels? A. Not necessarily the rear wheels, but the front wheels, too. 10

Q. Both? A. Both.

Q. Now, where were your hind wheels in relation to the car tracks when you first started to sheer, when you first saw this dress? A. On the team side of the road.

Q. On the team side of the road, that is to the right? A. To the right.

Q. Of the southbound tracks? A. Yes, sir.

Q. Then your left wheels would be in between the two car tracks? A. Yes, sir. 20

Q. How far from the curb line of Ocean Avenue, the west curb line, was the right side of your car? A. About six or seven feet.

Q. To what extent did you sheer your car when you started to blow your horn? A. I sheered the car more off the trolley tracks.

Q. Well, to what extent were you trying to get on the trolley tracks at the time? A. No, sir.

Q. Were you trying to cut across the trolley tracks? A. If necessary. 30

Q. If necessary. Now, where were you when you first saw the children step off the curb, where were you? A. Right abreast of the sidewalk of Ege Avenue.

Q. About abreast of the sidewalk of Ege Avenue. Now, you had sheered your car before that, hadn't you? A. Yes.

Q. At that—so that at that time where was your car—had you finished against the—withdraw that—had you finished sheering your car to the left at that time? A. No, sir. 40

George Harold Dentz, cross.

Q. You were still going to the left? A. Yes, sir.

Q. Did your front wheels respond as soon as you started to sheer the car to the left, Mr. Dentz? A. Yes.

10 Q. Now, just sit straight in the chair for a moment, if you will; now just turn, imagine you are going up Ocean Avenue, as you said you were, and just show the jury what you meant by sheering the car, by turning in your chair, if you can? A. Why, just turn the wheels (illustrating).

Q. Now, just turn your chair and show the jury to what extent you turned your wheel?

Mr. Walscheid: I object, immaterial.

20 The Court: Counsel is examining the witness as to that; you may proceed.

Mr. Walscheid: But he has done so much of it.

The Court: Proceed.

A. About like that (illustrating).

Q. I know, but just turn your chair to show—

The Court: How can he turn the chair as much as a car, so as to show that.

Mr. Warren: He can show the angle.

30 A. I do not recall the angle of the car, except as I turned the car out of the way as I seen these two children step down into the gutter.

Q. You turned your wheel before they started to step down into the gutter, didn't you? A. Just as they stepped to the gutter, as I came along Ocean Avenue, I seen this skirt behind the telegraph pole.

40 Q. Just as you got to where? A. As I came along up to Ege Avenue, as I approached the side, stepped down and I blew my horn.

George Harold Dentz, cross.

Q. Then, did you turn your car and blow your horn when they stepped off the sidewalk or the curb? A. Just as they stepped off.

Q. Then, it was while you were in a short distance of the middle of Ege Avenue that you were when you first saw the skirt that you blew your horn and sheered the car, is it? A. Well, this distance in there. 10

Q. Now, what is that distance between the two points where you were at the middle of Ege Avenue to a point opposite the sidewalk of Ege Avenue when you saw the children step down, what is that distance? A. I do not understand the question.

The Court: You see, you speak about the children where he said—they did not say where they were. You put them now at the crossing. 20

Mr. Walscheid: The question is ambiguous anyhow.

Mr. Warren: If my question is wrong, I withdraw it.

The Court: That is the reason the witness cannot understand it.

Q. How far was it from the point where you say you first saw the children, which you said was the middle of Ege Avenue, to the point where you were when you saw them step off the curb? 30

The Court: You do not mean that.

Mr. Warren: Withdraw it.

Q. Mr. Dentz, you were at a point opposite Ege Avenue when you first saw a dress? A. Yes.

Q. Now, how far was it from that point to the point where you saw the children step off the curb? A. About fifteen feet. 40

George Harold Dentz, cross.

Q. About fifteen feet? A. Yes, sir.

Q. Now, which is right, that you started to blow your horn and sheer the automobile to the left when you first saw the dress or when you first saw the children step off the sidewalk, or don't you know? A. I do not recollect.

Q. You do not recollect? A. No, sir.

Q. How far away from the curb had the children gotten, did you say, before they turned around and came back? A. About three feet.

Q. About three feet? A. Two or three feet.

Q. You say they did not run when they got off the curb? A. Yes.

Q. They just walked? A. Stepped down into the gutter.

Q. Did they turn around or did they just walk backwards to get back on the curb? A. Turned around.

Q. Now, which way did they turn, towards you or away from you? A. Away from me.

Q. Then when they got on the curb again—strike that out—did they turn around or did they stop? A. Certainly they had to stop.

Q. They had to stop. Did they have hold of each other's hands when they turned, do you know? A. I didn't—

Q. Did they still keep hold of each other's hands when they turned? A. Yes.

Q. Then the one that was farthest away from you turned and the other one went around her like that, is that right? A. No.

Q. It is not; how did they do it? A. (Standing.) They just stood up as they got off the curb, one was standing like this, back to me, as I came down the road; as I turned around they were—the little one went back on the curb stone.

George Harold Dentz, cross.

Q. Where did the other one go, on the curb stone after the little one? A. Yes, sir.

Q. When they stepped off, you said the little one was on which side of the big one? A. On which side of the big one?

Q. Yes, on which side of the big one was the little one? A. On the left-hand side. 10

Q. On the left-hand side, and then the big one stayed on the curb entirely? A. Yes.

Q. She stepped off and sort of pulled the other one? A. Yes, sir.

Q. She had hold of her with her left hand? A. Yes, sir.

Q. Then when she got back she pulled her like that? A. Yes sir.

Q. Then, what did they do, step down off the curb again? A. Stepped down off the curb and ran right out into the middle of the street. 20

Q. Now, when they got on the curb again, you can see them couldn't you? A. Yes, sir.

Q. There was nothing to interfere with your vision of them then? A. No, sir.

Q. Did they turn around again when they got on the curb? A. No, sir.

Q. Then, they were facing the curb when they got on again, weren't they? A. No, sir. 30

Q. What did they do, get on sidewise? A. No, sir.

Q. Did they? A. I do not know whether they did or not.

Q. As a matter of fact, you do not know whether they got on the curb again or not, do you, Mr. Dentz? A. Yes, I do know they got on the curb.

Q. Were you paying very much attention to those children? A. Yes, sir. 40

George Harold Dentz, cross.

Q. Why? A. For their actions as to what they were going to do.

Q. You were afraid that you might possibly run into them, weren't you? A. Yes.

10 Q. And because of that you naturally did not want to hurt anybody and you were keeping your eye on them? A. Yes.

Q. So that you saw everything that they did, isn't that so? A. Yes, sir.

Q. Now, when they got back on the curbstone, just exactly what did they do? A. They darted right out into the middle of the street.

Q. Did they go hand in hand again? A. Yes, sir; part of the way.

20 Q. How far did they go? A. As I came to them they came about half way out to the car and they broke hands and the larger one ran away and the other one ran into the car.

Q. Now, when they came off the curb, which was on the left? A. The little one.

Q. The little one? A. Yes.

Q. Did they let go of each other's hands? A. Yes, sir.

Q. Did they turn all of the way around when they got onto the curb? A. Yes, sir.

30 Q. They were on the curb and immediately stepped off again? A. Yes, sir.

Q. Did they step up on the curb backwards when they got on the curb? A. Sideways.

Q. Sideways, one before the other? A. Yes, sir.

Q. How far away were you from the place where they stepped off the curb when they stepped down the second time? A. I was nine or ten feet away.

40 Q. How? A. About nine or ten feet away.

Q. Nine or ten feet away? A. Yes.

George Harold Dentz, cross.

Q. Well, you mean you or the front of the machine, of the car—which? A. I was.

Q. You were, so that the car then, which is five feet—extends five feet in front of the driver's seat, the car then was four or five feet, the front of the car was only four or five feet away from where they stepped off, that is right, is it? A. Yes, sir. 10

Q. How? A. Yes, sir.

Q. Now, then, you were at the point opposite the sidewalk of Ege Avenue when you first say they stepped down off the curb? A. Yes, sir.

Q. Was that the first or the second time they stepped down? A. That was the first time.

Q. First time? A. Yes, sir.

Q. Now, when you first say you saw them step down off the curb what did you do? A. Turned my car, as I said. 20

Q. You turned your car when you first saw the dress on the sidewalk, didn't you? A. Well, it all happened at the same time, the dress appeared and she stepped right off the sidewalk.

Q. That was all just—the whole thing happened at once? A. Well, approximately at once.

Q. I mean that there was no time to stop or anything else? A. No time, in seconds. 30

Q. How? A. The whole thing was in seconds.

Q. You do not know whether you started blowing your horn when you were in the middle of Ege Avenue or when you were at a point at the side of the sidewalk of Ege Avenue? A. You must remember that I moved all of the time.

Q. You bet you were moving all of the time? A. Yes sir.

Mr. Walscheid: I object to that statement and ask to have that struck from the record. 40

George Harold Dentz, cross.

Mr. Warren: Yes, strike that out.

The Court: Yes.

Q. You didn't stop at any time from the time you saw them first until after Catherine Ferris was hit, did you? A. Yes, sir.

10 Q. When did you stop? A. When she hit the car the car was stopped.

Q. She hit the car? A. Yes.

Q. Where did she hit the car, Mr. Dentz? A. She ran into the wheel.

Q. Into what wheel? A. The front wheel.

Q. At the time that she ran into the front wheel, how far did the car move after she ran into the front wheel? A. Stopped right away.

20 Q. So that she was not underneath the car at all when the car stopped? A. No, sir.

Q. She was to one side? A. No, she was not to one side; she was right under the mudguard, you might say.

Q. Now, your right front mudguard at that time was where, I mean in relation to the position on Ocean Avenue, it was over on the northbound car tracks, wasn't it? A. Oh, no, not quite.

30 Q. As a matter of fact, your car was blocking the northbound track, wasn't it? A. Between the northbound and southbound, the car stood at an angle.

Q. It was blocking the northbound track, wasn't it—just opposite Dr. Mutard's driveway, do you know where that is? A. Yes, sir.

Q. That is where it was, wasn't it? A. Yes, sir.

40 Q. And your car was at the time that she ran into it was moving, wasn't it? A. No, we both stopped together.

George Harold Dentz, cross.

Q. Well, was your car moving when it touched the girl or had you stopped at that time? A. As I say, we both came together and stopped.

Q. I know— A. She ran out and I put my brakes on and stopped the car and when she got to the car she was running and the car slid sideways; it was not going ahead any, but the car was stopped, all wheels stopped when she hit it and it knocked her down on the cobblestones. 10

Q. The car was going sidewise at the time that she was hit, wasn't it? A. Yes, sir.

Q. It was veering across Ocean Avenue—it was not moving sidewise—it was moving southerly along Ocean Avenue, that is, in that direction in which you had been going, the car was swinging, is that right? A. Yes, sir. 20

Q. So that she was cutting across the street—where was she at the time that she was hit? A. About between the two trolley tracks.

Q. You said—between which two trolley tracks? A. North and south.

Q. You said that she was underneath the front right mudguard which was over north—within the north bound trolley track? A. She was under the mudguard.

Q. She was— A. But the wheel she was not. 30

Q. The wheel was not over her? A. No, sir.

Q. She had—was she carried or pushed at all by the car, do you know? A. No, sir.

Q. Do you know? A. Yes, sir.

Q. How do you know? A. Because if she fell to the side, the side of the wheel went right by her; I seen it.

Q. Now, Mr. Dentz, do you recollect Mr. Walscheid asking you about whether or not you saw the child go down? A. Yes, sir. 40

George Harold Dentz, cross.

Q. Do you remember what your answer was?
A. Yes, sir.

Q. What was it? A. Yes, sir; she dropped down out of sight there.

10 Q. Did you see that child in front of your car at all? A. No, sir.

Q. How? A. No, sir.

Q. If you had, if she had passed a point on Ocean Avenue where she was crossing the street at the time she was hit to the east of the most easterly point of your car at the time that you first saw the children, hadn't she? A. How is that?

20 Q. You were going up Ocean Avenue, your right wheel was in the wagon way, about six feet from the curb, wasn't it? A. Yes, sir.

Q. And she was all of the way over across the wagon way, across the first track, and very near the second track, when she was struck, or she ran into you, as you say? A. Yes, sir.

Q. That is so. When they left the curb the second time you saw them running? A. Yes, sir.

Q. They ran right off the curb? A. Yes, sir.

Q. Fast? A. Yes, sir.

30 Q. As fast apparently as they could go? A. Yes, sir.

Q. And they had—you saw that she was running hard straight across the street, didn't you? A. Yes, sir.

Q. If you had kept on going straight, she would have passed in front of you, wouldn't she? A. No, sir.

Q. If she kept on running? A. No, sir.

Q. Why not? A. She was too close to me.

40 Q. How far away was she from the front of the car when she started to run? A. About four or five feet.

George Harold Dentz, cross.

Q. About four or five feet? A. Yes, sir.

Q. That was before—that was when she stepped off the second time, not the first time? A. That was when she started to run.

Q. When she started to run. Well, you said these two children started out there from the street and then ran back to the curb, straight into the street and then ran back to the curb—you saw that there were two little tots, didn't you? A. Yes, sir. 10

Q. You thought that they were confused, didn't you? A. I thought they were going back on the sidewalk.

Q. When you thought they were going back on the sidewalk, they didn't, did they? A. Yes.

Q. You didn't pay any more attention to them, did you? A. Yes, I did. 20

Q. You kept looking at them all of the time, didn't you? A. Yes.

Q. Let's come back to where we started from almost; I don't like to keep at this, but I want to get it straight, this thing. From the time that you first saw the skirt until the time the thing was all over, how long did it take? A. I do not know.

Q. It was over in no time, wasn't it? A. Yes, sir. 30

The Court: He doesn't know.

Q. Was anything said by anybody in the car concerning the children? A. I do not know.

Q. Didn't the girl say anything? A. I do not know.

Q. You don't remember that? A. No, sir.

Q. Mr. Dentz, do you know within what distance that car could stop, if the brakes were both operated at once, if it had chains on those rear wheels? A. No, sir. 40

George Harold Dentz, redirect.

The Court: You asked him that once, and he said he did not know.

Q. You knew, as you drove along the street, that people might step out from the curb? A. Yes, sir.

10

Q. Children?—and you, of course, were careful? A. Yes, sir.

Q. And you didn't want to hurt anybody? A. Certainly not.

Q. And you wanted to drive your car in a way that you could stop in case of any emergency, so that you would not hurt anybody? A. Yes, sir.

20

Q. And yet you did not know within what distance you could stop that car at the speed at which you were going, did you? A. No, sir.

The Court: Anything further?

Mr. Warren: No, sir; that is all.

The Court: Call your next.

Redirect examination by Mr. Walscheid:

Q. You have since Monday of this week been served with a summons and complaint in this action, haven't you? A. Yes, sir.

30

Q. Was it on Monday of this week? A. No, sir.

Q. When was it? A. Tuesday.

Q. Tuesday of this week; at that time you were under subpoena? A. Yes, sir.

Q. And you were served here in court or in the Court House while you were under a subpoena? A. Yes, sir.

Q. You said in response to a question by Mr. Warren that you had the owner's consent for the use of the car that day; did you say that? A. No, sir.

40

George Harold Dentz, redirect.

Mr. Warren: I didn't understand him to say that.

Mr. Walscheid: I understood that he had said that.

Mr. Warren: He did not.

Q. You did not have the owner's consent to take these two ladies driving up the hill to your house? A. No, sir.

10

Q. In fact, he didn't know that you were doing it? A. No, sir.

Q. Nor had you any consent of his to drive home to supper that night in the car, had you? A. No, sir.

Q. Now, can you find upon this paper, marked D-1 for Identification, the location of your home? What is the name of the street? A. Wilkinson Avenue.

20

Q. Wilkinson Avenue—and what street? A. And Ocean.

Q. Wilkinson Avenue and what street? A. Between Ocean and Bergen.

Q. Will you put a figure "4" about where your place, where your home was on Wilkinson Avenue? A. (Witness does so.)

Q. Now, in relation to that Wilkinson Avenue, where was Bidwell Avenue? A. Two blocks further.

30

Q. Two blocks further down towards Bayonne? A. Yes, sir.

Q. Will you put a "5" where Bidwell Avenue is? A. (Witness does so.)

Mr. Walscheid: That is all.

The Court: Call your next.

Mr. Warren: Just a moment, Mr. Dentz.

40

George Harold Dentz, recross.

Recross examination by Mr. Warren:

Q. Mr. Dentz, where were you when you first received word that this case would probably be reached and would be tried on January 2nd or 3rd?

10

Mr. Walscheid: I object; immaterial, irrelevant and incompetent.

Mr. Warren: Cross examination.

The Court: You asked him whether he was under subpoena; I think it is competent.

Mr. Walscheid: Note the objection.

A. At home.

Q. Where? A. 82 Bostwick Avenue.

20

Q. Who communicated with you?

Mr. Walscheid: I object; immaterial.

The Court: Yes, immaterial.

Mr. Warren: Enter the objection.

Q. You say you were served with a subpoena when? A. Monday night.

Q. You had been in communication with somebody before that in connection with being at the trial of this case, had you not?

30

Mr. Walscheid: I object, immaterial.

The Court: I think that is immaterial.

Mr. Warren: Enter the objection.

Q. You were in court, were you not, Mr. Dentz, when this case was on the list for trial a couple of weeks ago?

Mr. Walscheid: I object; incompetent, irrelevant and immaterial.

The Court: Sustain the objection.

40

Q. You didn't—you stated that you didn't have

George Harold Dentz, recross.

Mr. McArdle's consent to take the ladies home; you said that you didn't know that you were going to meet those ladies at that time? A. Yes, sir.

The Court: He has testified to that.

Q. You say that you did not get Mr. McArdle's consent to drive home for supper; now, it is a fact, is it not, Mr. Dentz, that you were not using the car without Mr. McArdle's permission? 10

Mr. Walscheid: Now, I object to that.

The Court: I will allow that.

Mr. Walscheid: When he was on this trip?

Mr. Warren: On this trip.

Mr. Walscheid: That is limited to that, if he had obtained permission to go on this trip; you didn't ask that. 20

A. I did not have his permission, no.

Mr. Walscheid: What was the answer?

The Court: "I did not have his permission, no."

Q. What you mean is you did not ask him that day for permission to drive the car home for supper that night? 30

Mr. Walscheid: I object to that on the ground that the answer is that he did not.

The Court: I will allow that question.

A. No, I did not ask him.

Q. As a matter of fact, you stated earlier in your examination that when you had to clean the car and you finished up late in the afternoon, that you would drive home and then go to the garage and clean the car and leave it there, didn't you? 40

George Harold Dentz, recross.

Mr. Walscheid: I object to that—well, I will withdraw the objection.

The Court: Answer the question.

A. What was the question?

10

Mr. Warren: Read the question.

(Question read by the stenographer.)

A. Yes.

Q. That is what you did during all of the time that you were employed, wasn't it?

Mr. Walscheid: I object; immaterial, irrelevant and incompetent.

The Court: I will allow that.

Mr. Walscheid: I pray an objection.

20

The Court: Yes.

A. No.

Q. Didn't you ever do it before? A. Yes, I had done it before.

Q. One time or many times?

Mr. Walscheid: I object; immaterial, incompetent and irrelevant.

The Court: He may answer that question.

30

Mr. Walscheid: I pray an objection.

The Court: Yes.

A. It would all depend on the time when I got through.

Q. If you got through late and had to clean the car so as to have it clean for your employers, that is the family, the next day, you would go home to your supper and then go to the garage and clean your car, isn't that so?

A. No, sir.

40

George Harold Dentz, recross.

Q. Didn't you state that a moment ago? A. No.

Q. What did you state? A. I said if I should happen to get home earlier I would clean it before dark.

Q. You would do what? A. I would take the car up home and then go over to the garage. 10

Q. Well, that happened a number of times, didn't it? A. Yes.

Q. Mr. McArdle knew about that? A. I don't know whether he did or not.

Q. Don't you, Mr. Dentz? A. No.

Q. Mr. Dentz, did you at the time that you were doing that have any orders of Mr. McArdle— 20

Mr. Walscheid: I object; calling for a conclusion.

The Court: Yes, that is a conclusion.

Q. Was there any order of Mr. McArdle given you which would prevent you from driving home to supper when you had to go to the garage to clean the car at night?

Mr. Walscheid: I object; immaterial, irrelevant and incompetent. 30

The Court: Why do you think that is incompetent?

Mr. Walscheid: If he did, it wouldn't be competent.

The Court: I think it is competent.

Mr. Walscheid: I pray an objection.

The Court: Read the question.

(Question read by the stenographer.)

A. No.

Q. Do you recollect, with the knowledge of 40

George Harold Dentz, recross.

Mr. McArdle or any member of his family, going home to your supper with the car?

Mr. Walscheid: I object to that question.

10 The Court: Well, he shakes his head "no."

Q. Did you at any time that you recollect talk with Mr. McArdle about going home to your supper—

Mr. Walscheid: I object to that unless it is prior to the occurrence.

The Court: Prior to the accident?

Q. Prior to the accident? A. No, sir.

20 Q. Did you ever go home prior to the occurrence for your supper and then go back after Mr. McArdle in the evening with the car?

