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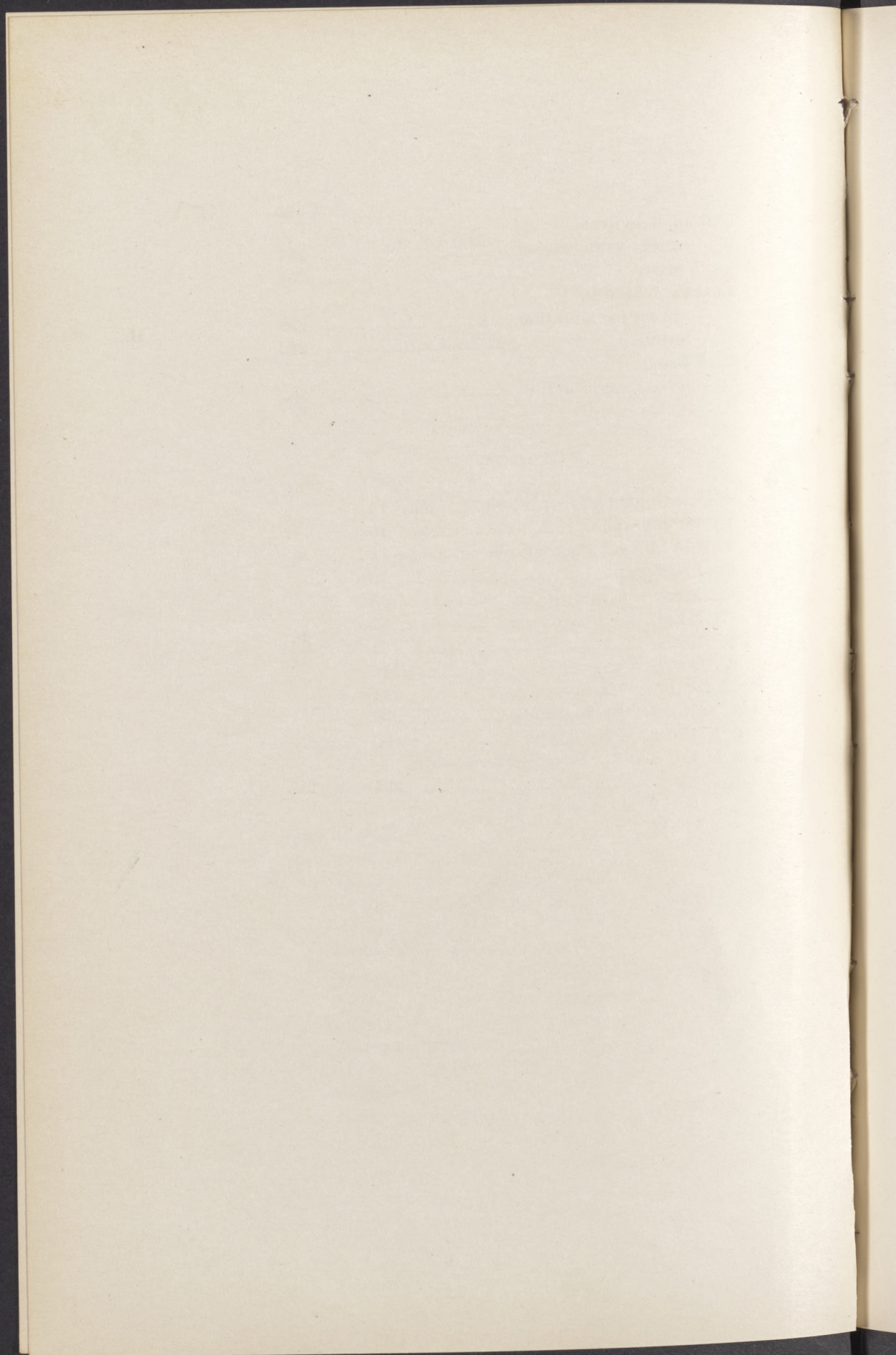
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NOTICE OF APPEAL.

New Jersey Supreme Court

UNION COUNTY.

EMMA McCUSKER,

Plaintiff,

vs.

PUBLIC SERVICE COORDINATED
TRANSPORT, a corporation of
New Jersey, and B & N
TRANSPORTATION Co., a cor-
poration of New Jersey,
Defendants.

*Action
at Law.*

*Notice
of Appeal.*

10

20

To Patrick J. O'Connell, attorney of plaintiff.

SIR:

PLEASE TAKE NOTICE that the defendant B & N
Transportation Co., a corporation of the State
of New Jersey, appeals to the New Jersey Court
of Errors and Appeals, court of last resort of all
causes in New Jersey, from the whole of the
judgment entered in this cause against this de-
fendant in the New Jersey Supreme Court.

30

Dated February 25, 1929.

SCHNEIDER & SCHNEIDER,
Attorneys of Defendant,
B & N Transportation Co.

40

GROUNDS OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

EMMA McCUSKER,
Plaintiff-Appellee,

vs.

B & N TRANSPORTATION COM-
PANY,
Defendant-Appellant.

*Action
at Law.*

On Appeal.

*Grounds
of Appeal.*

20

The following are the grounds on which the de-
fendant, B & N Transportation Company, a cor-
poration, appeals:

30

1. The trial court in ruling on the motion of
the defendant, Public Service Coordinated Trans-
port Company, erroneously and prejudicially to
this defendant, made the following statement:

“This collision would never have occurred
if the B & N bus had lived up to the law
which required it to pass a trolley car,
located as this trolley car was located, on the
right of the trolley car. According to the
uncontroverted evidence in this case, what I
have just said is an inevitable conclusion.

“The Traffic Act which was in force at the
time of the accident provides that a vehicle
proceeding in the same direction as a street
car operated on the tracks in the center of
any public street, when passing a moving car,
shall pass such street car on its right.

40

“Of course, if this car was standing at the
time, that does not make any difference, so
far as the application of this law is con-

Grounds of Appeal.

cerned, 'Provided however when through narrowness of the road or street or through congestion of traffic standing at the curb or side of such road or street, it is impossible or unsafe to pass that street car as above, then by exercising exceptional caution, the vehicle may pass on the left of such street car.' 10

"I am again stating that if the driver of the B & N bus had lived up to that traffic regulation this collision would never have occurred."

2. The Court in answer to a question propounded by one of the jurors said:

"That is a street, and I am holding that under the Traffic Law, it was his duty to keep on the right and to pass that car on the right. The law is that in making a turn you are to keep on the right, as I put the question to the driver of the B & N bus. It is their duty, in making those left-hand turns, to keep to the right of the street they are on until they get about to the center of the intersection, so that when they are into the other street, they are still on the right. 20

3. The trial court erroneously refused the defendant's, B & N Transportation Company, request to charge as follows: 30

"At the time of the accident upon which this suit is based, there was a provision in the traffic laws that a vehicle on making a left-hand turn at an intersection shall pass, when possible to the right of the center of the intersection, but the legislature has since passed a law as a guide to the reasonably prudent man requiring him to keep to the 40

Grounds of Appeal.

left of the center of the intersection and you have a right to consider this also in determining what reasonably prudent drivers would have done under the circumstances in the case.”

10

SCHNEIDER & SCHNEIDER,
Attorneys of Defendant-Appellant.

20

30

40

SUMMONS.

The State of New Jersey to Public
 Service Coordinated Transport, a cor-
 (SEAL) poration of New Jersey, and B & N
 Transportation Co., a corporation of
 New Jersey, 10

You are summoned to answer the annexed com-
 plaint of Emma McCusker, in an action at law
 in the Supreme Court. And take notice that un-
 less you file your answer to said complaint with
 the Clerk of the Supreme Court, at Trenton,
 within twenty days after service upon you of
 this writ and the annexed complaint, the plaintiff
 may proceed in the suit and judgment may be
 entered against you.

WITNESS, WILLIAM S. GUMMERE, Chief Justice 20
 of the Supreme Court, at Trenton, this 3rd day
 of May, nineteen hundred and twenty-eight.

FRED. L. BLOODGOOD,
 Clerk.

PATRICK J. O'CONNELL,
 Attorney.

30

40

COMPLAINT.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

10	EMMA McCUSKER,	}	<i>Plaintiff,</i>
	<i>vs.</i>		
	PUBLIC SERVICE COORDINATED TRANSPORT, a corporation of New Jersey, and B & N TRANSPORTATION Co., a cor- poration of New Jersey,	}	<i>Action at Law.</i>
	<i>Defendants.</i>		<i>Complaint.</i>

20 Plaintiff, residing in the City of Elizabeth,
County of Union and State of New Jersey says:

FIRST COUNT.

1. Defendant, Public Service Coordinated Transport, was on January 20, 1928 and is a corporation of the State of New Jersey and was on that date engaged in the business of transporting passengers for hire.

30 2. On said date plaintiff was lawfully riding as a passenger in an automobile, commonly known as a jitney bus, which was owned by said defendant and was being driven and operated by its agent or servant on and along East Broad street, a public highway in the City of Elizabeth, aforesaid.

40 3. On said date the plaintiff, Emma McCusker, was a passenger of the defendant while said defendant's agent or servant was driving

Complaint.

and operating said automobile along the said highway in the City of Elizabeth and while operating said automobile, it became the duty of the said defendant to move and operate the same with care and caution, and in such a manner as to safeguard the plaintiff Emma McCusker and avoid running into other vehicles and objects on the said highway. 10

4. The said defendant disregarding its duty as aforesaid, did on said date, so negligently and carelessly drive and operate its said automobile along the said highway that it ran with great force and violence into and against the automobile of the defendant, B & N Transportation Co., which was then and there proceeding on and along Broad street at East Broad street, aforesaid. 20

5. Defendant's negligence consisted in this:

(a) Defendant's automobile was being driven and operated at an excessive and unlawful rate of speed, and on the wrong side of the highway.

(b) It gave no signal or warning of the approach of said automobile.

(c) It had no control over said automobile. 30

(d) It disregarded the rights of other persons and vehicles lawfully using the highway.

6. As a result of the aforementioned negligence, the plaintiff was violently thrown forward and sustained divers painful and permanent external and internal injuries and her nervous system was greatly shocked and shattered and she became and was sick, sore, maimed, lame 40

Complaint.

and disabled and so remained and continued from thence hitherto and will in the future so remain and continue and during all that time suffered and underwent and will in the future suffer and undergo great physical pain and torment.

- 10 7. By reason of said injuries the plaintiff has been unable to perform her usual work and suffered loss of wages and has also been obliged to expend large and divers sums of money for medicines and medical attention.

SECOND COUNT.

1. All the paragraphs of the first count are herein repeated and made part of this count.

- 20 2. Defendant, B & N Transportation Co. was on January 20, 1928, and is a corporation of the State of New Jersey.

3. On said date defendant, B & N Transportation Co. was the owner of an automobile, commonly known as a jitney bus, which was being driven and operated by its agent or servant, on and along Broad street, a public highway in the City of Elizabeth, aforesaid.

- 30 4. The said defendant disregarding its duty as aforesaid, did on said date, so negligently and carelessly drive and operate its said automobile along the said highway that it ran with great force and violence into and against the automobile of the defendant, Public Service Coordinated Transport, which was then and there proceeding on and along East Broad street at Broad street, aforesaid.

- 40 5. Defendant's negligence consisted in this:
(a) Defendant's automobile was being driven and operated at an excessive and un-

Complaint.

lawful rate of speed, and on the wrong side of the highway.

(b) It gave no signal or warning of the approach of said automobile.

(c) It had no control over said automobile.

(d) It disregarded the rights of other persons and vehicles lawfully using the highway.

10

6. As a result of the aforementioned negligence, the plaintiff was violently thrown forward and sustained divers painful and permanent external and internal injuries and her nervous system was greatly shocked and shattered and she became and was sick, sore, maimed, lame and disabled and so remained and continued from thence hitherto and will in the future so remain and continue and during all that time suffered and underwent and will in the future suffer and undergo great physical pain and torment.

20

7. By reason of said injuries the plaintiff has been unable to perform her usual work and suffered loss of wages and has also been obliged to expend large and divers sums of money for medicines and medical attention.

30

Plaintiff, Emma McCusker, demands as damages on either the first or second count or both counts the sum of \$15,000.00.

PATRICK J. O'CONNELL,
Attorney of Plaintiff.

40

ANSWER OF DEFENDANT, B. & N TRANSPORTATION CO.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

10	EMMA McCUSKER, <div style="text-align: right;"><i>Plaintiff,</i></div>	}	<i>Action</i>
	<i>vs.</i>		<i>at Law.</i>
20	PUBLIC SERVICE COORDINATED TRANSPORT, a corporation of New Jersey, and B & N TRANSPORTATION Co., a cor- poration of New Jersey, <div style="text-align: right;"><i>Defendants.</i></div>	}	<i>Answer of</i>
			<i>Defendant, B & N Trans- portation Co., a corporation.</i>

The defendant, B & N Transportation Co., a corporation of the State of New Jersey, having its principal office in the Town of Madison, in the County of Morris and State of New Jersey, answering the complaint filed herein says that:

ANSWER TO FIRST COUNT.

1. It has no knowledge or information sufficient to form a belief as to the contents of paragraphs 1 and 2, and therefore denies the same.

2. It makes no answer to the balance of said count as concerns the co-defendant, Public Service Coordinated Transport, a corporation of New Jersey, excepting to insist that the collision was caused by the negligence of said co-defendant.

ANSWER TO SECOND COUNT.

1. It denies the contents of paragraph 1.

Answer.

2. It admits the contents of paragraphs 2 and 3.

3. It denies the contents of paragraphs 4, 5, 6 and 7.

FIRST DEFENSE.

10

The plaintiff was guilty of contributory negligence.

SCHNEIDER & SCHNEIDER,
Attorneys of Defendant,
B & N Transportation Co., a corporation.

20

30

40

REPLY.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

10 EMMA McCUSKER,

*Plaintiff,**vs.*

PUBLIC SERVICE COORDINATED
TRANSPORT, a corporation of
New Jersey, and B & N
TRANSPORTATION Co., a cor-
poration of New Jersey,
Defendants.

*Action
at Law.**Reply.*

20

Plaintiff, residing in the City of Elizabeth,
County of Union and State of New Jersey, reply-
ing to answer of the defendant, B & N Trans-
portation Co., a corporation of the State of New
Jersey, says that:

1. She joins issue with the defendant on the
answer to the first count of the complaint.
2. She joins issue with the defendant on the
answer to the second count of the complaint.
- 30 3. She denies the allegations contained in the
first separate defense of the answer.

PATRICK J. O'CONNELL,
Attorney of Plaintiff.

40

POSTEA.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

EMMA McCUSKER, vs. PUBLIC SERVICE COORDINATED TRANSPORT, a corporation of New Jersey, and B & N TRANSPORTATION Co., a cor- poration of New Jersey,	}	Plaintiff, Defendants.	Action at Law. Postea.	10
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This case was tried before Judge Peter Daly with a jury at the Union County Supreme Court Circuit on February 14, 1929, and the jury rendered a verdict against the defendants, Public Service Coordinated Transport and B & N Transportation Co., and in favor of plaintiff for twelve thousand, five hundred dollars.

PETER DALY,
 Judge. 30

ENTRY OF JUDGMENT.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

EMMA McCUSKER, vs. PUBLIC SERVICE COORDINATED TRANSPORT, a corporation of New Jersey, and B & N TRANSPORTATION Co., a corporation of New Jersey,	}	Plaintiff, Defendants.	Action at Law. On Postea.
--	---	---	----------------------------------

Damages	\$12,500.00
Costs	71.45
	\$12,571.45

It is ORDERED that judgment be and is hereby entered in favor of the plaintiff and against defendants for the sum of \$12,500 besides costs to be taxed nisi.

Entered February 16, 1929.

On motion of PATRICK J. O'CONNELL,
 Attorney.

TESTIMONY.NEW JERSEY SUPREME COURT.
UNION COUNTY CIRCUIT.

January Term, 1929.

10

EMMA McCUSKER,

*vs.*PUBLIC SERVICE CO-ORDINATED
TRANSPORT COMPANY, and B &
N TRANSPORTATION COMPANY,PUBLIC SERVICE CO-ORDINATED
TRANSPORT COMPANY,

20

*vs.*B & N TRANSPORTATION COM-
PANY.

30

Transcript of stenographer's notes of evidence in the above-entitled cause, taken before Hon. PETER F. DALY, Circuit Court Judge, and a jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the eleventh day of February, A. D. 1929, at 11:30 A. M.

Appearances:

Patrick J. O'Connell, Esq., Alfred Brenner, Esq. (present), attorneys for the plaintiff.

Messrs. Schneider & Schneider, William T. Braun, Esq. (present), attorneys for the B & N Transportation Co.

Henry H. Fryling, Esq., William F. Vosseller, Esq. (present), attorneys for the Public Service Company.

40

Charles R. Powellson, direct.

(A jury was duly empaneled and sworn.)

(Mr. Brenner made an opening statement to the jury on behalf of the plaintiff, after which Mr. Vosseller made an opening statement to the jury on behalf of the defendant, Public Service Co-ordinated Transport. Mr. Braun then made an opening statement to the jury on behalf of the defendant, B & N Transportation Company.) 10

Mr. Vosseller: If your Honor please, with the consent of counsel I would like to offer in evidence at this time a map and ask that it be marked "Public Service Co-ordinated Transport's Exhibit 1."

(The map referred to was received in evidence and marked "Defendant Public Service Co-ordinated Transport's Exhibit 1.") 20

The Court: We will recess at this time until 1:45 o'clock this afternoon.

(A recess was had until 1:45 o'clock P. M.)

AFTERNOON SESSION.

CHARLES R. POWELLSON, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath saith: 30

Direct examination by Mr. Brenner.

Q Mr. Powellson, what is your business? A Photographer.

Q How long have you been engaged in that business? A Over twenty years.

The Court: Cannot we finish with the doctors so that we shall not have to wait? 40

Charles R. Powellson, direct.

Mr. Brenner: I don't think so, your Honor. I think we shall have to put the plaintiff on first.

The Court: All right.

By Mr. Brenner.

10 Q Mr. Powellson, have you prepared photographs of the scene of this accident? A Yes, sir.

Q I hand you four photographs and ask you to explain to the jury just what they represent. Explain one at a time, please. A This first one is looking southeast, or southwest from East Broad street into Broad street showing the arches, the Pennsylvania arch at the right and the Central Railroad arch at the left.

20 Q You have put a slip on the back indicating the point from which the view was taken? A Yes, sir.

Mr. Brenner: I ask that the picture be marked in evidence.

(The picture referred to was received in evidence and marked "Plaintiff's Exhibit 1.")

30 *By Mr. Brenner.*

Q What does this second picture represent? A The second one represents the view looking south on Broad street from a point on East Broad street opposite the easterly curb line of Broad street.

Q You have so indicated that on the slip attached to the back? A Yes, sir.

Mr. Brenner: I offer this picture in evidence.

40

Charles R. Powellson, direct.

(The picture referred to was received in evidence and marked "Plaintiff's Exhibit 2.")

Q Explain the next picture, please. A The next one is looking south on Broad street under the Central Railroad bridge from the center arch of the Pennsylvania Railroad arch. 10

Q And the marking on the back of the picture so indicates? A Yes.

Mr. Brenner: I offer that picture in evidence.

(The picture referred to was received in evidence and marked "Plaintiff's Exhibit 3.")

Q What does the next one represent? A This one is looking north on Broad street showing the Central Railroad bridge in the foreground and East Broad street just beyond on the right. 20

Q And the slip on the back so indicates? A Yes, sir.

Mr. Brenner: I offer this in evidence.

(The picture referred to was received in evidence and marked "Plaintiff's Exhibit 4.") 30

Q What does the next picture represent? A Looking north on Broad street, a general view showing the Central Railroad arch.

Q You have a slip on the back indicating that? A Yes, sir.

Mr. Brenner: I offer that picture in evidence. 40

William E. Preston, direct.

(The picture referred to was received in evidence and marked "Plaintiff's Exhibit 5.")

Mr. Brenner: Cross examine.

Mr. Vosseller: No questions.

10 Mr. Braun: No questions.

WILLIAM E. PRESTON, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Brenner.

20 Q Mr. Preston, what is your business? A Engineer and surveyor.

Q How long have you been engaged in that business? A About forty years.

Q Have you made a map for the Public Service Company showing the scene of this accident? A Yes, sir.

30 Q Mr. Preston, will you please step down here and explain the map and in doing so give us the measurements that you made? A Yes, sir. First this will be the Pennsylvania Railroad and these names are turned around. This will be the Central Railroad (indicating). The parallel lines approximately a half inch apart are all rails of tracks, and East Broad street is shown to the right, the tracks running toward the north. Going this way (indicating) is going down toward the center of Elizabeth. The scale is one inch equals ten feet. This line represents the outline of various abutments and piers of the two arches. The line between the abutments and the track is the curb. If you will mention what you want
40 I will give you the dimensions.

William E. Preston, cross.

Q Have you the measurements of the distance between the outside rails of the tracks shown in the diagram and also the distance of the outer rails from the curb of each street? A Here on Broad street is the inner rail of the easterly curb. The easterly rail is sixteen and nine-tenths feet.

10

Mr. Brenner: As the witness gives those distances, would there be any objection to putting them on the map?

Mr. Vosseller: No objection.

The Witness: I will put them on the map. The rails are four feet, eight inches apart. The distance between the rails here is four and eighty-five hundredths, and this is 4.5. The track is not quite parallel to the curb, and at this point we will mark this 18.5 feet. The same on Broad street, the tracks are not parallel there. On this side, from Broad street to the rail is 15.4 feet. In Railroad Place there are—do you want right in the middle?

20

Q Whatever measurements you have, you had better put all of them in. A All right, I will put them all in. (The witness marked the map.)

30

Mr. Brenner: Cross examine.

Cross examination by Mr. Vosseller.

Q Have you indicated the entire width of North Broad street under the arch except by addition? A Yes, I have. I think it is 46.9 feet, I believe.

Q Will you put that total width on? A Yes.

40

Eugene Gillette, direct.

Q Will you also put the total width of East Broad street from curb to curb on the map?

A Yes. (Marking the map.) The total width of Broad street is only at this end (indicating). The curbs approach each other as they go further down. That is all the width.

10

By the Court.

Q What is the width of Railroad Place under the arch as you have it marked? A 39.8 feet, approximately forty feet.

Q What is the width of Broad street under the arch? A It is 49.6 feet.

By Mr. Vosseller.

20 Q Was that marked on the map, Mr. Preston?
A Yes, sir.

Q What is the distance between the center abutment and the northerly track from this corner here to the other rail, down to the East Broad street track? A That is approximately twenty-eight feet.

Mr. Vosseller: That is all.

Mr. Braun: No questions.

Mr. Brenner: That is all.

30

EUGENE GILLETTE, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Brenner.

40 Q Mr. Gillette, on the night of January 20, 1928, were you a driver for the B & N Transportation Company? A Yes, sir.

Eugene Gillette, direct.

Q You were driving a bus? A Yes, sir.

Q And was that the bus that was involved in an accident in the neighborhood of the Central Railroad and the Pennsylvania Railroad arches?

A Yes, sir.

Q Where were you coming from that night?

A From the basketball game in Elizabethport. 10

Q As you were coming toward the scene of the accident, along what road were you traveling?

A On Broad street, Elizabeth.

Q You were going in what direction? A I don't know just exactly the direction.

Q Would it be going toward Newark or away from Newark? A Going towards Newark.

Q You had come into Broad street at what street? A At Elizabeth avenue.

Q Then you were traveling practically north along Broad street toward the Central Railroad station? A Of the arch; yes, sir. 20

Q How far did you get before there was an accident? A Well, I passed the left rear end of the trolley car.

Q Where was the trolley car at that time? A It was under the arch.

Q Which part of the arch was it under? A It wasn't exactly under the first arch; it was— part of it was under the arch and some part of it was across the street, across the next switch there. 30

The Court: Talk louder, please, because everybody wants to hear what you have to say.

By Mr. Brenner.

Q You say that the trolley you refer to stood partly under the arch and partly not under? A Yes, sir. 40

Eugene Gillette, direct.

Q Referring to the part of it that was not under the arch, was that beyond the arch going toward Newark or this side of the arch looking towards Elizabeth avenue? A Beyond the arch towards Newark.

10 Q When you talk about the arch, do you refer to the arch made by the tracks of the Central Railroad? A Yes, sir.

Q You intended taking what street after passing the trolley car? A The street on the left into Morris avenue.

Q Do you know the name of that street? A No, sir; I don't.

20 Q Can you tell by looking at the map what street it was that you intended to take? You may step down, if you want to, and say first whether or not you understand the map. A I intended taking this street here (indicating).

The Court: The witness indicates the street marked "Railroad Place."

The Witness: Yes, sir.

By Mr. Brenner.

Q Where was this trolley that you refer to? A Right about here (indicating).

30 Q That would be under the Central Railroad arch, would it not? A Yes.

Q Where was the rear of that trolley car? A Right about here (indicating).

Q You indicate a place on the map where the rails, the trolley rails going into Railroad Place, leave those that go into East Broad street? A Yes.

Q Do you know how long that trolley car was? A No, sir; I don't.

40

Eugene Gillette, direct.

Q It was a fairly long car, was it not? A
It was a Union trolley.

The Court: Mr. Vosseller, do you know
about how long a Union trolley car is?

Mr. Vosseller: I don't know. I think it
is about forty feet. Perhaps Mr. Preston 10
can tell us how long a Union trolley car is,
of the serial number 2,000 type.

Mr. Preston: It is about forty-three feet
long.

The Court: It is agreed that the car was
forty-three feet long. Can you get the length
of his bus?

By Mr. Brenner.

Q What was the length of your bus? A That 20
I couldn't tell you.

Q About how many feet are there in the bus?

A It was—altogether it held twenty-eight, I
think—twenty-eight.

Q That is, if everybody was sitting, it would
hold twenty-eight people? A Yes.

Q And that would be fourteen on each side?
A Yes.

Q That would be about seven feet on each 30
side? A Yes.

Q Was the trolley car standing still or was
it in motion at the time you started to pass? A
The trolley car, when I came to the rear end
of it, it started, and then it stopped.

Q And when you started to go up toward
Railroad Place, was the trolley car then in mo-
tion or was it stopped? A It was stopped.

Q That trolley car, if it had continued along,
would have gone out North Broad street in the 40
direction of Newark? A Yes.

Eugene Gillette, direct.

Q It would not have taken the same course that you were taking? A Yes.

Q How far did you get past the end of that trolley car before anything happened? A I just got the front of the bus around the rear end of the car when I seen this other bus coming around
10 in front of it.

Q How far past the rear end of that car did the front end of your bus get? A Right by the driver's seat, just even with the rear.

Q The driver's seat that you were sitting in was just about to the rear of the trolley car? A Yes.

Q What distance was there between the driver's seat and the radiator of the bus, approximately? A I should judge about five or
20 six feet.

Q You say you then saw another bus? A I saw the headlights of another bus.

Q Where were the headlights of that bus when you first saw it? A Just about coming around the front of the car then.

Q So that it would have been about a distance of some forty feet away? A Yes.

Q What did you do when you saw that? A I swung over to the left as far as I could.

30 Q Why did you swing to the left? A Because if I had failed, I would have stopped dead in the center in front of it.

Q Then you swung over to the left of the street? A Yes.

Q Did you see what the bus did as you swung toward the left? A No, sir; I didn't.

Q What was the next thing that you observed? A In regards to what?

40 Q I mean in regard to the movement of your bus or the Public Service bus? A Well, I pulled

Eugene Gillette, direct.

over as far as I could, and then I stopped—
Well, I don't just recall whether I was stopped
then or not, and then I seen these lights coming
right alongside of me and hit me, and that is
all I know.

By the Court.

10

Q Will you please keep your voice up? A
Yes, sir.

By Mr. Brenner.

Q What part of the two buses came in con-
tact? A My right door, front door, and his
radiator, left—no, his right fender and radiator.

Q When you talk of the right of your car
and the right of his car, do you refer to the
right-hand side looking from the driver's seat of
both cars? A From the driver's seat.

20

Q And looking from that direction, you would
say that it was your right door and his right
fender and radiator or the right side of the radi-
ator and the right fender? A Yes, sir.

Q What was your position in the roadway
at the time of contact? A Position?

Q At the time the two buses came together,
what was your position in the road then? A I
was way over on the left.

30

Q Do you mean the whole car or part of the
car? A The front of the car was slanting across
the road.

Q Do you mean diagonally toward the left
curb? A Right up against the left curb, against
the abutment.

Q What was the position of the Public Serv-
ice bus at the time the bus came in contact with
your bus? Was it straight or likewise slanting?
A Slanting.

40

Eugene Gillette, direct.

Q In what direction was it slanting? A Well, just opposite.