Mr. Walscheid: I object; immaterial, irrelevant and incompetent.

Q. Please don't shake your head.

Mr. Walscheid: What was the answer?

The Court: He shakes his head "no."

A. No, sir.

30 Q. You, you say, have been served in this suit? A. Yes, sir.

Q. You do not feel very friendly towards the Ferris family, do you, because of the suit?

Mr. Walscheid: I object, incompetent, irrelevant.

The Court: I think it is always competent to show condition of mind.

A. Do I feel very friendly towards them?

Q. Yes. A. I don't feel badly towards them.

40 Q. Don't you feel a little bit badly towards

George Harold Dentz, recross.

them on account of their suing you? A. No, sir.

Q. Do you think that if Mr. McArdle wins this case and the plaintiff is beaten that that will prevent the suit from going on against you?

A. Will it prevent it?

10

Q. Yes. A. I don't know.

Mr. Warren: He said "no."

The Court: What did you say?

Mr. Walscheid: What did he say?

A. I said "no."

The Court: Talk a little louder; even the stenographer cannot hear.

Q. Do you have any feelings against Mr. or Mrs. Ferris as a result of this criminal proceeding against you, Mr. Dentz?

20

Mr. Walscheid: I object; there is no evidence of any criminal proceeding—

Mr. Warren: It is this man's case.

Mr. Walscheid: There is no evidence of any criminal proceeding.

The Court: How is that proper to go into the question of some other proceeding?

30

Mr. Warren: I will withdraw that.

The Court: Strike that out; that should not be in.

Q. Mr. Dentz, was there any criminal proceedings against you as the result of this accident because of the death of Catherine Ferris?

A. Yes.

Q. In those proceedings, did Mr. Ferris and Helen Ferris testify for the State?

40

Mr. Walscheid: I object; immaterial

George Harold Dentz, recross.

and irrelevant whether they testified; incompetent.

The Court: What difference does it make whether they did or not.

10 Mr. Warren: Laying the foundation for a question as to whether or not that affects his feelings towards the plaintiff in this case.

The Court: I will allow it for those grounds.

Mr. Warren: Read the question.

(Question not read.)

A. Yes.

20 Q. And you felt that this was an accident on your part, didn't you? A. Yes, sir.

Mr. Walscheid: I object to what he felt.

The Court: I do not see that it makes any difference what he felt.

Mr. Warren: All right; sir.

Q. As the result of their testifying against you in that criminal case, Mr. Dentz, what was your feelings towards Mr. Ferris? A. My feelings; I have no feelings towards him at all.

30 Q. You have none at all.

By Mr. Walscheid:

Q. You were acquitted on the trial of that criminal charge against you, weren't you? A. Yes, sir.

Q. When you drove home for supper at night in the McArdle car, you drove to your home for your own convenience; isn't that so? A. Yes, sir.

40 Mr. Walscheid: That is all.

George Harold Dentz, recross.

By Mr. Warren:

Q. And also, Mr. Dentz, for the purpose of getting your supper so that you could—withdraw that—it was also because you were going to the garage that evening to clean the car, wasn't it? A. Yes.

10

Q. You would not have taken the car home with you merely for the purpose of getting supper, would you? A. Certainly.

Q. How? A. Yes.

Mr. Walscheid: "Yes," is that what the answer is?

The Witness: Yes.

Q. If you had finished up earlier in the afternoon, Mr. Dentz, and had a chance to clear the car before your supper, you would not have taken the car home with you would you? A. No, not if I could have had it cleaned up and gone home for supper; yes.

20

Q. You would have had it cleaned up and left it there? A. Yes, sir.

Q. So that the reason that you took the car home with you that night was because you hadn't had time to get it cleaned up before supper, and you had to go back to the garage with it? A. Yes.

30

Mr. Warren: That is all.

Mr. Walscheid: That is all.

(Witness excused.)

40

Michael J. Coyne, direct.

MICHAEL J. COYNE, sworn.

Direct examination by Mr. Walscheid:

Q. Mr. Coyne, where are you employed? A. Hudson County Court House.

10 Q. What is your position? A. County Map Clerk.

Q. County of Hudson? A. Yes, sir.

Q. Have you a map of the County of Hudson? A. Yes, sir.

Q. I show you a paper, marked D-1 for identification, and ask you whether that came from the files from your office? A. That is a reduced map of the official map on file in our office; this map is not actually on file, but it is a correct representation of the layout of the city.

20 Q. With its streets, avenues, etc.? A. Yes, sir; based on the Official Assessment Map of Jersey City.

Mr. Walscheid: I now offer it in evidence.

Mr. Warren: May I cross-examine as to this map?

The Court: Yes.

30 Q. Who is this map issued by? A. Issued by Cole, the druggist.

Q. Cole, the druggist? A. Yes, sir; from the official maps in the office.

Q. Gotten up by whom, do you know? A. By, I think, the Rand-McNally people publish it at the request of Cole, I presume; they had their name on it.

Q. You don't know whose map that is, do you? A. This particular map?

40 Q. Yes. A. My map now; it was—

Q. I don't mean this copy. I mean the—who

Michael J. Coyne, direct.

was the surveyor who made this particular map?

A. No, Rand-McNally engrossed this; the surveyor that made the original is L. D. Fowler, now deceased.

Q. You say that it correctly represents the streets of Jersey City, do you? A. The relative position of the streets of Jersey City as they now exist.

10

Q. Relative positions? A. Yes, sir; one street is east and west of another, and when a street is south of the other.

Mr. Walscheid: I object to this examination as going far beyond the necessity of cross-examination on this; this is a mere sketch.

The Court: I will take it for granted that counsel is trying to get something before the jury that has some relevancy to his case.

20

Mr. Warren: Not for the jury but for the purpose of having Your Honor rule on this offer.

Q. Do you know Cartaret Avenue, where it comes into Ocean Avenue? A. I can show it to you there.

30

Q. I say, do you know it? A. Yes.

Q. You know that Cartaret Avenue ends at— A. At the east side of Ocean.

Q. —at the east side of Ocean, don't you? A. Yes, sir.

Q. This map shows, however, that it runs directly into Kearney Avenue, doesn't it? A. It runs into Ocean Avenue.

Q. Yes, at Kearney Avenue? A. Kearney Ave-

40

Michael J. Coyne, direct.

nue ends on the other side of the street there; it does not cross Ocean Avenue.

Q. You are talking from the map? A. Yes, sir.

10 Q. But, actually, Cartaret Avenue and Kearney Avenue do not end opposite one another at all, do they? A. They do not?

Q. No, sir? A. No, sir; very little difference however.

Mr. Warren: I object, if Your Honor please, to the offer; that is only one thing that I have seen, but I object to the offer.

By the Court:

20 Q. How near are they together? A. One hits about the middle of the other; in other words, the north side of one street would hit the middle of the street opposite.

Q. What is the scale of that map? A. It will scale about a thousand feet to the inch, I think, Your Honor.

By Mr. Warren:

30 Q. As a matter of fact, Mr. Coyne, this north line of Kearney Avenue is south of Cartaret Avenue, is it not? A. I could not say from memory; this map does not show it to be the case.

The Court: I think I will allow it to be used; you may take your exception.

Mr. Warren: Enter my objection?

The Court: Yes, sir.

(Marked Exhibit D-1.)

Mr. Walscheid: That is all.

Mr. Warren: That is all.

(Witness excused.)

Clara Scott, direct.

MISS CLARA SCOTT, sworn.

Direct examination by Mr. Walscheid:

Q. Miss Scott, where do you live? A. Sixty Stegman.

Q. Do you know Mr. Dentz? A. Yes, sir. 10

Q. Are you his sister-in-law? A. No, sir.

Q. You are not his sister-in-law? A. No, sir.

Q. On the evening of the 24th day of May, 1915, did you meet Mr. Dentz? A. Yes, sir.

Q. Who was with you when you met him? A. Miss Edwards.

Q. She is here in court, is she? A. Yes, sir.

Q. Is she his sister-in-law? A. Yes, sir.

Q. Where did you meet him? A. At Grand Street and Jersey Avenue. 20

Q. Where were you, on what portion of those streets were you and Miss Edwards when you met him? A. On the right-hand side.

Q. On the sidewalk, I suppose? A. Yes, sir.

Q. Were you walking or standing? A. We were standing there.

Q. What were you standing there for? A. Waiting for the car.

Q. Waiting for a trolley car? A. Yes, sir.

Q. Going home, were you? A. Yes, sir. 30

Q. You had no appointment to meet Mr. Dentz did you there? A. No, sir.

Q. What happened when you first saw him? A. He beckoned to come over.

Q. He was in an automobile? A. Yes.

Q. Do you know whose automobile it was? A. No, sir.

Q. After he beckoned to you to come over, what next did you do? A. Well, we just went over.

Q. You went over to the car? A. Yes. 40

Clara Scott, direct.

Q. Then what did you do? A. He opened the door of the car.

Q. And you got in? A. Yes, sir.

Q. Miss Edwards got in, too? A. Yes, sir.

Q. Which portion of the car did you get into?

10 A. The back.

Q. Was there anything said about where you were going? A. No, sir.

Q. Just driving up? A. Yes, sir.

Q. Where did you drive? A. Up Grand Street.

Q. How far up Grand Street? A. All of the way, I guess.

Q. Well, and the next street that you got on—do you know what was the next street that you got on after you left Grand Street? A. Ocean

20 Avenue—that goes into Ocean Avenue.

Q. You ran into Ocean Avenue? A. Yes, sir.

Q. Then, you drove on down Ocean Avenue to Ege Street, did you not? A. Yes, sir.

Q. Now, when you got into that automobile, where did you think it was going to take you?

Mr. Warren: I object to that as immaterial.

The Court: Objection sustained.

30 Q. Where did you intend to go in this machine?

Mr. Warren: I object to that as immaterial.

The Court: Unless something was said, it doesn't make any difference what the lady thought.

Mr. Walscheid: Not what she thought but where she intended to go.

40 The Court: Unless something was said, it hasn't any relevancy.

Clara Scott, cross.

Mr. Walscheid: Your Honor overrules the question?

The Court: Yes, of course, where she intended to go or where she was going is immaterial.

Mr. Walscheid: I pray an objection to both refusals. 10

The Court: Yes.

Q. Was there anything said by you to Dentz at all? A. No, sir.

Q. Was there anything said by Miss Edwards to Dentz at all? A. I do not remember.

Q. And as you drove down to Ege Street, what happened there? A. Well, this accident happened then.

Q. What did you see of this accident? A. Why, I heard him blow the horn and he turned around; that was all I seen. 20

Q. You heard him blow the horn; where was he when he blew the horn? A. I do not know.

Q. You do not know; have you any recollection of the accident at all? A. That—just that—that is all.

Q. Is that all that you remember of the accident? A. I saw him getting out to pick the girl up, that was after. 30

Q. Did you see any of the accident yourself? A. No, sir..

Q. You didn't see any of the accident? A. No, sir.

Mr. Walscheid: Cross-examine.

Cross examination by Mr. Warren:

Q. Didn't you, when you got over to the car, say anything at all to Mr. Dentz? A. No, sir. 40

Clara Scott, cross.

Q. Didn't say good evening or how do you do or anything? A. I did not think so.

Q. You did not. You have known him for some time? A. Yes, sir.

10 Q. You were not angry with him, were you? A. No, sir.

Q. Didn't his sister-in-law say anything to him? A. I do not remember.

Q. You don't remember what she said or you do not remember whether she said anything?

A. I do not remember whether she said anything or not.

Q. You do not remember whether or not Mr. Dentz said anything to you? A. No, sir.

20 Q. Did he say anything when he opened the car, such as "Jump in" or anything like that, did he? A. No, sir.

Q. Then, from the time that you got into the car until the time the accident happened, what was said? A. Nothing to him.

Q. I didn't ask you that; what was said by anybody?

The Court: Is it material what conversation took place between the ladies?

30 Mr. Warren: Yes, because it tests her recollection.

The Court: No, I think it is taking up time unnecessarily.

Mr. Warren: All right; enter an objection.

Q. Did you say anything to Dentz from the time you got into the car until after the accident happened? A. No, sir.

40 Q. Did you say anything to Dentz that night after the accident happened? A. No, sir.

Q. Did he say anything to you before the acci-

Clara Scott, cross.

dent happened or afterwards that night? A. No, sir.

Q. Did Miss Edwards, in your hearing, say anything to Dentz that night? A. No, sir.

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

Q. And Dentz in your hearing didn't say anything to her? A. No, sir. 10

Q. Were you and Miss Edwards talking in the car? A. Yes, sir.

Q. And were you talking at the time of the accident or just prior to it? A. I do not remember.

Q. Which side of the car were you sitting on? A. Left hand side.

Q. Left hand side? A. Yes, sir.

Q. Which way were you looking at the time of the accident, when you heard the horn? A. I do not know. 20

Q. And when you heard the horn, did you look out in front? A. Yes.

Q. Did you say anything then? A. I do not know; I do not remember.

Q. Well, if you saw a little girl running across the street in front of the car—or if you looked out in front and there was a little girl in front of the car running, you would have seen it, wouldn't you? 30

Mr. Walscheid: I object, calls for a conclusion.

The Court: Yes, I think it does call for a conclusion.

Mr. Warren: Exception.

Q. When you looked out in front you continued to look until the car stopped, did you?

Mr. Walscheid: I object; calling for a conclusion. 40

Clara Scott, cross.

The Court: Oh, no; that is all right; she may answer that question, if she can.

A. I do not know.

10 Q. When you heard the horn blow could you feel the car swerve to the left?

Mr. Walscheid: I object; she has not said she felt the car swerve to the left.

Mr. Warren: Just a moment; I will withdraw that.

Q. What did you say happened when Mr. Dentz blew his horn—didn't you say that he turned his car? A. Yes.

20 Q. That was as he blew the horn, wasn't it? A. That was the second time.

Q. Second time? A. Yes, sir.

Q. Where was the car at the first time? A. I do not know.

Q. What do you mean by the second time he blew the horn you say he turned the car? A. I heard the horn twice.

Q. One right after the other? A. Yes.

Q. And it was the second blast that he turned his car? A. Yes, sir.

30 Q. Now, when he turned the car and the horn was blowing and the car turned—he turned the car—you looked forward to see what was the matter, didn't you? A. I don't remember.

Q. You don't remember. Well, in any case, you did look out in front of the car; you have so testified, haven't you? A. I must have.

Q. That is true; you did look out in front of the car, didn't you?

40 Mr. Walscheid: I object to that question, that she so looked; that is based upon the contention that she must have done so.

Clara Scott, redirect.

By the Court:

Q. Do you remember what you did after you heard the horn blow, do you remember? A. No, sir.

Q. You do not remember anything about it? A. No, sir.

10

By Mr. Warren:

Q. Do you remember where the car was when you first heard the horn? A. No, sir.

Q. You do not remember that? A. No, sir.

Q. When you first heard the horn, were you talking with Miss Edwards or was she talking with you? A. I do not know.

Q. How long was it after you first heard the horn and the car stopped, do you know? A. Instantly.

20

Q. You don't know anything about the speed of automobiles, of course? A. No, sir.

Q. Do you know how far the car travelled after you heard the horn? A. No, sir.

Q. You do not know? A. No, sir.

Mr. Warren: That is all.

The Court: Anything further?

Redirect examination by Mr. Walscheid:

30

Q. Was the top up on this car, Miss Scott? A. I think so.

Q. It had been raining, hadn't it, during the day? A. Yes, sir.

Q. Do you remember whether the top was up and the side pieces on? A. I think they were.

Q. Was there a windshield on the car, do you know? A. I do not know.

Q. Do you know whether there was a wall between the front seat and the rear seats when the

40

Clara Scott, recross.

top was up and side pieces on? A. I do not know.

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

Recross examination by Mr. Warren:

10 Q. Do you know that the side curtains were on? A. I think they were.

Q. Are you sure that they were? Think a bit. A. Yes.

Q. You do not know whether there was a wind shield on the car? A. There must have been.

By Mr. Welscheid:

Q. Now, don't say "there must have been"; just tell us what you know.

By Mr. Warren:

20 Q. Is that the reason you think that there were side curtains on? (No reply.)

Q. You actually remember they were there? A. Yes, sir.

Q. But you do not remember seeing the wind-shield, but you just simply know that there must have been a shield? A. Yes, sir.

Q. It was not raining at that time? A. I do not remember.

30 Q. It was not raining when you got into the automobile was it? A. I do not remember that either.

Q. How far away from you was the automobile when Mr. Dentz waved to you? A. It was in the center of Jersey Avenue.

Q. You were where? A. On the corner.

Q. About fifteen or twenty feet away? A. From the corner?

Q. From where you were standing? A. From the corner?

40 Q. Huh-huh? A. I should judge about that.

Q. And as he sat on the seat, did he simply

Grace Edwards, direct.

wave to you—you could see him wave as he sat in the seat? A. Yes, sir.

Q. And he sat on the right hand side of the car? A. Yes, sir.

Q. You were on the opposite corner, that is on the lefthand side corner? A. Yes, sir. 10

Q. And he was not looking out of any curtains at that time, was he? A. I do not know.

Mr. Warren: That is all.

Mr. Walscheid: That is all.

The Court: Call your next.

(Witness excused.)

MISS GRACE EDWARDS, sworn.

20

Direct examination by Mr. Walscheid:

Q. What is your name, please? A. Grace Edwards.

Q. You are related to Mr. Dentz, are you? A. I am his sister-in-law.

Q. On May 24, 1915, did you meet Mr. Dentz? A. I saw him on that day.

Q. Didn't you meet him—I do not mean did you meet him by any appointment, or did he happen to meet you? A. By accident. 30

Q. Where were you when you met him by accident? A. On the corner of Jersey Avenue and Grand Street.

Q. Who was with you? A. Miss Scott.

Q. Where were you going at the time?

Mr. Warren: Objected to.

The Court: Yes, immaterial.

A. We were waiting for a car—

Mr. Warren: Objected to. 40

Grace Edwards, direct.

The Court: It is immaterial; it doesn't make any difference where they were going.

10 Mr. Walscheid: It is material on the question of whether they were on this man McArdle's business, or whether they were doing anything in furtherance of that that business. Does your Honor rule the question out?

The Court: Yes; where they were going is immaterial.

Mr. Walscheid: But can I not corroborate that fact by their testimony, even though Mr. McArdle has so testified that this man was not on any business of his?

20 The Court: Does the plaintiff claim that?

Mr. Walscheid: Even though there is no such claim.

The Court: Proceed, put it in if you think it is necessary.

Mr. Walscheid: I pray an objection to your Honor's ruling.

The Court: I have allowed it.

Mr. Walscheid: I beg your pardon.

30 Q. Where were you and this young lady going at that time?

Mr. Warren: Did your Honor allow the question?

The Court: Yes.

Mr. Warren: I pray an objection.

A. We were waiting for a Greenville car to take us home.

Q. To take you home? A. Yes, sir.

40 Q. And Mr. Dentz came along in the automobile, did he? A. Yes, sir.

Grace Edwards, direct.

Q. What happened after he came along? A. Well, we heard the automobile and looked over and saw him and he beckoned over for us to come over.

Q. And you went over? A. We went over.

Q. What happened then when you went over? A. As we were crossing the street, he said, "Are you going on your way home?" I said, "Yes." He said, "Jump in; I will take you along." 10

Q. Then, he said that to both of you, didn't he, "Are you going on your way home?"

Mr. Warren: I object to that.

The Court: Objection sustained.

Q. Well, to whom did he address that remark, "Are you going on your way home?" A. Well, I presume he directed it to me. 20

Q. Well, he didn't mention your name, did he? A. No.

Q. And the other girl was right along side of you? A. Miss Scott was with me.

Q. Had he known Miss Scott before that? A. Yes, for a number of years.

Q. And as both of you came across the street, he said to you while the two of you are (were) present, "You can get into the machine with me," is that right? A. Something to that effect. 30

Q. What did you say to that? A. I said, "yes."

Q. What did Miss Scott say? A. I don't believe she answered.

Q. Then, what did he say? A. Why, he opened the door of the automobile and we got in.

Q. Did he say, "Jump in?" A. Yes, before we got to the automobile, he said, "Jump in, and I will take you home."

Q. Then both of you got in, is that right? A. Yes. 40

Grace Edwards, cross.

Q. Then both of you sat in the back seat? A. In the rear.

Q. Talking to each other? A. At times.

Q. Were you talking to Mr. Dentz at all? A. No, sir.

10 Q. Was the top up on the car? A. Yes, sir.

Q. Was it raining at that time? A. Not at that time; no.

Q. Had it been raining? A. It had been during the day.

Q. Do you know whether the side pieces on the back were on? A. Which one, where I sat?

Q. They were on in the back of the car? A. Yes, sir.

20 Q. Were they on in the front of the car? A. I do not know.

Q. Then you drove on up through Grand Street? A. Yes, sir.

Q. Up through Grand Street and Ocean Avenue, didn't you? A. Yes, sir.

Q. To Ege Avenue? A. Yes, sir.

Q. And there there was an accident, is that right? A. Yes, sir.

Q. Did you see any of that accident? A. No.

Mr. Walscheid: That is all.