Q Do you mean toward the same curb or away from there? A Towards the same curb.

Q What happened next, as far as you observed? A Then I got out and went into the
10 other bus and asked to get his name, and then the bus driver asked the young lady if she was hurt, and she said no.

Mr. Vosseller: I object to what the bus driver said.

Mr. Brenner: I consent to that being stricken out.

By Mr. Brenner.

20 Q Did you observe anything as to the speed of the other bus as it was coming along? Was it fast or slow? A I couldn't swear how fast it was going. I judge he was going around anywheres from five to ten, anyway.

Q What is that? A Five to ten miles an hour, I should judge that.

Q And he covered that entire forty feet, going from five to ten miles an hour? A I couldn't say whether it was forty feet or not.

30 Q Well, it was the length of the car? A The length of the car.

Q What was the speed of your car at that time? A I couldn't say that, either. I was in second speed.

Q Was it going at the same speed as the Public Service bus was going or was it going at a greater speed? A I couldn't say that I was going faster or slower. I was in second speed, just starting up, and I couldn't judge just how
40 fast I was going.

Eugene Gillette, cross.

Q You were not going very fast, were you?
A No, sir.

The Court: Do not lead the witness, Mr. Brenner.

By Mr. Brenner.

10

Q Have you any idea as to the speed you were going? A No, I couldn't tell you exactly how fast I was going.

Mr. Brenner: Cross examine.

Cross examination by Mr. Vosseller.

Q Where did you say you were coming from?
A From a basketball game in Elizabethport.

20

Q And you had made no stops, except to pick up your crowd, and you were going where? A To Madison.

Q Where did you pick up your crowd of people? A From this basketball game in the school.

Q Where was it? A Some school, I don't know the name.

Q Was it far down South Broad street? A Around Fifth street, I think it was.

30

Q Were you familiar with this roadway? A No, sir; I wasn't.

Q There is a grade that leads down to the bridge, isn't there? A Yes, sir.

Q How fast were you going down that grade?
A I was in low gear going down the hill.

Q You were in low gear? A Second.

Q Well, second gear is not low gear, is it? A Well, that is low. If you are in first—

40

Eugene Gillette, cross.

Q How many gears did you have? How many speeds? A Four speeds.

Q Where did you change to third gear? A I don't change to third gear.

10 Q How long have you been driving a bus? How long had you been driving at that time? A I just started to work for them people.

Q How long had you been driving a car prior to that time? A About a month.

Q You had been driving only a month? A Yes, sir.

Q You say you have no idea as to the speed of your bus that you were going under that bridge? A No, sir; I was in second speed.

20 Q But you don't know whether you were going one or five miles an hour? A Well, I should judge around five or eight miles an hour.

Q When you saw this bus coming around from East Broad street, where was your car? A To the rear of the trolley car.

Q It was to the rear of it? A Yes.

Q Didn't you say, in answer to Mr. Brenner's question, that the front of your car— A I mean to the left rear.

30 Q How close to the front of the car were you? A How close?

Q How close to the front of the trolley car were you? A I should judge about twenty feet.

Q And you were twenty feet from the front of the trolley car? Do you mean from the front of the bus? A In front of the trolley car.

Q You were twenty feet in front of the trolley car when you first saw this Public Service bus? A Yes, sir.

40 Q You could not see it before that? A No, sir.

Eugene Gillette, direct.

Q The trolley car obscured your view? A Obscured my view; yes, sir.

Q When you saw this bus, or when you first saw something coming around, what was the first thing you saw? A Two lights.

Q I understood you to say that part of this trolley car was not under the bridge, is that right? A Yes, sir. 10

Q How much of the trolley car extended beyond the bridge? A I don't know; I couldn't tell you that. The front— I would not say that the whole car was under the bridge.

Q Would you say that any part of the car was not under the bridge? A The front of it.

Q Have you looked at this map? A Yes, sir.

Q Will you kindly look at this photograph marked "Plaintiff's Exhibit 4"? A Yes, sir. 20

Q Do you understand this map? A Yes, sir.

The Court: Let the jury look at the map that you are speaking about.

By Mr. Brenner.

Q This is Plaintiff's Exhibit 4, looking north on Broad street. Do you see the switch marks here, the switch in the track (indicating)? A Yes. 30

Q Where was the trolley car with relation to that switch? A The car was standing right here, right in here (indicating).

Q Will you mark a point showing the back of the trolley car and the front of the trolley car?

Mr. Braun: I object unless it is shown that the witness can do it. It does not show the depth, and it is a difficult thing 40

Eugene Gillette, direct.

to do. He can show it on the map, a flat picture, but not a vertical picture. If he can do it, it is all right.

By Mr. Brenner.

10 Q Can you show where the front of that trolley car was and where the rear of it was on this photograph? A Not exactly.

Q Are you sure that the front of the car was just about at the switch which leads into East Broad street? A I could not say it was.

Q Do you know where it was? A It was under the arch.

Q That is not an arch; that is a bridge? A Well, a bridge.

20 Q It was under the bridge? A Right.

Q And the whole trolley car was under the bridge, as a matter of fact? A No, not the whole trolley car.

Q Do you say it was? A I don't just exactly know whether or not it was.

Q When you came down there the trolley car was standing, was it not? A Yes, sir.

30 Q And you cut to the left of the trolley car, didn't you? A The left rear end of the car, yes.

Q And you got about twenty feet past the trolley car before you saw the headlights of the Public Service bus, is that correct? A Yes, sir.

Q How far was the side of your car then from the trolley car? How many feet away parallel with it?

40 Mr. Braun: I object to that. He does not say that he was parallel with it. He says

Eugene Gillette, cross.

he was turning there. How could he be parallel unless the trolley was off the track?

By Mr. Vosseller.

Q You ran for a space parallel with the trolley car, did you not? Your bus ran parallel with the trolley car until you got within twenty feet of the front, is that correct? A No, sir. 10

Mr. Braun: I object to that.

The Court: He says no.

By Mr. Vosseller.

Q Where was your bus and where was the trolley car? A The bus was headed for Morris avenue. It would be slanting from the trolley car. The direction would be going this way (indicating). I was going this way (indicating) when the trolley was facing up this way. 20

Q You were at an angle with the bus? A At an angle; yes, sir.

Q How far was the front of your bus from the side of the trolley car? A How far was the front of my bus from the side of the trolley car?

Q Yes. A About six feet. 30

Q How far was the rear of your bus from the trolley car? A About four or five feet.

Q So you were practically parallel with the trolley car then, weren't you?

Mr. Braun: I object to that as argumentative.

A Making a left-hand turn into Morris avenue.

Q You say you were making a left-hand turn into Morris avenue? A A left-hand turn. 40

Eugene Gillette, cross.

Q You kept pulling to the left side all the time, didn't you? A Yes, sir.

Q You were keeping over to the left until you saw this bus, and then you made a sharp turn clear to the curb, didn't you? A When I saw him, if I had stopped, I would have been in the center of the road, and he was coming down there, and there was not enough room on that part under the bridge there at that particular part for two cars to pass on account of the sidewalk sticking out there, the abutment.

Q There was plenty of room on the other side of the car, was there not? A That is on another street.

Q It is on another street? A Well, it is on the corner there. I would not say it is another street; it is right on the corner there.

Q After your bus came in collision with the Public Service bus, how far did your bus travel? A It didn't travel at all.

Q Didn't your bus scrape along the front of the Public Service bus? A No, no.

Q Didn't your bus scrape along the front of the Public Service bus for a while? A No; my bus could not go any further because it was right up against the abutment, and I was pushed right up onto the curb into the abutment.

Q How close were you to the left curb when your bus was struck?

Mr. Braun: I object to that unless it is shown what curb.

By Mr. Vosseller.

Q Well, I mean the west curb of the street underneath the railroad bridge? A When it was hit?

Eugene Gillette, cross.

Q Yes. A Why, I had pulled over there.

Q No, no. How close was it to that west curb under the railroad bridge. That is the question. A Why, I should judge about four feet—no, two to four feet.

Q Was it two feet or was it four feet? A I don't know exactly; I didn't measure it. 10

Q Then your best judgment is that it was between two and four feet? A Right.

Mr. Vosseller: That is all.

Cross examination by Mr. Braun.

Q This accident happened rather suddenly, didn't it? A Yes, sir.

Q You were not expecting anything to come around the front of that trolley car while it was moving, did you? 20

Mr. Vosseller: I object to that question.

Mr. Braun: This is cross examination.

A No, sir; I did not.

The Court: Proceed. He said he did not.

By Mr. Braun. 30

Q And you were not making any measurements there, were you? A No, sir.

Q And you did not have a ruler with you? A Not at that time; no, sir.

Q So you are trying to give us your best recollection and your best evidence and your best estimates as to distances? A Yes, sir.

Q You say you were going up to the left. Were you traveling on the trolley rails there 40

Eugene Gillette, cross.

that run into Railroad Place towards Morris avenue? A Yes, sir.

Q And you say your bus had gone past a point opposite the rear of the trolley before you first saw this other bus? A Right.

10 Q Will you please speak up so the jury may hear you? A Yes, sir.

Q When you first approached the trolley, as I understand your direct testimony, you say the trolley was standing? A Standing, right.

Q And then, as you got near it, it started up? A It started, and then it stopped again.

Q As you started to pass it, it stopped again? A Yes.

20 Q Was it at that time that you saw this other bus? A It was right after I had passed—got past the car when I seen the headlights of this other bus.

Q Was there any traffic coming down North Broad street under the other arch? A Not at that time there wasn't.

Q Was there anything at all on that side of the road? A No, sir.

30 Q Where, with respect to the northeast corner of Railroad Place and Broad street, did the two cars come together? Will you please indicate that on the map?

The Court: Why do you call that the northeast?

Mr. Braun: This is north and this is east (indicating).

The Court: Why do you call that the northeast corner? It is the northwest corner, so far as the map is concerned, isn't it?

40 Mr. Braun: I suppose it is the northwest corner, if you consider this as a continuation of East Broad street.

Eugene Gillette, cross.

The Court: It is the southwest corner of those two corners.

(Argument.)

Mr. Brenner: We will call it the southwest corner of Broad street and Railroad Place and East Broad street.

The Witness: There is an abutment there.

10

By the Court.

Q Put the letter "E" where you have been asked to mark. A Yes, sir (indicating).

Q That indicates what? A Where the two buses came together.

Q Were you up against the curb when they came together? A When he hit, he drove me up against the curb.

Q How far from the curb were you when you were hit? A I had pulled over to the left, and I seen him coming, and I was about two to four feet.

20

By Mr. Braun.

Q Was this other bus traveling in the trolley rails of East Broad street or beyond them in the other section? A That I couldn't say, because I didn't see the other bus until I had come out in front of the car.

30

The Court: I don't know why you cannot keep your voice up. You are not doing justice to yourself or to your employer.

By Mr. Braun.

Q I show you a photograph and ask you if that is a true representation of your bus after the accident? A Yes, sir.

40

Eugene Gillette, cross.

Mr. Braun: I ask to have this photograph marked for identification.

(The photograph referred to was marked "Defendant B & N Transportation Company's Exhibit 1 for identification.")

10 Q I show you another photograph and ask you if that represents a true picture of the bus after the accident? A Yes.

Mr. Braun: I ask to have that marked for identification.

(The picture referred to was marked "Defendant's Exhibit 2 for identification.")

20 Q By whom are you employed now? A Mr. Groover.

Q You are no longer employed by the B & N Transportation Company, are you? A No, sir.

Mr. Braun: That is all.

By Mr. Vosseller.

Q You say the trolley car moved. How far did it move? A It just started and then stopped.

30 Q How far did it go? A Well, I should judge about four feet.

Q Are you sure it was not two to four feet? A It might have been two, and it might have been four. I couldn't say exactly. I don't know exactly how far it did travel.

40 Q You put the letter "E" on that map where you say your buses came together. Is there anything there at that particular point where you put the letter "E" in the way of a pillar or end of the bridge? A Yes, sir; there is.

Eugene Gillette, by the Court.

Q Is there a pillar there? A Yes, an abutment.

Q That is south of the end of the bridge, isn't it? A Yes, just before the—

The Court: There are two bridges there.

Mr. Vosseller: I am speaking of the Central Railroad bridge. 10

The Witness: Yes, sir.

By the Court.

Q I want to make sure of some of your answers. Will you please step down here by this map? A Yes, sir.

Q You were going north on Broad street? A Yes.

Q And it was your intention to go around Railroad Place to Morris avenue in order to get to where? A To Madison. 20

Q It is on Morris avenue, isn't it? A On the way to Madison.

Q Morris avenue goes through Madison, does it not? A No; Morris avenue stops in Summit.

Q Morris avenue goes all the way through. That is the main highway. It is on the way to Madison and goes up to Morristown. You say you were not familiar with the use of that road. Had you ever been on it before? A I have been on it, but never drove on it. 30

Q You were familiar with the fact that the Central Railroad tracks cross over, weren't you? A Yes, sir.

Q How far were you south on Broad street from the bridge of the Central Railroad? How far south were you when you first saw the trolley car? A I was going down the hill when I first saw the car. 40

Eugene Gillette, by the Court.

Q There is a hill there about a block away from this, is there not? A Yes.

Q You estimated about 150 or 200 feet from the start of that hill on Broad street? A Yes.

Q And you were on the top of that hill and about to start down that hill to get under that
10 bridge? A Yes, sir.

Q That was when you first saw the trolley?
A Yes, sir.

Q How far away was the trolley from you when you first saw it? A About one hundred feet.

Q Then it was not under the bridge when you first saw it, was it? A It was stopped under the bridge then.

Q You were then about 100 feet away? A
20 Yes, sir.

Q And that was the first time you saw it?
A Yes, sir.

Q How near did you get to it when it started again? A I got all the way, about fifteen feet.

Q And then it made a sudden move of two to four feet and stopped again, is that right?
A Yes, sir.

Q That is right, is it not? A Yes.

30 Q That trolley car then was in what position under the bridge? Was it halfway under or wholly under or where was it? A Partly under.

Q About how long do you think it is under that bridge before you turn so as to get under the bridge of the Pennsylvania Railroad tracks? You go from under one bridge to get from under the other bridge to go to Madison, don't you?
A Yes.

40 Q How near to the northerly end of the Broad street bridge of the Central Railroad was

Eugene Gillette, by the Court.

the front of that car? A I should say about a couple of feet. The front of the car was past that.

Q When you first saw that car, could you see clearly where that car was going, so far as the tracks were concerned? A No, sir.

Q Could you not see, when you first saw it, that it was a car that was so located on that set of tracks there that it was going to go up North Broad street? A No, sir; I could not. 10

Q When did you first find out that that car necessarily was going up North Broad street, as distinguished from East Broad street, and as distinguished from Railroad Place? A After the accident, when I seen the name of the car, Union.

Q Weren't you familiar with the fact— A It had already passed that there switch, to go up the other way, and I knew it would go up that way. 20

Q Then you did see that it had passed the switch which would have brought it into Railroad Place? A Yes.

Q And you knew that that car was going the same way that you wanted to go, didn't you? A Yes, sir.

Q You knew that? A Yes, sir. 30

Q What was done with that car to show that it was going up Railroad Place? A It had already passed the first bridge.

Q So that its face was turned towards Railroad Place? A Its face was turned towards North Broad street.

Q You could see that it was going up North Broad street? A Yes, sir.

Q How far away from the rear end of that trolley car were you when you had the knowledge 40

Eugene Gillette, by the Court.

that that car was going up North Broad street?

A About fifteen feet.

Q You were then within fifteen feet of the car when that car made such a movement as to get on the tracks which would bring it up North Broad street, is that right? A Yes, sir.

10 Q Then the front of that car must have gotten to at least the center of a length under the Central Railroad bridge, is that right? A Yes, sir.

Q Do you see what I mean? A Yes, I understand.

Q So that the front had reached the center of that space under that bridge when you were fifteen feet in the rear of the car, is that right?

A The front was past the center.

20 Q How much farther past where it showed?

A It was past under this first switch here (indicating).

Q Do you mean this one here? A Yes.

Q You said in answer to a question of your employer's attorney that you did not expect any vehicle to come out of Railroad Place; is that true?

30 Mr. Braun: I beg your pardon. I said East Broad street.

By the Court.

Q Why didn't you expect the probability of a bus or automobile or trolley car or some other vehicle coming out of any street that reached into that Central Railroad bridge, the space under the Central Railroad bridge? A There wasn't any.

Q There wasn't any on the present occasion?

40 A No; I couldn't see any.

Eugene Gillette, by the Court.

Q But you had your mind on the expectation?
A Yes.

Q Why with reference to East Broad street and not with reference to Railroad Place? Did you have your mind on that, too? A Yes.

Q Did you expect that a bus or trolley car or automobile or some other vehicle might come out of Railroad Place, too? A Yes, sir. 10

Q What brought you over near here, what has been termed the southwest corner, but which is really the northwest corner of the Central Railroad bridge or abutment? What brought you over there? A When I saw this other bus I swung.

Q Where was that other bus when you first saw it? A In front of the trolley.

Q It was in front of this trolley? A Coming around the front. 20

Q With reference to that some corner, the northeast corner of the Central Railroad abutment, where was the Public Service bus when you first saw it? A Coming around in front of the trolley car.

Q Which trolley car do you mean? Do you mean the trolley car going up North Broad street? A The trolley car that was standing.

Q Which trolley car was standing? A Right here (indicating), the one that was standing right here. 30

Q Were there two trolley cars? A No, there was only one.

Q Then this trolley car that you say was standing had gotten beyond or off that switch that you have been referring to? A Yes.

Q And it stopped? A Yes, sir; I judge so.

Q Wasn't the trolley car in motion when you passed it? A It started and it stopped. 40

Eugene Gillette, by the Court.

Q Then it was stopped when you passed it?

A Yes.

Q With reference to the width of the space underneath the Pennsylvania Railroad bridge—do you know what I mean? A Yes.

10 Q Where was that bus when you first saw it? Was it in the center or to one side or the other?

A What bus was that?

Q The bus that you came in collision with?

A That was coming around in front of the car.

Q It was coming around here (indicating)?

A It wasn't over here; it was right here (indicating).

Q It was coming out of East Broad street? A Yes.

20 Q Where was it when you first saw it? A It was just coming around the front of the car.

Q Why did you go to the left of the car?

A I didn't go to the left of the car; I went to the rear end of the car.

Q If you went to the left rear end of the car, if you wanted to get into Railroad Place, you would be passing on the left side of the car, would you not? A I don't think so.

Q Why? A If a car had passed here (indicating) would not this go to Railroad Place?

30 Q I know, but would you not be cutting a corner on the left if you did that? A The street is very narrow there.

Q The street is at least thirty-nine feet wide under the Pennsylvania Railroad bridge, isn't it?

A Yes.

Q If you had kept to your right and continued to your right on that intersection on to when you turned into Railroad Place to the left, so that you would be still on the right, so far as Railroad Place is concerned, then you would

40

Eugene Gillette, by the Court.

never have been over to that northwest corner, would you? A No.

Q Do you get what I mean? A Yes.

Q If you got right here like this (indicating) and kept on to a point beyond the center of the intersection, as nearly as you could reasonably estimate it, when you turned to your left you would still be on the right-hand side? A Yes, sir. 10

Q You would never have come in contact with that car, would you? A No, sir.

Q Why didn't you do that, young man? A It looked to me as though that road was clear, the way the situation was.

Q I know, but you were making a left-hand turn, and you are supposed to keep to the right-hand corner as you are making a left-hand turn? A Yes. 20

Q When you are making a right-hand turn, you are supposed to keep as close to the right-hand corner as you can, and when you make a left-hand turn you still keep as close as you reasonably can to the right-hand corner. Do you get what I mean? A Yes.

Q How long have you been driving a car? A Now I have been driving over a year.

Q I want you to give these gentlemen the explanation in justice to yourself, and to your employer, so that they may pass upon whether or not you were negligent on that night, as to why you got so near the northwest corner. By agreement we will call it that corner that you have marked with an "E," the northwest corner of the Central Railroad abutment. Why did you get so close—you say within two or three feet of that northwest corner of the abutment—instead of being on the opposite side to that? Why was 30 40

Eugene Gillette, by the Court.

that? A The only reason why I could see was I thought this road was clear, so I was in the car track when I started out.

Q When you traveled down Broad street, were you riding the track? A Yes, sir; I was out on the track.

10 Q Your bus was not too wide to prevent your wheels being within the car track or the same width? A No.

Q You were riding the track, but you were not on the both tracks, were you? A No, sir.

Q And the reason for that is that your wheel-base is wider than four feet eight inches, isn't it? A Yes, sir.

Q But still you were following the right-hand track as you were going down Broad street, is that right? A Yes.

Q And you still kept out as you were trying to make this turn? A Yes.

Q How is it that you got within two or three feet of the left-hand curb? A When I saw him coming around the car, I swung over and tried to avoid him.

Q You said that when you first saw him you were two or three feet away from that northwest corner of the Central Railroad abutment, so that you were against the curb after the striking? A When I saw him coming, I didn't know whether he could stop or not, and I swung over and tried to avoid him.

Q If you had been riding the right-hand tracks as you were going, you would have been at least twelve feet away from that corner as you were making the turn. Now you told us that at the time you were struck by the other bus, you were only two or three feet away from that corner? A After I swung over.

40

Eugene Gillette, by the Court.

Q You swung over? A Yes.

Q Then I ask you again: How far away were you from the northwest corner of the Central Railroad abutment when you first saw the Public Service bus? A I was in the car tracks here (indicating).

Q How far away was the bus when you first saw it? A I should judge around twenty-five feet.

Q Then you made a sudden turn to the left?
A When I saw him coming, I seen the lights, and I swung to try to avoid him.

Mr. Braun: No further questions.

Mr. Vosseller: That is all.

The Court: Have the jurors any questions to ask? 20

A Juror: May I ask what the distances from that abutment marked "E" to the first rail of the northerly track are?

The Court: This scale is one inch to ten feet. In other words, ten feet on the ground is one inch on the map. That would be about sixteen or seventeen feet.

A Juror: And the distance to the rail nearest that point? 30

The Court: That is about five feet.

A Juror: I would like to ask where the rear end of the car was beyond the switch when the driver tried to pass him.

By the Court.

Q Where was the rear end of the trolley car when you tried to pass the trolley car? A The rear end was right about here (indicating). 40

Eugene Gillette, by the Court.

Q When you say, "right about here," do you mean about the center of the distance of the length of the abutment? A No.

Q You said about here (indicating). From here to here you are striking to the center? A About three-quarters.

10 Q In other words, it had passed the so-called Railroad Place tracks, had it not? A Yes.

Q Because you say it was going up North Broad street? A Yes.

Q So that if it had done that, then the rear was about three-quarters of the way under the arch as it was going? A Yes, sir.

A Juror: Would it not be easier if you put a check mark there?

20 The Court: Yes, certainly.

By the Court.

Q What is your last name? A Gillette.

Q You mark one mark "E" where your bus was within two or three feet of that when you were struck, and that is where you were after you had been struck. Now take that other initial "G" and mark that intelligently as to that distance. Here are the rails which changed
30 over as you see. You see that, don't you? A Yes.

Q The juror asked where the rear end of that trolley car was when you started to pass it? A Right here (indicating).

The Court: That is all.

Leo Ward, direct.

LEO WARD, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Brenner.

Q Doctor, you are practicing physician of this State? A Yes, sir. 10

Q You have been practicing for how many years? A Nine years.

Q Have you specialized during that time in any particular kind of work? A Yes, sir.

Q What kind? A X-ray.

Q You have done X-ray work with what institutions? A Post-graduate Hospital in New York City. I have charge of the X-ray department of the Bayonne City Hospital in Bayonne, the Greenville Hospital in Jersey City, the Alexian Brothers Hospital in Elizabeth, and the St. Elizabeth Hospital in Elizabeth. 20

Q Have you taken X-ray pictures of Miss McCusker? A Yes, sir.

Q When was the first one taken? A I don't recall that.

Q Can you tell by looking at the plate? A Yes, sir; taken on March 5, 1928.

Q How many pictures were taken on that day? A Four. 30

Q I want to refer first to the body pictures. You have one that was taken on that day, have you not? A Yes, sir.

Q Doctor, will you put that picture up on the light machine and tell us just exactly what it shows?

Mr. Braun: Does it appear from the evidence whether or not the doctor took these pictures?

Leo Ward, direct.

Mr. Brenner: I think he did.

By Mr. Brenner.

10 Q You did take these pictures, did you not, doctor? A I took them and personally developed them. It shows a separation of the right sacro-iliac joint.

20 Q Will you please show us where? A This is the sacro-iliac joint, the point indicated by my finger. There is some separation at that point. It shows a fracture through the first segment of the coccyx. That is the bone at the end of the spine. The fracture is through here (indicating). It shows that the coccyx is pushed to one side and shows evidence of an arthritis of the pubic bones, these bones here (indicating). It shows that the woman has a separation of this sacro-iliac joint, and the fracture for the coccyx shows a displacement of the coccyx, shows arthritis of the symphysis pubes.

30 Mr. Braun: I assume that it is understood that this testimony, being taken with the idea that if it is not correctly followed up, the doctor having been called out of order, a motion to strike out will be in order.

The Court: I don't understand your objection.

Mr. Braun: There is nothing to show what connection these injuries have with the accident.

Mr. Brenner: We will show that. I will consent to it being stricken out, if it is not connected up.

40 Mr. Vosseller: Are you using these pictures now in evidence?

Leo Ward, direct.

Mr. Brenner: I shall offer them as soon as the doctor describes them.

Mr. Vosseller: I should like to examine on them first.

By Mr. Vosseller.

Q Doctor, how is this picture identified? Have you any identification mark on it? A Yes, sir. 10

Q When was that identification mark put on?

A At the time of the accident—pardon me, at the time I took the pictures.

Q Were there any other pictures taken than the pictures you have here? Did you take any other pictures than the ones you have before you? A I have three pictures of the head taken at the same time. 20

Q These four pictures were taken at the same time? A Yes, sir.

Q Is there any mark of identification on there, showing the right and the left of these pictures?

A Just the label.

Q What does that say? A Right.

Direct examination (continued) by Mr. Brenner.

Q Doctor, you say that picture shows an injury to what kind of a joint? A The sacro-iliac joint. 30

Q What is the function of that particular joint? A The sacro-iliac joint carries the weight of the body above the hips. Both sacro-iliac joints carry the weight of the body above the hips.

Q What is the nature of the injury shown to that particular joint? A It shows a separation; that the joint is widened. 40

Leo Ward, direct.

Q Is that a permanent condition or not? A
It may or may not be permanent.

Q Has it existed up to the present time? A
It has.

10 Q And having existed up to the present
time— A That is, up until the time of my last
picture.

Q Your last picture was taken when? A
December, 1928.

Q And that is a little over a month ago? A
Yes.

Q Having existed up to the time that you took
your last picture, which was in December, 1928,
what are the probabilities as to that condition
continuing? A It will probably be permanent.

20 Q Take the injury to the end of the spine.
A Yes, sir.

Q You have described that by a technical
name. What is the nature of that injury? A
There is a fracture of the first segment of the
coccyx.

Q Is that a permanent condition? A That
should heal. I don't recall what the pictures
taken in December show.

30 Q Regarding the displacement, is that tempo-
rary or permanent? A That condition is still
present in December, 1928, and it is probably
permanent.

Q Having continued up to that time, it is
probably permanent?

Mr. Braun: I object to that.

The Witness: (Continued.) I said it is
probably permanent, having continued until
that time.

40

Leo Ward, direct.

By Mr. Brenner.

Q The next condition that you found was—
A An arthritis of the symphysis pubes.

Q What do you mean when you refer to arthritis? A I mean an inflammation of the bone.

Q Did that continue to exist in December, 1928? A In December, 1928, it shows a very marked destruction of the symphysis pubes.

Q More so than in that picture? A Very much more so.

Q Is that a permanent condition or not? A That condition appears to be increasingly worse. It will probably be permanent.

Mr. Brenner: I should like to offer this picture in evidence.

(The X-ray referred to was received in evidence and marked "Plaintiff's Exhibit 6.")

Q When was your next picture taken? A July 8, 1928.

Q Referring to that picture, did you take that picture yourself? A Yes, sir.

Q Did you develop it yourself? A I did.

Q Referring now to the sacro-iliac joint, concerning which you previously said there was a separation shown in the former picture, is that separation likewise shown on this picture? A The separation is not so definite due to a bridging-over of bone. The sacro-iliac joint at this time would appear to show a condition of ankylosis.

Q What do you mean by that? A That the joint has grown together, by the production of new bone.

Leo Ward, direct.

Q Is that joint supposed to grow completely together? A Never.

Q There should always be some motion in that joint? A There should.

Q And now there is the stiffening? A Yes, sir.