30 The Court: Cross examine.

Cross examination by Mr. Warren:

Q. Didn't Mr. Dentz say anything to you except, "Are you going home?" and "Jump in"? A. That was all as far as I can recollect.

Q. Well, do you recollect whether or not he spoke to you at all from that time until you got up the hill? A. I do not remember.

40 Q. You do not remember; he may have spoken to you? A. Possibly.

Q. Is it very likely?

Grace Edwards, cross.

Mr. Walscheid: I object to that, calls for a conclusion.

Mr. Warren: I will withdraw that.

Q. How do you know that he knew Miss Edwards— A. Miss Scott.

Q. —or Miss Scott? A. She has been a friend of the family for a number of years.

Q. And you were talking about what, do you remember?

Mr. Walscheid: Miss Scott?

A. Miss Scott and I?

Q. Miss Scott?

Mr. Walscheid: I object; immaterial.

(Question withdrawn.)

Q. What first attracted your attention to the fact that something was happening at Ege Avenue? A. Well, hearing the automobile horn.

Q. Was that the only time it had been blown that afternoon, during the ride up? A. Well, whenever it blows it attracts my attention each time.

Q. How does it attract—what do you do when it attracts your attention? A. If I was not paying attention, I looked out to see what has happened.

Q. And you looked out this time to see what was happening, didn't you? A. Well, I was looking out.

Q. Which way did you look out, up front? A. Yes, I could not see from the side, the curtain was down.

Q. Which side were you sitting on? A. Right.

Q. And the side curtain was by the rear seat?
A. Where I sat.

Grace Edwards, cross.

Q. Was there any curtain over the door? A. I do not know.

Q. You do not remember that? A. No.

Q. You do not know whether there was any curtains by the driver's side, do you? A. No.

10 Q. You were sitting directly behind Mr. Dentz? A. Yes, sir.

Q. When you looked out, you could see in front of the car, couldn't you? A. Slightly.

Q. You could see off some little distance in front, couldn't you? A. Yes, if I was looking out.

Q. When the horn blew, you did look out? A. Yes, I looked out.

20 Q. And the automobile stopped just as the horn was blown, didn't it? A. Yes.

Q. You didn't see anything out in front of the car at all? A. No.

Q. You didn't see a little girl? A. Well, the same instant I looked out I saw something run towards the car and the car turned.

Q. Oh, and you did see something about the accident, didn't you? A. That is not the accident; I just saw something running from the sidewalk.

30 Q. Now, where did you see that from, from the front of the car? A. As I sat in the back.

Q. But, did you see the little girl run in front of the car? A. It all happened so quickly, I couldn't say where she ran to.

Q. I know, but Miss Edwards—where were you looking—to the side of the car or over out in front, or over the hood? A. Over the hood; I couldn't see out of the side.

40 Q. How far in front of the car was the little girl when you saw her? A. I do not know.

Grace Edwards, cross.

Q. Well, was she the distance of this—from the wall there to you? A. I do not know.

Q. Well, was it greater or less than that? A. I do not know.

Q. Now, listen, Miss Edwards; you saw this little girl running after your attention had been attracted by the blowing of the horn— 10

Mr. Walscheid: Now, I object; this lady has not said it was a little girl; she said she saw something.

Q. What was it that you saw running? A. I do not know; I just saw that there was something running from the sidewalk the same instant as the horn blew.

Q. From which sidewalk? A. Ege and Ocean. 20

Q. Which side? A. South side.

Q. On the south side of Ege? A. Yes.

Q. Which side of Ocean Avenue was she, the side of the car where you were on, or the other side? A. The side where I was?

Q. Where did the little girl turn from the corner of Ocean and Ege—where was the person running from the corner of Ocean and Ege?

Mr. Walscheid: She has not said it was a person. 30

Q. Was it a dog? A. No, it was a person.

Q. What kind of a person—a big fat person or a little person? A. Small person.

Q. Small person; how small? A. I do not know.

Q. What do you call "small," Miss Edwards? A. Well, a child.

Q. A child. Did it have—as you saw it, was it dressed in pants or a skirt or dress? A. A dress. 40

Grace Edwards, cross.

Q. In other words, you think you saw a little girl run out from the sidewalk? A. Yes.

Q. When you said that you did not know what it was, you did not mean that, did you? A. Well, it all happened so quickly, you couldn't really tell what it was.

Q. Well, you knew it was a little girl, didn't you? A. I know that since.

Q. You knew from what you say that it was a little girl? A. No, I did not.

Q. Did you see the little person? A. I saw a dress, yes.

Q. You say that it was a small person? A. Yes, sir.

Q. And yet you do not know what it was. Now, did this little dress come out—where was the car at the time that you saw that; had it reached Ege Avenue, or not? A. Why, it was near the corner.

Q. Near the corner of Ege Avenue? A. As far as I could say.

Q. Which corner of Ege Avenue, north or the south? A. The south.

Q. Near the south? A. Yes.

Q. And the car swerved to the left, did it, right away? A. The instant I see this in front of the car it swerved to the left.

Q. That was at the same time that the horn was blown? A. Right after; directly after.

Q. The horn was blown first; how many blasts of the horn were there, do you know? A. Two, I believe.

Q. Two or three; the automobile was near then the corner of Ege Avenue when the child ran out or when this dress came out? A. As far as I know; I could not see the side there.

Grace Edwards, cross.

Q. You could not see the side there? A. No, the curtains were up at the side; I could see directly in front, what little I could see.

Q. But you say that you saw the child run back to the curb? A. Yes.

Q. Running to cross the street from the east sidewalk, didn't you? A. Well, that would be directly in front. 10

Q. Directly in front of what? Miss Edwards, you know what the west side of Ocean Avenue is, don't you? A. Yes.

Q. That was the side of the street to your right as you came up the street? A. Yes.

Q. And you saw something running from that west sidewalk, didn't you? A. Yes.

Q. And that something was a small something with a dress on it? A. Yes. 20

Q. Now, there was—you could see that from where you sat?

The Court: She said she saw it.

Q. There were no side curtains to prevent you from seeing that, were there? A. I saw that by looking out the front.

Q. Looking out the front you saw that? A. Yes. 30

Q. Now, when you looked out the front, you could see that child leave the sidewalk, couldn't you? A. Yes.

Q. And you could see the corner of Ege Avenue and Ocean Avenue, couldn't you? A. Yes.

Q. And you could see that child leaving the sidewalk, couldn't you? A. When I saw the child she was running out into the street and the same instant the automobile turned, and that was all I saw. 40

Grace Edwards, cross.

Q. Now, how far out in the street was the child when you first saw her? A. I could not say.

Q. Was she right at the curb or was she in the middle of the street? A. I do not know.

10 Q. Was she directly in front of the automobile? A. Running towards it.

Q. What? A. Running towards the middle of the street.

Q. Running towards the middle of the street and in front of the automobile because you were looking out the front? A. I was looking out.

Q. Now, can't you see—you said you could see the corner of Ege Avenue, that is the corner of Ege and Ocean? A. Yes.

20 Q. Where the saloon is? A. Yes.

Q. You could see that as you looked out front? A. Yes.

Q. And you could see the little girl at the same time in front of the automobile, could you not? You said you could, didn't you? A. Yes, I could see her.

Q. She was running across the path of the automobile, wasn't she, over to the left? A. Yes.

30 Q. She was running over to your left in front of the car— A. Yes.

Q. —to the east side of Ocean Avenue? And when you saw her in front of you, in front of the car, could you see her whole body? A. No.

Q. What part of her could you see? A. It was just the upper part.

Q. How much of the upper part? A. Oh, just enough to know that it was someone running.

40 Q. Just enough to know that there was someone running. How much was that, from her waist up? A. I should judge about that.

Q. Now, will you tell me how far in front of

Grace Edwards, redirect.

the automobile was this child when you saw it?

A. I do not know, because the same instant I saw the child, why the automobile turned.

Q. And when it turned, you could not see the child any more? A. No, we jarred.

Q. You were jarred, is that right? A. Yes, by the sudden stop. 10

Q. The last you saw of the automobile was the child in front of it? A. I did not see the child in front of it, but you can running toward it .

Q. It was running across the street, wasn't it? A. Yes.

Q. She was running towards the automobile, it was right in front of that, going across the street? A. Yes. 20

Q. And the next thing you knew was that the car was stopped and jarred? A. Yes.

Q. Is that right? A. Yes.

Mr. Warren: That is all.

Redirect examination by Mr. Walscheid:

Q. You said that jar was on the side of the car?

Mr. Warren: Now, she didn't say that. 30

A. The sudden stoppage of the car causing us to be jarred in our seats.

Q. All right. A. I didn't mean by striking anything.

By Mr. Warren:

Q. You didn't feel that? A. No, I didn't mean that; I meant that we were jarred from our seats by the sudden stoppage.

Q. Well, now, the instant that you were jarred 40

William A. Birchett, direct.

from your seat, did you go off the seat into the floor? A. No, we didn't go off.

Q. Did you do that? A. Well, we moved; it was a wide seat, of course, and it jarred us.

Q. You both came into one corner, didn't you?

10 A. I do not know.

Q. You do not recollect? A. No, I do not.

Mr. Warren: That is all.

Mr. Walscheid: That is all.

(Witness excused.)

WILLIAM A. BIRCHETT, sworn.

Direct examination by Mr. Walscheid:

20 Q. Where do you live? A. At present at 73 Virginia Avenue.

Q. Where did you live on May 24, 1915? A. 94 Kearney Avenue.

Q. In Jersey City? A. Yes, sir; in Jersey City.

Q. What was your business at that time? A. General contractor.

Q. What was that? A. General contractor.

Q. On that day did you see an accident at the corner or near the corner of Ege Avenue and Ocean Avenue, in Jersey City? A. Yes, I did.

30 Q. Where were you just before the accident? A. Why, I was on Ocean Avenue, about two-thirds of the way between Kearney Avenue and Ege Avenue.

Q. On which side of the street? A. On the uptown side.

Q. Now, that is nothing to me—was it north, south, east or west? A. I couldn't say, not being familiar with the cardinal points, there, I couldn't say.

40 Q. Well, do you know any of the buildings there? A. No.

William A. Birchett, direct.

Q. Well, was it on the side of Ocean Avenue from which Ege Avenue enters Ocean? A. It was about on the block between Kearney Avenue and Ege on Ocean.

Mr. Warren: That would make it the west side. 10

Q. On the same side of the street that Ege Avenue comes in? A. Yes.

Q. And you were walking in which direction, towards Jersey City? A. Towards Jersey City.

Q. Now, did you see the two little girls? A. Yes, I did.

Q. Where were you when you first saw them? A. I was about—

Q. In relation to the corner of Ege Avenue? A. I was nearing that corner. 20

Q. About how far away were you? A. I should judge about two thirds of the distance, pretty near Kearney.

Q. Well, in feet? A. That I could not really say.

Q. Well, where were the two little girls? A. When I saw them they came out from around the corner in a hurried walk like; they were not running, but were walking hurriedly. 30

Q. They came around the corner? A. They came around the corner onto Ocean Avenue.

Q. How far south on Ocean Avenue did they come? A. Why, they stepped—

Mr. Warren: Objected to on the ground that there is no testimony that they came around south on Ocean Avenue.

The Court: Did they come around Ocean Avenue.

Q. Did they come around Ocean Avenue 40

William A. Birchett, direct.

towards you? A. They did, a space of about two to four feet.

Q. Then when they—A. They did not cross the street directly as they came out of Ege Avenue.

10 Q. Then when they came out of that what did they do? A. Why, as I was looking at them they stepped right off the sidewalk without looking which way they were going, and I noticed they had—instead of going right direct across they went diagonally across.

Q. Diagonally in which direction? A. Towards Greenville.

Q. Towards the south? A. Yes.

20 Q. Towards Bayonne? A. Yes, sir; towards Bayonne.

Q. Diagonally across? A. Yes.

Q. Go ahead; what next happened? A. And then as they got about somewheres between the second car track and the opposite curbstone they stood still like, and started back for the curbstone which they had stepped off of.

Q. How did they start diagonally to that second car track—did they walk or did they run? A. Why, in the same attitude, in the same speed.

30 Q. Well, was it running or walking? A. Why, on a childish fast walk.

Q. Well, what does that mean, childish fast walk; what do you mean by a childish fast walk? A. Why, as the children generally do, not running or not exactly walking, still on a half walk and a half run.

Q. Well, they got as far as this second car track and then they stopped? A. They stopped and started—

40

Mr. Warren: I object.

William A. Birchett, direct.

Q. They stopped there, did they? A. Yes.

Q. Then, what next did they do after stopping?

A. Why, they started back for the same curbstone they came off of.

Q. How did they start back; did they walk or did they run or what did they do? A. Why, the larger girl seemed to hold on to her hand, tried to force her, to jerk her, to go to the opposite side of the street, had hold of her hand.

10

Q. The larger girl was pulling on the other? A. To the opposite side.

Q. You said they started back towards the side from which they came? A. Yes, they both did.

Q. Now, how far back did they go towards the south? A. Oh, it was a matter of about a foot or two.

20

Q. Where did they go—how far did they go in relation to the center line of the street? A. Why, they were beyond the center line—

Q. When they started back? A. They were beyond the center line when they started back.

Q. How far back did they come? A. Why, I guess between one and two feet.

Q. Did they cross the center line of the street? A. No, not the center line of the street, the second car track.

30

Q. Center line of the car track? A. Yes.

Q. What do you call the second car track? A. The Greenville car track, coming back from Greenville.

Q. How? A. The car track coming from Bayonne.

Q. Then what happened? A. They started back again to the curbstone for which they were heading at that time I noticed the automobile coming along in the car track, and the automobile at

40

William A. Birchett, direct.

that time when I first noticed it was just about entering upper Ege Avenue.

10 Q. Entering what? A. Entering upper Ege Avenue, and was in the car track running along slowly as I call it; whether the children noticed it or not, I do not know, but they turned around to go back to that opposite curbstone, and in doing that they broke hands and the chauffeur tried to turn the machine out of the way; in fact, he did turn the car out of the car track that he was in, turned it off towards Dr. Mutards.

Q. He was coming down on the car track that went to Bayonne? A. Coming down the car track that went to Bayonne—he was not—Oh, yes, going to Bayonne.

20 Q. Now, make sure? A. Going to Bayonne.

Q. Going to Bayonne? A. Yes.

Q. And when he started turning the car out towards Dr. Mutards place, why did he do that?

Mr. Warren: I object to that?

Mr. Walscheid: Strike that question out.

30 Q. Where were the little children then? A. Why, when the car—when the chauffeur turned his car out of the track, the children had started back for the curbstone they had left; they started back in that direction again.

Q. And then when they started back in that direction, it was then when the chauffeur turned towards Mutards? A. Yes.

Q. And when the chauffeur turned towards Mutards, what did the children—where were the little children, about? A. They turned right around again and went in the opposite direction.

Q. Where? A. Went towards Dr. Mutards, on the other side of the street, I mean.

40 Q. Were they running then? A. Well, from the

William A. Birchett, direct.

excitement, I should judge—yes, they did make more of a hurried motion then at that time than before.

Q. Both of them? A. Yes.

Q. Then what next happened? A. The next thing I saw was the machine had reached both of them on the downtown track, somewheres between the downtown track and the curbstone on the opposite side; yes both of them. 10

Q. Both of them? A. Yes, both of them, and had knocked the larger one down and she went up on the sidewalk and she crossed and ran toward Cartaret Avenue, somewheres, in a hurry; and at that time I saw the little one—it looked like had gone under the front part of the machine, right underneath the radiator or the axle of the front wheels, the little one had been hit. 20

Q. Do you know anything about the speed of motor cars? A. No, I do not.

Q. Can you say how fast this motor car was traveling? A. I could not say.

Q. Was it going fast or was it going slow in your estimation?

Mr. Warren: Objected to.

The Court: He says he doesn't know anything at all about the speed. 30

Q. Was there any horn blown by the chauffeur?
A. That I do not remember.

The Court: Anything further?

Mr. Walscheid: Just one question.

Q. How far did this automobile travel after it struck the little girl; how many feet, about?

A. Why, I do not know, but the automobile 40

William A. Birchett, cross.

travelled, oh, after it struck the children, I think it went—it did go right on toward the gutter.

Q. The automobile did? A. Yes, to the gutter.

Mr. Walscheid: That is all.

10 Cross examination by Mr. Warren:

Q. You say the automobile was traveling in the car tracks towards you? A. Yes.

Q. You mean it was in the track—you mean that his wheels were on the track? A. Yes.

Q. And the automobile was where when you first saw it? A. Coming in front of Ege Avenue and Ocean—just about entering upper Ege Avenue.

20 Q. Those children never got back to the west side—to the west curb after they had first left it, did they? A. That is, they never ran back to the gutter or the curb from which they stepped off?

Q. Yes. A. No, I don't think so.

Q. What kind of a contractor are you? A. Why, house cleaning, buildings, factories, etc.

Q. Where is your place of business? A. I am not in that business at the present time.

30 Q. What is your business now? A. Working for the Government.

Q. In what capacity? A. Longshoreman.

Q. Where was the little girl who was found under the automobile when she was hit? A. Why, between the Bayonne car track and the opposite curbstone.

Q. What do you mean, Bayonne car track, coming from Bayonne? A. Coming from Bayonne, yes.

40 Q. Just how far now—that would be between the east curb and the northbound car track,

wouldn't it? A. Well, between that—Bayonne car track and that curb.

Q. How far was she from the curb at the time she was hit, do you say? A. Why, they were in between the car track and the curb, between that space.

Q. Yes, but how far away from the curb, or how far away from the car track? A. Well, on the middle way between that space. 10

Q. And the car after hitting her went right up to the curb? A. After hitting her it went right up to the curb, and the left-hand wheel struck the curbstone.

Q. So that it went out to the gutter then? A. It went out to the gutter.

Q. It was there by Dr. Mutard's driveway, wasn't it? A. As far as Dr. Mutard's driveway, in front of him, I think. 20

By the Court:

Q. How wide is that driveway? A. I believe somewhere about five or six feet.

By Mr. Warren:

Q. And how far—when the car was going into the curb after it hit the little girl, it was going into the curb diagonally, wasn't it? A. Yes.

Q. Because the left front wheel hit the curb, didn't it? A. Yes. 30

Q. So that the car went in like that (illustrating)? A. Yes.

Q. Now, how far did the car travel toward Bayonne after it hit the little girl before the left wheel hit the curb? A. Why, I do not know.

Q. Five or six feet? A. No, it went right to the curbstone.

Q. Which was— A. About a foot or two, about a foot or so. 40

William A. Birchett, cross.

Q. Well, the car was coming south, wasn't it?
A. Yes.

Q. Diagonally at the time it hit the girl? A.
Yes.

10 Q. It traveled after it hit the girl until it hit
the curbstone? A. Yes.

Q. Now, it was traveling diagonally at that
time towards Bayonne, wasn't it? A. Yes.

Q. The distance between the curbstone and the
little girl was at least five feet wasn't it, when
she was hit? A. A little less than five feet.

Q. A little less than five feet? A. Yes.

Q. And the car traveled how far, did you say,
before it hit the curb? A. Turned around kind
of.

20 Q. How far did the car travel toward Bayonne
after it hit the little girl? A. Why, I guess about
between one and two feet.

Q. Well, it had traveled at least between four
to five feet—five feet of the curb, didn't it? A.
Yes.

Q. And it was going diagonally, and you think
it only went up about one foot up towards
Bayonne? A. Between one to two feet towards
Bayonne.

30 Q. Now, you said in answer to Mr. Walscheid's
question that the automobile when you first saw
it was on the car track coming from Bayonne,
that it was not on the car track going to Bayonne,
didn't you? A. It was going to Bayonne.

Q. I say, you said in answer to Mr. Walscheid's
question, that the automobile was not on the
car track going to Bayonne and then you later
changed it, that is so, isn't it?

The Court: Well, find out where it was.

40 Q. Now, which was correct, was the automo-

William A. Birchett, cross.

bile on the car track going to Bayonne or coming from Bayonne? A. It was going to Bayonne.

Q. Going to Bayonne? A. Yes.

Q. Where was the automobile, the front of the automobile, when it started to turn to the left?

A. Why, it seems to me it was just about even with the corner, or a little less, about two feet to the corner, to that same corner they stepped off. 10

Q. Two or three feet? A. Two or three feet.

Q. Two or three feet north towards Jersey City from the corner? A. In the opposite way, towards Bayonne—towards Greenville.

Q. The car was about two feet towards Greenville from the corner when it started to turn?

A. Yes, sir; when he started to turn. 20

Q. And the little girls at that time when it started to turn, you said, were out in the other car track? A. Yes.

Q. That is right? A. That is right.

Q. Now, when the automobile started to turn, it got out in the car track didn't it? A. Not out in the car track but between that car track and the gutter and the curb.

Q. That is between the far car track and the curb they were? A. Yes, between that space. 30

Q. In which direction were the children going at the time the automobile started to turn? A. Why, they were coming back to the gutter that they came off of.

Q. Now, how far did they go back? A. Why, they were in that same space, I guess it was between the two tracks, and the Bayonne car track going down town; they were in that track then, moving about as fast as they could do to get back. 40

William A. Birchett, cross.