10 Q Has the condition become better or worse in July as shown by your photograph? A Worse.

Q As to that particular joint? A Yes, sir.

Q Going down to the end of the spine, is there any change in the condition shown by the previous picture? A Not any.

Q That remains just the same? A That is the coccyx.

Q Going to the other bone that you refer to, the pubis— A The symphysis pubes

20 Q What is shown on that picture as to that? A There is an area of bone about the size of a small marble, that has been destroyed, as indicated by my finger, and this bone has been destroyed.

Q Does that condition show worse on that photograph than it did on the prior one? A Much worse.

30 Q What has happened to that portion of bone? Can you tell by looking at the photograph as compared with the other photograph? A Well, it just is not there. It is not present.

Q Is there any way of telling what became of it? A No.

Q Doctor, refer to the next photograph.

Mr. Brenner: Before asking that question I should like to offer this X-ray in evidence.

(The X-ray referred to was received in evidence and marked "Plaintiff's Exhibit 7.")

40

Leo Ward, direct.

Mr. Braun: I move to strike out that portion of his testimony if there is no way of telling what became of it.

The Witness: The bone is destroyed. I don't know what happened to the bone. I couldn't tell you. It just does not show in the picture, the area that is destroyed. Where it went to, I could not trace it for you. 10

Mr. Braun: Has your Honor ruled on that objection?

The Court: What is the point of your objection?

Mr. Braun: If he does not know what happened to it, how can he tell?

The Court: He testified that the bone is gone, and that he does not know where it has gone or what happened to it. 20

Mr. Braun: Why are we interested in that? It is up to the plaintiff to show that we are in some way responsible for it.

The Court: Objection overruled.

Mr. Braun: Exception.

By the Court.

Q Doctor, something must have happened to it, or it could not have gone? A Yes, sir. 30

Q What could have caused the loss of bone as a matter of reasonable certainty? A Trauma.

Mr. Braun: I object.

The Court: Objection overruled. Exception noted.

By the Court.

Q Do you mean a blow, doctor? A Yes, sir. 40

Leo Ward, direct.

By Mr. Brenner.

10 Q Doctor, examine the third photograph and take the injuries in the order in which I took them before. Will you compare the condition represented in this photograph with the second photograph and the first photograph? A The condition of December 28, 1928, seems to be about the same as to severity as compared with the pictures taken in July, 1928. There seems to be no improvement, nor is it any worse. It seems to be a stationary condition.

Q Doctor, the arthritis that you speak about, is about the same as it was in the second picture?

A Yes, sir.

20 Q And the ankylosis to the sacro-iliac joint is about the same or worse? A A little worse—approximately the same.

Mr. Brenner: I offer the picture in evidence.

(The X-ray referred to was received in evidence and marked "Plaintiff's Exhibit 8.")

Q You also say that you took photographs of the skull? A Yes, sir.

30 Q Will you put up the first photograph of the skull on that light machine? A Yes, sir.

Q You took that picture personally? A Yes, sir.

Q It was developed by you? A Yes, sir.

Q Will you tell us by looking at that picture, whether or not you can find any head injury?

40 A Of course, with a picture of the skull where there are sutures in the skull and the blood vessels are as plain as they are in this head, it is very difficult to tell whether or not you see

Leo Ward, direct.

a fracture. It is very difficult to tell whether or not a blood vessel is a blood vessel or whether it is a fracture, and whether the suture line between the brain represents the normal suture line or a fracture. In this view, I don't see anything that might be called a definite fracture.

Q That is all you can say regarding that particular fracture? A Some of these lines may be fractured, and they might not. An autopsy is the only way you can tell it. 10

The Court: Is there any objection to this? There is a picture being offered in evidence of what might be.

Mr. Vosseller: I object to that.

The Court: Objection sustained. 20

By Mr. Brenner.

Q Taking the second photograph, is there anything on that picture that will indicate whether or not there had been a fracture? A The same.

Mr. Braun: I object unless it is more definitely stated. There must be something that is probable, and not might be.

Mr. Brenner: I am asking whether the picture indicates it. 30

The Witness: This lateral view shows what might represent a fracture through the left parietal bone.

Mr. Vosseller: I move that that be stricken out.

The Court: That is stricken out. Mr. Brenner, you cannot introduce pictures that go before the jury as to what it might indicate. 40

Leo Ward, direct.

Mr. Brenner: I am not attempting to do that, your Honor.

By Mr. Brenner.

10 Q Doctor, by looking at any one of the skull pictures that have been taken, does it definitely show a condition of fracture without taking into consideration the symptoms that this lady complains of?

Mr. Braun: I object to that. He said there was nothing in the other one and he has not been asked anything except what might be here, and he testified it might be.

The Court: Objection sustained.

20 Mr. Brenner: My purpose in asking a very general question is that I don't want to put up one after another of the pictures if the doctor's answer is the same, that he cannot definitely tell.

30 The Court: You are making these suggestions, and it leaves the impression more or less. You are not dealing with possibilities. You have already put in two pictures, asking what it might show. He says it might show. Are you talking about these pictures or some other pictures?

Mr. Brenner: I am talking about other pictures. If they do not definitely show that, I don't want to put them up.

The Court: Haven't you asked the doctor before now?

Mr. Brenner: No.

Leo Ward, direct.

By the Court.

Q Doctor, do any of the pictures taken by you definitely show to a matter of reasonable certainty to your mind that there was a fracture of the skull, and if so, where are the pictures?

A I would not say it was definitely or was not definitely a fracture of the skull. 10

Q I am asking you whether or not it shows to your mind as a matter of reasonable certainty that there was a fracture? A I cannot answer that yes or no, your Honor. That may be a fracture. I do not know that.

Q My question is this: Did you take any picture that to your knowledge showed to a point of reasonable certainty that it was a fracture?

A I understand that question perfectly, but these things are so debatable that I don't think you can give a definite yes or no to that. 20

Q I will ask you the question again

(The stenographer read the last question.)

A I still do not know how to answer any differently than I did.

Mr. Brenner: Your Honor, I won't press the offer. 30

The Court: I want to know whether I can make an intelligible question or not.

The Witness: The point is that it may be a fracture and it may not.

By the Court.

Q Then it is not a point of reasonable certainty if it may be or may not be, is it? A I don't want to say it is or it is not a fracture. 40

Leo Ward, cross.

Q Then you cannot say that there is any picture that you took that showed you, as a matter of reasonable certainty, that there was a fracture, can you? A I can't say positively that is a fracture; no, sir.

10 *By Mr. Brenner.*

Q Doctor, did you make a charge for the taking of these X-rays? A Yes, sir.

Q How much did you charge? A Fifty-five dollars.

Q Has your bill been paid? A It has.

Q Is that a reasonable charge for the work which you did? A Yes, sir.

Mr. Brenner: Cross examine.

20

Cross examination by Mr. Vosseller.

Q Doctor, did you examine this woman in addition to making the picture? A No, sir.

Q You took some head pictures, didn't you? A Yes, sir.

Q You say she has an arthritic condition? A Yes, sir.

30 Q And where is the arthritic condition located? A It is located in the sacro-iliac and in the synthesis pubes.

Q What is the synthesis pubes? A It is the point of junction of the bones in the midline.

Q Can you indicate in simple language to the jury just where that point is on the human body? A I could draw it very easily so they would understand it.

40 Q Can you explain it in words? A Well, it is the point where the two bones come together

Leo Ward, cross.

in front in the region of the privates. That is the synthesis.

Q What two bones, doctor? A Two bones on there called the ischium.

Q You say it is in that position or that place in this woman's body that she suffered with arthritis? A That is one of the places; yes, sir. 10

Q And the other place is where? A The sacro-iliac joint.

Q Do not the pubic bones have anything to do with it? A I don't understand your question.

Q Aren't there pubic bones in front too, doctor? A Yes, sir.

Q Is there arthritis there? A Yes, sir.

Q You say arthritis is there? A Yes, sir. 20

Q You have a picture on the slide there, have you not? A Yes, sir.

Q Can you tell from the picture what the condition is of this woman's teeth? A I would not attempt to tell from this picture; no, sir.

Q Can you tell from any of the pictures the condition of this woman's teeth? A No, sir; none that I have taken.

Q Does not her teeth show on some of these pictures or all of them? A Yes, sir. 30

Q Will you examine them as to her teeth? A These are not proper pictures for teeth examination.

Q They show the teeth perfectly clearly, do they not? A They do not.

Q Will you take another look, to be sure? A I can see them plainly. These are not dental pictures.

Q Will you put that picture up there and take a look at that? A I would not attempt to interpret any dental pathology from a head picture. 40

Leo Ward, cross.

Q Doctor, you can see those teeth and the bones surrounding them? A You can't see the bones surrounding them definitely.

Q But to a large degree you can, can't you?
A No.

10 Q You can to some degree, can't you? A Yes.

Q Are they normal? A You could not say from a picture of this kind. I would always take dental pictures of the teeth, but not a head picture.

20 Q Will you look very closely at these pictures and tell me whether or not there is anything abnormal about the bones and the teeth so far as you can determine from that picture or the picture underneath? A You could not determine it to a certainty from this picture.

Q Did you say that you could not tell whether there was anything abnormal? A I would not make any interpretation of dental disease from this type of picture, no, sir.

Q Will you say that they are normal? A No, I would not say they are normal.

30 Q What is the matter with them if they are not normal? A They can't be read in this picture. This is not a normal picture for reading teeth.

Q How can you say that they are normal or abnormal? A I don't say they are or are not.

Q Didn't you just say so? A I didn't say they were normal, and I didn't say they were abnormal. I said I would not try to tell if there is any dental disease except from dental pictures, but not from this picture. This is not a dental picture. This is a fracture of the skull.

40 Mr. Vosseller: That is all.

Leo Ward, cross.

Cross examination by Mr. Braun.

Q Doctor, how long have you been confining yourself to X-rays particularly? A Eleven years.

Q Eleven years? I thought you had been practicing only nine years. A I have been practicing twelve years, and I have been in Elizabeth nine years. 10

Q These X-rays are really scenographs, aren't they? A What do you mean by scenographs?

Q Well, they merely outline the light resisting portions of the body, do they not? They are shadows that have been cast by the resistance of the various parts of the body to the passage of the X-rays themselves, are they not? A Yes, acceptable. 20

Q And therefore they are not in the true sense pictures, are they? A Well, they are X-ray pictures.

Q They are not pictures? A They are not pictures of the skin, if that is what you mean.

Q And in taking these pictures, the result depends a great deal upon the technique, does it not? A Yes, sir.

Q And it depends upon the amount of exposure that is given? A It depends upon the technique. That will cover your answer. 30

Q And the amount of exposure that is given? A That makes some difference.

Q And the distance between the bulb from which these rays emanate and the angle at which the patient is placed? A Yes, that makes a difference.

Q And it is possible to have a slight tilt to the lamp itself which would give what would appear to be some pathological condition, which in 40

Leo Ward, cross.

fact was not present? A That might be done by somebody that was not honest.

Q It might be done through error or unintentional motion on the part of the patient through fright? A Yes, the patient might move and you would not notice it; yes, that is possible.

10 Q And during the taking of these X-rays, there is a buzz and a lot of wires around that usually upset the unfamiliar patient? A Usually do not upset them.

Q Doesn't it make them at all nervous? A Usually not.

Q Was this patient nervous? A I didn't pay any particular attention to the patient, whether or not they are nervous. I was simply interested in taking the pictures.

20 Q If she is nervous, she might have moved when you turned on the juice? A Anything is possible.

Q And if she had done that, it might have made some difference in the result? A Not necessarily. The picture is not taken at the time that the juice is turned on, you know.

Q You spoke of an arthritis. Does it appear in that picture, referring to plaintiff's Exhibit 8? A Yes.

30 Q Just where does it appear? A In the sacro-iliac joint.

Q Will you examine that? A The synthesis pubes.

Q Where, with relation to the rest of the anatomy, surrounding there, does that bone lie? Is that nearest to the surface or farthest away from the surface which is exposed to the light of the X-ray machine? A That is nearest to the X-ray plate and farthest away from the X-ray tube.

40

Leo Ward, cross.

Q In other words, before reaching that section of the anatomy the X-rays must pass through other portions of the bony structure? A Yes, it goes right through the body, but not any other bony structure. There is no bony structure between that portion of the body and the tube itself. It would still go through the abdominal muscle. 10

Q And of course some of these other bones—here for instance—there are more than one layer of bone? A Only one layer. The tip of the coccyx may come down right at that point. The lower part of the synthesis pubes, there is no bone point.

Q What is the function of the coccyx? A It gives support to the pelvis.

Q Has it any real function or is it an unnecessary reminder of our prehistoric ancestors or tree-climbing days? A I don't know about that. It is supposed to give support to the pelvis. 20

Q Is it really a relic of the time when scientists believed that we all wore tails? A That may be true; I don't know that. I don't know how I can swear to that on the witness-stand.

Q What is this separation here, doctor (indicating)? Is that between two bones or is it a fracture of one bone? A No, it is between two bones, between the sacrum and the ilium. 30

Q Is there a separation on the other side which corresponds to the same thing? A In this picture, yes.

Mr. Braun: That is all.

The Court: We will recess at this time until half-past nine Wednesday morning.

(A recess was had until 9:30 Wednesday morning, February 13, 1929.)

Emma McCusker, direct.

SECOND DAY.

10 Transcript of stenographer's notes of evidence in the above-entitled cause, taken before the Hon. Peter F. Daly, Circuit Court Judge, and a jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the 13th day of February, A. D. 1929, at 9:30 A. M.

Appearances:

Patrick J. O'Connell, Esq.; Alfred Brenner, Esq. (present), attorneys for the plaintiff.

Messrs. Schneider & Schneider, William T. Braun, Esq. (present), attorneys for the B & N Transportation Co.

20 Henry H. Fryling, Esq.; William F. Vosseller, Esq. (present), attorneys for the Public Service Company.

EMMA McCUSKER, the plaintiff, being first duly sworn according to law, on her oath saith:

Direct examination by Mr. Brenner.

Q Mrs. McCusker, where do you live? A 426 Monroe street, Elizabeth.

30 Q On January 20, 1928, did you board a bus of the Public Service Co-ordinated Transport Company? A I did.

Q And where did you board that bus? A Meadow and Ann street.

Mr. Vosseller: Will you raise your voice just a little bit, so I can hear you.

By Mr. Brenner.

40 Q You were intending to go where? A To the Central Railroad station.

Emma McCusker, direct.

Q At that time you were working, were you not, in the vicinity of Ann and Meadow streets?

A Yes, sir.

Q Were you leaving your place of employment? A Yes, sir.

Q What time of day was it when you boarded the bus, approximately? A About eleven thirty-five. 10

Q At night? A Yes, sir.

Q Now, did you come along East Broad street? A Yes, sir.

Q As you were coming along East Broad street, did you notice a trolley car in the vicinity of the Central Railroad bridge here, which has been termed the arch? A Yes, sir.

Q Where were you at the time that you first noticed the trolley car? A Well, I don't know the name of the street. 20

Q But about how close to the trolley car? Some distance away or rather close? A About from here to the rear.

Q You had noticed the trolley car? A Yes, sir.

Mr. Vosseller: Let us agree on that. That is about fifteen feet.

Mr. Brenner: From there to the rear of the room? 30

Mr. Vosseller: Oh, from there to the rear of the room? I think that is about forty feet.

By Mr. Brenner.

Q What did you notice first, the trolley car or the bus? A The trolley car.

Q The trolley car? A Yes. 40

Emma McCusker, direct.

Q And at that time was the trolley car standing or was it going? A Standing.

Q Standing at that time? A Yes.

Q As you were driving along did you notice the bus coming in the opposite direction to that in which you were going? A Yes, sir.

10 Q Where was the bus with relation to the trolley car at the time that you first saw it? (After a pause.) Do you understand my question? A Yes, sir.

Q In other words, was it towards the front of the car, or towards the back of the car, or towards the center of the car, or where? A You mean the Public Service bus?

Q No. You were riding in the Public Service bus. I am talking about the B & N bus. A
20 Toward the back of the car.

Q Was that bus moving at the time that you noticed it or was it standing still? A It was moving.

Q In what direction? A Coming towards Morris avenue. I think, going toward Morris avenue.

Q That would be going toward the direction in which you were coming? A Yes, sir.

30 Q And when you first noticed that bus, which you place somewhere near the rear of the trolley car, where was your bus located? A In front of the trolley car.

Q Right opposite the front or not opposite the front? A No.

Q About how far away from the front was it? A How far was the Public Service bus from the front of the trolley car?

Q That is right. A I don't know.

40 Q Can you indicate about the distance? A About from here to that first bench.

Emma McCusker, direct.

Q Towards this bench here that I am standing alongside of? A Yes.

Mr. Vosseller: About twenty-one feet, Mr. Brenner.

Mr. Brenner: I believe so.

10

By Mr. Brenner.

Q At that time was the bus that you were in moving or standing still? A Moving slowly.

Q Moving slowly? A Yes.

Q Now, what happened when you were that distance away? Did your bus stop or did it keep on going? A Well, it was moving slowly and then it started to go.

Q What do you mean, it started to go? A It started to make a turn.

20

Q It started to make a turn, and when you refer to it making the turn, turning from where to where? A Toward under the arch.

Q I see. A Making a left-hand turn.

Q Making a left-hand turn or right-hand turn? A This way (indicating).

Q Which bus are you referring to now? A The Public Service.

Q Did the speed remain the same, or was the speed lessened or increased? A Increased.

30

Q It was increased? A Yes.

Q At what rate of speed would you say it was going at that time, after it had been increased?

A About twenty miles an hour.

Q Are you referring now to the bus that you were in? A Yes, sir.

Q What is the next thing that you did or that anybody did that was on the scene of that accident? A Well, when I saw the B & N bus coming toward me, I hollered.

40

Emma McCusker, direct.

Q And how far away was the bus in which you were riding from the front of the B & N bus when you, as you say, hollered? A About from here to the rail.

Q That is the first rail here? A Yes, sir.

10 Mr. Brenner: A distance of about fifteen feet?

Mr. Vosseller: About twenty feet, isn't it?

Mr. Brenner: That is all right.

By Mr. Brenner.

Q What next happened? A The Public Service bus went into the B & N bus.

20 Q I see. Now, when that collision occurred where were you sitting in the bus? A In the front seat.

Q The very front? A Yes, sir.

Q What occurred at the time the two vehicles came together? A I was thrown forward and struck my head on the gate.

Q On the gate? A Yes, sir.

Q That is the gate leading out from the bus? A Yes, sir.

30 Q And after you were thrown forward and your head struck, then what happened to you? A I was thrown back, and I don't know whether I struck my spine on the seat or on the floor.

Q The next thing that you knew where were you? A Some fellow got in that bus and picked me up and put me on the seat.

Q Where were you at the time that he picked you up? A On the floor.

40 Q Have you any recollection of what happened or how much time elapsed between the time that you were thrown forward and back, striking

Emma McCusker, direct.

the seat or the floor, and this gentleman was picking you up? A No, sir.

Q That is a blank, is it? A Yes.

Q What next occurred? A I heard some fellow saying—some fellow got in the bus and asked me if I wanted to go to the hospital.

10

Mr. Vosseller: I object to that.

By Mr. Brenner.

Q Don't tell us what anybody said to you. Did you go to the hospital or did you go somewhere else? A I went home first.

Q How did you get home? A In a taxi.

Q And after arriving home where did you then go? A To the hospital.

20

Q Did you remain in the hospital or did you return home again? A I returned home.

Q By home you refer to the place on Meadow street? A Yes, sir.

Q Now, did you go to bed or stay up? A I went to bed.

Q How long were you in bed? A About a month.

Q Were you in bed continuously or were you in bed and out of bed during that month? A In bed and out of bed.

30

Q Were you under the treatment of a physician? A Yes, sir.

Q Who was the doctor? A Dr. Funk.

Q How long did Dr. Funk continue to treat you? A One month.

Q Subsequently to being treated by Dr. Funk, were you treated by any other physician? A During that time?

Q No, after that time. A Yes, sir.

40

Emma McCusker, direct.

Q Who was the other physician? A Dr. Emory.

Q How long did Dr. Emory treat you? A Dr. Emory is still treating me.

Q You are still under his care, are you? A Yes, sir.

10 Q Prior to the time of this injury had you been employed? A Yes, sir.

Q By whom? A By Mr. Claire and my sister.

Q They were in partnership? A Yes, sir.

Q What kind of business did they have? A Delicatessen store.

Q What was your work in that delicatessen store? A Clerk.

20 Q Were you paid for your services? A Yes, sir.

Q How much did you receive? A Twenty dollars a week.

Q You had been working in another position prior to the time of going with them, hadn't you? A Yes, sir.

Q Where were you working prior to that?

Mr. Braun: I object to that—where she was working prior to that.

30 Mr. Vosseller: I object, too.

Mr. Braun: She certainly couldn't have been deprived of something she wasn't getting.

Mr. Brenner: I won't press it.

By Mr. Brenner.

Q How much were you earning in this delicatessen store? A Twenty dollars a week.

40 Q Did you return to work after the accident? A No, sir.

Emma McCusker, direct.

- Q Have you returned up to the present time?
 A A week before Christmas.
- Q That was the first that you worked? A
 Yes, sir.
- Q And during the time that you were absent
 from that business, were you paid? A No, sir.
- Q You didn't receive any pay whatsoever? A 10
 No, sir.
- Q Your sister is still interested in that place
 of business? A No, sir.
- Q Mr. Claire is still interested? A Yes, sir.
- Q In what way did the injuries that you re-
 ceived in this accident affect you? Taking first,
 as to your head. Will you describe the condition
 of your head since the time of this accident? A
 Well, if I get the least bit excited, my head will
 start in a severe pain that ends up in a dullness 20
 of the head.
- Q You mean dull pain? A Yes, sir.
- Q Approximately how long does that last? A
 Sometimes all day.
- Q Any other condition of the head besides the
 pain? A No, sir.
- Q What have you to say as to your eyes?
 Have they in any way been affected? A Well,
 my right eye—the nerve of my right eye jumps
 at times. 30
- Q How frequently does that occur? A Mostly
 at night, in bed.
- Q After you have retired? A Yes, sir.
- Q Is your head affected in any other way out-
 side of the twitching of the nerves of the eye and
 the headaches that you complain of? A No, sir.
- Q Now, as to the body. Did you have any
 trouble in the region of the spine? A Yes, sir.
- Q Will you describe for us the condition that
 exists there? A If I do much walking, my side
 and back bothers me. 40

Emma McCusker, direct.

Q Bother you in what way? A Severe pain.

Mr. Braun: Do I understand her to say her side bothers her?

Mr. Brenner: Her side and back bother her.

10 *By Mr. Brenner.*

Q Will you tell us the region of that pain that you got? A Do you mean whereabouts?

Q Yes, whereabouts? A The end of the spine and my side.

Q Whereabouts in the side? A Right here (indicating) around the hip.

Q Right around the hip bone? How long does that pain last? A Well, until I rest for
20 awhile.

Q How long do you have to rest to relieve it? A Well, I don't know how long.

Q Is it a matter of minutes or is it a matter of hours? Let me see if I can get it a little more clear. When you talk about rest, what do you mean by rest? A By sitting.

Q Sitting down? A Yes, sir.

Q And that relieves the pain? A Yes, sir.

30 Q Is that affected in any other way outside of by walking? A If I sit any length of time.

Q What do you have to do then? A Well, I have to sit to my side.

Q To which side do you sit? A To my left.

Q I see, to relieve the pressure on the right? A Yes, sir.

Q How are you affected by sitting? A I can't sit back on my spine at all. It bothers me.

Q What is the effect if you do? A A severe
40 pain.

Emma McCusker, direct.

Q What about your side after sitting for some time? A That bothers me, too.

Q In what respect? A Pain.

Q Is that continued from the time of the accident right up to the present time? A Yes, sir.

Q What treatment have you been given by Dr. Emory since the time he was first called in? A Sun ray. 10

Q Lights? A Yes, sir.

Q Anything else besides that? A No, sir.

Q Have you paid Dr. Emory? A Yes, sir.

Q Did you pay him in one lump sum, or as you went along? A One lump sum.

Q Have you a recollection of how much you paid?

Mr. Vosseller: I object. 20

The Witness: About \$450.

Mr. Vosseller: I object to her statement.

The Court: Well, she can tell what she paid.

By Mr. Brenner.

Q Besides the application of heat that you referred to, have you been given anything in any other manner by the doctor? A Yes, sir. 30

Q What have you been given? Do you know? A Medicine.

Q Do you know the type of medicine? A A powder.

Q Anything besides that? Besides the powder? A No, sir.

Q Have you been taking anything under the doctor's orders besides the powder? A No, sir.

Q After you go to bed at night, are you affected in any way by this condition? A Yes, sir. 40

Emma McCusker, cross.

Q And in what way? A I can't lie on my back.

Q What position do you assume while you are sleeping? A My side or my stomach.

Q Which side? A My left.

Q That is the side away from the injury?

10 A Yes, sir.

Q Did you sleep that way before this injury or has that been a condition assumed since the injury? A Since the injury.

Mr. Brenner: You may take the witness.

Cross examination by Mr. Vosseller.

Q Where were you working just prior to this accident? A Delicatessen store.

20 Q Who was the owner of it? A My sister and Mr. Claire.

Q And on this night where was that located? A 426 Meadow street.

Q Were you coming from your place of business on this evening? A Yes, sir.

Q You say you got the bus at about eleven thirty-five? A Yes, sir.

30 Q Do you understand this map that is hung over here? This map. This is East Broad street and this is Railroad Place. This is Broad street, I forget, either North or South. That is Broad street going on up here. This is the Central Railroad bridge here, and this is the Pennsylvania Railroad arch. Do you understand it? A Yes.

40 Q You arrived at East Broad street about the point where you were turning into East Broad street, I am speaking now, that bus was on East Broad street and you were turning south. That was the intention of the bus? A Yes, sir.

Emma McCusker, cross.

Q Where was the bus you were in when you first saw this trolley car? A East Broad.

Q It was in East Broad? A Yes.

Q Here (indicating)? A Yes.

Q And how far from the corner or from the turn? A Was the trolley car?

Q Yes. A About from here to that wall. 10

Q About from here to this wall (indicating)?

A Yes, sir.

The Court: That is about twenty feet.

Mr. Vosseller: Yes.

By Mr. Vosseller.

Q Now, I understood you to say that when you first saw this trolley car, the bus that you were in was about forty feet away, or as far as from here to the end of the room? A Yes, sir. 20

Q Well, is that true? A Yes, sir.

Q Which is correct?

Mr. Brenner: I object, if the Court please.

Mr. Vosseller: I don't know whether she is mixed up or not.

By Mr. Vosseller.

Q I understood you to say that when you first saw the trolley car, on your direct examination, that the trolley car was the distance of this room and it was agreed about forty feet. Now, is that correct? A Yes, sir. 30

Q I see. Where was the trolley car? A Standing under the arch.

Q Well, you mean under the arch or under the bridge? A Under the bridge.

Q Where was the front of the trolley car with relation to East Broad street? 40

Emma McCusker, cross.

The Court: She doesn't understand that question. Strike it out.

Mr. Vosseller: I will simplify it.

By Mr. Vosseller.

10 Q Where was the front of the trolley car? In what position? In relation to the bridge itself was it beyond the bridge, north of the bridge, or south of the bridge, or in the middle of the bridge? That is what I want to know? A It was in the middle.

Q Where was the front of the car? Nearer to what street? A Nearer to East Grand.

Q East Grand?

20 *By the Court.*

Q You mean East Broad? A East Broad.

By Mr. Vosseller.

Q Was the front of the trolley car under the bridge? A Yes, sir.

Q And it was standing still? A Yes, sir.

Q Was it not? A Yes, sir.

30 Q And where was the bus then? A East Broad.

Q About forty feet away? A Yes, sir.

Q And was the bus moving at that time? A Slowly.

Q And it came up to what point? It came down East Broad street to what point? A Do you mean stopped?

40 Q Well, strike that out. When the bus arrived at the intersection here, where it would turn into Broad street, did the bus stop there? A No, sir.

Emma McCusker, cross.

Q You were sitting right up in front, weren't you? A Yes, sir.

Q Didn't the bus stop there and didn't the motorman of the trolley car beckon it to come on? A I didn't see the motorman.

Q You didn't see the motorman? Are you positive that the bus didn't stop before it started to go down Broad street? A It didn't come to a standstill. 10

Q Did it come to almost a standstill? A Yes.

Q And then it was right practically turning into Broad street, was it not? A Yes, sir.

Q Then it picked up speed a little bit, didn't it, to go around the front of the trolley car? A Yes, sir.

Q Now, where was the bus which you were on, which was the Public Service bus, when you saw the B & N first? How close to Broad street were you? A About from here to that rail. 20

Q That is when you first saw the B & N bus? A Yes, sir.