Q. And the automobile started to turn towards Mutards when the two children then were in the car track going toward Jersey City? A. Yes.

10 Q. They only took a step or two towards the curb that they had started from, isn't that so? A. No, they were in the inside; they were in the downtown car track and Bayonne car track.

Q. Yes, but they only took a step or two towards the side of Ocean Avenue that you were on when they turned around and went back? A. Between a foot or two.

20 Q. But they never got beyond the car track; that is, I mean on the side nearer you, they never got on that side of the car track going towards Jersey City on their way back, did they? A. No.

Q. It was while they were in that car track that the automobile turned towards Dr. Mutard's and they turned to run towards the other curb? A. Ran towards the curb that they started from.

Q. You said that they—at the time that this little girl was hit she was going towards the east curb, that is not the curb that you were on, but the other curb, that is so, isn't it? A. Yes.

30 Q. Now, they started from the curb on which you were, that is on that side of the street? A. Yes.

Q. And they got over beyond the second car track, that is the car track to Jersey City? A. Yes.

Q. And then they turned around and started to go back towards the side of the street where you were? A. Yes.

40 Q. And then before they got out of that car track they turned around and went to the sidewalk, towards the sidewalk, where Dr. Mutard's house is? A. Yes.

William A. Birchett, cross.

Q. And while they were in the car track going towards Jersey City, this automobile which you saw was coming up on the other car track, turned in towards Dr. Mutard's house, that is what you testified to, isn't it?

10

Mr. Walscheid: I object to what he has testified to; it is what he is testifying to now.

Q. That is a fact, isn't it? A. Yes, that is a fact.

Q. And the children were on their way towards the east curb at the time that this automobile tried to avoid the two of them and struck them; that is so, isn't it? A. No, the automobile struck them—it struck them when they were coming back.

20

Q. Coming back to where? A. To the gutter which they left.

Q. Now, you have just stated the opposite; you have said, did you not, that the children were on their way to Dr. Mutard's side of the street at the time that they were struck; that is your testimony, isn't it? A. Yes, they were.

Q. Yes? A. Yes.

Q. Then the automobile hit the children from behind, didn't it? A. Yes.

30

The Court: Anything further?

Mr. Warren: That is all.

Redirect examination by Mr. Walscheid:

Q. Now, Mr. Birchett, I suppose you have given your best recollection of this matter to-day, haven't you? A. As far as I could.

Q. You haven't thought of it now since the accident occurred to to-day, have you? A. I have not.

40

William A. Birchett, redirect.

Q. Did you make a statement in relation to this matter? A. I believe I did at one time.

Q. Is that your signature (showing paper to the witness)?

10 Mr. Warren: I object to his reading the paper.

Q. That is your signature, isn't it? A. Yes, that is my signature.

Q. Are the words—what are those words?

Mr. Warren: I object to showing the statement to the witness.

The Court: Yes—I didn't hear your question.

20 Mr. Walscheid: I am asking him if he wrote those words.

Mr. Warren: I object to it.

Mr. Walscheid: This is merely to refresh his recollection; I have got a right to show it to him.

The Court: Anything that is material to the issue; proceed.

30 Mr. Warren: If your Honor please, this testimony is going in, of course, with the understanding, I mean under the rule that if he now, after being shown this statement, testifies differently to what he has testified here to-day, that it merely destroys the effect of all of his testimony?

The Court: The Jury is to say whether it does or not.

Mr. Warren: May I have my objection entered on the record to showing the witness this paper?

40 The Court: You can ask him if those words were written by him; take your objection.

William A. Birchett, redirect.

Q. You have identified your signature? A. Yes.

Mr. Walscheid: Mr. Stenographer, will you kindly mark this for identification this paper.

(Marked D-2 for identification.) 10

Q. Now, showing you paper marked D-2 for identification, I ask you whether or not you wrote these words, "Read the above statement, which is true"? A. That is my writing.

Mr. Warren: I object to his answer; and ask to have it struck out.

A. It is my writing.

Q. Now, I turn over on the other side, and I see on that paper—and I see again the name "William A. Birchett"; is that your signature, did you write that (showing paper to the witness)? 20

A. I do not remember of ever having written that.

Q. I did not ask whether you remembered ever having written it; is it your writing? A. Yes.

Q. That paper was read by you and signed by you on May 27, 1915, wasn't it? A. Yes.

Q. Three days after the accident, wasn't it?

A. I could not say exactly when it was; I know it was written. 30;

Q. You know when it was—A. I know it was written.

Q. And it was written in your presence? A. That I cannot remember whether it was or not; I do not remember just now whether it was written in my presence or not.

Q. Wasn't it written in your home? A. I do not remember.

Q. Why don't you remember? A. I just can-

40.

William A. Birchett, redirect.

not recollect at this moment whether it was or not.

10 Q. Didn't you stay there with the man who took this statement and tell him your story? A. I cannot really recall; I know I read it and signed it.

Q. And you knew it was true when you signed it?

Mr. Warren: Objected to.

The Court: Yes, it is leading.

Q. Was it true when you signed it? A. Whatever I signed was true.

Q. Whatever you sign was true on May 27, 1915? A. Yes.

20 Q. Your recollection of that accident was much better then than it is now. Is that so?

Mr. Warren: Objected to as leading.

The Court: Yes, that is leading.

Q. Wasn't your recollection better three days after the accident than it is now of this accident? A. Well, my recollection just at the present time is not as clear as it was then.

30 Q. Now, did you on that occasion say, "My name is William A. Birchett; I am thirty-five years of age; married"—

Mr. Warren: Just a moment, if your Honor please.

Mr. Walscheid: Allow me to put my question?

Q. —and "live at 94 Kearney avenue, Jersey City."

40 Mr. Warren: If your Honor please, it seems to me that under the circumstances when this statement is read and made a part of the testimony it goes into evidence,

William A. Birchett, redirect.

in the testimony of this witness, that the question as to whether or not the statement is to be admitted into evidence should be passed upon before the statement is read before the jury.

The Court: Now, he is asking whether he made certain statements about this; he may do that. 10

Mr. Warren: Enter my objection.

The Court: Yes.

Mr. Walscheid: Read the question.

(Question read by the stenographer as follows: Q. Now, did you on that occasion say: "My name is William A. Birchett; I am thirty-five years of age; married; and live at 94 Kearney Avenue, Jersey City.") 20

Q. Did you say that? A. I did.

Q. Is it true? A. It is true.

Q. Did you also at that time say, "On May 24, 1915, at about five-thirty P. M., I was walking north on the west sidewalk of Ocean Avenue, towards Ege Avenue"? Did you say that? A. Yes, sir; I can recall now—that is my statement.

Q. Was that true? A. That is true.

Q. Did you also say, "I was about fifty feet south of Ege Avenue"—"As I was about fifty feet south of Ege Avenue, I saw two little girls step off the same sidewalk I was walking on"—did you say that? A. I did. 30

Q. And is that true? A. That is true.

Q. Did you then also say, "They were about fifteen feet south of the crosswalk on Ocean Avenue and Ege Avenue"? A. I did.

Q. And is it true? A. It is true.

Q. Did you then say, "The larger girl had her 40

William A. Birchett, redirect.

arm locked into the smaller girl's arm"—did you say that? A. I did.

Q. Is it true? A. It is true.

10 Q. Did you then say, "As they stepped off the sidewalk, they started to walk towards the car tracks, and as they got about the middle of the south bound car tracks they stopped for a moment and then ran back towards the curb that they had gotten off"—did you say that? A. I did.

Q. And is it true? A. It is true.

Q. "And as they were about five feet from the gutter then turned around and ran back towards the east side of the street"—did you say that? A. I did.

20 Q. Is it true? A. It is true.

Q. Did you also say, "As they were near the south bound car tracks I saw a touring car coming south in the car tracks; it was not going as fast as I can run"—did you say that? A. I did.

Q. Is it true? A. It is true.

30 Q. Did you also say, "When these girls ran in front of the machine and the chauffeur turned to the left, but the smaller girl was knocked down and she fell under the front of the machine"—did you say that? A. I did.

Q. Was that true? A. It is true.

Q. Did you also say "The larger girl was knocked about three or four feet away from the machine"? A. I did.

Q. And is that the fact? A. It is true.

Q. Did you also say, "But she immediately regained her feet and ran towards the auto, that was stopped"—did you say that? A. Yes.

40 Q. Is it true? A. That is true.

Q. Did you also say, "The chauffeur jumped

William A. Birchett, redirect.

out of auto from left side and walked to front of machine and picked the smaller girl up from under the automobile"—did you say that? A. Yes.

Q. Is it true? A. It is true.

Q. Did you also say, "I do not know whether the chauffeur blew the horn or not before the accident"—did you say that? A. I did. 10

Q. And is it true? A. It is true.

Q. Did you also say, "The auto had almost come to a stop when the girls were struck, and it had not traveled more than one to three feet after they were knocked down"? A. I said that.

Q. And it is true? A. It is true.

Mr. Walscheid: That is all.

Mr. Warren: The last clause of that statement. 20

Mr. Walscheid: I did not read the last paragraph because I do not think it is material.

Mr. Warren: I want my objection noted upon anything he said upon which he has been examined.

The Court: Yes.

Recross examination by Mr. Warren: 30

Q. You were looking at this statement all of the time it was being read to you, weren't you, Mr. Birchett? A. Yes.

Q. And the reason that you say that you said those things—is it because of your recollection that you did say that or because you saw that written on this paper? A. Because of my recollection that I did say so that time.

Q. You now remember that you said those things which were read to you and which you read on this paper? A. I do. 40

William A. Birchett, recross.

Q. Was your testimony in court here this afternoon true? A. It is.

Q. Huh-huh. A. So far as I can recall.

The Court: Is there anything further?

Mr. Warren: Yes.

10

Q. Will you just describe to the jury—you said—you were just asked and you answered that they were, speaking of the little girls, about fifteen feet south of the crosswalk on Ocean and Ege Avenue; will you just describe to the jury the crosswalk that is there? A. I cannot recollect whether or not there is any crosswalk just at the present time or not; I do not know; but what I said more from the standpoint of being what I supposed to be a crossing from the corner to the opposite side of the street.

20

Q. It is the crosswalk that I am speaking of? A. I am stating now as to what was there in the summer of 1915.

Q. Well, there weren't any there, were there? A. I cannot recollect whether there was or not; I do not remember.

Q. Don't you remember about that? A. I do not.

30

The Court: He said he did not know.

Q. Do you know whether or not there was a crosswalk there when you made this statement? A. No, I do not remember that, or I did not know about it then.

Q. As they left the sidewalk, then as you say now, that they walked, is that right? A. Walked hurriedly.

40

Q. Is it true that they got to the middle of the or beyond the middle of the northbound tracks before they turned around to come back? A. It is true.

William A. Birchett, recross.

Q. That is true? A. Yes.

The Court: Anything further?

Mr. Warren: Yes, your Honor; just a second.

Q. It is also true that the car was up against the curb when it stopped after the accident, immediately after the accident? A. That is true. 10

Q. And the little girl while the car was up against the curb was underneath the car? A. Yes, sir.

Q. That was the east curb of Ocean Avenue? A. Why, that, I do not know whether it was the east or the west.

Q. That is the side where Dr. Mutard's house is? A. Yes, sir. 20

Mr. Warren: That is all.

Redirect examination by Mr. Walscheid:

Q. Now, Mr. Birchett, did this car, as you say, come in collision with this little girl in the center of the street, and only went from one to three feet afterwards; how is it possible that it could reach the curb? Which of these two stories is true; is the story that you signed on May 27th true or is your statement now that the car went across the street into the curb true; or don't you know which is true? 30

Mr. Warren: I object to the question on the ground that there is nothing in that statement that contradicts the last answer of the witness.

The Court: I am going to allow him to answer that question, if he can.

Mr. Warren: Enter my objection?

The Court: Yes. 40

(Question read by the stenographer.)

William A. Birchett, redirect.

10 A. Why, the car is headed in the middle of the street; what I meant by the middle was between the middle of the street car track and the opposite curbstone; it was not in the middle of the street at all, not in the middle of the street; in the middle of the car track; I think it says that on the paper, I believe.

Q. You said on May 27th that these little girls got about to the middle of the south bound car tracks? A. Yes, to the middle of the car tracks.

Q. South bound car tracks? A. Yes.

Q. That is the car track running from Jersey City to Bayonne, isn't it, the one nearest the side of the street that you were on? A. From Bayonne to Jersey City.

20 Q. That is the north bound car track? A. The car coming from Greenville.

Q. Do you know what that arrow indicates, showing you Exhibit P-2? A. Yes.

Q. That indicates that that is a northerly direction, doesn't it? A. Yes.

Q. Now, then, here is Ege Avenue, do you see that? A. Yes.

Q. Here is Ocean Avenue, do you see that? A. Yes.

30 Q. This is the side of the street that you were on, over here, can you understand that? A. That seems to be kind of turned around to me.

Q. You want to turn it around, all right. Now, this is on the same side of the street that you were on? A. Yes.

Q. You were right there, in that neighborhood? A. Coming up this way; that is right.

Q. That is north, is it? A. Yes.

40 Q. This track here, nearest the side that you were on, is the track that goes south, do you see that here? A. Yes, I see.

William A. Birchett, redirect.

Q. That is the south bound car track? A. Yes.

Q. Now, you said on May 27th, "As they stepped off the sidewalk"—the side that you were on—"they started to walk towards the car tracks—" Where are those car tracks? A. Here.

Q. That is the car track? A. Yes.

10

Q. "And as they got about the middle of the south bound car track"—the middle of that car track here (indicating) which is the south bound car track—A. Yes, towards Bayonne that goes.

By the Court:

Q. In other words, you mean the south bound track? A. Yes.

By Mr. Walscheid:

Q. When they got to the south bound tracks, you say now, they stopped for a moment? A. Yes.

20

Q. And then ran back towards the curb that you were on? A. Yes, sir; that is true.

Q. So that they got to the middle of that second car track? A. Yes, sir; right.

Q. Then they ran back towards the curb that you were on? A. Yes.

Q. And as they were about five feet from the gutter, from this gutter that way? A. From this gutter (indicating).

30

Q. You didn't say that? A. That is what I am saying; there I seen them.

Q. You know they went—they ran back—they stopped for a moment—and then ran back towards the curb that they had gotten off; they ran back towards this curb (indicating), and as they got about five feet from the gutter they turned around and ran back towards the east side of the street; now, do you mean—A. I mean

40

William A. Birchett, recross.

that I might have made a misjudgment in the amount of the feet.

10 Q. Are you making a misjudgment now or did you make it then? A. Why, whatever I said is true; but, as I said before, the distance of the feet, I am not so sure.

Q. You haven't thought of this case since 1915, have you? A. No; I have not.

Q. Did anybody ever have any talks with you about your testimony in this case? A. I have not.

Q. You were honest at that time in making this statement, weren't you? A. Yes, just as I say I have said, whatever I said is true.

20 Q. All that you are doing now is giving your recollection, which is now three years old—I will withdraw the question.

Mr. Walscheid: That is all.

Recross examination by Mr. Warren:

Q. Now, Mr. Birchett, is there anything in that statement that says where the girl was hit?

Mr. Walscheid: I object to that; the statement shows that.

30 The Court: You have read it before the jury, the jury can recall whether there is or not. Do you think it is necessary? If you do, you may ask it.

Mr. Warren: I think that it is necessary; but it doesn't make any difference.

Mr. Walscheid: Now, one moment; I think that the whole statement is in evidence.

40 The Court: He may answer that question.

Mr. Walscheid: I pray an objection.

Argument.

The Court: I have allowed you to go into the question.

A. Yes, it seems to me when I speak of the distance between the opposite curbstone and the downtown—the Bayonne car track—that space—at that point, that is where they were hit. 10

Mr. Warren: All right; that is all.

The Court: Now, is that all with this witness.

Mr. Warren: That is all.

Mr. Walscheid: That is all.

(Witness excused.)

The Court: Is that all?

Mr. Walscheid: That is the last witness, so far as we are concerned. 20

The Court: We will take a recess now until Monday morning at ten o'clock—until Monday morning.

(Recess.)

January 7, 1918; 10.00 A. M.

Court met pursuant to adjournment.

Mr. Walscheid: I desire at this time to offer in evidence the following paragraphs of the complaint: Paragraphs 1 and 2 of the first, second and third counts of the complaint, as an admission of the fact that there was a cross-walk at the point, at the intersection of Ege Avenue and Ocean, and that according to the declaration the accident is alleged to have happened upon that crosswalk. 30

The Court: Which paragraphs?

Mr. Walscheid: 1 and 2 of the first 40

Argument.

count of the complaint, which paragraphs are repeated into the second and third paragraphs of the complaint; and the defendant rests.

The Court: Anything further?

10

Mr. Warren: I did have the plaintiff in rebuttal, but he is not here yet. I will object to the offer, if Your Honor please, on the ground that the testimony in the case speaks for itself and shows the condition existing at that particular point.

The Court: Now, let us see; you answered that?

Mr. Walscheid: The answer denied—

The Court: Then the situation is—

20

Mr. Walscheid: It is a fact stated by the plaintiff and is therefore a matter of evidence which the jury is entitled to have.

The Court: The pleadings are before them.

Mr. Walscheid: You see, we have denied the whole of those two paragraphs, which, of course, contain more than the mere fact of the existence of the crosswalk; Your Honor understands that the statement of the two paragraphs contain more than the statement of the existence of the crosswalk; it contains a statement of the occurrence of the whole accident, so we denied those contentions and we denied that it happened on that cross-walk.

30

The Court: Well, the plaintiff says it did and you say it did not.

Mr. Walscheid: That is why I will ask that the statement be offered or received in evidence.

40

Argument.

The Court: I do not believe it is any more than the regular pleading, that is all.

Mr. Walscheid: And Your Honor rules that I cannot have that in evidence?

The Court: It goes in as a pleading in the case; that is all; it does not have any more effect than that it is a pleading of the case. 10

Mr. Walscheid: I now contend that it is an admission on the part of the plaintiff contrary to the statement his witnesses have made here in this case. The witnesses in this case stated that there is no crosswalk, and in his pleading he said that there is a crosswalk. Now, I say that that fact is an admission which we are entitled to have to go to the jury as an admission that it is there. 20

The Court: It is nothing more than one of the pleadings in the case.

Mr. Walscheid: Your Honor, then, overrules my offer?

The Court: Yes.

Mr. Walscheid: I pray an objection.

The Court: Pleading in the case; that is all. Anything further? 30

Mr. Walscheid: The defendant rests.

(Defendant rests.)

Mr. Warren: I cannot find him, Sir.

Mr. Walscheid: I have several motions to make.

The Court: All right; make them now.

Mr. Walscheid: There are, as Your Honor will have noticed, three actions brought by this one complaint; an action by William Ferris as Administrator of Catherine Ferris, deceased; an action by 40

Argument.

10 Helen Ferris who sues by her next friend, William Ferris; and an action by William Ferris for the loss of the services of his daughter, Helen Ferris. There are three actions. Addressing myself, first, to the action of Helen Ferris, who sues by next friend—

Mr. Warren: Mr. Walscheid, I think I can perhaps shorten the matter, if you will recall in the opening to the jury I stated that there was not any substantial claim on the part of Helen Ferris.

Mr. Walscheid: You have discontinued—

20 Mr. Warren: I have discontinued the case of the injuries to Helen Ferris, which, of course, includes in that relation as to the father, his claim for loss of services
* * * so that we are now trying at this time the one case only—the death case only.

Mr. Walscheid: In other words, as to the two cases specified, you are taking a voluntary non-suit, as to those two cases.

Mr. Warren: Certainly.

30 Mr. Walscheid: That leaves just the action of William Ferris, administrator of Catherine Ferris, deceased?

Mr. Warren: That of course, if Your Honor please, is as to this defendant. If Your Honor please, Mr. Ferris is here now.

Mr. Walscheid: But the case is closed.

The Court: Well, if you have anything important, I will allow that to go in; but he is confined strictly, though, to such matters as may go in at this time.

William Ferris, direct.

WILLIAM FERRIS, called in rebuttal.

Direct examination by Mr. Warren:

Q. Do you know the defendant, Mr. McArdle, Mr. Ferris? A. Yes, sir.

Q. Have you at any time talked with him? 10

Mr. Walscheid: I object to that is immaterial, irrelevant and incompetent.

Mr. Warren: I will withdraw that question.

Q. Have you at any time after this accident on the 24th of May 1915, talked with him?

Mr. Walscheid: Same objection, and on the further ground that it is not rebuttal. 20

The Court: Yes, he said rebuttal.

Mr. Warren: They were on the question as to whether or not the chauffeur was acting for the defendant at the particular time; if I can show that before this suit was instituted that the defendant of his own motion suggested to the plaintiff that he do something, looking towards a settlement of the case, that it would be—it could be considered by the jury on the question as to whether or not at the particular time the chauffeur was acting for this defendant. 30

The Court: No, that is incompetent.

Mr. Warren: Your Honor will permit an objection?

The Court: Yes, I will. I will allow a question as to whether or not he had a talk. 40

William Ferris, direct.

Mr. Walscheid: That calls for an answer, yes or no?

The Court: Yes.

Q. Answer yes or no? A. Yes.

10 Q. Where did this conversation take place and who was present? A. In the Court House here, between me and you, Judge Warren, and myself.

Q. And who else? A. And Mr. McArdle.

Q. What was that conversation?

Mr. Walscheid: I object to that is immaterial, irrelevant and incompetent.

The Court: Yes, I do not think that is competent.

20 Mr. Warren: According to my offer, Sir.

The Court: I think it is improper; I will refuse your offer; you may enter an objection.

Mr. Warren: The stenographer has my reasons for the offer, I think.

The Court: Just state them.

30 Mr. Warren: I intend by this witness to prove that in a conversation had with the defendant prior to the institution of this action the defendant suggested to the witness that he do a certain thing, looking towards the payment to the plaintiff for compensation for damages resulting from the death of his daughter, Catherine Ferris, in the action which is the basis of this suit.

The Court: You object to that?

Mr. Walscheid: Yes, sir.

40 The Court: I will sustain your objection.

Request for Verdict.

Mr. Warren: Enter my objection to that too?

The Court: Yes.

Mr. Warren: That is all, Mr. Ferris.

(No cross examination.)

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(Witness excused.)

(Plaintiff rests.)

Mr. Walscheid: I now ask your Honor to direct a verdict in this case for the defendant McArdle on the ground that there is no proof in this case that the death of Catherine Ferris was the result of an accident which she is alleged to have suffered; that there is no proof of negligence in the driver of the automobile, causing or contributing to any injury suffered by Catherine Ferris; that the accident happened upon a portion of the highway known as Ocean Avenue, which was not a crossing or crosswalk over Ocean Avenue, and that the plaintiff's intestate, in being at the point of accident, the point of the alleged accident, assumed the risk of being there and that her right of action against the owner of the automobile, McArdle, but he not driving the car then is barred by the statute which I have referred to your Honor's attention and which was in force on the 24th day of May, 1915; that the case made by the plaintiff is not within the issues presented by his pleadings, and that he is limited to the issues presented by his pleading, namely, that the accident did happen upon the crosswalk stated in the pleadings as the locus of the accident; that it now appears by uncontradicted and affirmative testimony that the accident when it did hapen happened to Dentz, the driver of the automobile, and that Dentz

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Motion for Non-Suit.

10 the driver of the automobile, at the time when
the accident happened, was not in the perform-
ance of any function of his master McArdle,
was not in the performance of any business of
his master McArdle, but, on the contrary, was
driving the car of his master McArdle upon a
mission of his own and for his own convenience,
and, that, therefore, the action against McArdle,
the owner of the automobile, does not lie, be-
cause the relation of master and servant, the
relation of principal and agent, upon which the
action against the owner is predicated, was not
an existing fact at the time of the occurrence of
the accident, or, if it was existing fact, the acci-
dent did not occur while the agent was perform-
20 ing some act within the scope of his employ-
ment or in the furtherance of that employment.
Those, briefly, are the grounds of my motion.
Does Your Honor—

The Court: No, I am going to refuse your mo-
tion and allow it to go to the jury.

Mr. Walscheid: I pray an objection.

The Court: Yes, it will be noted. Any other
motions?

30 Mr. Walscheid: For the same reasons as
stated I also desire at this time, I now desire to
move a non-suit against the plaintiff in the re-
maining case with which, I suppose Your Honor
will deal in the same manner.

The Court: Can you ask for a non-suit after
you put your case in?

40 Mr. Walscheid: Yes, Sir; I infer—I think un-
der the cases the proper time, the really proper
time, to ask for a non-suit is at the close of the
case; and if a motion is made at the end of the
plaintiff's case, it is within the discretion of the

Charge.

court to then refuse it and to hold it until the termination of the case.

The Court: Well, I will refuse it anyhow.

Mr. Walscheid: I desire to note an objection.

The Court: Yes.

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(Followed by discussion.)

Counsel for the defendant then summed the case to the jury.

Counsel for the plaintiff then summed the case to the jury.

The Court then charged the Jury as follows:

Gentlemen of the Jury: On May 24, 1915, Helen Ferris, then seven years old, and Catherine Ferris, her sister, then about five and a half years of age, attempted to cross Ocean Avenue near Ege Avenue, and while on Ocean Avenue came in contact with an automobile, owned by Frank McArdle and driven by one Dentz. The younger of the two girls, Catherine, was taken out from under the machine and died a short time afterwards.

20

The plaintiff must establish his case by a preponderance of the testimony, and must satisfy you that this girl, Catherine, died from this accident; otherwise, there could be no recovery in this case.

30

Her father, William Ferris, was appointed her administrator, and this suit is brought by him as such administrator, by Helen Ferris, the sister, and by William Ferris, individually, against Frank McArdle, the owner of the automobile, and Dentz, but a voluntary non-suit has been entered as to Helen and the father individually, so the suit now stands by the father as administrator of the deceased child.

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Charge.

10 The suit has been and is brought against both the driver and the owner of the car, but the driver of the car, Dentz, was not served with papers in this case until quite recently, so he is not a party to the present suit, and this suit as it now stands before you, which you are to decide, is a suit by the father as administrator of the deceased child against the owner of this car.

The evidence as to how and where the accident occurred is in conflict, and you gentlemen must determine that fact from the evidence, after carefully considering the evidence in the case, because that is the important point of this case, where the younger girl was at the time of the accident.

20 The accident occurred on a public street—whether on a crossing or not is for you to determine from the evidence in the case.

30 Dentz, the driver of this machine, had the right to operate the automobile over and upon the street, but he had no right to do so in a reckless or careless manner. He was bound to obey the laws relating to the use of vehicles on the streets. He had no right to operate his car at a greater rate of speed than prescribed by law or at a greater rate of speed than was reasonable, having regards to traffic over this highway and the use of it by others. He had no right to operate this automobile so as to endanger the life, limb or property of other persons. He was required to keep his automobile under control, at such a rate of speed, and to operate it in such a manner as a reasonably prudent man would exercise in operating an automobile along the street at this place under like circumstances.

40 Does it appear that the driver of this car was driving in a reckless or careless manner; and

Charge.

could he have avoided the accident by using reasonable care in operating this automobile, as a reasonably prudent man would have done under like circumstances?

If this accident was caused by the children running into or before the machine, and was not caused by the negligence of Dentz, the plaintiff cannot recover, for the mere fact that an accident occurred in which one of the children lost her life will not of itself entitle the plaintiff to a verdict.

10

In order to recover, the plaintiff must show by a preponderance of the testimony that the accident was due to the negligence of the driver of this car—not merely that the driver was negligent, but that the negligence of the driver of the car was the proximate cause of the accident which resulted in the death of this child.

20

In 1915 the Legislature of this state passed an Act providing for the regulation of vehicles, animals, and pedestrians on public roads. Part IV read as follows:

“12 (1) In places where the houses are on the average of less than one hundred feet apart, pedestrians shall have the right of way over vehicles at any street crossing.

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“(2) Any person crossing a street at any place other than the crosswalk shall do so at his own risk. Nothing in this regulation, however, shall relieve the drivers of vehicles from being constantly vigilant, exercising all reasonable care to avoid injuring either persons or property.”

The Legislature in the same act defined a “crossing” in these words:

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Charge.

“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.”

10 It is important for you to determine from the evidence where the children were when the accident occurred. If they were on the crossing as defined by this statute, they would have a right of way over vehicles being driven along that avenue; and it would have been the duty of the driver of this automobile to recognize their rights. The children had the right to cross the avenue, but if in doing so at a crossing they ran into the automobile or ran before the machine in such a way that it was impossible for
20 the driver of the machine to avoid the accident, if he was then and had been operating the machine as a reasonably prudent man would do under like circumstances, he would not be responsible or liable, for the driver’s liability depends solely upon his negligence, and if his negligence was not the proximate cause of the accident there can be no recovery.

30 If the children were not on the crossing as defined by this statute, even if the accident was due to the negligence of the driver of the automobile in operating the machine, there can be no recovery against this defendant, as the owner of the car, if the driver was his servant or employe, for the second paragraph of the act which I have read to you was in force at the time of the accident and governs this case, although it has since been repealed, but that can make no difference for you are bound to apply the law as it was at the time the accident occurred.

40 If you find that the accident was due to the negligence of the driver of this machine and that

Charge.

the children were not on a crossing, as described by this act, there can be no recovery against this particular defendant, because he was not driving the machine (that is, the owner of the car), and in such case the owner of the car is not responsible.

10

If you find that the accident was due to the negligence of the driver of this car and that the children were on the crossing at the time of the accident, you will have to go a step further and determine from the evidence whether the operator of this car was engaged and was in the employ of McArdle and engaged in his business at the time the accident occurred, for, if he was not, there can be no recovery against the owner of the car if the owner of the car was not present at the time of the accident.

20

It would not be sufficient that the driver of the car was in the employ of the defendant to make the defendant liable; it must also appear from the evidence that he was at the time of the accident engaged in the performance of his duty as the servant of his master.

Justice Fort, speaking for the Court of Errors and Appeals, in the case of *Haller v. Ross*, 68 N. J. L., 324, said:

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"The servant of the master cannot bind the master to respond in damages to the plaintiff unless it be shown that the act which the servant did, which caused the injury, was an act which was expressly or by necessary implication within the line of his duty under his employment."

If you find from the evidence that Dentz was the servant of the defendant and was engaged in his master's business at the time of the accident, that the accident was caused by the negligence

40

Charge.

of the servant, of the driver of the car, and that the girl, Catherine, was on a crossing as described under the statute to which I have referred, you should proceed to determine the amount of damages you will award to the plaintiff.

10 The father, the plaintiff in this case, as administrator of the deceased child, is entitled to recover if entitled to recover at all, under the act generally known as the "Death Act." Section two of the original act was amended in 1913, and reads partly as follows:

20 "Every such action shall be brought by and in the names of their personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of the widow, surviving husband, and next of kin of such deceased person, and shall be distributed to such widow, surviving husband, and next of kin, their proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action, the Jury may give such damages as they shall deem fair and just with reference to the pecuniary injuries resulting from such death to the wife, surviving husband, and next of kin of such deceased person."

30 You will note, gentlemen, that this statute provides that you may give such damages as you shall deem fair and just with reference to the pecuniary injury resulting from the death to the next of kin. This means deprivation of a reasonable expectation of pecuniary advantage which could have resulted by a continuance of the life of this deceased child.

40 In this case, the deceased being a minor, the father would be entitled to her services had she

Charge.

lived until she was twenty-one years of age or until emancipated; and if the father, the administrator, is entitled to any verdict, the damages to be awarded would be such sum of money as would compensate the father for the reasonable expectation of pecuniary benefit from the deceased during the period of her minority, and thereafter when she became emancipated by being of full age, such pecuniary benefit as the father and the next of kin might reasonably expect to have received from the deceased. 10

You are not restricted, however, to consider only what might have been received by the father during the girl's minority, but you are also to consider the probabilities of the girl's contributing to the father's support and assistance, and the probability of her assisting her next of kin after she became twenty-one years of age. 20

You should also take into consideration the fact that during the child's minority the father would be obliged to support and to educate her. You are to consider all of the probabilities and the possibilities, the probability of the marriage of this girl, the possibility of her death by natural causes before reaching her majority, the possibility of the death of the father prior to the girl's reaching an age where she would be capable of earning wages, in the determination of the sum that would compensate the father and next of kin for the reasonable expectation of pecuniary benefit which could have resulted from the continuation of this girl's life. 30

The amount the administrator would be entitled to recover in this case, if entitled to recover anything, is a sum which will represent the present value of all the pecuniary losses, after considering all of the possibilities and 40

Charge.

probabilities which may enter therein; but nothing can be included in this sum for loss of society or wounded feelings or any loss which cannot be measured by money and satisfied by a pecuniary recompense.

10 I have been requested, gentlemen, to charge you on certain principles of law, which I will dispose of at this time.

On behalf of the plaintiff:

First; it is the duty of the driver of an automobile, when the improved portion of a road is of sufficient width, to drive his automobile to the right of the center of the road, except when passing a vehicle ahead. I so charge you.

20 Second; it is the duty of the driver of an automobile following any street car operated on tracks in the center of the street, when passing such car while it is stopped to take on or discharge passengers, to only pass such street car on the right and at least eight feet from the right-hand running board or lower step of said car, unless by reason of the presence of other vehicles at the place where such car is stopping or by reason of the narrowness of the street, or
30 for any other reason, it is not possible to preserve such distance of eight feet, then the said driver shall bring his automobile to a full stop until the car shall have taken on or discharged its passengers and again started. I so charge you.

40 Third; an automobile proceeding in the same direction as a street car operated on tracks in the center of any public road or street must pass such car on its right, unless when through narrowness of road or street or through a conges-

Charge.

tion of traffic standing at the curb or side of such road or street it is impossible or unsafe to pass such street car on its right; then by exercising exceptional caution, the automobile may pass on the left of such street car. I so charge you.

10

Fourth; a pedestrian, having the right of way over vehicles at any street crossing where the houses are on an average of less than one hundred feet apart, the necessity of constant observation to avoid injury to pedestrians at a crossing is placed on the driver of an automobile approaching the crossing. I so charge you.

Fifth; although the driver of an automobile may have done everything in his power to avoid injuring a pedestrian after it was possible to see him, this does not relieve him of liability, if prior negligence on his part rendered it impossible to avoid injury after becoming aware of the pedestrian's presence. I so charge you, having modified it slightly.

20

The sixth request I refuse to charge except as I have charged.

The seventh request I refuse to charge except as I have charged.

30

Eighth; the decedent, Catherine Ferris, being a child five and a half years old, could not be guilty of contributory negligence. I so charge you, gentlemen, but there is no defence in this case based on contributory negligence.

The ninth request I refuse to charge.

The tenth request I refuse to charge.

The eleventh request I refuse to charge.

40

Charge.

The twelfth request I refuse to charge, except as I have charged.

The thirteenth request I refuse to charge except as I have charged.

10 The fourteenth request I refuse to charge.

The fifteenth request I refuse to charge except as I have charged.

The sixteenth request I refuse to charge except as I have charged.

The seventeenth request I refuse to charge except as I have charged.

20 The eighteenth request I refuse to charge except as I have charged.

This disposes of the requests to charge of the plaintiff.

On the requests to charge of the defendant:

I refuse to charge, except as I have charged, requests to Charge "1," "2," "3" and "4."

The fifth request I refuse to charge; the same with the sixth, seventh, eighth, ninth and tenth.

30 Eleventh; if Catherine Ferris, deceased, attempted to cross Ocean Avenue at any other place than on a crossing or crosswalk, and in doing so lost her life as a result of being struck by defendant's car, the administrator is barred from bringing this action against the defendant McArdle. I so charge you.

The twelfth I refuse to charge.

40 Thirteenth; if at the time the accident happened the chauffeur Dentz was not executing any

Charge.

orders of the defendant, McArdle, and was not then actually engaged in serving him, the plaintiff cannot recover against the defendant, McArdle. I so charge you.

Fourteenth; if at the time of the accident the driver Dentz was using the machine of the defendant, McArdle, for his own convenience and without reference to the business of the defendant, McArdle, then there must be a verdict for the defendant, McArdle. I so charge you. 10

Fifteenth; if at the time of the accident the driver Dentz was using the machine of the defendant, McArdle, for his own convenience and not for any purpose of the defendant, McArdle, there must be a verdict for the defendant, McArdle, even though the evidence in the case might lead to the conclusion that Dentz had either express or implied permission so to use said machine. 20

Gentlemen, if you are satisfied from the evidence that Dentz had the right to use the machine, not for his own convenience, but was using it as the servant of the master, then there should be a recovery in this case, if the other provisions that I have referred to apply; but, if he was using it for his own convenience and not in the service of his master, there could be no recovery. 30

The sixteenth request, I charge as modified: The plaintiff can only succeed if he shows that the accident did happen while the driver Dentz was acting as a servant of the defendant, McArdle.

The seventeenth I refuse to charge except as I have charged. 40

Exceptions.

Now, gentlemen, take the case; consider it carefully. It has been carefully tried by both the plaintiff's and defendant's counsel. Consider all of the evidence and then render such verdict as you believe the evidence warrants under the law as I have laid down to you.

(Jury Retires.)

Mr. Warren: I want the benefit of an objection to that portion of your Honor's charge to this effect—I cannot quote the exact words—that if the child was not on the crossing, even though the accident was due to the negligence of the driver, there can be no recovery against the owner of the car, on the ground that the plaintiff intestate was an infant of the age of five and a half years old, and, in law and in fact, on the evidence incapable of assuming the risks.

I also want to except to that portion of your charge, which is to the effect that the jury was bound to apply of the day when the accident occurred, on the ground that in the case at bar the statute placing the assumption of risk on persons crossing at other than a crosswalk had been repealed and was no longer the law at the time the action was instituted.

The Court: Take your exception to what I did say on both of those points.

Mr. Warren: And I also desire to have the benefit of an objection to your refusal to charge my sixth to eighteenth requests to charge, inclusive. I also desire to except to your charging the defendant's thirteenth request to charge, on the ground that the mere fact that the chauffeur was not at the time of the accident executing an order given to him by the defendant, McArdle, would not take the driving of the car

Exceptions.

at that particular time and place outside of the scope of Dentz's employment.

I desire to except to your charging the fourteenth request to charge of the defendant, on the ground that you charged that there could be no recovery if Dentz was using the car for his own convenience and not on business of the defendant, McArdle, on the ground that the mere deviation from the route or the doing of a thing by the servant not for the benefit of his master but for his own convenience will not necessarily take his act out of the scope of the employment.

10

I desire to except to your charging the defendant's fifteenth request to charge for the same reasons.

You also charged, in speaking of either the fifteenth or sixteenth of the defendant's requests to charge that if he was doing the thing for his own convenience and not for the service of the master, that there could be no recovery; I desire to except to that upon the same grounds as my last two exceptions.

20

The Court: That is the fifteenth request to charge of the defendant.

Mr. Warren: The sixteenth request of the defendant to charge, or so much of it as your Honor did charge, I desire to except to that, you charging that Dentz must have been acting as the servant of McArdle at the time of the accident, on the ground that in view of other instructions from your Honor as to what they might consider in arriving at a decision whether or not he was acting at the time of the accident as the servant of the defendant is misleading to the jury and prejudicial to the plaintiff.

30

The Court: You may note objections to what I said on all of those subjects.

40

Exceptions.

Mr. Warren: Very well; note my objections.

Mr. Walscheid: I desire to note an objection to your Honor's refusal to charge the defendant's requests to charge which your Honor did not charge.

10 I desire to note an objection to your Honor's modification of the fifteenth request of the defendant, which you did charge after modifying the same.

I desire to note an objection to your modification of the sixteenth request of the defendant to charge, which your Honor charged as modified.

20 I desire to note an objection to your Honor's charging the first, second, third, fourth, fifth and eighth requests to charge of the plaintiff, which your Honor charged.

30 I desire to note an objection to your Honor's statement in charging that Dentz had no right to drive in a reckless or careless manner or in a manner exceeding the speed or at a rate of speed unreasonable or to operate the machine in a manner to endanger life, limb or property, and that portion of your Honor's charge in which you define the duties of the chauffeur; and I desire particularly to note an objection to the questions which you immediately thereafter present to the jury, namely, could he have avoided the accident, etc., in that language, the exact language of which I cannot quote.

I desire to note an objection to that portion of your Honor's charge following shortly after the last objection noted in which your Honor said that the plaintiff in order to recover must show that the accident was due to the negligence of the driver of the car.

40 I desire to note an objection to that portion of your Honor's charge, in which you say that if the

Exceptions.

accident happened at a crossing, or if the plaintiff's intestate was on the crossing, the plaintiff's intestate would have a right of way over the driver.

I desire to note an objection to that portion of your Honor's charge shortly following the portion just objected to in which your Honor says that the action depends upon the driver's negligence? 10

The Court: Don't you think it does?

Mr. Walscheid: No, sir; I think it depends upon more than that. I think it depends primarily upon the relationship of master and servant.

I desire to note an objection to that portion of your Honor's charge immediately preceding the point where you proceed to the question of damages, to a statement of the rule of damages, in which you say that if you find that Dentz was driving for the defendant and that the accident happened on a crossing by his negligence, etc., etc., that then you should proceed to an estimation of the damages, or whatever words you used there, in leading up to the definition of the rules under which the damages are to be fixed. 20

The Court: Yes, you may take exceptions to what I have said upon those subjects. 30

Mr. Walscheid: That is all.

Mr. Warren: I want to note one other objection, if your Honor please, if your Honor will permit it— an objection to your entire charge.

Mr. Walscheid: I do not think that that is proper.

The Court: I do not think so. Now, I suppose you can enter any objection that you please under the ruling of the Court of Errors and Appeals, but I do not think that you are entitled to an objection to the whole charge. 40

Exceptions.

Mr. Warren: I may note my objection?

The Court: You have a right to enter it.