Q Where was it and where was the Public Service bus? A The Public Service bus had started to make the turn.

Q Onto the west side of Broad street? A Yes, sir. 30

Q Now, you hadn't seen the B & N bus prior to that time, had you? A No.

Q And didn't know it was there up to that time? A No.

Q What kind of bus was it? Was this one of the large B & N buses? A I didn't notice.

Q Well, you traveled it every night, didn't you, practically, at the same time? A Yes, sir.

Q And you didn't notice whether it was a large bus or small bus? A Not the B & N bus. 40

Emma McCusker, cross.

Q I am talking about the Public Service bus?

A Yes.

Q That was a large bus, wasn't it? A Yes.

Q Did I understand you to say that the front of the trolley car, was not out beyond the bridge?

A It wasn't out beyond the bridge.

10 Q The whole of the car was under the bridge, is that right? A Yes.

Q Now, you said that the Public Service bus was going how fast? A About twenty miles.

Q How do you judge twenty miles? I mean, how do you know that it was twenty miles? A Because I have ridden in cars before.

By the Court.

20 Q At what time was he going twenty miles?

Mr. Vosseller: I was just going to get that.

By Mr. Vosseller.

Q As I understood it, you said that the bus practically stopped or came almost to a stop as it started to turn into Broad street to its left? Is that right? A Yes, sir.

30 Q It didn't have to go very far from that, did it, to make the turn? A No, sir.

Q And when was it going twenty miles an hour? A When it had started off.

Q Do you think that bus could start at twenty miles an hour?

Mr. Brenner: I object, if the Court please, to what the witness thinks.

The Court: Oh, I know, but she is under cross examination now.

40

Mr. Brenner: I will withdraw it.

Emma McCusker, cross.

By Mr. Vosseller.

Q You have ridden in buses and ridden in cars, you say? A Yes, sir.

Q A good deal? A Yes.

Q Now, this bus was in first speed when it started around that trolley car, wasn't it? 10

The Court: How does she know that?

Mr. Vosseller: Well, she has ridden in cars a great deal.

The Court: That is a mechanical condition, isn't it?

By Mr. Vosseller.

Q Do you know when a car is going in first speed, by the noise and so forth that it makes? 20
A No, sir.

Q You don't know? A No.

By the Court.

Q How far were you in front of the trolley car when your bus was turning, madam? You say, the bus started to turn? A Yes.

Q How far were you in front of the trolley car when he started to turn around the trolley car? About how many feet? Do you clearly understand my question? A Yes, sir. 30

Q Just as you were turning around the trolley car, how far in front of the trolley car were you when that turn was about to be made? A About from here to the end of that (indicating).

By Mr. Vosseller.

Q Of this?

40

Emma McCusker, cross.

The Court: Is it agreed that it is about sixteen feet? We have had these measured.

Mr. Vosseller: Yes.

Mr. Brenner: Yes.

The Court: All right.

10 *By Mr. Vosseller.*

Q It was about that far ahead of the trolley car when it was turning, is that right? A Yes.

Q And did it slant across to the left? A Yes.

Q When it started to turn, it was closer or did it stay that distance all the time, sixteen feet? A You mean when it started to make the turn?

Q I mean, after it began to turn, did it come closer to the front of the trolley car? A No, sir.

20 Q Now, what did you do in this delicatessen store? A Clerk.

Q What were your duties as clerk? A To handle the business.

Q Well, to keep the books? A Yes.

Q Did you take care of the decorations and so forth? A Yes, sir.

Q You used to decorate the windows once in a while, did you not? A Yes, sir.

30 Q And when were you hurt? A January 20th.

Q The 27th, wasn't it? A I believe I gave my date as January 20th.

Q Wasn't it as a matter of fact January 27th that you were hurt? A That is when the accident was, yes.

Q On the 27th? A Yes, sir.

Q You did some work between then and the first of March, didn't you? A What do you mean, the first of March?

Emma McCusker, cross.

Q The same year you were hurt on January 27th. Now, you did some work between that and the first day of March? A Not being paid for it.

Q No, but didn't you do some work? A Down in the store?

Q Yes, yes. A Probably for a few minutes at a time. 10

Q Yes. Now on February 29th, do you remember what you did on that date? A I don't.

Q What? A I don't.

Q Do you remember decorating there or getting into the windows of the delicatessen store on that day and arranging some things in there? A I don't.

Q You don't remember that? Well, you won't say that you didn't? A I will not.

Q What? A I will not. 20

Q Now, do you remember decorating or whatever you do to those two windows and then getting out of the windows and coming over and sweeping the sidewalk in front of the delicatessen? This was on February 29th. A I don't remember that date.

Q Do you remember doing that at any time? A Yes, I remember decorating windows.

Q You did work that day, didn't you? Didn't you wait on the customers after you decorated the two windows and had gotten out and swept the sidewalk, you waited on some customers on the same day? A I used to do that if he went to the bank or was shaving. 30

Q Now, Mrs. McCusker, East Broad street comes into Broad street at an angle, doesn't it? Just take a look at this map. A Yes, sir.

Q Now, you say that the Public Service bus when it turned in front of the trolley car was about sixteen feet in front of it, or from here to 40

Emma McCusker, cross.

the end of the jury box, is that correct? A Yes, sir.

Q Now, aren't you mistaken about the distance it was in front of the trolley car? Wasn't it closer to the trolley than that? A I am not positive. I am only judging.

10 Q You say you were in bed a part of the time? A Yes, sir.

Q After the accident how much of the time were you in bed and how much of the time were you out of bed? A I was in bed during the night.

Q Well, you do go to bed at night, don't you? A Well, not the first few nights, no, I couldn't sleep.

20 Q How much during the daytime were you in bed? A I was lying down most of the time.

Q And the only treatment, as I understand it, that you had since this accident has been the sun ray lamps? A Up until July.

Q And you have not had them since then? A I have had the treatments. I am getting them now. Up until July I have had these treatments until I was taken with a severe spell of sickness.

30 Q You mean to tell me that you started the sun ray treatments in July or you took them until July? A I took them up until July.

Q Since that time you have not been taking them? A I have.

Q What do you mean when you say you took them up until July? A I took the treatments up until July alone, with very little medicine—

Q Did you—

Mr. Brenner: Let her finish.

40 Mr. Vosseller: I thought she was through.

Emma McCusker, cross.

By Mr. Vosseler.

Q Where did you take these sun ray treatments? A Dr. Emory's office.

Q Where is that? A Elmora avenue.

Q What? A Elmora avenue.

Q You have paid him \$450, you say? A Up 10
until July.

Q How often did you take these sun ray treatments? A Once a day.

Q What does he charge a treatment, Mrs. McCusker? A I think he charges three dollars or four dollars.

Q You don't know? A I am not sure whether he gave them to me for three or four.

Q He gave you treatments for three or four dollars a treatment, is that what you mean? A 20
Yes.

Q As I understand it, you paid this bill as you went along? A I did.

Q Well, don't you know how much you paid for each treatment? A Sometimes I used to give him ten or fifteen. I would only ask him how much I owed him for a few days.

Q Did you ever have a bill from him? A A bill paid?

Q Yes. A Yes.

Q Have you got your bill with you? A No, 30
sir.

Mr. Vosseler: I think that is all.

Cross examination by Mr. Braun.

Q Who treated you at the hospital? Is it Miss or Mrs. McCusker? A Mrs.

Q Who treated you at the hospital, Mrs. McCusker? A I don't know the doctor's name. He 40
was an interne.

Emma McCusker, cross.

Q When did you have your first personal doctor? A The very next morning.

Q What was his name? A Dr. Funk.

Q How long did he treat you? A One month.

Q Did he render a bill? A Yes, sir.

10 Q Did you pay him as you went along? A No, sir.

Q Did you pay him? A Not yet.

Q When did he render his bill? A His last bill came January 1st.

Q When did he render his first bill? A When the month was up.

Q When the month was up? A Yes.

Q That was in February some time? A Yes, sir.

20 Q How much was that for, \$15? A No, sir; I forget.

Q Have you got it? A Yes, sir.

Q Then you started treatment with this other doctor? A Yes, sir.

Q Immediately? A Yes.

Q In February? A Yes, sir.

Q And then you paid him as you went along? A Yes, sir.

30 Q How much had you paid him on July 11, 1928? A I don't know.

Q How many visits had you made to him on July 11, 1928? A One a day, leaving out Sundays.

Q And you had paid him though for some visits at that time? A Yes, sir.

Q Had you paid him more than \$15? A Yes, sir.

Q You are sure about that? A Yes, sir.

40 Q Can't be any doubt in your mind? A No, sir.

Emma McCusker, cross.

Q Is that your signature (handing paper to witness)? A Yes, sir.

Q And that is your affidavit? A That doesn't say what I said.

Q Is that your affidavit, signed and sworn to on July 11th before Patrick J. O'Connell, Master in Chancery of New Jersey? A Yes, sir. 10

Q And you read and answered these interrogatories before you signed them? A Yes, sir.

Q Did you read and answer the fourth interrogatory, "How much did you expend for physician's bills, if any? Answer: \$15, other physicians' bills have not been paid." A I didn't know my bill from Dr. Funk at the time.

Q Yes, but you had been paying this other man for treatment every day, hadn't you? A Yes, sir. 20

Q Didn't you say in answer to my other question that you paid him more than \$15? A Yes, sir.

Q Why didn't you put that down?

The Court: What is the date of the interrogatories?

Mr. Braun: July 11th, they were sworn to, your Honor.

The Court: Last year? 30

Mr. Braun: Yes, sir.

The Court: Ask her whether those payments have been made since then.

Mr. Braun: She has already answered, your Honor, that she made payments every day from February, or nearly every day, and I believe that the charges were something like three or four dollars a visit, and that she had paid more than \$15 before July 11th.

The Court: All right; go on. 40

Emma McCusker, cross.

By Mr. Braun.

Q Now, do you still think that you paid more than \$15 up to July 11, 1928? A I paid more than \$4 to Dr. Emory from February until July 11th.

10 Q More than \$15?

The Court: She said yes.

A I have paid more than \$15 up until that time.

By Mr. Braun.

Q Then, why did you put \$15 in the answer to this question? A I probably didn't read that thoroughly.

20 Q Did you read the last one thoroughly? A My salary?

Q Well, read the question to yourself and the answer and say whether you read it thoroughly. A I don't remember reading it thoroughly.

Q Well, is it true? A That I make \$20 a week?

Q No, is the question and answer true?

30 The Court: You are talking Greek to the jury. Why don't you let them know the question and answer?

By Mr. Braun.

Q Well, the question is: Give an itemized statement of the disbursements and losses incurred by you by reason of the injuries alleged, and on July 11th your answer to that was: Physicians' bills, medicine, and four weeks' wages at \$20 a week. Is that true? A Yes, sir.

40

Emma McCusker, cross.

Q I also call your attention to question number two, "Were you confined to your bed by reason of the injury complained of and if so for how long? Answer, one week." Is that true?

A No, sir.

Q Why did you put it down on this answer under oath? A I don't know.

10

Q Is that your best answer?

The Court: Well, that is her answer. You will find she has two kinds of answers.

By Mr. Braun.

Q You conferred with your attorneys before these were answered, didn't you? A Yes, sir.

Q And he put the answer down for you? A Yes, sir.

20

Q Then you went before this Master in Chancery and you swore to them? A Yes, sir.

Q Now, I call your attention to the third, "Were you confined to your house by reason of the injury complained of, and if so for how long? Answer: Yes, one month." That was true, wasn't it? A Yes, sir.

Q Of that month you spent a week in bed. Is that true? A No, sir.

Q Well, what is true? A That I was confined in my house for one month, in and out of bed for a month.

30

Q Now, where was your bus located as it came along East Broad street? Was it in the trolley rails or was it to the right of the trolley rails before it made the turn? A Trolley rails.

Q And did it change in the trolley rails, as it made the turn? A I don't know.

Q Do you understand this map? A Not very well.

40

Emma McCusker, cross.

Q Where did the bus in which you were riding make the turn into Broad street, above or below the center of this intersection (indicating)? By above I mean to the north of the intersection and by below to the south? A I don't know what you mean.

10 Q Well, did it make a sharp turn or a long swinging turn to the left? A A long swinging turn.

Q And that brought it as it was crossing the trolley car almost head into the right-hand side of Railroad Place, didn't it?

The Court: She has not said—

Mr. Braun: I beg your pardon?

20 The Court: You put your question in an affirmative way, as though she had testified that way. Simply making a declaration to the witness and then putting the addendum, "isn't that so?" even on cross examination, is not proper.

Read the question.

(The reporter read as follows:)

30 Q And that brought it as it was crossing the trolley car almost head into the right-hand side of Railroad Place, didn't it?

The Court: In other words, you make a declaration of a fact and then ask her if that is not so.

Mr. Braun: If your Honor please, it is based on the previous question and answer.

The Court: That is all right. You put the question, even on cross examination, in a purely interrogatory form.

40

Emma McCusker, cross.

(To the witness.) You may answer the question if you can.

Mr. Braun: I will withdraw the question, if there is any doubt about it.

By Mr. Braun.

Q Which way was the bus headed as it crossed the trolley tracks on which the trolley was located, directly across or on an angle? A On an angle. This way (indicating).

10

Q And it didn't go directly across the trolley rails at right angles? A I don't know what you mean.

Q Was it in the process of turning when it passed in front of the trolley car, or was it going directly across? A Getting ready to make a turn.

20

Q Where was the front of the trolley car located with reference to Railroad Place? A Under the bridge.

Q Under which bridge, the Central Railroad bridge? A Yes, sir.

Q I believe you testified that the bus passed about fifteen or twenty feet, which is the measurement to this rail—

The Court: No, no. She pointed, as I understand it, to the end of the jury box.

30

Mr. Braun: Sixteen feet, I think.

The Court: That is what I said, but as a matter of actual measurement it is fourteen feet and three inches from the front of this witness chair.

It is about fifteen or sixteen feet, she said.

40

Emma McCusker, cross.

By Mr. Braun.

Q And as you passed the front of the trolley car, could you see the B & N bus? A Yes, sir.

Q Where was it then? A Coming under the railroad bridge, too.

10 Q Was it behind the trolley? A No, sir.

Q Where with reference to the trolley was it? A To the left.

Q How could you see it to the left as you were passing the front of the trolley? Was it so far past the rear of the trolley that you could see it then? A What do you mean, the bus I was riding?

Q No, the B & N bus. A Well, my bus was towards the front of the trolley car, and naturally I could see the other bus coming.

20 Q And you could see it when it was on the left of the trolley car? A I don't know it was left or right, but it was that way (indicating).

Q Which side of the Public Service bus were you seated in? A To my right—to my left getting in.

Q That would be the right facing the front of the bus? A The seat near the gate.

30 Q Was there anything between you and the driver? A What do you mean?

Q Any obstruction or anything in the way of the construction of the bus? A Nothing, only the gate.

Q What kind of gate was it? A A white gate.

Q You mean a railing of piping? A A gate that opens and closes.

40 Q Was the gate open? A No, sir; it was closed.

Emma McCusker, cross.

Q Well, then the gate would not be between you and the driver, would it? A It separated the driver and myself.

Q Could you see through that gate? A Yes, sir.

Q How close to Railroad Place was the B & N bus at that time? A I don't know what you mean when you say Railroad Place. 10

Q Will you refer to the map and perhaps we can clear it up. It is the first turn to the left under the arch of the railroad bridge opposite East Broad street. A How far was it from the Public Service bus?

Q No. How far was the B & N bus from Railroad Place when you first saw it? A I think it was already under the arch. I meant to say under the bridge. 20

By the Court.

Q The Central Railroad Bridge? A Yes, sir.

By Mr. Braun.

Q And how close to Railroad Place was it as your bus was passing the front of the trolley car? A I don't know how close.

Q How far had it traveled from the time you had first seen it? A I don't know. 30

Q Was it still under the bridge? A Well, it was moving.

Q How far away from the bridge was it or Railroad Place after the front of your bus had gotten past the trolley car? A I only noticed the bus coming up—the lights of the bus. I didn't notice the distance.

Q Where did the two buses come together? In Railroad Place or out on Broad street? A Under the bridge. 40

Emma McCusker, cross.

Q Under which bridge? A The Central Railroad bridge.

Q And how far under the bridge were they when they came together? A I don't know.

Q When did your first doctor discontinue treating you? A A month.

10 Q Your first X-rays were taken in March, were they not? A Yes, sir.

Q After your first doctor discontinued treatment— A After I discharged him.

Q After you discharged him? A Yes, sir.

Q He didn't discharge you? A Well, he told me that it would be five or six months—

Q Now, I asked you, he didn't discharge you?

Mr. Brenner: I think the witness ought to be permitted to finish the answer.

20 Mr. Braun: I didn't ask for any explanatory—

The Court: She might not be positively able to say that he discharged her. The jury can decide that.

A He told me to come down and see him if I wasn't feeling any better and I went down.

Q When did you go down? A I don't remember.

30 Q And his name was what? A Dr. Funk.

Mr. Braun: That is all.

By Mr. Vosseller.

Q Mrs. McCusker, there is a mark here (indicating)—

Mr. Vosseller: Did that witness put a mark on there where the buses came together?

40

Emma McCusker, cross.

The Court: He marked it "E," the initial of his first name.

By Mr. Vosseller.

Q Do you know whether or not the accident took place under the bridge? A Yes.

Q And do you know at about what point it took place under the bridge? A I could point the spot out if I were near.

Q Do you want to point it out on the photograph or on the map? A The photograph.

Q Will you look at that photograph—

The Court: What one is that?

Mr. Vosseller: This is P. 4.

By Mr. Vosseller.

Q Will you look at it and see if you understand it? This is East Broad here and this is looking north up Broad street. A The Public Service bus was about to turn here, about there on the bridge (indicating).

By the Court.

Q Do you thoroughly understand that photograph? A Yes, sir.

Q You were going that way, were you not (indicating)? You were going that way as you were coming out of East Broad street? You said you didn't know Railroad Place. This is Railroad Place. It is the road that you could take in order to go to Morristown, up in that direction. Do you understand enough about that? A Yes, sir.

Q And this is the road towards the bridge. That is called the Pennsylvania Railroad. You

Emma McCusker, cross.

go under that bridge in order to go up North Broad street. Now, do you understand this? A Yes, sir.

Q You were coming this way and the Public Service bus was going down that way—

10 Mr. Vosseller: Coming out of Broad street.

By the Court.

Q Coming out of Broad street and the trolley car was going down that way and the other bus was coming out of Railroad Place?

Mr. Vosseller: No, Judge, it was going toward Railroad Place.

20

By the Court.

Q It was going toward Railroad Place. The same way that the trolley car was going? Do you understand that now? A Yes, sir.

The Court: Go on.

By Mr. Vosseller.

30 Q Will you point out so the jury can see the point of the collision. Hold it that way. Can you see now?

Mr. Vosseller: I will have her make a mark on that map.

By Mr. Vosseller.

40 Q If you are sure of where the point of collision was, will you make a mark? A It was right about there.

Emma McCusker, cross.

Q Make a cross.

The Court: Is that a lead pencil?

Mr. Vosseller: Yes, it is a lead pencil. I will give her a pen.

(The witness marked the map.)

The Court: Let the jury see it.

10

By Mr. Vosseller.

Q When the bus in which you were riding, which was the Public Service bus, came around in front of the trolley car, the B & N bus was on the west side of the trolley car, wasn't it, proceeding toward the north. Is that correct? A Yes.

(Mr. Vosseller handed the photograph to the jury.)

20

By Mr. Vosseller.

Q Have you an idea as to how fast the B & N bus was going? A I haven't.

Q Was it going fast or slow? A I don't know.

Q You don't know whether it was going fast or slow? A I don't know.

30

Q But you saw it? A I saw the lights.

Q I don't ask you to fix the speed, but I am asking you if you are positive that you can't say whether it was going fast or slow? A I don't know.

Q You don't know? A I don't know.

Q Why don't you know? A Because I wasn't paying any attention to that other bus.

Q Are you sure you saw it before the accident? A Yes, sir.

40

Emma McCusker, re-direct.

Mr. Vosseller: I think that is all.

Re-direct examination by Mr. Brenner.

Q May I just ask another question? Has there been any change in your weight from the
10 time of the accident up until the present time?

A Yes, sir.

Q What did you weigh before the accident occurred? A About 127 or 128.

Q You fell down to what weight? A I am down to 115.

Q That is your weight at the present time? A Yes, sir.

Q Were you ever lower than that during this period, from January until now? A Yes, sir.

20 Q When? A After the accident and in July.

Q I see. What did you weigh at that time? A July, August and September I weighed 101.

Q There has been some reference to the date of February 29th, when you say that you were helping out in the store, during the time that Mr. Claire was getting a shave or was getting something else. Did you work steadily in the store at that time or were you just assisting them for a short time? A Assisting for a short time.
30

Q After that time, after the month of February, had you become better or worse than you had during the month of February? A No better or no worse.

Q You refer to something about July when your weight was down to 101 pounds. Did anything particular happen at that time? A A relapse.

Q So that you became worse at that time? A Yes, sir.
40

Emma McCusker, re-cross.

Q How long did that relapse last? A Nearly until October, the last part of October.

Q Did you stay at home during that period from July until October, or did you go away somewhere? A For a week.

Q Have you been away on more than one occasion? A Twice. 10

Q And on the other occasion how long were you away? A A week.

Q A week on each occasion? A Yes.

Mr. Brenner: I don't think that there is any dispute that this is a built-up section of the city, is there?

The Court: It is the heart of Elizabeth. Go on. That is a matter of common knowledge. 20

Mr. Brenner: I want to get it on the record, that is all.

Re-cross examination by Mr. Braun.

Q There is one question. Didn't you tell the doctor that examined you in July that your weight was 115? A The doctor that examined me in July? What part of July?

Q Well, this doctor here (indicating). 30

The Court: Dr. Green.

A What part of July?

By Mr. Braun.

Q July 6th. A July 6th. I was 115 then. I was taken sick the last two weeks in July.

Q What was the nature of your illness? A My stomach and back. 40

Max Imre, direct.

Q Didn't your husband pay any of these bills?

A No, sir.

Q All of them that were paid, you paid yourself? A Through the help of my family.

Mr. Braun: That is all.

10 *Re-cross examination by Mr. Vosseller.*

Q Mrs. McCusker, do you remember making and signing a written statement on January 28th?

A Not on January 28th, but sometime. I don't know the date.

Q You remember making a written statement after the accident occurred? A I do.

Q And that is your signature, isn't it? A It is.

20 Q You said in that—and you said in that, "I saw another bus very near the westerly curb. It looked as though it was going to Morris avenue, and two auto buses were about ten feet apart." Is that right? Did you say that? A Yes, sir.

Mr. Vosseller: That is all.

The Court: That is all, madam.

30 MAX IMRE, a witness produced on behalf of the plaintiff, being first duly sworn according to law, on his oath saith:

Direct examination by Mr. Brenner.

Q Doctor, you are a practicing physician of this State? A Yes, sir.

Q Doctor, how long have you been practicing in the State of New Jersey? A Four years ago.

40

Max Imre, direct.

Q Are you a graduate of any school of medicine? A Yes, sir. I am a graduate of the Hungarian—

Q Doctor, would you mind turning this way, so the jury can hear you? A Gentlemen, I don't feel very well today.

Q Raise your voice as high as you can, doctor. A Yes, sir. 10

Q You are a graduate of what institution? A I am a graduate of the Royal Hungarian University of Budapest, 1912, and of the University of Berlin, 1915, a post-graduate.

Q And you came from Europe to establish yourself where? A First I have served the State of—the City of New York, in the capacity of chief resident physician at Welfare Island, connected with the Department of Correction. 20

Q And you were located there for how long? A A year and a half.

Q And went from there to where? A I went from there to Glen Gardner, New Jersey.

Q What was your position there, doctor? A Resident physician at the institution for tuberculosis disease.

Q And you were in Glen Gardner for how long? A Until I come Elizabeth. Until 1920. 30
Until October 1, 1925.

Q And from that time on you have been engaged in private practice? A Yes, sir.

Q Are you connected with any of the institutions in Elizabeth at the present time? A Yes, I am a dispensary member for St. Elizabeth Hospital and the Alexian Brothers Hospital. I am chief medical examiner of the Metropolitan Life Insurance Company, examining health and accident cases. 40

Max Imre, direct.

Q Doctor, did you treat Mrs. McCusker? A Yes, sir.

Q When did you commence treating her? A On March 3, 1928.

Q Did she at that time give you a history of her injury? A Yes, sir.

10 Q What was the first thing that you did, doctor, in examination or treatment? A Examination.

Q And your examination revealed what? A Revealed that there was a separation of the sacro-iliac, right sacro-iliac synchondrosis—that feels more firm, but still a loss of motion.

Q Doctor, so the jury thoroughly understands, what is the sacro-iliac joint? A The sacro-iliac joint is a joint between the sacrum cross bone and the hip bone.

Q It is what is usually referred to as the hip bone. The layman then refers to it as the hip bone? A Yes, sir.

Q What was the nature of the injury to that bone? A There was a separation.

Q Did you have an X-ray taken at that time? A Yes, sir.

Q Who took the X-ray? A Dr. Ward.

30 Q You were in court when Dr. Ward testified? A Partly.

Q And the picture that he testified to, was that the X-ray that was made at that time? A Yes, sir.

Q And your diagnosis at that time was that there was a separation just where Dr. Ward says the X-ray shows? A Yes, sir.

Q Did you have X-rays taken or were they taken at your suggestion at a later date? A Yes, sir.

40

Max Imre, direct.

Q And when? A Somewhere in July, and then again, I believe, in December.

Q Did the X-ray show any change in the condition which existed when you first treated Mrs. McCusker? A Yes.

Mr. Braun: Now, I think that the X-ray itself should be produced and it should be identified. They have not identified from the doctor's statement that they were the ones that were testified to. I think there should be some identification whether it is this set or some other set that had not been introduced. 10

The Court: All right. Objection sustained.

By Mr. Brenner. 20

Q Doctor, the X-ray which has been marked in evidence as P. 6, was testified to by Dr. Ward as being the first X-ray he made, which, I believe, was sometime in March, 1928. Now, will you look at that picture and say whether that is the first X-ray? A Yes, sir.

Q Now, I show you the one that has been marked in evidence P. 7, which has been testified to and is marked, as a matter of fact, having been taken July 8, 1928, which Dr. Ward says is the second X-ray. Will you look at that picture and say whether that was the second X-ray? A Yes, sir. 30

Q Is that correct? A Yes, sir.

Q I show you now the one that has been marked in evidence P. 8 and testified by Dr. Ward as the third one, having been taken December 8, 1928, and ask you if that is the third one that you are familiar with? A Yes. 40

Max Imre, direct.

Q Now, doctor, confine yourself to the sacro-iliac joint, in which you say there was a separation. Was there any change in the condition as shown by the X-ray and as diagnosed by you between the time when the first X-ray was taken in March and the second X-ray in July, 1928?

10 A There was.

Q And in what respect was that particular injury different? A There is a marked— That is a marked absorption— An arthritic condition on the right sacro-iliac joint.

Q What do you mean by absorption? A Arthritis is an inflammation of a joint, proliferative or a bony absorption.

Q It is a disturbance of the bone? A Yes.

Q And is that more pronounced in the second
20 X-ray than it was in the first? A Yes.

Q Making the comparison now between the first and second X-rays with the third X-ray, was there any considerable difference? A Yes, sir.

Q In what respect does that X-ray or what is shown by that X-ray, differ from what is shown on the first and second X-rays? A It has progressed.

Q It has progressed? A Yes.

30 Q To what extent? A There is— It shows that there is an ankylosis.

Q What do you mean, doctor, by an ankylosis? A Stiffening of a joint.

Q Stiffening of a joint? A Yes, sir.

Q That is not shown by the first and second X-rays? A No, sir.

Q So that this condition, doctor, in ordinary language, is getting worse? A Yes.

40 Q Doctor, is that condition of arthritis produced by a blow or injury? A Yes, sir.

Max Imre, direct.

Q Now, leaving that joint, doctor, and going to the next point of injury, did you make an examination of the X-rays as to the injury to the end of the spine or the technical name of coccyx? A Yes.

Q What injury did you find there from your examination and from the examination of the X-rays? A On the X-rays it shows that the tip of the coccyx is broken. On physical examination it shows tenderness. 10

Q Was there any other injury at that part of the body? A Yes, sir.

Q What further injuries? A Separation. Separation of the pubic bone. Separation of the pubic bone.

Q What are the pubic bones? A The pubic bones are the os tissue, the os pubes. 20

Q And in ordinary language what two bones are they? A About making the joint and the front of the pelvis.