10 Mr. Warren: On the ground that while your charge laid down the rules as to negligence, and also generally as to the liability of the master for the acts of his servant, stating that in order to hold the master liable that the accident must have occurred while the servant was acting within the scope of his employment, that you did not in your charge lay down such rules for the guidance of the jury that they could intelligently in the present case decide whether or not the chauffeur Dentz was at the time of the accident acting within the scope of his duty for the reason that it is not necessary in order to hold the master to show that the servant was at the time of the accident carrying out some order of the master, the law being that the master would be liable if at the time of the accident the chauffeur was carrying on some business incidental to his employment, or that the master would be liable if the chauffeur made a deviation for his own convenience but with the general performance of the master's business in mind, and for this reason, that the charge is prejudicial to the plaintiff's case.

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Mr. Walscheid: I understand, sir, that this is an objection on the ground of your Honor's refusal to charge certain propositions at law which Mr. Warren thinks ought to be charged, or that your charge is not specific enough or perhaps did not cover all of the points which he thinks ought to have been covered therein. There is no such an objection; he has got no right to such an objection; and I desire to object to such an objection being noted on his objection.

40

Requests to Charge.

The Court: I suppose you have a right to enter any objections you please; whether it is a valid objection is another question.

Mr. Warren: I suppose under this law that, as a matter of fact, the entering of an objection is not within the discretion of the Court.

10

The Court: I understand you may enter any objection you please, as a right.

Mr. Warren: Undoubtedly; I would not encumber the record if I did not think I had the right.

The Court: I do not see that it makes much difference.

Mr. Warren: That is all.

Mr. Walscheid: My objection is noted, your Honor?

The Court: Yes.

20

(Followed by discussion.)

The plaintiff's requests to charge which the Court declined to charge, except as charged, are as follows:

Fifth; although the driver of an automobile may have done everything in his power to avoid injuring a pedestrian after it was possible to see him, this does not relieve him, or his employer, (provided, of course, that the driver, at the time of the accident, was using the automobile within the scope of his employment), of liability if prior negligence on his part rendered it impossible to avoid injury after becoming aware of the pedestrian's presence.

30

Sixth; a person guilty of negligence which causes injury to another may be liable to pay the injured party damages. He may also be liable if the acts of negligence are not done by himself personally but by another acting under his express direction. Such liability for the

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Requests to Charge.

negligent acts of another is controlled by the general law of agency. But the law goes further than this, and makes a master liable for acts of negligence done by his servant, although such acts are unauthorized, or even contrary to instructions, when the negligent acts are done in the execution of the master's business for which the servant has been employed. This law is based on a rule of public policy which declares that substantial justice is, on the whole, best served by making a master responsible for the injuries caused by his servant acting in his service, when set to work by him for his own benefit. It is this rule of policy that has established, as applicable to that class of cases to which the one before us belongs, the rule of law, namely, the master is liable for his servant's negligence, if the negligent acts are done in the execution of the master's business, within the scope of the servant's employment, and this rule of policy must be kept in mind in determining the meaning of the language used to express the rule of law.

Seventh: the defendant contends that his servant by using the automobile to go to his home for his supper before taking the machine to the garage, where he was to clean it, so far deviated from his authority—the course of his employment—as to relieve the defendant from liability for negligence upon this occasion. In case of deviation from the scope of employment from the defendant's business, a mere departure by the servant from the strict course of duty, even for a purpose of his own, will not, in and of itself, be such a departure from the master's business as to relieve him from responsibility. Not

Requests to Charge.

every deviation from the strict execution of his duty, nor every disregard of particular instructions, will be such an interruption of the course of employment as to determine or suspend the master's responsibility. But where there is not merely a deviation, but a total departure from the course of the master's business, so that the servant may be said to be on a frolic of his own, the master is no longer liable for a servant's conduct. 10

Ninth; drivers of automobiles are bound to exercise greater care to avoid collision with young children, stepping, running or jumping off a sidewalk, than older persons, because of the lack of judgment of young children as to how best to avoid injury when placed in a position of danger. 20

Tenth; the defendant contends that his chauffeur was driving the automobile at the time of the accident without his consent. This would have been a violation of the law by Dentz, punishable by fine or imprisonment, and the law presumes that Dentz was complying with the law until the contrary is shown. The burden of proving that Dentz was driving the car without the consent of the defendant is upon the defendant. 30

Eleventh; inasmuch as for Dentz to drive the defendant's automobile without his consent was a crime, you must be satisfied (and the burden of proving this is on the defendant), beyond a reasonable doubt that he had committed this crime before you can find that the said Dentz was at the time of the accident acting outside of the scope of his employment. 40

Requests to Charge.

10 Twelfth; you may consider the actions and conduct of the defendant after learning of the accident, and that Dentz was on his way home for his supper at the time, such as his securing the parole of Dentz in his custody, while charged with manslaughter, keeping him in his employ, trying to have decedent's father refrain from pushing the criminal proceedings, and suggesting that he settle before the present suit was started, in ascertaining whether or not Dentz was driving the car without his consent and outside of the scope of the employment.

20 Thirteenth; if you find that Dentz was not acting within his employment at the time of the accident, then you may consider the conduct of the defendant after learning of the accident and that Dentz was on his way to his supper at the time in order to ascertain whether or not the defendant ratified the wrongful act of his servant, for the defendant may be liable if he ratified the wrongful act of his servant where otherwise he would not be liable.

30 Fourteenth; the question of the master's ignorance of or lack of consent to the act of the servant has no bearing upon his liability.

Fifteenth; the master may be liable even though the servant was disobeying his express commands at the time of the accident.

40 Sixteenth; where a servant employed for the special purpose of operating an automobile for the master is found operating it in the usual manner, such machines are operated, the presumption naturally arises that he is running the machine in the master's service. If he is not so running it, this fact is peculiarly within the knowledge of the master, and the burden is

Requests to Charge.

on him to overthrow this presumption by evidence of which the law presumes he is in possession; it would be a hard rule, in such circumstances, to require the party complaining of the tortious acts of the servant, to show by positive proof that the servant was serving the master and not himself, and the fact that the chauffeur made a detour from the direct route from defendant's home to the garage where he was to wash the car, in order to get his supper, does not change the presumption or relieve the master's liability for injuries caused by careless driving; the master has still the burden of proof to show that Dentz was not, at the time of the accident, acting within the scope of his employment.

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Seventeenth; a child five and one-half years old cannot assume the risk of crossing a street at a place other than a crosswalk or crossing.

Eighteenth; it is for you to decide whether or not the decedent being five and one-half years old was capable of assuming the risk of crossing the street at a place other than at a crossing or crosswalk.

The defendant's requests to charge which the Court declined to charge, except as charged, are as follows:

30

First; there is no evidence in this case which will justify the jury in finding that either the deceased, Catherine Ferris, or the plaintiff, Helen Ferris, had any right of way over the driver of the motor car in attempting to cross Ocean Avenue.

Second; there is no evidence in this cause which will justify the jury in finding that the death

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Requests to Charge.

of Catherine Ferris was caused by coming in contact with the automobile of the defendant McArdle.

10 Third; the plaintiff in the first action must show that Catherine Ferris was struck by a motor car while Catherine Ferris was lawfully crossing Ocean Avenue on the southerly crosswalk, the said crosswalk being a continuation of the southerly sidewalk of Ege Avenue.

20 Fourth; the plaintiffs in the second and third actions must show that Helen Ferris was struck while Helen Ferris was lawfully crossing Ocean Avenue on the southerly crosswalk, the said crosswalk being a continuation of the southerly sidewalk of Ege Avenue.

Fifth; there is no evidence in this cause which will justify the jury in finding that the death of Catherine Ferris was caused as the result of coming in contact with the automobile of the defendant McArdle, while she, Catherine Ferris, was lawfully crossing Ocean Avenue on the southerly crosswalk, the said crosswalk being a continuation of the southerly sidewalk of Ege Avenue.

30 Sixth; there is no evidence in this cause which will justify the jury in finding that Helen Ferris was injured by the motor car of the defendant McArdle while she, Helen Ferris, was lawfully crossing Ocean Avenue on the southerly crosswalk, the said crosswalk being a continuation of the southerly sidewalk of Ege Avenue.

40 Seventh; there is no proof of any injury or of any pain or suffering on the part of Helen Ferris, arising out of the accident alleged in the second and third counts of the complaint.

Requests to Charge.

Eighth; there is no proof that the father of Helen Ferris lost the services of his daughter or expended any money on her as a result of the accident alleged in the second and third counts of the complaint.

Ninth; the verdict of the jury upon the second count of the complaint cannot be for more than nominal damages, or six cents.

10.

Tenth; the verdict of the jury upon the third count of the complaint cannot be for more than nominal damages, or six cents.

Twelfth; if Helen Ferris attempted to cross Ocean Avenue at any other place than on a crossing or crosswalk, and in doing so was injured by being struck with the automobile of defendant McArdle, neither the cause of action set forth in the second count of the complaint or the cause of action set forth in the third count of the complaint can be maintained against the defendant McArdle.

20.

Sixteenth; the plaintiffs in the three counts of the complaint allege that the accident which led to the institution of the suit occurred while the driver Dentz was acting as a servant of the defendant McArdle, and upon the pleadings as drawn the plaintiffs can only succeed if they show that the accident did happen while the driver Dentz was acting as a servant of the defendant McArdle.

30.

Seventeenth; neither permission, express or implied, from the defendant McArdle to his driver Dentz, allowing the latter to drive home to his supper, or acquiescence by the defendant McArdle in the praeice of the driver Dentz of driving home to his supper in the motor car of the de-

40.

Plaintiff's Exhibit P1.

10 fendant McArdle will constitute Dentz the agent or servant of the defendant McArdle while so driving home; and, if at the time of the accident the driver Dentz was thus driving home to his supper, the defendant McArdle is entitled to a verdict even though he permitted his driver thus to drive home or acquiesced in the practice.

Which was all the evidence offered or received and other proceedings had on the trial of said cause.

Verdict for \$1,500.

Plaintiff's Exhibit P1.

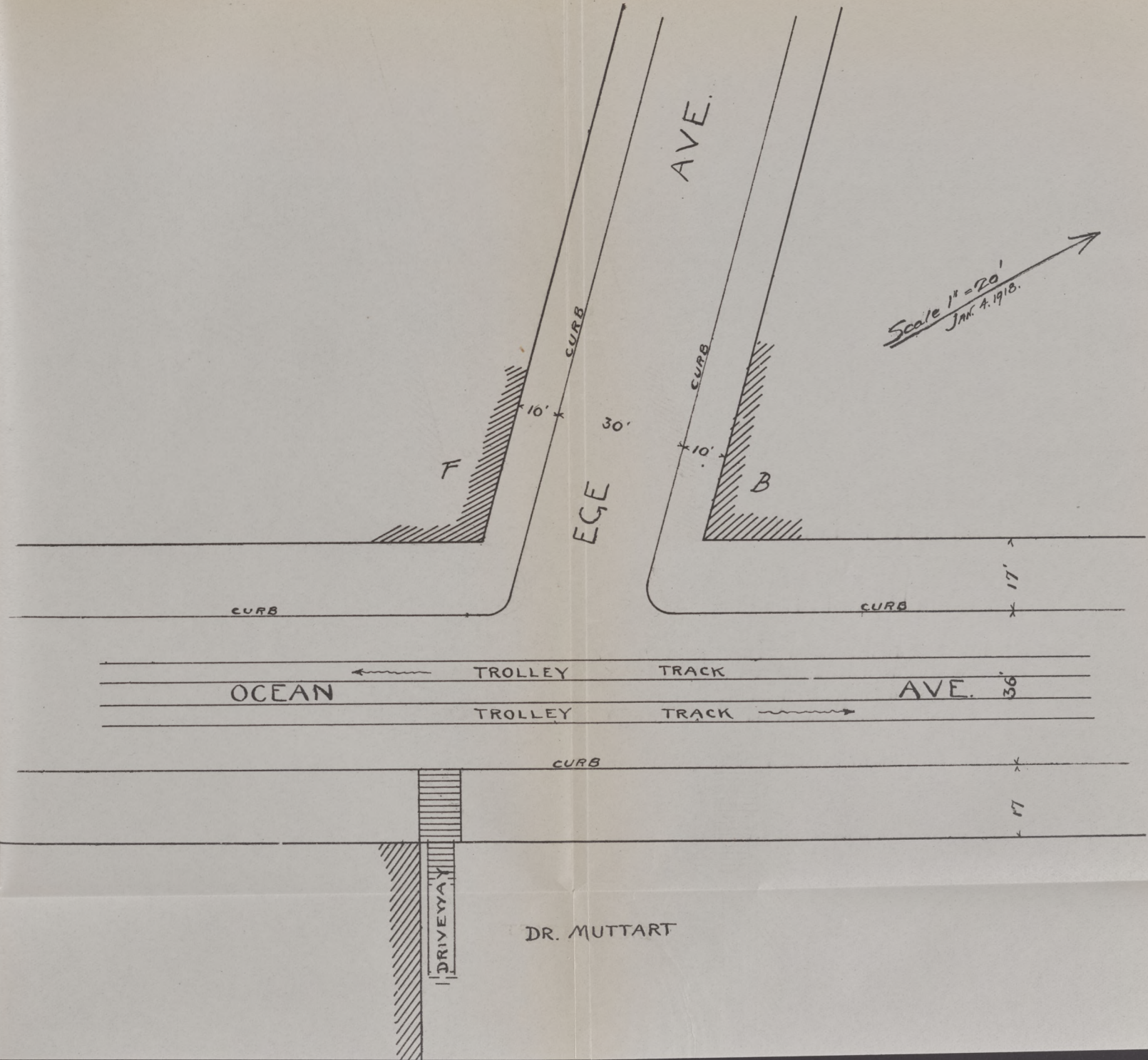
20 State of New Jersey, }
County of Hudson, } ss.:

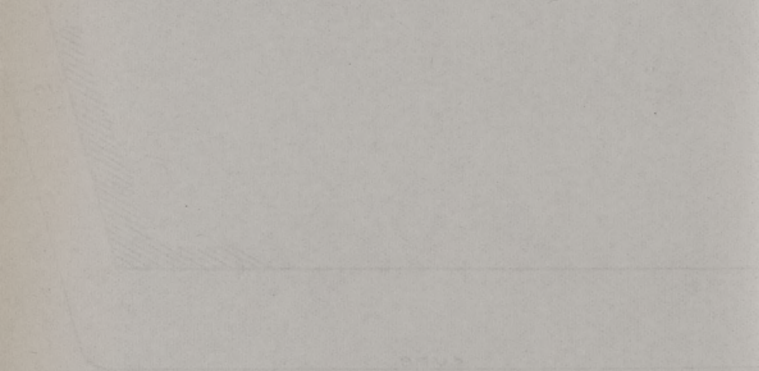
30 I, William J. Flanagan, Deputy Surrogate of the County of Hudson, do certify that on the 14th day of August, in the year of our Lord one thousand nine hundred and fifteen, administration of the goods and chattels, rights and credits which were of Catherine Ferris late of the County of Hudson, who died intestate was granted by me to William Ferris of the County of Hudson, who is duly authorized to administer the same agreeably to law.

[SEAL.] Witness, my hand and seal of office, the fourteenth day of August, in the year of our Lord, One thousand nine hundred and fifteen.

W. J. FLANAGAN,
Deputy Surrogate.

Scale 1" = 20'
Jan 4, 1918.





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Rule for Judgment.

(Final Judgment entered January 7, 1918.)

HUDSON COUNTY CIRCUIT COURT.

WILLIAM FERRIS, Administra-
tor, etc., of Catherine Ferris,
deceased,

Plaintiff,

v.

FRANK McARDLE,
Defendant.

10

Action at Law.

The above entitled cause being regularly on the
list for trial this December 1917 term of the
above named court, and the case having been
reached for trial the third day of January, 1918,
before Hon. Willard W. Cutler, Judge of the
above stated court and a jury regularly em-
panelled and the case being moved and the plain-
tiff having submitted his evidence on the afore-
said day and on the 4th and 5th days of Janu-
ary instant and the defendant having submitted
his evidence on the last mentioned day and the
case being regularly adjourned to January 7,
1918, at ten o'clock in the forenoon, and the
Hon. J. Emil Walscheid, of counsel with the de-
fendant and John Warren, attorney of the plain-
tiff, having addressed the jury and the judge hav-
ing charged the jury and the jury having retired
to consider the evidence, argument and charge
come again into court and say that they find a
verdict in favor of the plaintiff William Ferris,
administrator of the rights, credits etc., which

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Rule for Judgment.

were of Catherine Ferris, deceased, and against the defendant, Frank McArdle, and that they assess the damages of the plaintiff against the defendant at the sum of fifteen hundred (\$1,500) dollars and so say they all.

10 It is, therefore, on this 7th day of January, 1918, ordered that judgment final be entered in favor of the plaintiff William Ferris, administrator of the rights and credits, goods and chattels, which were of Catherine Ferris, deceased, and against the defendant, Frank McArdle in the sum of fifteen hundred (\$1,500) dollars, besides the costs of suit to be taxed.

WILLARD W. CUTLER,
Judge.

20 Rule actually entered this 7th day of January, A. D. 1913, by

JOHN WARREN,
Attorney of Plaintiff.

30.

40

New Jersey Court of Errors and Appeals

WILLIAM FERRIS, Administrator,
etc., Estate of Cathrine Ferris,
deceased,

Plaintiff-Appellee,

v.

FRANK McARDLE,
Defendant-Appellant.

At Law.

On Appeal from
Hudson County
Circuit Courts.

BRIEF FOR APPELLANT.

Statement.

This case was tried in the Hudson County Circuit Court, before Hon. Willard W. Cutter and a jury. It resulted in a verdict for the plaintiff in the sum of one thousand five hundred dollars (\$1,500.00).

Facts.

On May 24, 1915, Cathrine Ferris, daughter of the plaintiff, was killed by being struck by an automobile owned by the defendant. The accident happened on Ocean Avenue, in Jersey City, where a street called Ege Avenue runs into Ocean Avenue from the west. Plaintiff's Exhibit P-2 (p. 277) discloses that Ocean Avenue has a roadway thirty-six feet wide and that two sets of trolley tracks are laid, one set to either side of the center line of said avenue. Ocean Ave-

nue is an improved street laid with a stone pavement. The same exhibit discloses that Ege Avenue debouches into Ocean Avenue on a slight slant. Plaintiff's intestate, at the time of the accident which caused her death, was five and a half years old (p. 30).

Plaintiff by his complaint claimed that Cathrine Ferris, at the time of the accident, "*was * * * lawfully crossing said Ocean Avenue on the southerly crosswalk, the said crosswalk being a continuation of the southerly sidewalk of Ege Avenue; that defendant through his agent and servant, was driving his motor car in a southerly direction along Ocean Avenue at the southerly crosswalk of Ege Avenue, the said crosswalk being a continuation of the southerly sidewalk of Ege Avenue crossing Ocean Avenue, in a negligent manner (p. 13), specifying (the acts of negligence complained of, p. 14), and did not permit said Cathrine Ferris to have the right of way at the crossing of Ege and Ocean Avenues (p. 15), and by reason thereof struck said Cathrine Ferris with said motor car and killed her.*

The defendant denied the acts of negligence complained of, alleged that Cathrine Ferris *was crossing said Ocean Avenue at a place other than a crosswalk, and therefor, as against him, did so at her own risk (p. 23), that the chauffeur, Denty, at the time of said accident, was operating said motor car for his own business purpose; on no business or upon any duty for this defendant; and that at the time of the accident the automobile was not under the control of this defendant, or was it being used with the consent of the defendant on any business purpose or agency of this defendant, or was the party driving it acting as a servant or agent of*

this defendant at the time of the accident (p. 22).

The plaintiff produced, as *the only witness to the accident* which caused the death of plaintiff intestate, a sister of the deceased, who at the time of the accident was upwards of seven years.

This sister, Helen Ferris, said: We, my sister, Cathrine Ferris, and myself, went to the southwest corner of Ege and Ocean Avenues. When we got to the corner a little friend of me and my sister called from across Ocean Avenue (p. 36), and we were going to run over there to her to play with her (p. 37, fol. 20), when we started across the street we were right at the corner of Ege and Ocean and we started to go straight across (p. 36, fols. 30-40). As I started I looked, but did not see anything (p. 38, fol. 1). We ran across; Cathrine was in front all the time going across. After we started something happened, but not that I seen (p. 40). Well, the auto came suddenly—we didn't know it was coming—and she [Cathrine] was knocked down, and I got up and went home and told my mother. When she was struck she was near the curb, almost. I was not much away from her when she was knocked down; she was under the automobile, but I was not; I was just knocked down. I did not hear the automobile coming; I heard no sounds before I was struck. I did not really know where Cathrine was then, because I got up and ran home and I did not know where she was. I did not see who was driving the car (p. 41). It was around five o'clock in the afternoon; we were just going around the corner to take a walk and we saw the little girl down the street (p. 43). We were going to walk down Ocean Avenue towards Bayonne until we got to Grant Avenue, four blocks down. We turned the corner [of Ege Avenue] and

started down Ocean Avenue towards Grant Avenue and we saw her across the street. We were just about the corner; the little girl was right across the street (p. 44), in front of the hat store, towards where the Bayonne cars come from, not quite near the middle of the block between Ege Avenue and the street that comes in (p. 46) next, going towards Bayonne. She said, "Come over here," and called to us by name, and with that we started to go over there, and went directly toward her in a sort of a slant, both I and my sister. When we got to the middle of the street we stopped and ran back again to the sidewalk (p. 46). We wanted to run on the curb and we ran back again (p. 46) *and the auto was trying to get out of the way.* It was going to go straight over and we ran back again, and when we ran back again we were hit. *We were running like anything on a slant.* When we got to the middle of the street there were two car tracks and we saw a Bayonne car coming towards us. It was not so close, but we were afraid it would run us down; we started to run across and tried to get ahead of the car; we tried to cross before that, and we didn't see any automobile that time (p. 47). *We did not see any automobile at all, and I did not know that an automobile hit me until I got up and saw the automobile, and I got up and ran home across the street in a hurry.* And I did not see my sister struck by the automobile (p. 48).