Q I see. Was there anything else besides a separation there? A Yes, sir; not on the first picture.

Q Referring to the second or third picture, now, does it show anything outside of the separation? A Yes, sir.

Q What does it show? A There is an arthritic condition again, with a probable—a bony absorption. 30

Q An arthritic condition is what you referred to before as an inflammation? A Yes, sir.

Q Is that condition also shown in the third picture? A Yes, sir.

Q Is it more pronounced or less pronounced? A More pronounced.

Q In what respect is it more pronounced in the third X-ray? A Well, they are more marked. The condition is more progressed. 40

Max Imre, direct.

Q Doctor, as to the conditions that you testified to, are they permanent or not? A They are permanent.

Q They are permanent conditions? A Yes, sir.

10 Q What is the treatment you have given for the injuries, if the injuries have been treated by you? A Well, I have— It has been given different kinds of treatment. Diathermia, that is under heat, and ultra violet rays, to term the general condition, and infra red lights.

Q All heat, isn't it, doctor? A Yes.

Q And is that the recognized treatment for that condition? A That is about all we can do.

Q That is about all you can do? A Yes, sir.

20 Q And in spite of the fact, doctor, that you have continued that treatment, her condition has not improved? A Not markedly.

Q In what way, doctor, does the condition that you find affect her general condition? A Well, the stiffening of the sacro-iliac condition— The stiffening of the right sacro-iliac joint will prevent her to become mother again.

By Mr. Braun.

30 Q It does what? A Prevent her become mother again. The condition of the pubic— That is, can prevent her to have any—to have anything to do with very hard she can communicate with the man.

By Mr. Brenner.

Q What are you talking about? A I don't want to say. There are ladies—so loud, and that is why.

40

Max Imre, direct.

Q All right, doctor; if the ladies are here they will have to listen to it. A She will hardly be able to have an intercourse with a man.

Q Does that affect her in any other way?

A Yes.

Q Referring, now, as to pain? A Yes.

Q Will she have pain with the injuries that you have described? A Yes. 10

Q Will that pain continue into the future?

A Yes, sir.

Q Doctor, this lady has also testified, first, as to getting a sharp pain, followed by a dull headache. Can you tell us what that condition is due to?

Mr. Braun: Now, if the Court please, I don't think that that is fair. The doctor testified what he examined her for and what he treated her for, and now to have him pass on what she said here in court, I say, it has nothing whatever to do with his treatment. If this is to be in the form of a reasonable question, I think it should be properly framed and all the symptoms and everything else put in. 20

The Court: You will have to do that, Mr. Brenner. 30

Mr. Brenner: I will do that.

By Mr. Brenner.

Q Doctor, it has been testified by Mrs. McCusker on the stand this morning that under excitement or that under a nervous condition that she first receives a pain in the head which is followed by a dull pain or headache, lasting sometimes for the period of the remainder of the day. Assuming, doctor, that she has correctly 40

Max Imre, direct.

testified as to those things and that those pains exist, can you tell us to what particular thing they are due?

Mr. Braun: I object to that. That is not the proper question.

10 The Court: Do you want everything—all the testimony to go in? What do you want to do? Waste time? This simply narrows it. He is subject to your cross examination as severely as you can reasonably put him to.

I will have to sustain the objection, Mr. Brenner, if he makes it. You will have to go on and state everything that has been brought out. That is what he is looking for.

20 Mr. Brenner: It will be a long, long question, I am afraid.

By Mr. Brenner.

Q Doctor, assuming that on January 20th or 27th, I am not sure of the date, that—

Mr. Braun: Twenty-seventh.

By Mr. Brenner.

30 Q (Continuing.) —a jitney bus belonging to the B & N bus company and one belonging to the Public Service Co-ordinated Transport Company came together under the bridge of the Central Railroad Company, and that this lady was thrown from her seat, first in a forward position so that her head hit a gate, then backwards so that the back end of her spine either hit the edge of the seat or came in contact with the floor; that she was then taken to her home, subsequently to the hospital, then back to her

40

Max Imre, direct.

home, where she remained for a period of approximately one month, part time in bed and part time out of bed, and that subsequently, she says, that in times of stress or when she becomes nervous, that she has a pain, a sharp pain in the head, followed by a dull headache or dull pain that sometimes remains for the rest of the day. Would you or would you not say that the pain she now suffers in her head came as a result of the fall that she had in this bus, resulting from the collision of the two buses? Yes or no, doctor? A I can't say positively. 10

Q Can you say, doctor, whether it is or is not reasonably probable that she would have the pain described? A Yes.

Mr. Braun: I think that the question should also incorporate the fact that X-rays were taken and showed absolutely no skull injuries. 20

By Mr. Brenner.

Q Assuming, doctor, that the X-rays do not definitely show a fracture of the skull, would your answer still be yes, that it is reasonably probable? A Yes, sir.

Q Doctor, it has been testified that you have been paid some \$450? A Yes, sir. 30

Q Do you know the exact amount that has been paid to you? A Yes, sir.

Q What is the amount? A \$479.

Q \$479? A Yes, sir.

Q Does that pay up to the present time, or is there a bill still due? A Well, she is in the arrears about \$50 or \$45.

Q Between \$45 and \$50? A Yes, sir. 40

Max Imre, cross.

Q Doctor, is the charge that you have made for your services including those that have been paid a reasonable charge for the services that have been rendered? A I think it was.

Q Besides the treatment or heat, have you given Mrs. McCusker any internal treatment? A
10 Yes.

Q What is the nature of the internal treatment that you have given her? A Medicines. Prescribed medicines.

Q Of what nature? A Any mineral oil.

Q What? A Any mineral oil, I says, some medicines to allay pain.

Q What is the reason for prescribing mineral oil? A Well, she had some difficulty in passing food, and that is why I prescribed her on account
20 of the fracture—I presumed, at least, on account of the fracture of the coccyx.

Q You say you also gave her medicines to allay pain? A Yes, sir.

Q Is she still taking that medicine, doctor? A If she has pain.

Mr. Brenner: That is all.

Cross examination by Mr. Vosseller.

30 Q Doctor, you say you were graduated from some Austrian hospital? A No, that is a Hungarian hospital.

Q Hungarian? A Yes.

Q And from some school in Germany? A Yes, sir.

Q How long did you attend school in Germany? A Three years. It was a post graduate—

40 Q Yes, I understand that. Then you came to this country? A Yes, sir. No, I didn't.

Max Imre, cross.

Q What? A No, I didn't.

Q Well, you practiced somewhere? A Yes, I was the first assistant when I went back from Berlin to Budapest. I was the first assistant. Became—I became the first assistant of the Polyclinic Hospital at Budapest and stayed there for eleven years. 10

Q Eleven years? A Yes, sir.

Q And when you came to this country you first started practicing in New York? A I didn't start no practice in New York.

Q What did you do in New York? A I was the resident physician of the Department of Correction, New York State.

Q What did you do as resident physician? A What? 20

Q What did you do? What did you do? What were you activities? A I was in the women's workhouse.

Q Speak up, will you? You did what? A I was in the women's workhouse and the penitentiary.

Q And then you went out to Glen Gardner? A Yes, sir.

Q What did you do up there? A Resident physician.

Q What? What were your duties as resident physician? A Well, examine patients, treat patients. 30

Q What position did you hold there? Resident physician? A Yes, sir.

Q How long have you been in Roselle? A I have never been in Roselle.

Q Or wherever you are? Where are you located? A October 1, 1925.

Q Where are you located? A At the present time 64 Elmora avenue. 40

Max Imre, cross.

Q And that is in Elizabeth? A Yes, sir.

Q Now, do you treat generally by electrical treatment? A Yes, I do.

Q And that is your chief treatment? A No, that is not my—

Q Now, did you read these X-rays yourself,
10 or did you have them read by an X-ray expert?

A Well, I first— It was explained to me, and then I read it myself. I understand how to read X-ray pictures.

Q Well, you had Dr. Ward's diagnosis, didn't you? A Yes, I have.

Q Yes? And you depended on his diagnosis?
A Not a hundred per cent.

Q Did you eighty per cent.? A Well, I
20 won't say how many per cent., but I have my own ideas, and I can say myself.

Q Now, when you examined this woman what kind of examination did you give her? A Internal and external examination.

Q What did you do by way of internal examination? A Genital examination and rectum examination.

Q Did you look at any other internal parts of the woman? A Yes, sir.

Q What else did you look at? A I looked—
30 I looked her over all the way through, and I examined the urinal and the blood. I examined everything.

Q Did you examine her head? A Yes, sir; I did.

Q Did you examine her teeth? A Yes, I did.

Q What kind of examination did you give her for the teeth? A Well, the routine examination every doctor gives to a patient.

Q What is a routine examination? A I
40 looked over the teeth, and I have my tongue

Max Imre, cross.

depressor or any instrument I should have in my hand, and I just simply knock on her teeth and examine her.

Q Now, doctor, you say that the chief thing this woman is suffering from is arthritis, isn't it?

A At present?

Q Yes, at present? A Yes. 10

Q An arthritis frequently does come from an infection? A Yes; that is a hypothesis that comes from former infection.

Q And it is a frequent cause of arthritis? A Yes; that is a hypothesis.

Q What do you mean by a hypothesis? A That is not being proved in one hundred per cent. of the arthritis that arthritis will come from an infected tooth or infection. That never has been proved a hundred per cent. that every arthritis comes from a focal infection. 20

Q Has it been proved seventy-five per cent.?

A I hardly believe it has been proved seventy-five per cent. I read very lately that statistics, and I find just about sixty-six or less.

Q But, as a matter of fact, the general belief in the medical profession is that arthritis comes from a focal infection in a good many instances? A Sure, it comes sometimes.

Q When a person comes to you with arthritis, don't you examine that person with a view of finding out whether there is a focal infection or not? A Yes, sir. 3)

Q Can you state whether there is a focal infection of the teeth by tapping them? A Well—

Q Just answer the question. A Repeat, please.

Q Can you state whether there is a focal infection of the teeth, by tapping them? I mean, by tapping the teeth with an instrument alone? 40

Max Imre, cross.

A If there is no— The teeth are not affected and you cannot see any defect on the teeth, then you can make your judgment after knocking on the teeth.

Q But many teeth, doctor, appear all right, but still are points of infection? A It has
10 been—

Q I didn't ask you that. I say, many cases you have teeth which look all right and you can tap on them all right, but still they are focal points of infection X-rays show? A Yes.

Q Did you X-ray her teeth? A No, I didn't.

Q You didn't recommend it, did you? A No.

Q Did you examine her tonsils? A Yes, I did.

Q How did you do it? A What do you mean,
20 how did I do it?

Q Did you puncture them to see if there was any pus secretions? A I never done that, and no doctor does it so far as I know.

Q Well, I am asking you, what did you do, that is all. Did you examine any other points for focal infection to see whether this arthritis condition comes from infection? A Yes, I examined—

Q What did you do? A I examined her
30 vaginal—

Q To see whether there was a point of infection there? A No, there wasn't.

Q I say, is that what you examined her for to see if there was a point of focal infection? A Yes, sir.

Q Did you take a Wassermann Test? A No, I didn't.

40 Mr. Vosseller: I think that is all.

Max Imre, cross.

Cross examination by Mr. Braun.

Q You do not pretend to be an X-ray specialist, do you? A No, I don't.

Q You never took X-rays, did you? A Yes, I did.

Q When? A Well, I am taking up a course 10
at the present time and every patient of mine before—or is being examined, at least, every patient is being examined by X-ray and I am present almost any time the patient goes to the X-ray man, and I just decided to buy an X-ray for myself.

Q When did you take an X-ray for the first time? A Some sixteen years ago.

Q Where? A In Budapest.

Q When did you take the next one? A The 20
next one?

Q When did you take the next one? A Almost every day ever since.

Q You have taken X-rays yourself? A No, I didn't take myself, but sometimes I did.

Q Did you ever own an X-ray machine? A No, not own, but I had the loan of one from the Service X-ray Company.

Q How many X-rays were you present at the taking of at Welfare Island? A How many 30
X-rays?

Q Yes. A I would say not much in Welfare Island, but I have taken at least a hundred pictures in a month in Glen Gardner.

Q How long were you at Welfare Island? A About a year and a half.

Q What years were they? A It was 1923 and 1924.

Q That was when you first came here? A Yes, sir.

Max Imre, cross.

Q Where had you been before that? A Where in this country, you mean?

Q No, before you started at Welfare Island?
A I was in the Polyclinic in Budapest.

10 Q What were your duties there? A I was the first assistant. That is a university—clinic, and I was the first assistant in this institution for eleven years—inside of—a second man in the institution, I mean.

Q What were your duties there? Were they purely administration? A Examining and treating patients.

Q What is that? A Examining and treating patients.

Q For what specific disease? A Internal medicine.

20 Q Internal medicine? A Yes, sir.

Q That didn't involve X-ray examinations, did it? A About eighty per cent. of the cases, yes.

Q Eighty per cent. of the cases involved X-rays? A Yes, sir.

Q For what? A Stomach, heart, lungs and kidneys.

30 Q But you had nothing to do with any bone pathology there, did you? A Sure, we had tuberculosis, arthritic conditions.

Q Now, doctor, I understood you to say that your duties there involved internal medicine? A That involves internal medicine.

Q And that your X-rays were for the stomach, the kidneys and the lungs, but not arthritic conditions? A Arthritis is also an internal—It belongs to the internal medicine, as far as I know.

40 Q All right. Now, coming back to this country, you were located at Glen Gardner? A I didn't.

Max Imre, cross.

Q After you left Welfare Island? A Yes, after.

Q And your duties there were what, as resident physician? A Resident physician giving treatment. I was in charge of the sun treatments, mechano-therapy treatment.

Q What did that consist of? A Mechano-therapy and sun ray treatments. 10

Q That is exposing you to the sun? A No, that is alpine land or—

Q Don't you ever use the natural rays of the sun in sun ray treatment? A Well, not very often.

Q Isn't it profitable? A I won't say it isn't profitable, but you cannot expose yourself by giving these treatments. You have to give them in a series. Today is a nice day, but tomorrow is a rainy day. You cannot depend on the sun. We give— In the sanitarium we have about twenty-four machines with artificial sun treating machines. 20

Q They are all light—ray machines? A Ultra violet rays.

Q What was this other treatment that you spoke of? What did that use? A Laboratory work.

Q Laboratory work? A And the children's ward. 30

Q Do you specialize in any particular branch of medicine or surgery? A At the present time I am trying to specialize.

Q In what? A On circulatory and chest diseases.

Q Have you ever specialized on bone conditions? Have you ever specialized as an orthopedic surgeon? A No. 40

Max Imre, cross.

Q You don't hold yourself out as a specialist on orthopedia, do you? A No.

Q And that has to do particularly with bones and bone conditions, does it not? A Sir?

Q And it also involves treatment of arthritis, doesn't it? A Do you mean the— I don't
10 understand what you mean.

Q Orthopedics frequently have to treat arthritis? A Yes; but they never treat the cause of the arthritis.

Q They treat the condition, the result? A Yes.

Q And this lady had an arthritis which showed a result, didn't she? A What do you mean, she had an arthritis?

Q When you said she had an arthritis— A
20 It developed an arthritis.

Q And then, according to your interpretation of the X-rays, it showed a pathological condition? A Yes.

Q And that condition was getting worse? A Yes.

Q And you have been treating her from March? A Yes.

Q Nevertheless, the condition got worse? A Yes.

Q And is it still getting worse? A Well,
30 I don't know. I don't understand what you mean getting worse. Pathologically, she doesn't—she might not get worse, but she might have pain sometimes. We are here to help the patient anyway whether he has pain or not.

Q Didn't you testify, doctor, that according to the series of X-rays, this condition is getting worse? A Progressing, yes.

Q Every time you took a picture, it showed a worse condition? A Yes.
40

Max Imre, cross.

Q Regardless of your treatment? A Yes.

Q And you are still treating her? A Yes.

Q Why didn't you send her to an orthopedist?

A Because I don't believe in an orthopedist surgeon or whatever you call him. I mean—I don't mean M.D. There are some osteopaths I talked to, and I thought that is what you meant. 10

Q Do you consider an osteopath or orthopedist surgeon? A No, I corrected that before. I said, I didn't believe in an osteopathic surgeon. I thought you asked me about an osteopath.

Q Do you know the difference between the two? A Yes; sure I do.

Q An osteopath doesn't specialize on this kind of condition, does he? A Sometimes they do.

Q But you know now that I mean an orthopedic surgeon, an M.D., who has studied orthopedic surgery? A Yes. 20

Q A specialist in it? A Yes.

Q They are thoroughly capable? A Yes.

Q Why didn't you send her to one of those?

A There wasn't very much improvement, and if she goes to— I don't know where this condition would never be cured.

Q Haven't we any orthopedic surgeons in this country? 30

The Court: What do you mean by that?

Mr. Braun: He said, he don't know where he could send her in this country.

The Court: No; that her condition was such that he didn't think it was such that an orthopedic surgeon could cure it subsequently.

Max Imre, cross.

By Mr. Braun.

Q You are not an orthopedic surgeon? A
No.

Q And your treatment wasn't doing her any
good? A I can't say. I wouldn't say that I
10 didn't do any good for a patient. A patient is
very sick sometimes and you can call—I don't
know who, and the patient never gets well.

Q Now, will you answer the question, doctor?

Mr. Braun: Read the question.

(The reporter read as follows:)

“Q And your treatment wasn't doing her any
good?” A I wouldn't say that.

20 *By Mr. Braun.*

Q Well, she was getting worse, wasn't she?
A If she was getting worse, she had pain, and
she needed me to allay pain. That is what she
was treated for.

Q How about this pathological condition which
is a destruction of the bone? A It never can
be cured.

Q And you don't think an orthopedic surgeon
30 can relieve her? A No.

Q They claim they can do it? A I hardly
believe they claim they can do it.

Q They specialize in that? A I might be a
good heart specialist, but I cannot cure a man
who drops dead or has a stroke.

Q I know, but we are talking about this con-
dition, not heart failure? A That is the same
thing.

Q Then, in your opinion, although you are not
40 an orthopedic surgeon, you don't think they could

Max Imre, cross.

do anything at all for her? A They couldn't do subsequently as much to allay and to prevent further destruction.

Q You have not been able to do that, though, prevent a further destruction? A I couldn't.

Q But an orthopedic surgeon might, might he not? 10

Mr. Brenner: I object to that, if the Court please.

The Court: Objection sustained. He has answered a half dozen times.

Mr. Braun: All right.

By Mr. Braun.

Q Now, will you show us on this X-ray where this separation is located, referring to P. 6? A Right sacro-iliac (indicating). 20

Q There is a normal separation there, isn't there, doctor? A No.

Q Well, it is not a fracture, is it? A It is more a fracture than anything else.

Q Isn't there a separation between these two parts normally? A No.

Q To a certain degree? A Well, there is. There are just motions. 30

Q That is a joint, isn't it? A No.

Q It is not? A No.

Q What is it, a solid bone? A Synchondrosis.

Q What? A Synchondrosis.

Q What does that mean in every-day language? A In every-day's language it means that is a joint that allows certain motions.

Q Well, then, it is a joint? A Well, it is not. I cannot explain to you any better way. 40

Max Imre, cross.

Q It is not a solid piece of bone, is it? A No, it is not.

Q There is the same kind of a line on this side to a certain extent, isn't there? A You can see the difference here (indicating).

10 Q Now, will you answer the question, doctor? Isn't there a line on the other side, a corresponding line on the other. It may be heavier or narrower? A Yes, there is, sure.

Q And there is a separation on that side, too, isn't there? Doesn't the line indicate a separation? A This line does.

Q Why doesn't the other line indicate a separation? A That is why, then.

Q Merely because the one is wider than the other? A Yes.

20 Q Whether or not there is a normal separation— A Excuse me— Yes. I don't feel very good.

By the Court.

Q What? A I don't feel very good. I would like to have a glass of water.

The Court: Go on.

30 *By Mr. Braun.*

Q Now, isn't there a separation to some extent indicated on the other side? Isn't that what this line indicates? A That is a line and you can see that. That is about, say, two or three or half a centimeter of difference. You can see this by the naked eye. This is merely a line and this is not a line. This is a separation (indicating).

40 Q Were you present when these pictures were taken? A No, I don't.

Max Imre, cross.

Q So you don't know under what circumstances they were taken or how? A No.

Q Now, you say that you examined this lady before you had her X-rayed. What objective symptoms did you find of this separation? A She had pain. She couldn't hardly bend, and she complained of— Do you mean concerning to this lesion? 10

Q Yes. A To this right sacro-iliae, that is all I can say, pain and tenderness.

Q What treatment did you give her for it? A Diathermia. That is internal heat.

Q What objective symptoms did you find in your examination of the coccyx? A The coccyx on the first examination, you mean?

Q Yes. A Well, the coccyx was very, very sensitive and any time I pushed in my finger I felt a little moving. 20

Q You actually felt movement there? A Yes, sir.

Q Isn't that supposed to be there? A No.

Q At no part of the coccyx? A No.

Q It is supposed to be absolutely rigid? A No, not absolutely rigid. Of course, during the maternity— During the delivery it responds and it deviates then a little bit.

Q Well, an examination of the coccyx is always more or less discomfoting and painful, isn't it? A (The witness shook his head.) 30

Q Does it cause any discomfort to examine the coccyx with the fingers? A Well, I don't know. It doesn't in a healthy patient, a healthy man, no.

Q How do you do it? A I mean examining internally and externally.

Q How? A From the rectum, the vagina or external. That is the leading point. The tip of 40

Max Imre, cross.

the coccyx is the leading point in maternity. That is the first thing when we make measurements. If a woman gets pregnant, that is the first thing we do.

Q You have to get inside of her and press around? A Sure.

10 Q Or, in the case of a man you have to do the same thing? Isn't that painful; isn't that discomfort? A No discomfort.

Q Did you ever have your coccyx examined? A I had more than my coccyx examined.

Q All right. How about this other condition? Will you point that out? A Yes, sir.

Q What objective symptoms did you find of that? A Physical examination?

20 Q Yes. A Pain.

Q Is that all? A Yes, sir.

Q What do you call that condition there? A Separation.

Q Is there a normal separation between these two bones? A No.

Q Or are they joined, one solid mass? A They are joined.

Q They are one solid mass? A No, they are two bones. This ischium and this here pubic, they come together in front and join.

30 Q They are one—you know, one piece of bone? A Yes, sir.

Q Isn't there a separation there between them so that they could be pulled apart? That is, if you want to find out? A There is a little bit in between them.

Q Exactly, and they are part of one and the same bone? A No.

Q And they can be pulled apart? A No.

40 Q Can't they? A No.

Max Imre, cross.

Q How do you account for this separation?

A It is a blow against—

Q Didn't that pull them apart? A Sir?

Q Didn't that pull them apart? You say it was a blow. Didn't that pull them apart? A Yes, sir; it might.

Q All right. How can you get them back together? A How? 10

Q How can you get them back together? A Why, you can get them back again by an operation.

Q Is that the only way? A That is the usual way we do.

Q There is no lateral displacement there, is there? A I didn't see anything; no.

Q They are in good position? A Yes.

Q Is there any reason why they shouldn't go back to their normal position if properly treated by some retaining apparatus or rest? 20

A She did have a rest. She did have a rest plenty enough.

Q What normally holds them in position? A Well, it has been grown together.

Q Normally it is grown together? A Sure.

Q And it is one solid mass? A Yes. If I would ask your Honor to give a little explanation to that point, I point out that during a labor this is an absolute firm joint and during the labor if the labor is hard, we have to separate the symphysis in order to get motion and more space. 30

Q Could you do that in order to assist labor?

A Sure.

Q Why do you say, then, that this condition is going to prevent this woman from having any more children, if you do it deliberately in order to assist labor? 40

Max Imre, cross.

Mr. Brenner: I object to that if the Court please. The condition that the doctor referred to was the ankylosis of the sacroiliac joint and not this particular joint.

10 Mr. Braun: I believe, if your Honor please, that he said this would also prevent her—

Mr. Brenner: No. He said she would have intercourse made painful not by this condition of a separation, but by the condition of the arthritis.

The Court: Go on. Put the question again.

(The reporter read as follows:)

20 “Q Why do you say, then, that this condition is going to prevent this woman from having any more children if you do it deliberately in order to assist labor?”

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

Mr. Braun: It is; yes, sir.

By Mr. Braun.

30 Q If you separate this deliberately in order to assist in labor, then this wouldn't—

The Court: He didn't testify that they were all separated.

Mr. Braun: They do it to assist labor.

The Court: Why argue? I say that he didn't say it was always done. You are assuming he said it was always done. He said sometimes to assist when they are laboring in delivery, they deliberately separate

40

Max Imre, cross.

these bones, otherwise they are firmly attached together. That is what he said.

By Mr. Braun.

Q Don't these bones always separate in labor, either voluntarily or involuntarily? A No. 10

Q What is your answer? A No.

Q You are positive of that? A Sir?

Q You are positive of that? A Yes.

Q What part of the bony fabric does separate to an extent and allow the emission of the child?

A The coccyx.

Q Is that all? A And here (indicating) the sacro-iliac.

Q The sacro-iliac? A Yes.

Q That separates? A Not separates, but allows some motion. 20

Q How does it move, which way? A I am not a maternity expert and I don't know.

Q But, doctor, you are testifying that there is a condition here that is going to prevent this woman from having any children. Do you want to withdraw your opinion, then? A What is it?

Q Well, you say now you are not a maternity expert, and you don't like to answer this question. A To go into details. 30

Q Well, this is a detail on which you based your opinion, isn't it? A Well—

By the Court.

Q Doctor, you said that it was the result of the injury this woman received in that collision?

A Yes, sir.

Q That her body was so damaged that she will no longer be able to bear children. Why do 40

Max Imre, cross.

you say it? A Because the bone—pelvis became rigid.

By Mr. Braun.

Q Now, where did it become rigid? A Here
10 (indicating) on the sacro-iliac.

Q Where else? A That is all I can say.

The Court: Speak out. These gentlemen have the duty of hearing you.

The Witness: On this picture, it doesn't show anything, but here.

By Mr. Braun.

Q What is it called? A What does it call
for?

20 Q What is it called? These other places you say you can't indicate? A That is the sacro-iliac.

Q Isn't the sacro-iliac shown there on that picture? A Yes, here (indicating).

Q Well, now, you said there was something else that moved that you couldn't show because it wasn't on that picture. I am asking you? A The whole bony pelvis after this collision and after this rigidity is affected. I don't see how
30 she can bear a child.

Q Well, where else is it affected besides in the coccyx, and the sacro-iliac, and the other places that you indicated? A Here (indicating).

Q And is it that lower portion that affects her child-bearing ability? A Not as much as this one.

Q Does it affect her at all? A Well, it affects in some minor degree.

40 Q Well, to what extent and in what way? A About, I would say, about twenty-five per cent.

Max Imre, cross.

Q How much does the sacro-iliac affect her?

A Forty per cent.

Q Where does the other sixty-five come in— or the other thirty-five, rather? A Here (indicating). I didn't say in a hundred per cent. she won't be able to become a mother.

Q Oh, she won't be absolutely unable? A 10
Not in a hundred per cent.

Q How much will she be able to become a mother? A It depends on the condition.

Q You mean, she can't have twins or triplets, but she could have ones? A She might have once more a child of force or instruments, or she might have—some other means. But she would have a very very difficult labor.

Q Why couldn't she have one normally? A 20
Because the pelvis is rigid.

Q Well, do you say the coccyx bothers it? How does that affect it? A Everything. The coccyx bothers it, too. The coccyx— She complains that she can never normally—

Q I asked you how the coccyx would interfere with labor in this case? A It deviates. First of all, before labor. That is, the labor point, we make all measurements—

Q I know, doctor, but what I am trying to 30
find out is, how it would interfere with labor. We are not interested in your measurements. The jury wouldn't understand them. A It is cracked now.

Q Do you mean it would interfere? It would be in the way or something? A Yes.

Q I thought you told us it was moving, that you felt a motion there? A Yes, in March.

Q That it was supposed to be rigid? A In March.

Max Imre, cross.

Q How much of it was moving in March? A Well, it was moving some degree.

Q Just the tip? A Yes.

Q And the rest of it was rigid? A Yes.

Q It is supposed to be rigid, isn't it? A Yes.

10 Q Well, then, how would this injury affect it? A It is cracked.

Q How much of it is cracked? A If you examine the girl, you will find it. I found that she is— It is in the way. It has to be removed or taken out or do something.

Q Which way is it cracked and how much of it? Can you point it out on the X-ray? A It is to the right.

20 Q You mean it bends to the right? A Yes.

Q Is that the only direction it bends in? A Yes

Q How does that affect her? A The right and a little bit in the front.

Q What is that? A The right and front.

Q Where does it start to bend? What portion of it? A The second ring.