When we started across the street from the corner we were going out on a slant and got further and further to the right of Ege Avenue (p. 54). At Ege Avenue there is a crosswalk so that you can get across the street, on the other side of Ocean Avenue without stepping on the cobblestones (p. 55). My little friend on

the other side of that street was to the right-hand side of this crosswalk; about the middle of the block; we were going toward our little friend in a sort of slant, we were going that way (indicating) straight towards our little friend on the other side. Cathrine was in front of me and I had hold of the back of her coat. I had hold of her coat (p. 57), but when I got to the center of the street I did not have hold of her coat, not when I saw the trolley-car coming. When I saw the trolley-car coming I did not know what to do; I did not know whether to run or stand there or do what. But we did run *back* towards the sidewalks; the other side where the little girl was, but the car was in sight at the time we ran there; that is what she told me (p. 58). But it was not so near us, and I thought it came sudden to us and knocked us down, but the atomobile knocked us down (p. 6).

The chauffeur's version of the accident is as follows:

When I came to the point of accident two little girls were on the corner. When I first saw them I was on Ocean Avenue, midway between the north and south line of Ege Avenue, on the right-hand side of Ocean Avenue, going about 10 miles an hour. The children were south of the corner about 15-18 feet. As I approached them they stepped down into the gutter. I blew my horn and slowed my machine, and they made an attempt to go back on the sidewalk, and as I approached them they ran out into the street. I swung the machine and put the brakes on. I swung to the east; one of the girls disappeared and the other one ran away. I did not see the little girl who disappeared struck by my machine; she was not struck by the front of the car, but by the side. I was about 10 feet away

from these little girls when they again started to run out, astraddle the southbound car tracks (p. 156). When I stopped I was crossways of the street, with my car facing east (p. 157). It was cloudy and had been raining that day. The car was equipped with brakes, which were in good working order (p. 164). The pavement was wet and I had chains on both rear wheels. I had been driving that particular car three or four years and was thoroughly familiar with it (p. 165). I could stop the car within her own length of twelve feet (p. 168). When I first saw the children they were about a foot back of the curb (p. 172). The shorter child was nearer to me. They started to run across the street, the front of my automobile then being almost in line with Ege Avenue south sidewalk. I was five or six feet the other way [north] and they were fifteen or eighteen feet south of the curb line. They did not run fast as they came off the sidewalk. They went back on the sidewalk again (p. 173). They had gotten about two or three feet from the curb when they started back again. They stepped down off the curb with their backs to me and Jersey City. Ege Avenue is about 30 feet wide (p. 174). Ocean Avenue is about 35 feet wide (p. 175). Just before the accident, I was driving my car astraddle of the southbound car track (p. 177). The right side of my car was about six or seven feet from the curb, before they wound around and went back, facing away from me, then when they got on the curb again they stopped (p. 182). Then they stepped down off the curb again and ran right out into the middle of the street (p. 183). They went hand in hand part of the way; about half-way out to the car they broke hands, the larger one ran away and the other ran into the car.

When they stepped down from the curb the second time I was nine or ten feet away (p. 184); the front of the car was only four or five feet away; the whole thing happened approximately at once (p. 186). When the little girl hit the car I stopped. She ran into the front wheels. After I stopped she was right under the mudguard. My right mudguard was then between the northbound and southbound tracks; my car stood at an angle just opposite Dr. Mutard's driveway (p. 186). She ran out and I put my brakes on and stopped the car and when she got to the car she was running and the car slid sideways; it was not going ahead any, but the car was stopped; all wheels stopped when she hit it and it knocked her down on the cobblestones. If I had kept on going straight, she would not have passed in front of me if she had kept on running; she was too close to me; about four or five feet (p. 188); that was when they started to run. When they first started back to the curb I *thought they were going back on the sidewalk*, but they didn't (p. 189).

The undisputed evidence in the case further showed that Denty, the chauffeur, at the time was driving his sister-in-law and a friend of her's. He met them about 5:30 P. M., when he was through driving for the day, and invited them into the car to take them home (pp. 153, 213). He lived in the same house with his sister-in-law, at 137 Wilkinson Avenue, while the other lady lived on Ocean Avenue (p. 153), at the corner of Bidwell. To reach Wilkinson Street and also to reach Bidwell and Ocean Avenue, he had to pass from the north to the south of the point of the accident. When he met the two ladies he had no other duty to perform than to take the car to the garage, on Oxford Ave-

nue, near Hudson Boulevard (p. 127), and wash it so as to have it ready for the next day's use. He did not have to pass the point of accident to get the car to the garage. The garage was off in another direction from that in which he was driving when the accident occurred. He had no instructions from his master to drive down there or to drive those girls home. He was doing so because he wanted to drive them home (p. 157), and wanted to drive home to his supper. Neither the master or any member of his family knew anything about driving those girls home that night (p. 158). He did not have his master's consent to drive the ladies home, nor did he have his consent to drive home to supper in the car (p. 193). He had on some other occasion driven the car home to supper, but did not know if his master had knowledge of this. Whenever he drove the car home for his supper, he did it merely for his own convenience (p. 198).

ARGUMENT.

POINT I.

The motion to non-suit and for a direction of a verdict ought to have been allowed:

(a) Because there was no evidence of any negligence of the defendant's servant to submit to the jury.

(b) Because the accident happened at a place other than a street crossing and at a place where plaintiff's intestate—as against the owner of the motor car—assumed the risk of being.

(c) Because the accident happened while the servant of defendant was not acting within the

scope of his employment or while engaged about his master's business.

(a) *The motion to non-suit and for a direction of a verdict ought to have been allowed because there was no evidence of any negligence of the defendant's servant to submit to the jury.*

A proper consideration of this question requires a search of the record for some negligent act either of commission or omission on the part of Denty, the driver of the motor car. We respectfully submit that such inspection must disclose that there is no such evidence.

None of plaintiff's witnesses saw the accident.

The evidence of Helen Ferris, the sister of the deceased, in so far as it attempts to describe the action of the deceased and of herself, clearly indicates that the accident was brought about solely by their own acts without any contributory act of negligence on the part of the driver of the motor car.

The evidence of the chauffeur discloses no act of negligence on his part to which one might point as *the cause* or as a *contributory cause* of the accident. His story rather harmonizes with that of Helen Ferris and leads to the single inference, namely, that the accident was caused by the sudden darting of the two children directly in front of his car when they were called by and were attempting to cross over Ocean Avenue to join their little friend at play.

The only other witness *to the accident* is Birchett (pp. 222-245). He tells *two* stories of the accident. *But neither story discloses any act of negligence of the chauffeur.* His two stories were first told and *recorded* three days after the accident; the second was told *without having his memory in any way refreshed*, at the trial,

two years and eight months after the accident. The first story agrees with that of the chauffeur; the second differs in that it places the motor car in the southbound car tracks approaching the accident and not astraddle these tracks, as claimed by the chauffeur. The second story also differs in that it has the children going to the east *beyond* the southbound tracks and *then* darting back *to* the southbound tracks directly in front of the motor car; while the first story has them leaving the curb and darting back almost to the same before being struck. The second story has the motor car veering to the left from the southbound track and running toward and to the eastern curb, at Dr. Mutard's driveway in attempting to stop the same, while the first story does not tell how far to the east the car went after being turned to the east.

Some of plaintiff's witnesses *who did not see the accident*, but who saw the motor car where it stood immediately after the accident, say it stood across the car tracks facing directly up Dr. Mutard's driveway (pp. 87, 79, 66). Counsel for plaintiff may argue that the legal crosswalk over Ocean Avenue from the southerly side of Ege Avenue must be found by *extending* the *outer* lines of the southerly sidewalk of Ege Avenue across Ocean Avenue; that by doing so this crosswalk will terminate directly in the driveway of Dr. Mutard (see map, p. 277); that the motor car of defendant was found after the accident facing up the driveway; that it was therefore *on the crosswalk* where plaintiff's intestate under the statute had the right of way, and that the jury would have a right to infer from this that decedent was struck while on the crosswalk and was *dragged over the same*. Such

argument was advanced at the trial. The fallacy of it consists in this: It places the *legal* crosswalk to the south of where the law places it. The law describes it as "all duly indicated crossings marked by a pavement or otherwise, and the most direct route from curb to curb at the intersection of streets (L. 1915, p. 285, sec. 1, subd. 4). Helen Ferris at first testified to the existence of an indicated crossing across Ocean Avenue from the southerly side of Ege Avenue, but later corrected this statement and swore no such indicated crossing existed there (p. 116, fols. 30-40). Another witness swore there was no indicated crossing at the point. Under these circumstances the most direct route from curb to curb at the intersection of the two streets defines the crosswalk. The most southerly side of such a crosswalk would be found by extending the southerly house line of Ege Avenue to the westerly curb of Ege Avenue, and from the point thus found running a line across Ocean Avenue *and at right angles* to said easterly curb line. A crosswalk thus found *will come entirely to the north of Dr. Mutard's driveway* (see map, p. 277). The argument thus advanced will also be postulated upon the fact that decedent was struck while on the crosswalk and was dragged over the same. The *only witness* who testified to the course traveled by plaintiff's decedent and who said that decedent started from the southwest corner of Ege and Ocean Avenues, is Helen Ferris. She says decedent left the corner diagonally *on a slant to reach the middle of the block on the other side*. There is, therefore, no evidence in the case to support a finding that decedent was on the crosswalk when she was struck, and the jury under the circumstances would not be justified in finding that she was

struck while on the crosswalk and then dragged over it.

We submit there is no evidence of negligence on the part of the chauffeur in the case.

(b) *The accident happened at a place other than a street crossing and at a place where plaintiff's intestate—as against the owner of the motor car—assumed the risk of being.*

The accident happened on May 24th, 1915.

Chapter 156, Laws of 1915, page 285, was approved April 6th, 1915. Section 27 of the Act provides that it “shall take effect one month after its approval.” The Act therefore became effective May 6th, 1915. Section 12 of the Act provides:

“1. In places where the houses are on an average less than one hundred feet apart, pedestrians shall have the right of way over vehicles at any street crossing.

“2. Any person crossing a street at any place other than the crosswalk shall do so at his own risk. Nothing in this regulation, however, shall relieve the *drivers* of vehicles from being constantly vigilant, exercising all reasonable care to avoid injuring either persons or property.”

This section has been construed in

Schreiber v. Grinwell, 89 N. J. L., 37.

That case holds that as against *owners* of vehicles *not themselves driving*, the pedestrian who crosses a street at a place other than a crosswalk *is barred from maintaining an action for damages caused by collision*; that as against *drivers*, whether they are owners of the vehicle or servants of the owner, the pedestrian is *not* barred of his action.

This action is brought against an owner who was not driving at the time of the accident.

The evidence clearly indicates that the accident happened at a place *other than a crosswalk* as crosswalks are defined by Section 1, Subdivision 4, of said Act.

The issue presented by the complaint was that plaintiff's decedent was on a crosswalk when she was struck (p. 13, l. 30). This was denied by defendant, who, in addition, advanced as a separate defense the proposition that decedent was not on a crosswalk when struck and therefore assumed the risk of her position (p. 23, l. 10).

The matter was called to the attention of the court in the motion to non-suit, and the court met the situation by saying:

"The question is, really, is there any evidence that the child was *not* on a crosswalk" (p. 120, ll. 10-20)

and again by saying:

"I have got to see in this case before I grant a non-suit that that child is *not* on the crosswalk, and I have got to leave that to the jury; *I do not see that there is any evidence that she was not on that crosswalk*; it is a question for the jury, I think, to say where she was."

We submit that in the state of the law as it stood in 1915 and in view of the issue tendered by plaintiff and accepted by defendant it was the *affirmative* duty of plaintiff to adduce evidence that plaintiff's decedent at the time of the accident *was crossing the street on a crosswalk*; that there is *no presumption* that she was crossing upon a crosswalk; that the judge by his ruling erroneously shifted to defendant the burden of

proof upon the very issue in the cause and forced *the defendant* to establish the *negative* that she was not on the crosswalk, and this was done in the face of the testimony of the only eye-witness to the accident who attempted to locate the decedent in relation to the cross-walk,—the testimony of Helen Ferris, who said they left the corner on a slant.

(c). *The accident happened while the servant of defendant was not engaged upon his master's business and while he was acting outside the scope of his employment.*

Denty, the chauffeur, was employed by defendant to drive his automobile for him for use of himself and family (p. 151). In addition to his driving duties he had to keep the motor car clean and in repair (p. 142). The chauffeur could use his discretion as to where he washed the car (p. 142).

The accident happened after the chauffeur, at half-past five in the evening, had left Mrs. McArdle and her daughters, members of defendant's family, at their home and when he had no further orders for the day (p. 151).

The automobile was stored at a garage on Oxford Place or Avenue, between Bergen Avenue and Hudson Boulevard (p. 151).

The chauffeur, after being discharged for the day by the McArdle family, instead of driving the motor-car to the garage, picked up his sister-in-law and a lady friend for the purpose of driving them home and also for the purpose of going to his supper. He intended to drive the car to the garage after supper. He lived in the same house with his sister-in-law. Her friend lived upon Ocean Avenue, a few blocks beyond the house in which the chauffeur and his sister-in-

law lived. In thus driving these ladies home and in driving home for his own supper the chauffeur was on no errand of the defendant. The garage was in a different direction from the home of the chauffeur or of the lady friend of his sister-in-law, when coming from the defendant's home. The defendant did not know that the chauffeur was going to drive these ladies home or that he was going to drive home for supper.

The case seems to be ruled by the opinion in *Doran v. Thomsen*, 76 N. J. L., 754, and by *Evers v. Krouse*, 70 N. J. L., 653.

In the case of *Doran v. Thomsen*, the Court of Errors and Appeals held that the test of *service* as to third person "is whether the Act is done by one *for* another, however trivial, with the *knowledge* of the person *sought to be charged* even though there was no request on his part to the other to do the act in question.

The act must be done by one for the other.

In this case there is no proof that the chauffeur in driving to his own home for supper *was doing something for his master*. On the contrary the proof is plenary that he was doing what he was doing for *himself and his two lady friends*.

Again in *Doran v. Thomsen*, *supra*, the court held at page 757:

"Assuming that the relation of master and servant existed generally between the father and daughter, yet it does not appear in this case that *on the occasion* in question she was acting as *such servant* within *the scope* of her employment.

"That the master is responsible for the negligence of his servant when acting within the scope of his employment is elementary law, but that he is *not responsible* if the negligence was committed by the servant, when engaged in some *private matter of his own*, is equally elementary."

So, also, it said at page 758:

“The doctrine of *respondet superior*, applies only when the relation of master and servant is shown to exist between the wrongdoer and the person sought to be charged for the result of such neglect or wrong, at *the time* and in *respect to the very transaction out of which the injury arose.*”

Applying these rules to the undisputed facts in the case we submit that the master was not responsible for the alleged negligence of his chauffeur at the time and in respect to the transaction out of which the injury arose.

It may be contented by plaintiff that the evidence was sufficient to warrant the jury in finding that the chauffeur had the express or implied permission of his master to use the automobile to drive home to his supper and that the accident occurred while he was doing this.

We contend that *permission* thus to use the car does not establish liability as against the master. In the language of *Doran v. Thomsen, supra*, at page 762:

“This proposition ignores an essential element in the creation of that status [master and man] as to third person, that such use *must* be in *furtherance* of and *not apart* from the master’s service and control, and fails to distinguish between a *mere permission to use*, and a use subject to the control of the master and *connected with his affairs.*”

The act must be done for the purpose of executing *the master’s orders* and doing his work, and *while actually engaged in serving* the master, and *it is not enough to say that the injuries complained of would not have been committed without the facilities afforded by the servant’s relation to his master* (*Doran v. Thomsen*, p. 759).

POINT II.

The Court erroneously admitted answers to the following questions to be given over the objection of the defendant:

Question addressed to defendant McArdle, at page 133.

Q. How long after the accident did you have him (the chauffeur) in your employ? A. January, 1916.

Question addressed to defendant McArdle, at page 137:

Q. You endeavored that night to secure his (the chauffeur's) proof did you not Mr. McArdle? A. Yes, I believe I did.

Question addressed to defendant McArdle, at page 137:

Q. As a matter of fact Mr. Denty (the chauffeur) was paroled into your custody wasn't he? A. Why I believe he was.

Question addressed to defendant McArdle, at page 144:

Q. As part of his employment, did Mr. Denty (the chauffeur) tell you that night that he had met his sister-in-law and another girl friend of hers down town and was taking them home? A. Yes.

Question addressed to defendant McArdle, at page 145:

Q. Do you know who those two ladies were Mr. McArdle? Did Mr. Denty [the chauffeur] tell you who they were? A. He told me that one was his sister-in-law and a friend of hers.

It is the contention of the defendant that all of these questions were erroneously allowed be answered and that the answers to the ques-

tions did substantial injury to the rights of the defendant.

The complaint charged that the accident happened *while* the chauffeur was acting as the agent and servant of the defendant. Paragraph one of the complaint charges that "On May 24th, 1915, the defendant George H. Denty was *as the agent and servant of Frank McArdle*, driving, etc. (p. 13, l. 10). Paragraph two of the complaint charges that: "Said defendant George H. Denty, *while so in the employ and acting as a servant of the defendant Frank McArdle*, so carelessly, etc., operated, etc., said automobile" (p. 13, ll. 10-20).

The issue thus tendered by the complaint had been accepted by the denial of the defendant McArdle contained in his answer (p. 21) and by the first separate and distinct defense to the complaint (p. 22) which specifically denied that the automobile was under the control of defendant McArdle at the time of the accident or that the chauffeur then was "on any business, purpose or agency of defendant McArdle."

The testimony of defendant McArdle and of the chauffeur fully supported the answers thus filed by defendant McArdle, and established beyond dispute that the chauffeur *at the time of the accident* was engaged upon private business of his own in no way related to the service of his master or within the scope of his employment. It was in this posture of the evidence that plaintiff asked the objectionable questions hereinbefore set out for the purpose of showing that *even if it was true* that the chauffeur was engaged at the time of the accident upon private business of his own in no way related to the service of his master or within the scope of his employment the master by *his* actions towards his chauffeur *subsequent*

to the accident had impliedly ratified, confirmed and adopted the acts of his chauffeur as his own and ought, therefor, to be held responsible. Conceding for a moment that the enumerated questions and answers have probative force for the purpose just mentioned the evidence thus offered was certainly not *within the issue framed and then being tried*. The evidence thus offered *confessed and avoided* the proposition that the accident happened while the driver was engaged upon his private business and was not acting within the scope of his employment. It amounted to proof of a plea confessing the matter set up in the answer and avoiding it by showing that *subsequently* the defendant had ratified, approved and adopted the action of the driver as his own. It imported a new issue into the cause and this could not be done over the objection of the defendant.

Conceding now, however, that it *was* proper to confess and avoid the fact that the driver was *not* the agent of the defendant, and was *not* acting within the scope of his agency when the accident happened, we say that *none* of the objectionable questions, *or their answers*, had any probative value whatever to establish such ratification, confirmation, approval or adoption of the chauffeur's act by the defendant. Such ratification, confirmation approval or adoption would be *purely* a question of intent with the defendant, owner, and no inference of an *implied* ratification, confirmation, approval or adoption ought to be permitted if the questions asked did not necessarily or clearly lead to that result. In other words no inference of implied action by this defendant ought to be allowed, nor ought evidence be submitted to the jury for the purpose of per-

mitting it to infer such action, when the questions asked and the answers given may *just as well indicate* that defendant did *not* intend to ratify, confirm, approve, or adopt the act of his servant as that he *did* intend so to do, and it is the earnest contention of this defendant that *all* of the objectionable questions dealt with such matters and that it was wrong to allow the jury to take the questions objected to and their answers under consideration for the purpose of deciding whether or not defendant had thus ratified, confirmed, approved or adopted the act of his servant.

POINT III.

The Court erroneously refused to charge the jury the seventeenth request to charge made by the defendant which reads as follows:

“Neither permission, express or implied, from the defendant McArdle to his driver, Denty, allowing the latter to drive home to his supper, or acquiescence of the defendant McArdle in the practice of the driver Denty of driving home to his supper in the motor car of the defendant McArdle will constitute Denty the agent or servant of the defendant McArdle while so driving home; and if at the time of the accident the driver Denty was thus driving home to his supper, the defendant McArdle is entitled to a verdict, even though he permitted his driver thus to drive home or acquiesced in the practice” (p. 263, l. 40; p. 275, ll. 35-40, etc.).