Q The second from the bottom? A Yes, sir.

Q How long is it from there to the tip? A About that size (indicating).

30 Q From the second ring to the tip it is that long? A No.

Q How far is it from the second ring to the tip where it starts to deviate? A Two more rings.

Q Can you point them out here on the X-ray? A The second one. One, two, three.

Q Is that the tip down there? A Yes.

Q Where is the chip? A Here (indicating).

40 Q That is the chip? A Yes.

Max Imre, cross.

Q And this is where it is deviated, you say?
A Here it has deviated. You see there (indicating).

Q How much is it tilted inward or forward?

A How much?

Q Yes. A I didn't measure it. With my finger, I measured it. 10

Q Isn't the coccyx normally in the majority of people deviated to some extent? A No.

Q Isn't it rare to find that absolutely on a line with the rest of the spine? A Absolutely.

Q You are sure of that? A Yes.

Q Now, doctor, this is the third X-ray plate, referring to P. 8. Will you put it up there? A (The witness placed the plate on the light machine.)

Q Can you see a corresponding separation on the left side of the picture? A Yes. 20

Q Is there any arthritic condition found there?

A Yes.

Q On the left side? A No.

Q Do you mean that, doctor? A What is it? Why, no, not in the left side.

Q Do you mean there is no arthritic condition shown on the left side in that picture? A No.

The Court: Go on with the question. He said no. 30

Mr. Braun: I didn't hear the answer, your Honor.

By Mr. Braun.

Q To what do you attribute that separation there? A To a blow, to an injury.

Q On the left side as well as on the right?

A No, I didn't say any left side. I am not speaking of the left side. 40

Otis Chapman, direct.

Q I have been asking you about the left side, doctor. Didn't you understand my question? A I said no condition. There is no pathological condition on the left side.

10 Q But there is the same corresponding line of shadow on the left side? A About the same.

Q The same as indicated on the right? A No.

Q Did you say no?

The Court: He said no.

Mr. Braun: That is all.

20 OTIS CHAPMAN, a witness produced on behalf of the plaintiff, being first duly sworn according to law, on his oath saith:

Direct examination by Mr. Brenner.

Q Doctor, you are a practicing physician of this State? A I am.

Q And you have been for how many years?

A I have been practicing sixteen years.

Q Have you an office in Elizabeth? A Yes.

30 Q Are you connected with any of the institutions in Elizabeth? A I do some work at the Alexian Brothers Hospital.

Q Any other hospitals outside of that? A Occasionally Saint Elizabeth.

Q Any others outside of Saint Elizabeth? A No.

40 Q Have you been previously connected with any? A I have been previously connected with a tuberculosis sanitarium, also with a private hospital. I don't recollect the hospital, and an

Otis Chapman, direct.

industrial hospital. I was previously connected at Cornell University. That about sums up my institution experience.

Q Of what college are you a graduate? A University of Louisville.

Q You have done considerable bone work, haven't you? A I think I do a considerable amount of— 10

Q Have you specialized in it? A I wouldn't say that I specialized in it. No; I have treated a good many people who have had bone diseases.

Q Did you, in connection with that, make a study of X-ray plates? A I have to use them. Take pictures and read them to do that work.

Q Doctor, referring to an X-ray photograph taken in March, can you tell us what condition is shown in that X-ray plate? A There is evidence of a separation at the sacro-iliac joint. There is evidence of a fracture in the coccyx, and some evidence of a widening at the symphysis pubes. 20

Q Doctor, you used the word separation and I noticed that Dr. Emory used the same word. Is that a technical word known in surgery or in medicine? A Well, it is a word or term used to denote that two things have come apart. 30

Q Further than they are supposed to be apart? A Further than they are supposed to be apart.

Q In other words, it indicates an abnormal condition? A Yes.

Q After a study of that first X-ray, did you also study the second and third X-rays taken one in July and then one later in December? A Yes, I did. 40

Otis Chapman, direct.

Q Does that show any change of condition from that which existed and is shown in the first X-ray? A Yes, it does.

Q What difference would you say is shown to any or all of the three injuries that have been mentioned? A The sacro-iliac joint seems to be
10 filling in.

Q Which means what, doctor? A I beg your pardon?

Q Which means what, doctor? A It is fusing. The symphysis possibly is wider in the previous picture. The pubic bone is considerably thinned down to the extent that it can be easily measured. There is a difference in the calibre of the pubic bone.

Q And what has caused it to thin down, doctor? Is there any way of telling? A Some
20 disturbance in the nutrition to the bone, I would say.

Q What is that condition called technically? A It probably is a manifestation of the arthritic affair.

Q Is she suffering now from arthritis? A Yes.

Q Is that shown in the X-rays? A Yes.

Q And will arthritis develop from an injury? A Yes.
30

Mr. Braun: I object to that "will."

By Mr. Brenner.

Q Doctor, is it reasonably possible that an arthritis develops from injury? A An injury is oftentimes the starting point of an arthritis in an individual who has not had it previously.

Q Doctor, assuming that prior to the time of the injury that there was no indication of pain
40

Otis Chapman, direct.

or disability at the particular point where the arthritis now is, would you say that it is reasonably probable that the arthritis was caused by the injury? A I should say so, yes.

Q The arthritic condition as shown in those X-rays, doctor, would you say that that is permanent or that it can be cured? A Arthritis is more or less a chronic affair. It is subject to remissions and exacerbations, due to many things, depending on occupation, the conditions of health, order and other affairs. In other words, they have periods in which they feel better, and they have periods in which they feel worse. As a rule, if it has existed any great length of time, then it is more or less a chronic affair, which will continue to manifest itself more or less permanently.

Q Doctor, assuming that has existed in Mrs. McCusker from the time that it was first shown in the first X-ray plate, which was March, 1928, until it is shown in the last X-ray, which is December, 1928, having covered that period of time, would you now say it is a permanent condition, chronic and incurable? A I think it is chronic in character. As to the question of whether it could be arrested, I don't know.

Q What could be done to arrest it, doctor? A Well, she would need a complete medical survey. That is, she should be thoroughly and completely examined in respect to several things, and then various measures carried out; and if they were successful, if they found any aggravated cause that could be removed and it might arrest the condition. It might not be found. I don't know.

Q Doctor, did you make an examination of Mrs. McCusker, besides examining the X-ray plates? A I did.

Otis Chapman, direct.

Q What did you find on the examination of herself as to her condition? A She is painful around the regions where the pathology is shown in the films. She is painful around her pubic bone. She is tender and has pain around the coccyx. She complains of pains, particularly
10 on lifting, upon rotating—anything that puts stress or strain on that part of the body.

Q Do you think, doctor, that that pain is real or it is assumed? A Yes, sir.

Mr. Braun: I object to that.

The Court: Oh, no.

Mr. Braun: Let him answer.

A She has pathology enough to have pain. That
20 is, the film shows—the woman is entitled to have some discomfort and pain.

By Mr. Brenner.

Q Will the pain continue, doctor, so long as this arthritic condition continues? A I should think so.

Q Would any part of that pain be due to the injuries to the coccyx? A It probably is.

Q Or of a combination of both things? A
30 Yes.

The Court: Until half-past one, gentlemen.

(A recess was taken until 1:30 P. M.)

Otis Chapman, cross.

AFTERNOON SESSION

OTIS CHAPMAN, resumed the stand.

By Mr. Brenner.

Q Doctor, you made some mention of the fact that in the sacro-iliac joint that there was a fusion or a fusing, as shown on the last X-ray? 10

A Yes.

Q Is that synonymous with the term ankylosis? A Yes.

Q And both of those terms described mean a stiffening? A Yes, a rigidity.

Q As to this arthritic condition, did you examine Mrs. McCusker at any other joint for the purpose of finding out whether that existed in any other joint? A I examined all her large joints. 20

Q Does that condition of arthritis exist in any other joint outside of the sacro-iliac joint and the pubic joint? A I could find no evidence in any other place.

Q In other words, this arthritic condition is at the seat of the injury? A Yes, where she says she was hurt.

30

Mr. Brenner: Take the witness.

Cross examination by Mr. Vosseller.

Q Did you treat this woman? A No.

Q When did you make your examination? A Two days ago.

Q And you made that examination for the purpose of coming into court to testify? A For one thing. 40

Otis Chapman, cross.

Q You weren't consulted professionally at all? A No.

Q Except as to that particular thing? A Yes.

10 Q You merely qualified yourself as a witness, is that right? A Yes.

Q Are you an X-ray expert? A Not an expert, no.

Mr. Vosseller: I think that is all.

Cross examination by Mr. Braun.

Q There are several forms of arthritis, are there not? A Yes.

20 Q In some instances there is a destruction of bone? A Yes.

Q In some cases formation of bone? A Yes.

Q What form did you find indications of in this particular case? A There was some evidence of production at the sacro-iliac joint. There is evidence of absorption at the pubic bone.

Q And absorption is usually found in the case of tubercular arthritis, is it not? A It might be.

30 Q Isn't it usually so? A There is absorption of bones due to several causes.

Q Well, they are all primarily created by some sort or form or forms of infection, are they not? A It is thought so.

Q You say in the case of the sacro-iliac condition you found a field of deposit? A Yes.

Q On which picture did you find that, doctor? A This picture here, I think shows it, at the lower end of it.

40 Q Put it on the record, please. A Referring to P. 8.

Otis Chapman, cross.

Q You found it there at about the point where the arrow in pen and ink— A Yes, I think there is evidence of production of bone at that point.

Q Well, how about separation, doctor? A I think the separation is filling it.

Q The X-rays show indications merely by shadows, do they not, doctor? A Yes, shadows. 10

Q And the point and the form of the shadow, and their relative positions, one with the other, depend entirely upon the angle at which they are taken, do they not? A Yes.

Q So that it is possible through error in placing of the lens or tube or the placement of the body which is to be X-rayed to get distortion which shows what appears to be a pathological condition, when, in fact, it doesn't exist, isn't that true? A In taking second pictures they usually try to guard against some things. They try to bring them out in the second picture the same as in the first. Those things are guarded against as much as possible. 20

Q As far as normal or abnormal separations are determined, they are usually determined by a comparison with the duplicate member? A Yes.

Q And if a picture was taken on a side, it would probably show a difference on the one side from the other? A There would be distortion. 30

Q Of course, you weren't present when these pictures were taken? A No.

Q Now, there is some indication of separation on both sides? A There is a little bit on both sides which shows on any picture of that part of the body.

Q Because those are separate bones? A Yes.

Q There is an articulation there, a movement?

A There is not much movement there.

Q But that is a form of joint? A Yes. 40

Otis Chapman, cross.

Q It is supposed to be that way? A Yes.

Q So that in order to tell whether or not there is any injury to that you can only compare one side with the other? A Yes.

10 Q Assuming that the pictures have been taken carefully and with the proper angle and elevation and so on— A Well, you consider here the individual's complaint, at that point, too.

Q Well, wouldn't it be possible to have pain there without any separation? A Yes.

Q And that pain might be in the ligaments or muscles? A It might be.

Q Or in some other portion of the body other than the bone? A It might be, yes.

20 Q That would make a difference as to your diagnosis, wouldn't it, if you could ascertain that? A If the individual was hurt at that point and the films showed separation at that point as compared with the opposite side you would consider that you had separation.

Q If that were a lesion from an injury of the ligaments or to the muscles, would you still feel that she had an arthritis as a result of this accident? A Yes.

Q Regardless of whether there is any pain arising from the bones? A Yes.

30 Q It wouldn't make any difference? A No.

Q What evidence of infection did you find in this place? A Where? I don't know just what you mean.

40 Q Well, I understood you to say that the generally accepted theory of doctrine is that arthritis comes from an infection? A There is usually some—it is considered that there is some low-grade infection usually in some part of the body. Oftentimes they do not find it; oftentimes the infected parts are cleared up and they continue to

Otis Chapman, cross.

have arthritis just the same, we still think that there is some place else it may be lurking around, but they do not know where it is.

Q And did you find any evidence which indicated the creation of an infection or the injection of an infection to her system as a result of this accident? A The one place that I was suspicious of is the condition of her mouth, teeth. I don't know that that has anything to do with it, but, at least, I consider it. 10

Q That is a very common cause of arthritis, isn't it? A It is sometimes a cause. We often pull the teeth and they still continue to ache. Sometimes you pull one tooth and the condition gets better very promptly.

Q Is there anything in the evidence, I mean, of symptoms or any of the history given, which would indicate that this lady suffered any infection of her teeth as a result of the accident? A I don't know that, no. 20

Q That would be independent of the accident? A Yes.

Q And she would probably have had the arthritis irrespective of whether or not she had met with the accident? A I wouldn't say that.

Q If she had that? A I wouldn't say that. You will hear people with foul mouths from teeth that go through life, they don't have any arthritis. There is a good many of them seem to be able to manufacture their own vaccine and are able to resist the invasion of an arthritis into some part of the body. 30

Q But evidently the patient wasn't able to do it? A After she was hit, she evidently wasn't.

Q Now, as to the pubic bone, doctor, that is also normally two separate bones, is it not? A 40

Otis Chapman, cross.

Yes, they are held together there by a piece of cartilage commonly called gristle. That bone between the two bones holds them together, helps hold them together.

Q That is a sort of cushion? A It is a fibro-cartilage.

10 Q Somewhat similar to the little cushions that exist between the vertebrae and the spine? A Yes.

Q And it acts as a cushion as well as a means of holding them together? A Yes.

Q And it is intended to be constructed so that it can expand to a certain extent, isn't that so? A Under certain conditions. For instance, in pregnancy it seems to soften and widen.

20 Q And a separation there wouldn't necessarily interfere with childbirth, would it, doctor? A Well, I should think it would help ease the passage of the child, if it were separated.

Q Now, the coccyx, doctor, what evidence of injury did you find there? A She shows evidence of a fracture in the coccyx.

Q What evidence is there of fracture? What definite evidence? A On this film here at this point here (indicating).

30 Q Referring to P. 6. A Yes, I think there is evidence of a fracture at that point.

Q Referring to the upper red line. What does that evidence consist of, doctor? A There seems to be a piece broken off the side—the right side of it.

Q It is not very clear and distinct, is it, doctor? A I think it is distinct enough for a diagnosis.

40 Q And it only involves a very small portion of the side, doesn't it, doctor? A Yes.

Otis Chapman, cross.

Q Did you find any evidence in the other pictures, referring to P. 7? A This one I don't see it so well. There is a shadow there right at the point where you want to see it.

Q Did you see it at all in the picture, doctor?

A No, there is a shadow right over the point.

Q P. 6? A This is the one I looked at. 10

Q P. 8. rather? A I can't see it in this one.

Q How do you account for the fact that it doesn't show on the two other pictures? A The way the film was taken.

Q Then, these films are not all taken in the same position? A So far as I know, yes.

Q Well, why wouldn't it show in the others?

A There is some shadows over that area in two of these films.

Q You are diagnosing this fracture from the shadow? A I am diagnosing that fracture from that first picture. 20

Q That is a shadow, isn't it? A Yes, an outline of the bone.

Q What other evidence of injury did you find in the coccyx? A That is the only bone pathology I found there.

Q Just that slight chip on the side of it? A That is all I found in the films.

Q That wouldn't cause a deviation, would it? 30

A It might. The force that caused the fracture might deviate the coccyx.

Q Without fracturing the other? A It could have given way at that point.

Q That is only a small chip off the side? A It may have torn on through the articulation. I don't know.

Q Is there any indication of it there? A The space there seems to be wider than below. There is an articulation here. Here is an articulation 40

Otis Chapman, cross.

here. There is a gap here which is wider than here considerably.

Q But the lower articulation is a smaller articulation? A Yes.

10 Q It would be smaller? It would be small?
A But there is a disproportion between the size of the two articulations.

Q But there is the same space on both sides of that upper articulation, isn't there? A It is about the same, I should say.

Q Right across the joint? A It is wider from the center. The separation is wider in the center, than it is on the upper margin on either side.

20 Q That is because of the formation of the bone? A That has something to do with it, yes.

Q On either side the bones are the same degrees apart? A I should say they are about equal.

Q Then, there can't be any deviation there, can there? A There could be, yes.

Q On the point of the coccyx? A The coccyx? I should say the deviation doesn't amount to a great deal.

30 Q And the injury itself as far as the coccyx is concerned doesn't amount to a great deal? A Yes.

Q And the injury itself as far as the coccyx is concerned doesn't amount to a great deal? A It gives a lot of pain—considerable.

Q In this particular instance? A This woman has pain there. She can't sit on it, which is a common complaint after injuries of that type.

40 Q Did you find any evidence of any severe injury to the coccyx, which amounts to a very great deal in this woman, from your examination?

Otis Chapman, cross.

A I found this evidence of this breaking of the bone.

Q And you consider that that amounts to a great deal? A It can, yes.

Q Does it? A It gives her a painful coccyx. It causes difficulty in sitting.

Q You think she has difficulty in sitting? A 10
I think so, yes.

Q Did you ever manipulate the various joints of her body, doctor? A Yes.

Q Did you have her walk? A Yes.

Q Did she limp? A I didn't notice any limp.

Mr. Braun: That is all.

By Mr. Vosseller.

20

Q You said that you were suspicious of her head or of her teeth? A Yes.

Q How did that suspicion arise? A Because she has a lot of gold crowns in her mouth.

Q Did you examine the head pictures that were taken? A I saw one view.

Mr. Vosseller: Are they here?

Mr. Brenner: Yes.

I am perfectly willing they should go in evidence. Counsel objected to them before. 30

Mr. Vosseller: I can look at them, can't I?

Mr. Brenner: Sure.

By Mr. Vosseller.

Q You only saw the one?

Mr. Brenner: I object to the doctor testifying from them.

40

Otis Chapman, cross.

The Court: If you examine that picture it will have to go in evidence.

Mr. Vosseller: All right, I will let it go in evidence.

The Court: It is agreed to?

10 Mr. Vosseller: As far as I am concerned.

The Court: It is agreed that two of the three pictures being X-rays of the teeth are admitted in evidence.

(Two X-ray plates were received in evidence and marked P. 9 and P. 10; one X-ray plate was marked P. 11 for identification.)

By Mr. Vosseller.

20 Q Have you seen this picture before, doctor? A No, I didn't see that one before.

Q You have made, now, an examination of this picture? A Yes.

Q And this picture, that is P. 11, and this is P. 9 and this is P. 10, show any different situation than P. 11? A In respect to what? I don't understand you.

Q The teeth? A Can I see the other one?

Q Surely. A Well, from the different views shown of the teeth here?

30 Q Yes, from your examination of these plates now, can you say whether or not there is any evidence of infection in these teeth? A I see nothing there to suggest that there should be some teeth films made, which are clipped on to the teeth and the ray directly focused on the teeth.

Q Did you see evidences of infection there? A I see something there that I—that would lead me strongly to advise that they be further
40 examined, at least.

Edward Rayne, direct.

Q Can you give me a better answer than that? Can you tell me whether or not you see some evidence of infection? A I think there is some evidence of infection, there, yes.

Mr. Vosseller: That is all.

10

EDWARD RAYNE, a witness produced on behalf of the plaintiff, being first duly sworn, according to law, on his oath saith:

Direct examination by Mr. Brenner.

Q Doctor, you are a practicing physician of this State? A I am.

Q And have been for how many years? A Twenty years.

20

Q You have an office in Elizabeth? A Yes.

Q And you have been located in Elizabeth for how many years? A Twenty years.

Q And are you connected with any hospitals here? A Saint Elizabeth and Alexian Brothers.

Q For a number of years? A For a number of years.

Q You were called in to make an examination of Mrs. McCusker? A I was.

30

Q When was that examination made? A Monday.

Q The same time that it was made by Dr. Chapman? A The same time.

Q Doctor, did you find a condition of arthritis in the pelvic bones of Mrs. McCusker? A I found considerable pain there. I wouldn't say it was an arthritis. I should say I found considerable pain on examination.

40

Edward Rayne, direct.

Q Doctor, what was your diagnosis as to the cause of that pain? A She had a fractured coccyx, which was evident. That is about all I could find.

Q You are not an X-ray specialist? A No, I am not.

10 Q And can't testify as to what the X-ray discloses? A No.

Q How did you find that there was evidence of a fractured coccyx? A By the callous on the coccyx. The deformity of the coccyx, with the callous fine where it had united.

Q Does that callous formation that you found indicate a previous fracture? A It indicated a fracture, yes.

20 Q Does that occasion considerable pain? A In a great many cases, yes.

Mr. Vosseller: I can't hear you.

The Witness: In a great many times it does.

By Mr. Brenner.

30 Q As far as Mrs. McCusker is concerned, would you or would you not say there is pain present at that particular joint? A I would say there was.

Q Does that pain exist to a considerable degree? A It did on examination, yes.

Q Is there any way, doctor, of telling how long that painful condition will continue? A No.

40 Q From the evidence of a fracture that existed at that point and is still painful, is that going to affect Mrs. McCusker in any way in the future? A It might during labor.

Edward Rayne, direct.

Q Is it probable that it will? A Very probable, yes.

Q And in what respects would it affect her during labor? A Why, I would consider it would make labor difficult from the rigidity of the coccyx during labor, and the head wouldn't pass over it well, because it would be rigid. 10

Q What would it be necessary to do? A Forceps.

Q What is the likelihood of the baby being born alive? A That you can't say.

Q It is then not impossible for her to have children, but if she does have them, she will have them with considerable pain? A Why, she will have them with difficulty.

Q Doctor, there has been some testimony as to the absorption of the pubic bones. Will that have any affect on her future? 20

Mr. Braun: I object to that unless it is made more specific, if the Court please, "there has been something said about the absorption of the pubic bones."

Mr. Brenner: I will withdraw it.

By Mr. Brenner.

Q There has been testimony to the effect that there is an absorption of the pubic bones. Will that have any affect— 30

Mr. Braun: That is the same question, your Honor. I object to it. There is no testimony that the pubic bones have been absorbed. That is what the question almost implies. I think it is a question of degree and location. 40

Edward Rayne, direct.

The Court: If it is objected to, and you have to enlarge upon it, you will have to take up the time necessary to do it.

By Mr. Brenner.

10 Q Doctor, can you read an X-ray sufficiently so that making a comparison between the first and last X-rays taken, you could tell whether or not there is an absorption of the pubic bones?
A I think I could.

Mr. Braun: Now, first, the doctor is not an X-ray man—

20 The Court: I don't see what you are taking up any time about that for. It seems to me that any doctor could answer the question as originally put. He is subject to your thorough cross examination and you can bring it out if he is not.

Suppose, you ask him if there is any absorption, no matter how slight, at this point, and whether that would affect the child-bearing labor of the mother.

By Mr. Brenner.

30 Q You have heard the Court's question? A The only danger would be if there was sufficient absorption you might have a fracture—a fracture of the pubic bones or where the absorption occurred.

By the Court.

Q You might have a fracture while the child was being born, is that what you mean? A Yes.

40 Q What do you mean by "sufficient." A I don't understand your question.

Edward Rayne, direct.

Q You said if there was sufficient absorption there might be a fracture of the bone when the child was being delivered? A If the bone was thinned down.

Q What do you mean by sufficient absorption? How much? A About fifty per cent. of the bone. 10

The Court: Go on.

By Mr. Brenner.

Q Now, can you tell, doctor, by comparing the first X-ray plate that was taken with the last one that was taken whether absorption is going on? A I can tell if there has been some absorption. I can't say whether it is still going on or not. 20

Q Whether it had gone on up until the time it was last taken? A Yes.

Q Will you make a comparison, doctor, between them. Take the X-ray P. 6, that is the first one taken in March, 1928, and compare that, if you will, with the one marked P. 8, taken December 8, 1928, and after making that comparison tell us whether there has been any considerable absorption from the time the first picture was taken until the time the last was taken? A Yes, there has been some. There is not any great amount. 30

Q That is still going on— It would be impossible to say if that is still going on? A I could not say.

Q That would require further X-rays? A Yes.

Q Doctor, have you specialized in your profession? A No. 40

Edward Rayne, cross.

Q Have you done any obstetrical work? A Yes.

Q To what extent? A I think I brought around two thousand children into the world or more.

10 Mr. Brenner: Take the witness.

Cross examination by Mr. Vosseller.

Q You made an examination of this coccyx of this woman, didn't you? A I did, yes.

Q How did you examine it? A For vaginal and for rectum both.

Q How? A Through the vagina and through the rectum.

20 Q I suppose you examined her both ways? A Yes.

Q You say that she has pain. Now, you don't know except from what she says, do you, that she has pain? A No, just take her word for it.

Q That is a subjective symptom, isn't it? A Yes.

Q In other words, you take the patient's word for whatever pain she may have? A Yes.

30 Mr. Vosseller: That is all.

Cross examination by Mr. Braun.

Q Doctor, where did this absorption appear in the X-ray plates with reference to the bone absorbing? A It seems to be on the left pubic bone—on the lower part of the left pubic bone, as you come down the pubic bone through here (indicating).

40 Q How is it evidenced to you? What do you see in that picture that convinces you that there

Edward Rayne, cross.

has been an absorption? A I didn't get your question.

(The last question was read by the reporter.)

A Because the right bone is larger than the left. They are not symmetrical. 10

Q Then, it is merely by comparison between the two bones? A That is all.

Q And if there is any distortion because of the tilting of the X-ray apparatus by the motion of the patient, you can't say? A I can't say. I don't know sufficient about X-rays for that.

Q Did I understand you to say, doctor, that the reason that the coccyx in its present condition will interfere is because it is rigid? A 20 It is rigid. There is no give to it.

Q You say that there should be some motion there? A Decidedly.

Q Where did you find this evidence of the fracture? In what portion of the coccyx? A About, I should say, an inch, an inch and a quarter from the tip. At the end of the coccyx.

Q Where? To the right or to the left? A There was a callous around the bone.

Q Entirely around? A No, through the back 30 part.

Q You didn't find any evidence of a little chip having been separated? A No.

Mr. Braun: That is all.

By Mr. Brenner.

Q Did you find evidence of a chip, doctor, after the callous is formed? A Not if it is in the callous.

Motion for a Non-suit.

By Mr. Braun.

Q The size of the callous would indicate the extent of the fracture? A No, not necessarily.

10 Q Why not? A If you keep a fracture immobilized properly, you will get less callous than if there were a lot of motion in it while it is healing.

Q You wouldn't get a callous formation if a small portion were chipped off the side? A Decidedly not.

Mr. Braun: That is all.

Mr. Brenner: That is our case, if the Court please.

THE PLAINTIFF RESTED.

20

Mr. Vosseller: Of course, there is another case being tried here, and that is the case of the Public Service against the B & N; but before going into that I would like to move at this time for a non-suit as to the Public Service Coordinated Transport Company on the theory of law as laid down in the case of McCairns against Public Service Railway Company.

30

In that case, which is almost, it seems to me, directly on all fours with the case that we are trying here, the Court held that the jitney was being driven in flagrant violation of the statute. There was nothing in evidence that obtained at that point which would seem in any way to justify the action of the driver in departing from the general injunction of that act—that where a street car and vehicle are proceeding in the same direction and the vehicle undertakes to pass

40

Motion for a Non-suit.

the street car, he must do it on the right and under certain well defined rules.

The driver of the Public Service Coordinated Transport Company's bus was not bound to anticipate, to suppose, or to assume that the other driver—the driver of the B & N bus—would disobey the law, and that he was, as a result, under no duty to give warning which would serve notice upon the illegally driven jitney of his approach. 10

There is no question of warning in this case, but the Court in this case held that there was no legal negligence, I think the Court will recall maybe the circumstances.

This accident, McCairns case, occurred on Broad street. A trolley car was turning—

The Court: Broad street, Newark? 20

Mr. Vosseller: Broad street, Newark. A trolley car was turning to go up a street or into a car house. The jitney attempted to pass it on its left and ran head on into a trolley car approaching the jitney in the opposite direction. The suit was by a passenger in the jitney, and the Court held in that case that there was no legal negligence attributable to the driver of the motor car. 30

I don't know how in this case there can be any legal negligence attributable to the driver of the P. S. bus, which was coming down in a proper manner. He had no reason to expect, anticipate, or to assume that the jitney bus of the B & N Company would disobey the law by traveling to the left of that standing trolley car, and it seems to me that we are absolutely free from negligence, and the Court should grant a non-suit in this case as to that company. 40

Motion for a Non-suit.

(Argument off the record.)

10 The Court: So far as this motion is concerned, I am familiar with the case that Mr. Vosseller has cited, but there was the appellate court that had all of this evidence before them, and they said that the Court in that case should have directed a non-suit.

Well, while I don't for a minute question the correctness of that court, it is not my place to comment on it, but each case must stand on its own set of circumstances.