The plaintiff attempted to show and there is some evidence in the cause supporting the proposition that defendant McArdle *knew* that his chauffeur was in the habit of driving to his home

to supper in the motor car, and that defendant McArdle *permitted* and *acquiesced* in this practice and that the accident happened while the chauffeur was thus driving home to his supper.

It is the contention of the defendant that neither such permission or acquiescence can constitute the driver's act of driving home to his supper an act done *for the master* or in furtherance of the master's business for which the driver was employed, or an act done within the scope of his employment.

Doran *v.* Thomsen, 76 N. J. L.;
Evers *v.* Krouse, 70 N. J. L.

If this contention is correct, the defendant had a right to have the request charged and the refusal so to do constituted reversible error.

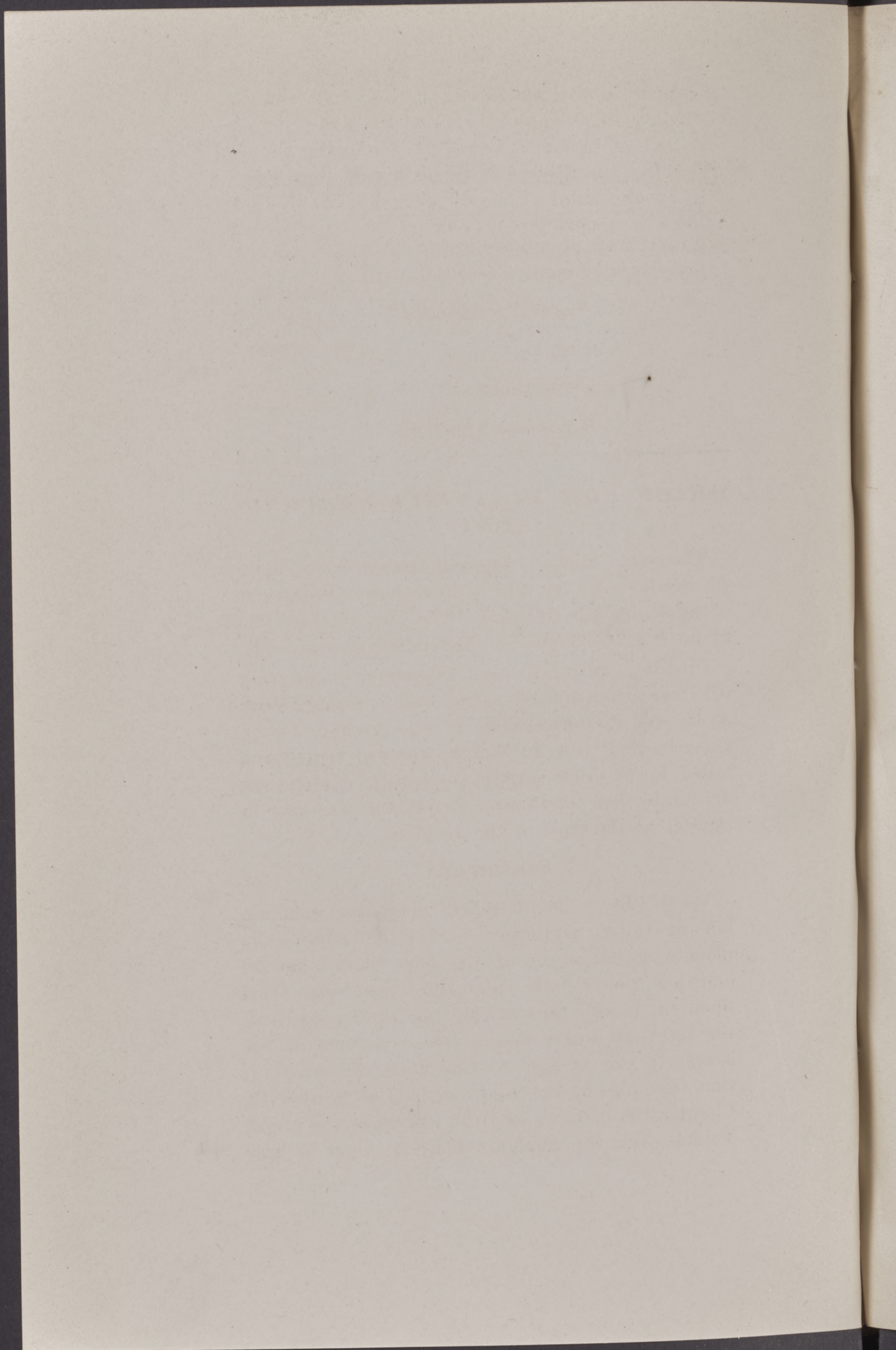
CONCLUSION.

We respectfully submit that the judgment brought up for review should be reversed and that a venire de novo should be awarded.

Respectfully submitted,

J. EMIL WALSCHEID,
of Counsel with Defendant.

June Term, 1918.



New Jersey Court of Errors and Appeals.

WILLIAM FERRIS, Administrator of
KATHERINE FERRIS, deceased,
Plaintiff-Respondent,

v.

FRANK MCARDLE,
Defendant-Appellant.

Action at
Law.

On Appeal.

10

BRIEF FOR PLAINTIFF-RESPONDENT.

This is an appeal from a judgment based upon the verdict of a jury in a death case, arising out of an automobile collision. The jury awarded the plaintiff \$1500 damages. Defendant now appeals. 20

Intestate, an infant aged 5½ years, in company with her sister, aged 7 years, were crossing Ocean Avenue at the intersection of Ege Avenue, Jersey City, on May 24th, 1915, when she was struck and killed by the defendant's automobile, which was driven by his chauffeur. Defendant was not in the car at the time of the accident.

Statement.

While the plaintiff relied upon the common law to prove negligence of the defendant, the pleadings and state of the case show that in addition thereto, the plaintiff's case was tried upon the theory that at the time of the accident, the intestate was crossing Ocean Avenue at the southerly side of Ege Avenue upon the crossing; that therefore under the provisions of Section 12, Chapter 156 of Laws of 1915, known as the Motor Vehicle Act, the intestate had the right of way 40

and the failure of the defendant's chauffeur to observe that right, constituted negligence. The defense consisted that the intestate was not upon the street crossing, and therefore as against the defendant, she assumed the risk of the accident.

Defendant further contended that the chauffeur was not acting within the scope of his authority as defendant's agent, and therefore his negligence was not imputable to the defendant.

10 At this point of the intersection of the aforesaid streets, there was no crossing marked by a pavement, such as crosswalks at some streets.

Facts.

20 Ocean Avenue runs north and south, Ege Avenue, northwesterly and southeasterly. Ege Avenue ends at Ocean Avenue, and it intersects the westerly side of Ocean Avenue at an angle, the southerly curblineline of Ege Avenue intersecting the westerly curblineline of Ocean Avenue at an obtuse angle.

There are two sets of trolley tracks on Ocean Avenue, one a southbound track on which the cars run to Bayonne, and the other the northbound track to Exchange Place, Jersey City.

The jury might have found the following to be the facts:

30 Ocean Avenue was paved with granite block and there was no street crossing, marked by a pavement such as crosswalks, on Ocean Avenue at the intersection of Ege Avenue. *The intestate was on that part of Ocean Avenue directly opposite the driveway of Dr. Mutard's house at the time she was struck.* Dr. Mutard's house is located on the easterly side of Ocean Avenue. A driveway from the easterly side of Ocean Avenue adjoined his house on its southerly side. This driveway is 8 to 10 feet wide. The southerly sidewalk of Ege Avenue is 40 feet wide. The

northerly line of the driveway was directly opposite the southerly curblin of Ege Avenue, so that if the southerly sidewalk of Ege Avenue were extended, it would take in the driveway.

The intestate and her sister approached Ocean Avenue on the southerly sidewalk of Ege Avenue, and intended to cross Ocean Avenue, to meet a child on the easterly sidewalk of Ocean Avenue. They continued in the same direction across Ocean Avenue, so that if the southerly sidewalk were extended, they would be on that sidewalk in crossing the street; the intestate was directly ahead of her sister, the latter having hold of the former's coat; before they started to cross the street, they looked in both directions and saw nothing except a trolley car approaching from the south; they started to cross the street on a line with the southerly sidewalk of Ege Avenue, but when they reached the southbound track they became afraid that they would be struck by the northbound trolley car; they then stopped in the middle of the southbound track but decided that they could cross the northbound track before the trolley car, approaching from the south, reached them; they started to run and were either in the middle of the northbound track or between the northbound track and the easterly curb of Ocean Avenue, when they were struck by defendant's automobile; no horn or signal of the approaching automobile was given; the defendant's automobile continued a few feet and ran against the easterly curb of Ocean Avenue, then stopped; at that time the automobile was facing in a southeasterly direction, with its front directly opposite Dr. Mutard's driveway. The hat of the intestate was picked up in front of the automobile.

A southbound trolley car was approaching at the time of the accident, and at Virginia Avenue,

which is one block north of Ege Avenue, the defendant's machine passed the car on the left or easterly side of the trolley car, and at the time the accident occurred, was diagonally across both trolley tracks.

PLAINTIFF'S EVIDENCE.

HELEN FERRIS, (pp. 35 and 36) she and the
 10 intestate were approaching Ocean Avenue on the
 southerly sidewalk of Ege Avenue; when they
 reached Ocean Avenue they saw a little girl
 friend on the easterly side of Ocean Avenue, and
 they started to cross the street (pp. 37, 38, 39
 and 40); before crossing the street they looked
 in both directions, and saw nothing except a trol-
 ley car approaching from the south.

(p. 37, l. 40) "Q. Did you go—start to go
 across Ocean Avenue? A. Straight across.

20 "Q. Or did you start to go to one side?
 A. Straight across."

(p. 40) Intestate was in front of her. (p. 41)
 She heard no signal or any horn from the auto-
 mobile, and the intestate was near the easterly
 curb of Ocean Avenue, when she was struck.
 (p. 117, l. 30) When they reached the point be-
 tween the two car tracks, they were afraid the
 Bayonne car would hit them, so they stopped;
 (p. 118) the trolley car stopped and they then
 30 started to run to get ahead of the car, when in-
 testate was hit by the automobile, while they were
 midway between the northbound track.

While on cross-examination this witness became
 confused, and at times contradicted herself, she
 at no time withdrew the evidence that she had
 given on direct examination, as above set forth.

GEORGE BOYD. (p. 66) His attention was at-
 tracted by the accident and the automobile was
 stopped at that time. It was diagonally across
 40 the two car tracks, with the front of the automo-

bile in the northbound car track, which the witness erroneously described as a southbound car track going towards Jersey City.

Robert Dunkason (p. 78) was a passenger on the southbound trolley car from Jersey City; the defendant's automobile passed this car on the easterly side when they were at Virginia Avenue, which is one block north of Ege Avenue. He next saw the automobile stop at Ege Avenue, between the northerly and the southerly curb, and the front of the automobile was then between Dr. Mutard's house, and the driveway. **10**

Benjamin Levy (p. 87, l. 20) when the automobile stopped, it was on Dr. Mutard's driveway; he picked up a child's hat in front of the automobile.

Frank Dunham (p. 105) a civil engineer of 30 years standing, who was at that time employed with the City of Jersey City, testified as follows: **20**

(P. 106, l. 12) "Q. Calling your attention to the place marked 'driveway', on the east side of Ocean Avenue, and Dr. Mutard's name alongside, would that north side of the driveway be to the north or the south of the south curblin of Ege Avenue, if extended? A. The north side of the driveway is exactly on a line with the south curb extended; the driveway itself is directly opposite and even with the southerly sidewalk of Ege Avenue.

"Q. By that you mean that the sidewalk, if produced and extended, across the street, would take in the driveway? A. Yes. **30**

"Q. The limits of the driveway? A. Yes, that exactly.

"Q. Where it touches the curb? A. Yes, sir, right at the curb."

(p. 107, l. 30) "Q. Are there cross walks along Ocean Avenue, there, Mr. Dunham, or not? A. No cross walk."

Cross examination (p. 107, l. 10) "Q. You have had considerable experience in Municipal engineering, have you not? A. Yes. **40**

“Q. And you know that where streets run into large main arteries, such as this, at an angle, that the cross walks are also laid at right angles to the main artery? A. That is not so.”

William Birchett, a witness for the defendant, testified on cross examination (p. 228) that he was an eye witness to the accident; that the intestate was between the northbound track and the easterly curblineline of Ocean Avenue when she was struck by the automobile; after hitting her, the automobile continued a few feet until the left hand wheel struck the curbstone; it was then in front of Dr. Mutard's driveway (p. 232); that the intestate and her sister were between two car tracks when the automobile started to turn; they retraced their steps for a step or two, but then turned back toward the easterly curblineline, and started to run (p. 233); the automobile hit the children from behind.

While the chauffeur, George Dentz (p. 150), and the witness Clara Scott (p. 203), Grace Edwards (p. 211) stated that the horn of the automobile had been blown and that the accident occurred from 15 to 20 feet south of the southerly building line of Ege Avenue, and that the accident was caused by the intestate suddenly running from the curb into the front of the automobile, this evidence in view of the above evidence of the plaintiff, presented a jury question.

POINT I.

The motion for a non suit was properly denied.

The defendant having admitted the ownership of the car (pp. 125 and 150), this established prima facie that the person operating the car was the defendant's servant, and acting within the scope of his authority.

Edgeworth v. Wood, 58 N. J. Law, 463;
Denery v. G. A. & P. Tea Co., 53 Vr. 519;
Missel v. Hayes, 91 Atl. Rep., 322.

While the testimony of the witness, Helen Ferris, sister of the intestate, was contradictory at times, and it was apparent that she was confused upon the witness stand, yet the plaintiff under this motion, was entitled to the most favorable consideration of the evidence. The evidence showed that there was no duly indicated crossing, marked by a pavement at that point; that the most direct route from curb to curb was the line of the continuation of the southerly sidewalk of Ege Avenue; that the intestate looked in both directions before attempting to cross the street; no automobile was in sight, and no horn or signal was given, and at the time she was struck, she was at a point on Ocean Avenue, representing a continuation of the southerly sidewalk of Ege Avenue, and was between the northbound car track and the easterly curb of Ocean Avenue; the automobile came from behind a trolley car on the wrong side thereof, in violation of provisions of Motor Vehicle Act of 1915, and at the time it struck the intestate, it was on the wrong side of the street.

Whether intestate had the right of way over defendant's automobile, depended of course, whether she was crossing Ocean Avenue at the street crossing.

Section 1 of the Motor Vehicle Act of 1915, defines a street crossing in the following language:

"The word 'crossing' includes all duly indicated crossing marked by a pavement or otherwise, and the most direct route from curb to curb."

There was no crosswalk, marked by flag-stone paving, or otherwise, at the point of the accident.

In Jersey City, crosswalks follow the line of the intersecting sidewalk and are not placed at right angles to the intersected streets when these streets intersect each other at either acute or obtuse angles (Dunham p. 107, l. 30).

I submit that in the case at bar, the legal determination of the street crossing is contained in the words "or otherwise" in the aforesaid definition. Logically this means "marked" by the
 10 lines and the limits of the sidewalk, because in the absence of a marked crosswalk there are no other means of ascertaining the crossing except by the boundaries of the sidewalk. This appears more manifest when we consider the remaining words of the definition to wit, "and the most direct route from curb to curb at the intersection of streets." If we assume that Ege Avenue was continued through the easterly side of Ocean Avenue, the most direct route from curb to curb
 20 would be the line of the sidewalk, otherwise a person crossing Ocean Avenue at a right angle and starting from the southerly curb line, would reach a point on the easterly side of Ocean Avenue, which would be between the north and south curb-lines of Ege Avenue.

It was therefore permissible for the jury to find that the intestate was on the street crossing of Ocean Avenue, at the intersection of Ege Avenue, within the meaning of Section 12, Chapter
 30 156 of the Laws of 1915, under which she had the right of way; that the defendant's chauffeur gave no warning of his approach, did not have the car under control, and failed to observe the intestate's right of way. Under this evidence, the jury would have the right to find that the defendant was guilty of negligence.

POINT II.

The motion for a direction of a verdict, was properly denied.

Although the evidence of the chauffeur and the two ladies who were with him in the automobile was to the effect that the automobile horn had been blown, that the car was proceeding at a low rate of speed, that the intestate ran out suddenly from the sidewalk at a point 15 or 20 feet south of Ege Avenue, and was there struck by the car, the cross examination of defendant's witness, Birchett, developed the fact that the accident occurred directly in front of Dr. Mutard's driveway; intestate at that time was between the easterly curblineline of Ocean Avenue and the easterly rail of the northbound track. The credibility of the different witnesses was of course, one of fact for the jury. They believed the testimony of Birchett, as developed on cross examination that they could find that the defendant was struck while on the street crossing at a point within a few feet of the easterly curb of Ocean Avenue, and that the automobile was on the wrong side of the street. This evidence taken in conjunction with that of the plaintiff, presented a jury question as to the defendant's negligence.

B. Whether the driver of the car was engaged upon his master's business and whether he was acting within the scope of his employer's authority, was a question of fact for the jury.

The evidence showed that Dentz, the chauffeur, (p. 150) had been employed as the defendant's chauffeur for a period of 3 or 4 years; that his general duties consisted of driving the defendant and his family and taking care of the car; that that afternoon he had had the defendant's family out for a ride, and had left them at their home

around 5.30 P. M. (p. 151) that no instructions had been given him where to go or what to do; that it was part of his duty as defendant's chauffeur, to keep the car washed, and repaired; that the particular day in question, it had been raining; that he frequently washed the car at night and if he got through driving in time, he would wash the car at the garage before dinner; if not, it had been his practice to drive home to his

10. supper, then take the car to the garage and wash it; that no instructions had ever been given him as to what route he should take to the garage; that the particular night in question, he was following the most direct route home, but not the most direct route to the garage; inasmuch as it was late, he was going home to his supper and then take the car to the garage and wash it; on his way home he met two ladies, one his sister-in-law with whom he lived, and at whose house he

20. got his meals, and was going to that night, and invited them to ride home with him. The defendant testified (p. 141) that Dentz's general duties were to drive the car, keep it repaired and washed, but Dentz would use his own judgment and discretion as to when he would wash the car, whether at day time or at night; that he knew that the defendant had taken the car home for his supper, and afterwards took it to the garage and washed it.

30. "Q. That was satisfactory to you? A. I accepted it as a matter of fact."

The fact that the defendant had two ladies in the car at the time, had not any bearing upon this case; he was taking the route that he would have taken if he had not met the ladies in question.

I therefore submit that the fact that Dentz's duties as defendant's chauffeur were general; that

40. specified hours of employment were fixed, but he

was subject to call at all hours of the night or day; that it was his duty to keep the car washed and repaired; that after taking the car to the garage that night, he had to wash it; that he finished driving defendant's family at 5.30 P. M. that afternoon; that upon such occasions, he was accustomed to drive the car to his home, have his supper, and then take it to the garage and wash it, in the doing of which defendant always at least, passively acquiesced; that no specific direction as to what route to take the car to the garage had ever been given him; that a short time after the accident, defendant went to the police station and procured Dentz' parole in his (defendant's) custody, presented a jury question whether Dentz was acting within the scope of his employment at the time of the accident. 10

Bennett v. Busch, 46 Vr. 240;
Missel v. Hayes, N. J. 91 Atl. Rep. 322; 20
Reynolds v. Denholm, Mass. 100 N. E.
 Rep. 1006;
Richie v. Waller, Conn. 27 L. R. A. 161;
McKeever v. Ratcliffe, 218 Mass. 17;
Quinn v. Power, 87 N. Y. 535;
Krzikowsky v. Sperring, 107 Ill. Appeal
 493;
Witte v. Mitchell-Louis Motor Co., 244
 Pa. State, 172.

Maloy vs. Rosenbaum Co. 103 Atl. Rep. 882
 Pa. 30

POINT III.

The questions allowed by the Court which are objected to by the appellant, under point II, of his brief, were properly admitted.

I assume that these questions were asked by counsel for the plaintiff, for the purpose of proving ratification by the defendant and the chauffeur's act in driving the car over the route that 40

he was on at the time of the accident. It was relevant and material for the plaintiff to prove ratification under the issues raised by the pleadings. The defendant's act in procuring the parole of the chauffeur after the accident, tended to show that the chauffeur was acting within the scope of his authority, not contrary to the instructions of the defendant.

10

POINT IV.

The 17th request to charge of the defendant, was properly refused.

The vice of this request is that it did not embrace all the evidence in the case. The undisputed evidence was that the chauffeur was in the habit at times of driving home to his supper and then taking the car to the garage to wash it; where he did not finish his afternoon's work in time to do
 20 so before his supper hour; it was undisputed that that was his purpose that night; therefore under the evidence, the legal question was not presented whether the chauffeur was acting within the scope of his authority ~~but~~ merely driving home to his supper; the real question was whether the chauffeur, taking the car back to his garage, where he intended to wash it, ^{intending to} first stopped at his home for supper, which had been his general practice, and which was either known or acquiesced ~~him~~
 30 by the defendant. The charge was therefore properly denied.

Christensen v. Lambert 38 Vr: 341.

I therefore respectfully submit that the judgment should be affirmed.

Respectfully submitted,

MARK TOWNSEND, JR.,

Of Counsel with Plaintiff-Respondent.

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acting as
ad auto agent

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