20 There is nothing in the recital of that case that so far as the physical situation is concerned shows that it was the same kind of situation that was here. Here is a rather unusual physical condition. The crossing of one set of railroad tracks over another set of tracks with the necessary bridges and arches and with the depression in the streets. Now, it is true that under our traffic laws the driver of the B & N bus, in order to comply literally with the traffic laws should have passed the trolley car on the trolley car's right. He didn't do it. Now, if the jury concluded that if he had passed this car on the right, as the traffic law provides, this accident wouldn't have occurred, then it would be for them to say whether or not the cause of this accident was the sole and exclusive negligence of the driver of the B & N. Of course, the law is, as is indicated by that case and in a number of other cases, that a man ordinarily has a right to assume that another user of the highway is going to live up to the traffic laws.

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Motion for a Non-suit.

CHARLES F. BAKER, a witness produced on behalf of the defendant, being first duly sworn according to law, on his oath saith:

Mr. Brenner: I may say this: For the purpose of getting the evidence in as quickly as possible, I will be glad to consent to the qualifications of all the doctors. 10

Mr. Vosseller: I think the jury in this case is entitled to know what experience these doctors have.

Direct examination by Mr. Vosseller.

Q Doctor, where did you graduate? From what college? A Columbia College, in New York. 20

Q How long ago? A 1902.

Q Did you specialize in some branch of medicine? A I was in general practice for ten years, but always interested in the X-ray, and I specialized in that line alone since 1914.

Q Will you tell the jury your connections as an X-ray specialist? A Well, for twenty-three years I had charge of the City Hospital X-ray Department in Newark, and I am still connected with them as a consultant. About fifteen years I have had charge of the work at Saint Barnabas Hospital at Newark. About the same time I have had charge of the X-ray Department of the Home for Crippled Children, in Newark, the Eye and Ear Hospital, in Newark, the Presbyterian Hospital, in Newark, and the Babies' Hospital, in Newark. For several years I was in charge of Saint Michaels Hospital X-ray Department, in Newark. For about two years Saint Mary's Hospital in Orange, for about two years 40

Motion for a Non-suit, Public Service Co.

10 I could go on and argue this, but I don't think it would be fair to any of the parties to argue it. It is sufficient to say at this time that I don't feel justified in granting the motion, not that I deem that the jury should infer from that that I form any conclusions on the question of fact involved.

The motion for the present is denied. You may have an exception.

Mr. Vosseller: If the Court please, the situation has come up due to the other suit—

20 The Court: No privileges due to the other suit. If in the other suit they have any other form of evidence to present, now is the time to present it. I am holding the jury here, and I don't want to keep them here from their employment any longer than possible.

Mr. Vosseller: Would it be all right with the Court if I put the medical on and then take up the question of damages and so forth with the other case?

The Court: You are not the plaintiff in the other case, are you?

Mr. Vosseller: Yes.

30 The Court: If that is agreeable to Mr. Braun.

Mr. Braun: Yes.

The Court: How about you, Mr. Brenner.

Mr. Brenner: No objection.

The Court: All right, then in order to convenience the doctors, call them.

Charles F. Baker, direct.

the Women's and Children's Hospital, in Newark.

Q During that period, doctor, what is your average yearly? What would be the number of X-ray pictures that you took on an average yearly if you can give it? A Personally, now, I take few pictures myself, but examine all of those pictures taken in my office, which is between forty and fifty a day, and for many years I saw twenty thousand, up to twenty-five thousand at the Newark City Hospital and four or five or six thousand at each of the other hospitals. 10

Q It was your duty to read and interpret these pictures, I take it? A Yes, sir.

Q And you still do it? A Yes, sir, all except the City Hospital.

Q Did you at the request of the Public Service Coordinated Transport Company make an examination of the pictures that were taken of Mrs. McCusker, the plaintiff in this case? A I saw them Monday afternoon here in court. 20

Q I will ask you to point out, so the jury can see on that picture, which is P. 6, the sacro-iliac joint. A There are two on each side, just below the vertebral column(indicating).

Q What are their functions? A One on each side—I said two on each side. 30

Q Yes. What are their functions? A The function of the sacro-iliac joint is to join the sacrum with the ilium and form the rear part of the pelvis—sort of a key stone.

Q Is there any evidence on that picture, P. 6, of a separation of the sacro-iliac joint or the sacrum from the ilium? A On which side.

Q On either side? A No, sir.

Q Is there any separation at all on either side? A No, sir. 40

Charles F. Baker, direct.

Q Are they equal from each other, equal from the pubic bone from each other? A Yes.

Q Do you see any pathological condition of the bones there, such as arthritis? A I see no arthritis. I see a very slight lipping on the lower margin of the right sacro-iliac joint.

10 Q Would you explain the term lipping, to the jury? A A slight production on the surface of the bone at the end of the articular surface. It is pointed. It is about an eighth of an inch long.

Q Does that indicate anything to your mind of disease or diseased bone? A It doesn't indicate diseased bone in the true sense. That joint may have been sprained at some time, but it took some time for this spur, as we call them, to develop—several months.

20 Q Now, doctor, will you look at the pubic bones? Is there anything abnormal in their relation to each other or in their relation to this woman's body? A No, sir. The pubic bones are directly in line with each other. They show no unusual separation. There is always the difference in density in the media line where the cartilage separates one side from the other. This loss of the cartilage through the fusion of the two bones never occurs until they are late in life,
30 between the age of seventy and ninety years of age.

Q I think there has been some testimony as to the chipping off of one or the other of these bones. Will you examine that picture and tell the jury if there is any such thing there? A No. In one of the other films there is a slight irregularity on the upper margin of the pubic bone, which I think was an artifact or a defect in the film and not in the bone itself. That doesn't
40 show on this plate.

Charles F. Baker, direct.

Q Am I to understand they are the normal pubic bones of a normal person? A Yes.

Q Can you see the coccyx in the picture? A Yes, sir. You can see it, not only plain—

Q Does that picture disclose a fracture, a break, or a chip, or anything abnormal? A No, it shows no fracture, nor chip, nor break. The very tip of it deviates at the last quarter of an inch towards the left. This is marked right up here with the label, I assume, that is toward the left. There are several lines meeting the coccyx. One is at the sacro-intercostal joint, and the others—there are two or three others which represent the segmentation of the coccyx, which is present in the infant and which fuses later on in life, just leaving these faint lines. They could not be called fracture lines. They are too smooth and regular. 10 20

Q You say there is a slight deviation to the left? A Very slight, right at the extreme tip.

Q Is that an abnormality? A We find it in a large number of normal patients. I don't consider it is abnormal in this case.

Q Does it have any significance in the way of pain, disease, or otherwise? A It doesn't to me.

Q I don't know whether I asked you this question or not. Do you know which picture that was and when it was taken? Is that one of the first? 30

Mr. Brenner: The first.

A It is marked July, I think. Marked 7, line 11, line 29, P. 6.

By Mr. Vosseller.

Q I don't know whether I asked you this question. Do you find in that picture, doctor, 40

Charles F. Baker, direct.

any evidence of an arthritic condition of the bone anywhere, coccyx or otherwise? A Well, there has been no destruction of the bones, and there has been no absorption of the cartilage. The only trace of new bone development is that little spur that I spoke to you about, at the lower end
 10 of the right sacro-iliac joint, and I would, therefore, say that the signs of a true arthritis are absent, excepting there has been some irritation sometime on the right sacro-iliac joint.

Q What might that occur from, doctor? A That can occur from a toxic infection or from a strain, lifting, although that has been doubted. There is a great argument about that, but whatever caused it was present sometime prior to the taking of this picture.

20 Q Is there any way, doctor, by which you could estimate the time? A I would estimate it as at least three months—it might have been done years previous. I couldn't tell how much longer.

Q Doctor, I think one of the doctors in this case said that the coccyx supported the pelvis. Is that so? A No, sir.

30 Q What is the function of the coccyx, if it has any? A It has no general function. There are some muscles attached to it, which is supposed to be the rudiment of a tail that a prehistoric man had, and which is undergoing a retrograde removal. You might say a metamorphosis.

40 Q Arthritis in a shadow picture X-ray is usually indicated by a cloudiness, isn't it? A A cloudiness, loss of density of the bone, loss of calcium lime salts in the bone, absorption of the cartilage, and the appearance of coming closer together gradually pressing upon each other, and eroding the surface provided there are germs in it producing pus. Then we have the chronic

Charles F. Baker, direct.

productive form of arthritis where the cartilage may or may not be absorbed, but where the muscles of the articular surface, the bones forming the joint become irregular from an enlargement due to deposits of new bone produced by irritation of toxins or poisons coming from some focal source.

10

Q Do you find any evidence of that condition in this particular picture that you are looking at?

A The only evidence that I see is that one little tip down there at the bottom of the sacro-iliac joint.

Q Will you take the next picture, which is P. 7? Before you put that up, I would like to ask you what would be the effect of the removal of the coccyx on the human body? A If the patient is suffering pain previously, he is relieved of his pain, but he doesn't miss his coccyx. He doesn't know whether it is in or not.

20

Q Will you look at that picture, doctor, and tell us— A It is marked 7, line 8, line two eight. It has no marks on it, to indicate which is the right or the left side.

Q Can you tell, doctor, from looking at the picture, which is the right and which is the left? A I would assume that as we fact it, our right is on the right side of the plate, because I can see very slight irregularity at the bottom of that sacro-iliac joint, which in this particular picture is not as marked as in the last one.

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Q Will you explain, doctor, if that picture shows any different situation of this person when it was taken than the first picture that you looked at, that is P. 6? A It is a very much finer picture. It shows more contrast, better visage of the bones, and all. It doesn't exactly agree with the first picture, although I have no doubt it is

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Charles F. Baker, direct.

of the same person. This lipping down here (indicating) doesn't show as it did then.

Q What would that indicate, that lipping not showing as it did then? A It might show that the picture was taken from a slightly different angle, so that the lipping is hidden underneath the shell and bone.

10 Q Does it show any separation of the sacroiliac joint? A No, sir; it doesn't.

Q Is there anything abnormal about the pubic bones in that picture? A There is an abnormal appearance of that pubic bone. It doesn't show on this picture.

Q Explain it if you can. In what way it is abnormal and so forth. A Well, there is a shadow over the upper portion of it. I think that the shadow is produced by gas in the rectum, such as we see in other locations all through the bowels. Here is a gas shadow. There is a large gas shadow. Here is a smaller gas shadow. The bones can be seen to be in line still, and if it were a defective bone, it would be absolutely symmetrical one on both sides of the median line. The space is still present normally between the two pubic bones.

Q And would that happen if there were the lipping or whatever you call it? A The erosion, you mean?

30 Q Yes. Would it be perfectly symmetrical on both sides? A I could be, but I doubt if it would be.

Q Did you ever see in all your experience a case where it was perfectly symmetrical on both sides? A I have never seen an arthritis when an infection—the symphysis pubes are not subject to the infections of germs. In fact, it is not a true joint. It is simply a space with an inter-

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Charles F. Baker, direct.

posed piece of cartilage between two bones which allows them to spread apart.

Q Did I understand you to say that you had never seen in all your experience a case of arthritis where it was perfectly symmetrical on both sides? A I never heard of it existing.

Q Doctor, does that picture show or indicate to you in any way that there is any arthritic condition aside from the one lipping place that you point out? A No, sir. 10

Q And if it did show an arthritis, will you explain to the jury how you could tell? A Well, consider comparing the two sacro-iliac joints, one would see that the line, indicating the articular surfaces, which can be traced down here has two parallel lines. Most of them would be either partly or entirely obliterated, or if it was of the slow technical variety of arthritis, those lines would stand out boldly against the softer bones surrounding them. Increased breakage would account for that, due to new deposits of the bone along the articular surfaces. If there had been an absorption of the cartilage the bones would lie in the base. If that infection had gone on further the bones would corrode and destroy each other by the slight movement and pressure that is always in that joint. 20 30

Q Do you see the coccyx on that picture? A I do.

Q You do? A Yes, sir.

Q Do you see any evidence of malformation or breakage? A I see a slight deviation.

Q Well, that you saw in the other picture? A The same thing as before.

Q Do you see any evidences of cartilage or callous? A There is cartilage between— 40

Charles F. Baker, direct.

Q I mean fracture or callous. A I don't see any evidence of callous.

Q If it had been broken or fractured would there be evidence of callous? A Yes, sir.

10 Q Now, as to the sacro-iliac joint, is it your opinion that there is no separation or that there is a separation? A In my opinion, there is no separation.

Q Now, doctor, will you take P. 8— A This is P. 8, marked December 28, 1928.

20 Q Yes. Will you explain to the jury what you find wrong about that picture as to the sacro-iliac joint, as to the coccyx, as to the pubic bone, and as to any arthritic condition there? A Well, this picture is not as good as the last, and it is not as good as the first. It doesn't show as good details. It shows that little lipping, marked by an arrow which some one has placed there.

Q Is that a separation, doctor? A That is not a separation. That is that little spur that I spoke to you about. It also shows another arrow. Turn to this light here. It shows an irregularity in the contour of the symphysis pubes.

30 Q What does that indicate to your mind, doctor? A Well, I said the last time I thought it might be due to gas in the intestines, but lots believe that gas would flow over the same space that that is. I believe there must be some abnormal development in the symphysis.

Q Have you any opinion as to the cause of the abnormality there? A No, I couldn't say.

40 Q Could you say it was the result of trauma or a blow? A I don't think it is. This is a part of the body that is subject to great variations, so is the coccyx.

Charles F. Baker, direct.

Q Do you see any wasting away or erosion of the bone there? A You mean at the symphysis?

Q The symphysis, yes. A No, I don't see that that is wasting away. That bone shows good, strong density, but it shows an abnormal outline.

(There was a general discussion among the Court, the witness and the jurors, which was off the record.) 10

By Mr. Vosseller.

Q Did that last picture show any evidence of arthritis, P. 7, doctor? A I said a little—a little lipping.

Q That is all any of those body pictures show, isn't it? A Yes.

Q Will you look at these head pictures? A 20
This is P. 9.

Q Yes, sir. Did you examine that picture before? A Yes, I did.

Q What did you find, doctor, as to her teeth? A I found in the upper jaw there was a breaking of the molar and in the bicuspid region there are some teeth surrounding by black areas indicating infection. It doesn't show it as well as one of the others.

Q What is that P.— A P. 9. 30

Q Will you look at P. 10 and 11 and tell the jury what you find? A P. 11 is not here.

Q I will get it for you. (Mr. Vosseller handed an X-ray plate to the witness.) A In P. 10 the teeth override each other and it is impossible to see very much about that, but in the lower—the teeth of the lower front jaw, front region of the jaw, the central region of the jaw, there is evidence of infection about the teeth. This is the best view. 40

Charles F. Baker, direct.

Q That is what? A P. 11, taken March 5, 1928. This shows a large amount of bone absorption about these upper teeth. It suggested a rather large abscess, which goes around her bicuspids and through some of the central incisors teeth in the middle of the upper jaw on the left side. This is marked right here. It also shows in the lower jaw an area of dark bone, indicating infection on the right side and one on the left. It shows that the bone is being absorbed down along the lateral margins of these teeth. The mouth appears to be in a very unhealthy state, although as the doctor said, this is not a genuine dental examination.

10
20 Q What does that signify, doctor, that state of the mouth, the teeth in the way—A It signifies that the patient may be subject to a toxic condition or poisonous condition resulting from the teeth.

Q Would the condition of her mouth have anything to do with her present physical condition? Would it cause any of the things that she complains about? A Yes, a condition of the mouth can produce great disability.

Q Arthritis? A Arthritis of the different joints.

30 Q And it is apt to be at any joint, is it not? Because it happens to be the teeth it don't necessarily have to be the shoulder or the arm, does it? A It can be any joint or any other joint that has been bruised or injured is the joint of least resistance and is most apt to become the one.

Mr. Vosseller: That is all.

Charles F. Baker, cross.

Cross examination by Mr Brenner.

Q Doctor, you didn't examine this young lady yourself, did you? A No.

Q And you, of course, can't therefore tell us whether she has pain in the vicinity of or in this joint that we have been referring to? A No. 10

Q Doctor, if there is pain there then it is due to some condition that exists at this particular place, does it not? A It must be.

Q And arthritis will cause pain, will it not? A Yes.

Q It is an inflammation? A Yes.

Q And arthritis acts, doctor, in two ways, either by absorbing bone or depositing more bone? A That is true. 20

Q I mean that is the layman's way of putting it? A That is a good way of putting it.

Q This lipping that you talked about at the sacro-iliac joint shows an additional bone, does it not? A Yes, very slight, but nevertheless, a slight addition of bone at one end.

Q Now, doctor, if there was an arthritis in that particular joint one of the evidences of arthritis would be a spur of that kind, would it not? A Yes, it could be. 30

Q And also another evidence of an arthritis would be pain at that particular joint, would it not, doctor? A Yes.

Q So that when you have a condition of the boney spur plus the pain at that particular joint then you have two symptoms of an arthritis? A The only thing is that the spur is found in a great many people in which there is no pain.

Q That might be right. A In which there is no arthritis. 40

Charles F. Baker, cross.

Q I mean, right now the hypothesis from the existing condition— A Yes, hypothesis is correct.

Q (Continued.) Is that if there is the spur plus the pain that it is an indication of arthritis?

10 A That would be one indication of a slight arthritis.

Q And if you have this situation, doctor: where regardless of what the condition of a patient was prior to the time of the accident, that they suffered no pain at the region of any particular joint, and then had an injury at about the point of that joint and there was subsequently a condition of the boney spur and pain at that point, wouldn't that indicate an arthritis started by the injury? A I don't have to answer that

20 yes or no, do I?

Q No, doctor. A If a patient had very bad teeth and had an injury to a joint, that joint would be more subject to pain, a r—as they call it, than the joint before it was injured. These first pictures were taken only a short time after the injury. In my opinion, it is too short a time to produce the spur—in which a spur could have developed. Does that answer the question?

30 Q Doctor, you fixed the time of the development of arthritis as approximately three months?

A Yes.

Q Of course, these pictures were taken in March, you understand that, the first one? A And the accident was in January.

Q Two months? A Yes.

40 Q You couldn't say it wasn't impossible? A I couldn't say it was impossible in two months, but I could say it was impossible in one month. At the end of two months you can see it definitely.

Charles F. Baker, cross.

Q I am not talking about the fracture. A The same rule applies to the development of new bone. How long it would take the new bone to show in an X-ray plate.

Q There is no claim of a fracture of the sacroiliac joint. There is a claim of an inflammation, and inflammation indicates an arthritis, does it not? A Not necessarily. That is too general. 10

Q It is one of the symptoms of an arthritis? A An arthritis means inflammation of a joint.

Q Where you have the pain and the boney spur, you have, therefore, two symptoms that indicate an arthritis? A They may indicate it, yes.

Q You think arthritis can develop in a period of two months? A Yes, arthritis can develop over night. 20

Q It can develop over night? A Certainly. As soon as infection occurs, arthritis is present.

Q Now, there can be the infection, doctor, without there being the arthritis? A No, sir.

Q In other words, what I am trying to get at is this: That there may be an infected tooth but no arthritis of any joint? A Oh, yes.

Q An injury to a joint would aggravate a pre-existing condition, would it not? A Of that joint, you mean? 30

Q Yes. A Yes.

Q So that if that particular joint was subject to an arthritis, an injury would bring about the absolute condition, in other words, throw it up? A Yes.

Q And give pain where there was no pain before? A Possibly.

Q And increase inflammation where there was no inflammation or very little inflammation be- 40

Charles F. Baker, cross.

fore? A Well, if there was none before, it couldn't increase it.

Q Well, assuming there was a slight inflammation before which gave no pain, and the occurrence of an accident and an injury at that particular joint would aggravate the pre-existing condition—

Mr. Vosseller: I don't there is anything in this case for bringing up such a claim as aggravation of a pre-existing condition.

Mr. Brenner: I think it is proper cross examination, if the Court please.

The Court: Go on.

By Mr. Brenner.

20 Q Would you assume that all inflammation caused pain? A I would assume that there was.

Q Now, doctor, if she had no pain in the sacro-iliac joint or, in other words, in that vicinity prior to this accident, then she had no arthritis prior to the accident, did she? A I couldn't say that, sir. She might have had it ten years before.

Q Well, I am talking of that particular time.
A I can't answer that question any better than
30 you can yourself or any—

Q Doctor, if there was an arthritis present before this accident occurred, would it be indicated to her in any way whatsoever? A She should have pain.

Q She should have pain? So, if she didn't have pain the indications are that she didn't have an arthritis at the time that this accident occurred? A I think so.

Q And if she got the pain subsequent to the
40 happening of the accident and that pain con-

Charles F. Baker, cross.

tinued and you had with that this big spur that you have shown us, that is an indication that she is now suffering from arthritis? A I think you have attached too much significance to what I have said about the spur. I was asked if there was anything abnormal about that joint, but that spur doesn't indicate a general arthritis at that joint. If it did, I would have described more generally absorption—absorption of cartilage here at the bone if this were present. I said that indicated what might have been an indication of strain upon that joint at some earlier date, but I don't say there was a true arthritis of that joint. I didn't say there was. I don't think there was. 10

Q You won't say there wasn't? A I will say there wasn't.

Q Will you tell us, then, the cause of the pain she is suffering from? A I won't say she is. 20

Q You won't say she is not suffering from pain? A I cannot.

Q You could tell more completely if you made a personal examination of her? A No, sir, pain is a subjective symptom. Tenderness is pain.

Q Can you tell whether there is tenderness there by examination? A I might or might not.

Q Doctor, you also said that as far as that coccyx is concerned that a good many people had deviated coccyx. That nevertheless is an abnormal condition, is it not? A It may be a bit abnormal, but not pathological. There is quite a difference. It is an anomalous condition not from a state of health. 30

Q The normal coccyx is a straight coccyx, is that so? A It is usually straight, yes.

Q So that if there is a deviation it is an abnormal condition? A That is your statement; that is not mine. I said no. I said it was an anomalous condition. 40

Charles F. Baker, cross.

Q You, of course, don't know what caused the deviation in her case? A No, it is impossible to tell.

10 Q You can't tell whether it was due to injury or whether she was born that way? A Well, I am of the opinion that it is not due to injury. I can tell that, because I can see no indication of an injury. We have to go by what we see.

Q Can you definitely, doctor, whether there is a callous formation, on a vaginal or a rectum examination, such as Dr. Imre testified? A I don't think you can as accurately as you can with an X-ray picture.

Q So that in your judgment there is no callous formation there? A That is my judgment.

20 Q You don't agree entirely with Dr. Imre?
A Yes, sir.

Q And, doctor, on the examination of the pubic bones and any bones in the vicinity of the pelvis, you just make up your mind definitely that that cup-shaped disturbance of bone—if I might refer to it in that manner—was simply a gastro (?)? A Yes, the bones are there. They show through that shadow and they do in the other pictures.

30 Q You later changed your mind when you saw that the additional pictures had the same thing?
A I changed my mind as regards the shadow of the gas.

Q Can you tell us now what is apparently an absorption of the bone? A No, I don't say that the bone has disappeared. I say there is an irregular appearance about that—that the bone is there.

40 Q Can you tell us what caused that? A No, I can't. I think that is another anomaly.

Charles F. Baker, cross.

Q Will you say positively, doctor, that it is not due to injury? A Yes, I think it is not due to injury.

Q But you can't attribute any particular cause to it? A I said, an anomalous condition. This even was present in the symphysis.

Q It is also an abnormal condition, doctor? A Yes. 10

By Mr. Vosseller.

Q Doctor, is there anything in any of the X-ray exhibits of this woman's body, that is P. 6, 7 and 8, that would indicate to you that this woman could not have children and could not have a normal birth? A No, sir.

Q There is nothing that would indicate to your mind that there is anything abnormal there to prevent child birth? A No, sir. 20

By Mr. Brenner.

Q Doctor, you say that a rigid coccyx would not interfere with birth? A I didn't say that. Assuming the coccyx is rigid—

Q Assuming the coccyx is rigid, would that interfere with birth? A Slightly. 30

Q You don't do obstetrical work, do you, doctor? A I did for ten years.

Q You don't now? A No.

By Mr. Vosseller.

Q Is there anything in the pictures that indicate a rigid coccyx?

The Court: Tomorrow morning at half-past nine.

Charles F. Baker, cross.

Mr. Braun: If the Court please, I was waiting my cross examination until these gentlemen finish. I should like to ask two questions.

The Court: All right.

10 *By Mr. Braun.*

Q Doctor, if this lady had an arthritis in that joint, could she walk without a limp? A No, sir.

Q Referring to P. 6, at the upper arrow on the coccyx, do you find any evidence of a small fragment chipped away?

Mr. Brenner: The doctor has already testified to that, saying he didn't.

20

By Mr. Braun.

Q I am calling your attention to the upper part that was destroyed? A No, I didn't. That is the normal outline of the joint between the sacrum and the coccyx, and I see no chipped pieces of bone there.

Mr. Braun: That is all.

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(A recess was taken until 9:30 A. M. February 14, 1929.)

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Herbert Austin Vogel, direct.

SECOND DAY.

Transcript of stenographer's notes of evidence in the above-entitled cause, taken before Hon. Peter F. Daly, Circuit Court Judge, and a jury, at the Union County Court house, in the City of Elizabeth, New Jersey, on the fourteenth day of February, A. D. 1929. 10

Appearances:

Patrick J. O'Connell, Esq., and Alfred Brenner, Esq. (present), attorneys for the plaintiff.

Messrs. Schneider & Schneider and William T. Braun, Esq. (present), attorneys for the B & N Transportation Co.

Henry H. Fryling, Esq., and William F. Vosseller, Esq. (present), attorneys for the Public Service Company. 20

HERBERT AUSTIN VOGEL, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Vosseller.

Q Doctor, where do you reside? A 1060 East Jersey street.

Q You are a doctor by profession? A I am. 30

Q Where did you acquire your medical education? A Albany Medical College, Albany, New York.

Q How long have you been practicing? A Graduated in 1915 and have been practicing since 1916.

Q Where? A Two years in Albany and then the Army period and since 1920, in Elizabeth. 40

Herbert Austin Vogel, direct.

Q Have you specialized in any branch of the medical profession? A I have, sir, X-ray.

Q What connections have you as an X-ray expert? A Roentgenologist to the Elizabeth General Hospital, Elizabeth, and the All Souls Hospital of Morristown, New Jersey.

10 Q How long have you been a roentgenologist? A Nine years in the Elizabeth General Hospital and five years with the All Souls Hospital.

Q During that period of time have you any notion of the average number of pictures you would read in a year? I mean the number of pictures you would take and read in a year? I suppose you took them and read them both, did you not? A Yes.

20 Q Have you any notion of the number? A Oh, I should say, in all probability, about 15,000 pictures.

Q A year? A At least.

Q Have you examined the X-ray pictures known as Plaintiff's Exhibits 6, 7, 8, 9, 10 and 11 in this case? A I have seen them.

Q Do you remember when you examined them? A One of them I examined, I believe it was about six to eight months ago.

30 Q Doctor, at whose request did you examine these pictures? A Dr. Green from Elizabeth.

Q Will you look at that picture and put it on the slide? A Yes, sir.

Q That is Plaintiff's Exhibit 6. Do you recognize that picture, doctor? A I recognize it by a little mark of identification that was put on at the time I looked at the picture. The initial was up in the upper left-hand corner, J. S. G.

40 Q Will you look at the date of the picture and tell me when it was taken? A I find no other mark of identification so far as the date

Herbert Austin Vogel, direct.

is concerned. The paster covers some numbers which I cannot see.

Mr. Vosseller: Is it agreed that this picture was taken in March, 1928?

Mr. Braun: Yes.

10

By Mr. Vosseller.

Q Doctor, will you put that picture on the slide? A Yes, sir.

Q You examined the pictures at the request of Dr. Green? A Yes.

Q For what purpose did you examine them? A For the purpose of depicting whether or not there might be any injury to the bony structure of the pelvis and hips or the lower spine of the structure showing in the picture.

20

Q Will you point out the sacro-iliac joint so that the jury may see it? A The sacro-iliac joint on either side is located as I have pointed (indicating).

Q Is there a separation of the sacro-iliac joint shown on either side of the picture? A No, sir.

Q Can you tell the jury how you determine that there is not a separation there? A The appearance of the lines of the joint itself. I would not say there was any sacro-iliac separation from this picture alone for the reason that the pelvis is not absolutely straight. There appears to be a slight tilt.

30

Q Is it or is it not easy to determine from such an X-ray picture whether or not the sacro-iliac joint is separated? I mean for an expert to determine that? A Depending on whether or not the picture absolutely in the anatomical position. If it is such, it is not difficult.

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Herbert Austin Vogel, direct.

Q You say it would be difficult to determine it from that one picture? A Yes, sir.

Q By looking at Plaintiff's Exhibits 7 and 8, can you come to a more thorough understanding as to whether or not there is a separation? A I assume these pictures are all taken of the same
10 patient, and I would say there is no separation. This picture particularly (indicating) appears to be symmetrical.

Q I call your attention to Plaintiff's Exhibit 8 to a rather irregular line on the right side which differs somewhat from the left-hand side and ask you if that has any significance? A That line, as pointed out, is the joint, part of the joint, and while it is not just exactly the same as on the opposite side, I did not feel that it is
20 an abnormality or a pathological condition, because we find that both sides of the body are not always developed entirely alike.

Q Directing your attention to what I call the pubic bones, these two bones here (indicating), will you look at Plaintiff's Exhibits 6, 7 and 8, if you need them all for the purpose of determination, and tell the jury what you find of an abnormal character there, if there is any such thing? A The inner margin of the right pubic bone
30 does not appear identical with that of the opposite side, and the appearance does not persist the same in all of the pictures, apparently due to the fact that the pelvis was not in the same identical position in which all pictures were taken.

Q Do you find any evidence of diseased bones or abnormality or pathologic condition in those pubic bones? A No, sir, I don't. The bone appears in a healthy condition, the side of both
40 pubic bones.

Herbert Austin Vogel, direct.

Q Do you find any sloughing away of bone or deterioration in bone? A No, sir.

Q I want to direct your attention to the coccyx, doctor. Is that plainly delineated on those pictures? A In one picture it is very plainly shown, and in another not so well.

Q Is there anything abnormal about the coccyx as shown by the picture? A There is a slight deviation of the coccyx, but I find no evidence of any other condition.

Q Do you see, on that picture, any evidence of a break, a fracture, a chip or anything outside of the deviation from the median line? A No, sir, I don't.

Q Doctor, do you see, in any of those pictures, Plaintiff's Exhibits 6, 7 and 8, any evidence of an arthritic condition of the pelvic bone or the pubic bone or of the sacro-iliac joint in any of its parts? A The only thing I note about the right sacro-iliac joint is at the lower end of its articulation, and at that point of the site there is a slight lipping.

Q A slight what? A Lipping or just a little spur projection of the bone of the iliac side of the joint.

Q What does that indicate to your mind, doctor? A There is no other accompanying sign of any arthritic change about the joint further up, so I would attach no significance to its presence.

Q Doctor, how is an arthritic condition indicated on an X-ray picture? How would you determine whether there was an arthritic condition there or not? A Well, an arthritic condition is evidenced by certain changes which take place in the joint surfaces, and following that about the bone adjacent to the joint surfaces.

Herbert Austin Vogel, direct.

We usually get a proliferation of bone, an increase in the amount of bone calcium salts or deposits, and the bone becomes more dense, and the joint surfaces become more sharply defined. They are more pronounced and the joint surfaces gradually come closer together as time goes on and as the process increases.

10 Q May I understand from that that you get a greater density from your picture where there is an arthritic condition? A Yes.

Q Do you see any evidence of greater density in any of these pictures, taking the first one which was taken in March, and the last one in December, 1928? A The last picture taken is by far a more satisfactory picture than the first one, and as far as can be used for comparison, I would say there is no increase in the deposition of bone.

20 Q Did you examine the head pictures? A Yes, sir, I did.

Q Do you recall them? They are Plaintiff's Exhibits 9, 10 and 11. A Yes.

Q Will you look at them and look at the jaw part of those pictures and state whether or not you find any evidences of infection there? A Routinely we use small dental films for the examination of the teeth. However, it is sometimes necessary to use films of this type. In the lower jaw there is no question about there being a very evident infection about the remaining lower teeth. There is also a root in the right jaw of the last molar. The crown is entirely missing, and in addition to that there is some absorption of the bone about the other teeth, principally about the crowns.

30 Q Does that indicate an infection, when you say there is some absorption? A Yes, sir.

40

Herbert Austin Vogel, cross.

Cross examination by Mr. Braun.

Q Doctor, an infection can cause pains in the joints without creating an arthritis, can it not?

The Court: Has the witness been called for that purpose or has he been called simply to tell you what the pictures show? 10

Mr. Braun: I think he is qualified to give an expert opinion.

The Court: I again ask you the question: What was he called for and what did he testify to?

Mr. Braun: I didn't call him, your Honor. I am cross examining him.

The Court: Then you are not cross examining, because he was not asked to give his opinion as to causes. 20

Mr. Braun: He has testified to this infection.

The Court: He has testified to what the pictures show, but he has not testified to the cause of the infection.

Mr. Braun: I will withdraw the question, so far as this witness is concerned, and save time. 30

By Mr. Braun.

Q Doctor, you have testified that there was no significance between the apparent difference, between the lines indicating the sacro-iliac joint on one side and on the other because both sides of the body—where we have pairs of organs on either side, they are not always the same? Does that pertain throughout the entire body? A Yes, sir. 40

Herbert Austin Vogel, cross.

Q And even one side of the face is not identical with the other, is it? A No, sir.

Q Or one side of the skull with the other? A Yes.

Q I think you spoke of the coccyx being deviated slightly. A Yes.

10 Q Will you explain to the jury just where the coccyx is with reference to the other bones in the vicinity? A Well, the coccyx is the very end portion of the spine made up of several segments. It is that portion below the sacrum.

Q And in the human structure, when in a seated position, where is the coccyx with reference to the lowest bony structure in the pelvic region? Is it above or below? A Above.

Q It is really out of the way, isn't it? A 20 Yes, sir.

Q And you do not sit on your coccyx, doctor, do you? A No, sir.

Q What do you sit on? A The tuberischii.

Q Are they the bones that support the buttocks? A Yes, sir.

Q Does the coccyx ever come in contact with anything upon which a person sits unless there is a projection that can extend up between these two bones, these tuberosities? A Yes, the tuberosities on either side. 30

Q How far above the lowest point of the tuberosities is the coccyx located? A Well, it would really vary a bit depending upon the arrangement of the anatomy of it. If it were perfectly straight or slightly deviated —

Q What is the minimum distance? A Probably a half inch.

Q So as the tuberosities are solid bony structures, aren't they, doctor? A Yes, sir.

40 Mr. Braun: I think that is all.

Herbert Austin Vogel, cross.

Cross examination by Mr. Brenner.

Q You have testified about the ascertainment of an infection in one or more teeth. According to your reading of the X-rays, that infection has in no manner affected the pelvic joints? A It is possible that it has. 10

Q Is there anything on the X-ray that indicates that either the sacro-iliac or the symphysis pubes has been affected by an infection? A No, sir.

Q So that your answer must necessarily be, then, doctor, that the infection of the teeth has not affected either of these joints? A Did I understand you to say in your first question that the infection in the teeth had affected these joints or a joint? 20

Q These joints, referring to the two, the sacro-iliac and the symphysis pubes. A No, sir.

Q Doctor, a separation is indicated by a shadow, is it not? A Yes, sir.

Q In other words, to make it entirely clear, if one side of your picture shows a more dense area at the point of contact between the two bones or the joint than the other side shows, that would indicate a separation, would it not? A The degree of density? No. 30

Q How would you be able to tell that? A The distance between the opposing surfaces of the joint.

Q That is what I mean. I didn't mean the degree of density so much as the width of it. A The width?

Q So that if the black portion where the bones unite was larger on the one side than it was on the other, that would indicate a separation on that particular side, would it not? A Yes, sir, 40

Herbert Austin Vogel, cross.

provided the portion of the pelvis was in a normal position for the detection of that.

Q I am assuming that. Usually when you make successive X-rays for the purpose of comparison, the patient is laid in the same position and at the same elevation. It is so in general
10 practice, is it not? A In the same position, yes.

Q And also at the same elevation? A I don't know just what you mean by elevation. Do you mean the elevation of the patient? The patient lies flat on the table, and there is no elevation of the patient.

Q The lamp is put a certain distance over the patient? A Yes.

Q Usually for the purpose of comparison, where you have made successive X-rays, you
20 will place the light or lamp at the same elevation above the patient? A Yes.

Q That is the generally recognized practice of X-ray experts? A Yes, sir.

Q Doctor, you, of course, were not present when these pictures were taken? A No, I wasn't.

Q And you don't know but what they were taken at the same elevation? A I do not know.

Q With the patient lying in the same position? A The position appears to vary from one
30 picture to another.

Q There is nothing that makes you certain of the fact that there was a variation in the position, is there, doctor? A Yes, there is evidence in the pictures of there being a variation in the position of the patient. The crests of the iliac bones are not the same level. In that picture (indicating) they are considerably different than in this picture, for instance.

Q You are comparing what two pictures by
40 number? A Plaintiff's Exhibit 8 and Plaintiff's Exhibit 7.

Herbert Austin Vogel, cross.

Q You say that they were taken in a different position? A The patient was not in the same identical position.

Q Can you tell the difference in the position by looking at the X-ray? A The patient's pelvis is tilted in Plaintiff's Exhibit 7, and the patient is not lying perfectly straight on the table. The right side of the pelvis is elevated more than the left side. 10

Q Is there any greater separation shown in Plaintiff's Exhibit 7 than is shown in Plaintiff's Exhibit 8? A No, sir, I find none.

Q In spite of what you say as to the difference in elevation, the marks of separation appear the same in both pictures?

Mr. Vosseler: He has not said there was any separation, as I understand it. 20

A The width? Do you refer to the width?

Q The width between the two bones joined by that joint. A It appears the same in both of these pictures.

Q It is the same in spite of the fact that you say they were taken at a different elevation? A I didn't say a different elevation; I said the patient was slightly—the right side is slightly elevated from the other side. 30

Q If it was slightly elevated, that would bring it nearer to the lamp? A No.

Q It would bring it nearer to the film? A No.

Q Would it bring it further away from it? A No.

Q What would the effect be of taking a picture from the different elevation? A It would be very, very little effect, varying the elevation of the tube. 40

Herbert Austin Vogel, cross.

Q So that even though there might have been some change of position, both pictures were taken practically under the same circumstances? A If the patient is elevated, there would be a distortion.

10 Q There is no distortion shown as far as the width of that joint, is there? A I find none.

Q So that one picture is like the other? A The patient is not in the same identical position as the other.

Q But so far as the pictures are concerned showing a mark between the joint, they are practically the same in all three pictures? A I find no abnormal width in either one.

20 Q The arthritis is shown there by an additional deposit of bone or by an erosion of bone, is it not? A It acts in both ways.

Q If there was an increased deposit, then there would be an increased density of bone? A Yes, sir.

Q If there was an erosion, then there would be a less density of bone? A Yes, sir.

Q The spur that you talk about, or lip, as it has been referred to, shows a deposit of bone, does it not? A It does.

30 Q That is not a normal condition in the normal person? A I would not say that. It depends on any accompanying signs of bone or the condition of the bone about that site.

Q I am talking about whether or not it is normal. That should be a rounded surface, should it not? A Not entirely so, no. We find pictures of the pelvis of patients that have no rounded surface at the end of the sacro-iliac joint, and they are perfectly normal and never

40

James S. Green, direct.

Q But a spur of bone is not a normal condition, is it, doctor? A It may be an anomalous condition; I would not say it is an abnormal condition.

Q What do you mean by anomalous condition? A As I referred before, no two—the both sides of the body are not always developed symmetrically. The frontal sinuses are practically never both the same on either side, and so on down over the body. You don't always find both sides of the body in the same identical arrangement. 10

Q In the normal person, both sides should match up, should they not? A Not necessarily, no.

Q If they don't match up it is either abnormal or it is anomalous? A Yes.

JAMES S. GREEN, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith: 20

Direct examination by Mr. Vosseller.

Q Doctor, where do you practice medicine? A In Elizabeth.

Q How long have you been practicing medicine in Elizabeth? A Since 1889.

Q What school of medicine did you graduate from? A I graduated from the College of Physicians and Surgeons, New York City, the medical department of Columbia University. 30

Q How long have you been practicing in the City of Elizabeth? A Ever since I graduated in 1889.

Q Are you connected with any hospitals, doctor? A Yes, sir.

Q What hospitals? A I am attending surgeon at the Elizabeth General Hospital; I am consulting surgeon at the St. Elizabeth Hospital, consulting surgeon to the Rahway Hos- 40

James S. Green, direct.

pital. I was for a short while attending surgeon at the Alexian Hospital.

Q Were you a surgeon connected in any way with the medical department in the late war? A Yes, sir.

10 Q Will you tell us what? A I was the chief of the surgical department of the base hospital at Camp Dix during the duration of the war.

Q Have you made an examination of the plaintiff, Miss McCusker, in this case? A I have.

Q Will you state when you made your first examination? A My first examination was made on January 31, 1928, at her home.

Q Did you make any subsequent examinations of this woman? A I did.

20 Q When were they made? A The second examination was made on July 6, 1928, at her home.

Q And the third examination, if you made it, was made where? A The third examination was made on January 27, 1929, at her home.

30 Q Doctor, will you tell the jury what that examination consisted of on January 31st, the first examination? What examination did you make and what tests did you give this lady and what did you find? A At the time of my first examination I got from her an account of how she was injured and then asked her what she complained of. She told me that she complained of being injured on the right side of her head and that her spine was injured.

40 Q What examination did you make there of her personally? A I first examined her head and found a small bruise about an inch in size over the outer side of her right eye or right about here (indicating). That was the only objective evidence of injury that I could find at that first

James S. Green, direct.

examination, which was four days after the time she said that she was hurt. I then examined her pulse and found that it was beating at the rate of one hundred beats. I examined to find evidences of any disorder of the nervous system and I found none.

Q Did you examine her back, her spine? A 10
I felt the spine but was not able to determine any abnormalities of the spine, any distortions.

Q Did you do anything else upon this examination to determine what the condition of this woman was? A I made no more intimate examination at the first examination, but I did at the second and third.

Q Will you give the date of the second examination and tell the jury exactly what your examination consisted of upon that occasion and what you found? A I—on the second examination, which was on July 6th, I examined her at her home and found that the outward evidences of the bruise over the eye had disappeared. She informed me at that time that she still had pain over the eye and that it jumps at times. She also said at the second examination that the end of her spine felt sore and that she felt very nervous. Then I proceeded to examine her, and I found at this examination she had a pulse of one hundred. She had no shaking or tremor of her tongue or her fingers. 20 30

Q Which would indicate what, if she did not have, doctor? A Which would indicate an absence of nervousness. She had a normal reflex of the eye and of the nose. That is to say, when I tapped below the knee, with the knees crossed, the foot would jerk out in about the normal way. It was not an exaggerated jerking out and was equal on both sides. 40

James S. Green, direct.

10 Q Which indicated what, doctor? A That there was no undue excitability of that part of the nervous system, that resides in the spine. I asked her to stand with her feet together and her eyes closed, and she stood in that position without any swaying, and while her eyes were still closed, I asked her to extend her arm out from the body and suddenly touch the end of her nose with the end of the index finger on both sides.

20 Q And that would indicate what? A That indicated that her co-ordination, that is to say the consecutive action of the muscles that are concerned in that intricate motion was absolutely normal on both sides. As a result of those examinations, I concluded that there was no disorder of the nervous system. At that time I examined the end of the spine by introducing my index finger into the rectum, and with the thumb behind the end of the spine I was enabled to take hold of the coccyx or tail and bend it and feel the front surface of the coccyx. As a result of that examination I found no stiffness of the coccyx and no evidence of fracture.

30 Q I take it that what you found from that rectal examination the coccyx was normal? A In my opinion it was normal.

Q Did you make any further examination? A Not at that time.

Q Doctor, did you ever examine the X-ray pictures in evidence in this case marked "Plaintiff's Exhibits 6, 7, 8, 9, 10 and 11?" A I examined one picture in March of last year and then in a cursory way I looked at the others in the ante-room.

40 Q During this trial? A Yes, sir.

James S. Green, direct.

Q What if anything, did the picture that you examined in March or taken in March indicate to your mind by way of separation of the iliac joint or disease of any kind connected with that portion of the plaintiff's body? A I could see nothing abnormal in that picture.

Q When was your last examination made? 10

A It was made on the twenty-seventh of January of this year.

Q What did you do by way of examination and what were your findings? A The results of the examination were substantially the same as what I made in July, with this difference: The heart action was a little bit slower. The examination in July, the pulse rate was 100 at the time of the examination, and this time it was eighty-eight at the beginning of the examination and eighty-six at the end of the examination. 20

Q What did the pulse of one hundred and the subsequent dropping of the pulse to eighty-six indicate to your mind? A The pulse did not drop from one hundred to eighty-six; it dropped from eighty-eight to eighty-six.

Q What you mean is that your first examination showed one hundred and your second examination showed a one hundred pulse, and your third came down to eighty-six or eighty-eight. Is there any significance to that? That is what I mean. A Well, we ordinarily consider a more rapid condition of the pulse as indicating a degree of excitement. 30

Q Is that the reason that you examined her, to see whether or not there was any lack of coordination between her muscles? A Yes, sir.

Q You made these examinations at the request of the Public Service Corporation, did you not?

A I did. 40

James S. Green, cross.

Q And from the result of the personal examination of this woman on the three occasions which you have examined her and from the examination of these X-ray pictures, marked 6, 7, 8, 9, 10 and 11, is this woman, at this time, suffering from any disease or any arthritis or any separation of the sacro-iliac joint or any pathological condition of the pubic bones? A In my opinion she is not.

Mr. Vosseller: Cross examine.

Cross examination by Mr. Braun.

Q Doctor, if she had an arthritis, would she walk without a limp—arthritis in the sacro-iliac joint? A They usually do limp when they have an arthritis in the sacro-iliac joint because it hurts them so much.

Q It becomes a creaking joint, does it not? A Yes.

Mr. Vosseller: May I ask one more question, please?

By Mr. Vosseller.

Q Doctor, in the examination of these head pictures, did you find anything, any disease or pathological condition in the teeth and their sockets? A I don't recall that I examined the head pictures.

By Mr. Braun.

Q Doctor, if there were any indications of infection on the teeth, would that in any way account for pains in other parts of the body? A It would.

James S. Green, cross.

Q And would those pains necessarily be the result of an involvement of the bone? A Oh, no. You have very frequently involvement of nerves and muscles as a result of focal infection, and that would not show in X-ray pictures.

Q Doctor, it has been testified that there is a callous formation around the back, extending around the back of the coccyx at the second or third joint from the bottom. Did you find any such condition on your examinations? A It was not there when I examined it. 10

Q When did you last examine the coccyx? A In this last month, on January 27.

Q In that examination, did you press on the entire surface of the coccyx? A I did.

Q It has also been testified that there is a slight deviation of the coccyx. Did you find such deviation? A In the X-ray picture it does show a slight deviation from one side. 20

Q Does that indicate injury? A It does not.

Q Why not? A Why, the coccyx is a rudimentary tail, and it is not abnormal to have a tail a little bit to one side, as it is to have it absolutely straight. You have to have some—either disease or alteration in the structure of the bones to produce an abnormality. 30

Q It has also been testified that the sacro-iliac is not a joint. Is it or it is not a joint? A It is a joint.

Q At the time of your first examination did this lady complain of any pain in the region of her right sacro-iliac joint? A She did not. She complained of her spine.

Q Did she complain of any pain in the lower junction of the pelvic bones, the pubic bones rather—I think it is the ischium? A The 40

James S. Green, cross.

ischium is the part that you sit down on, and she did not complain of any pain there.

Q I refer to the front bones that extend down and are joined by what I believe is a small button, a cartilage. A That is known as the pubic or pubic bones, which come together there
10 with the interposition of a fibro cartilage or cushion.

Q Did she complain of any pain there? A She did not.

Q Did she complain of any pain in either one of those portions of her body at any of your examinations? A She complained to me only of the pain or headache over her right eye and the pain in the spine; at the later examinations, specifying the end of the spine.

Q Did you find any indication of any brain
20 disturbance? A No.

Q Was there anything to account for this pain over her eye? A No.

Q Is the coccyx often injured by falling against a seat or the floor?

Mr. Brenner: I object to that, if the Court please. I cannot see the materiality as to whether or not it is often done. It is what happened in this particular case.
30

The Court: The question is the probability of this kind of injury.

Mr. Brenner: If your Honor thinks it is proper, I will withdraw the objection.

The Court: Proceed, doctor.

(The last question was read as follows: Is the coccyx very often injured by falling against a seat or the floor?)

40 A Not unless the seat or floor is irregular.

James S. Green, cross.

Q Do you mean by that that there would have to be some projection? A Yes, sir.

Q And why is that necessary to injure the coccyx? A Because, as you sit on the ischium, which I could liken to the rocker of a rocking chair, the tail or coccyx is at a higher level than the rocker of the pelvis, and therefore, if you went down on a flat surface, it would not injure the coccyx. There would have to be either some projection or some irregularity of the surface on which you sat down. 10

Q Is the coccyx ever injured in childbirth? A I have never known it to be.

Mr. Braun: That is all.

Cross examination by Mr. Brenner. 20

Q Doctor, the first time you examined this lady she was in bed, wasn't she? A Yes.

Q And you went there at the request of the Public Service Company to make your examination? A I did.

Q You have been doing that for a good many years, haven't you? A Yes.

Q How many? A I don't recall definitely but I think ever since the Public Service has been operating cars in Elizabeth. 30

Q You have been testifying for them the same amount of years, haven't you? A I have whenever I have been asked to.

Q Doctor, what is the normal pulse? A In the male seventy-two; in the female eighty.

Q That is for a lady of her age? A That is the normal rate for females.

Q So that when you got a pulse of one hundred, you had a greatly accelerated pulse? A 40

James S. Green, cross.

Not greatly, no. It is not at all unusual to have the pulse increased in rate on the advent of a stranger into the room.

Q That is an indication then of a source of excitement? A Yes.

10 Q And so is nervousness? A Yes.

Q Nervousness will increase the pulse, will it not? A Yes.

Q A twitching of the eye will also indicate a nervous condition? A No.

Q Will headaches indicate it? A No.

Q What do you attribute the twitching of the eye of Mrs. McCusker to? A I didn't know that it did twitch.

20 Q Assuming that it does, what would you say it was due to in her particular case, or can you tell us? A I can't say.

Q Assuming that she gets the sharp pain over that eye which terminated in a dull headache that lasts sometimes all day, can you attribute any cause for that? A I don't know that she has it, aside from the fact that she says she has it. In other words, that is a subjective symptom which gives no outward evidence of it.

30 Q You, of course, do not know that she is untruthful. A I don't say that she is untruthful.

40 Q If she is truthful and says that that condition exists and frequently exists when there is stress or excitement, would you at all attribute it to the stress or excitement that she has undergone? A As I say, I didn't know that she has it, and therefore I could not explain it, because there is no other evidence, because there is no other evidence of her having it outside of her statement.

James S. Green, cross.

Q Of course, if it exists, it comes from some cause, does it not? A Yes.

Q And the cause, of course, is an abnormal one? A Yes.

Q And what the cause is you cannot tell us? A No, I don't know.

Q If she experiences pain while sitting, that would also be indicative of an inflammation of some kind, would it not? A Yes. 10

Q And likewise, if she had pain and fatigue after a week, that would be indicative of some disorder, would it not? A Yes.

Q In other words the normal person does not have those things? A No.

Q And there is nothing about this young lady during the time of your examinations which indicated her to be untruthful, was there, doctor? A I am not a judge of honesty, and therefore I am not in a position to answer you, sir. 20

Q Doctor, in the examining of a number of cases that you have, you are pretty well able to tell a person that is faking pain, aren't you?

Mr. Braun: I object to that. I do not think it is proper cross examination.

Mr. Brenner: I will withdraw it, if it is objectionable. 30

Mr. Braun: I think it is embarrassing.

The Court: I don't think it will embarrass Dr. Green.

Mr. Braun: It would embarrass me to be asked to pass upon the truthfulness of a lady.

Mr. Brenner: We are not all affected the same way. I will withdraw the question. 40

James S. Green, cross.

By Mr. Brenner.

Q Doctor, when you refer to an injury of the coccyx by coming into contact with a projection, hitting the coccyx against a sharp corner might bring about injury, might it not? A Yes.

10 Q And of course those seats on the buttocks have sharp corners, have they not? A Yes.

Q So that, if this lady, in falling backwards, came against the edge of that seat, with the end of her coccyx, that might bring about injury? A Yes.

Mr. Brenner: That is all.

20 *By Mr. Braun.*

Q But if she fell against that sharp seat, would she also be likely to injure that sacroiliac joint? A No.

By Mr. Vosseller.

Q From your examination was there any injury to the coccyx? A In my opinion there was not.

30 *By Mr. Brenner.*

Q Doctor, can you, through a vaginal examination of her, or rectal examination, ascertain the existence of callous? A Yes.

Mr. Brenner: That is all.

By the Court.

40 Q Doctor, is that a surer test than a shadowgraph or an X-ray? A Yes.

John Pollack, direct.

The Court: We will take a five-minute recess at this time.

(A brief recess was had.)

Mr. Vosseller: If the Court please, I feel that this damage suit which is being tried in conjunction with this case—

10

The Court: Mr. Brenner suggested an objection to trying both. He has an important case, here, and if you agree to a severance here, it will be all right.

(Argument.)

The Court: It is agreed that we will simply limit ourselves to the one case, number forty-four, Emma McCusker vs. Public Service Co-ordinated Transport and B & N Transportation Company, a corporation of New Jersey.

20

JOHN POLLACK, a witness produced on behalf of the defendant, Public Service Company, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Vosseller.

30

Q Mr. Pollack, where do you live? A At Linden.

Q Were you employed by the Public Service Corporation on January 27, 1928? A Yes.

Q In what capacity were you employed? A Public Service driver.

Q Were you driving the bus that was in collision with the B & N Transportation Company bus on the night of January 27? A Yes.

40

John Pollack, direct.

Q Where was your bus coming from? A East Broad street.

Q I mean where did it start? A It started from Henry street.

10 Q Where was your bus standing just before the accident, or where was it going before the accident? A There was a trolley going to Newark, and I just stopped there at the arch, just before the arch, making that bend.

Q You were coming out of what street? A Out of East Broad street.

Q Do you understand this map? This is north, this is south, this is west, and this is east (indicating). A Yes.

Q This is the Central Railroad bridge here where these lines are. A Yes.

20 Q And this is the arch of the Pennsylvania, do you understand it? A Yes.

Q Where was your bus just prior to the accident, and where was the trolley car? Please point it out on the map. A I was coming out of here (indicating), on this side here, and the trolley was going to Newark up this way.

Q Was the trolley going? A No, it stopped there.

Q Where was it? A On Broad street.

30 Q Was it under the bridge or where was it? A It was past this—it was just about at these rails here, right about here somewheres (indicating), and I was around here, and I stopped and motioned for the trolley to come ahead, and the trolley motioned for me to come ahead.

40 Q Yes. A So, as I started to go around the trolley here, I went down, and just about four or five feet before I seen that bus, I tried to stop, but I could not stop.

John Pollack, direct.

Q Look at this picture. Does that represent the bridge under the railroad? A Yes.

Q This is Plaintiff's Exhibit 4. Just point out where the bus was on that picture. A My bus was in the back here—at the time of the accident?

Q No, before the accident. Do you understand the picture? A The way it seems to me, this is East Broad up here (indicating). 10

Q Wait a minute. This is looking north on Broad street, looking north toward Newark. A Looking toward Newark?

Q Yes. Where was your bus standing? A Right up in here (indicating). That is where my bus was standing, up here (indicating).

Q Where was the trolley car? A Right about past this switch here (indicating). 20

A Juror: Let him make a mark there.

Mr. Vosseller: I suggest that he put a "T" there for the trolley.

The Court: There are different marks there.

By the Court.

Q What is your first name? A John.

Q Put the letter "J" where you say the front of the trolley car was there. A Yes, sir. 30

Q Have you got this picture? A I have.

Q This is coming from the court house and going under the bridge? A Yes.

Q As you look at the picture, this is Railroad Place to the left. A Yes, going up Morris avenue.

Q That goes under the Pennsylvania railroad tracks, and this is the Central railroad, the first bridge. A Yes. 40

John Pollack, direct.

Q And here is East Broad street, isn't it?

A Yes.

Q And this is North Broad street? A Yes.

Q Now, where was the trolley when it was stopped? A Put a "J" did you say, Judge.

10 Q Be careful about it now and be sure you are right. A Yes, sir, (marking the map).

Q When you were stopped and the car was stopped, how far away in feet were you from the trolley car? A Well, I should judge about ten feet, Judge.

Q About ten feet? A Yes.

Q What is your last name? A Pollack.

20 Q It would be pretty hard to measure that on that photograph, but do the best you can and mark with an "H" where your bus was when it was stopped and the trolley was stopped. A I don't know how to figure this out here. I should judge about here somewheres (indicating).

Q At any rate, you say it is ten feet? That may be enough just as it is, ten feet away. It would be on the other street.

By Mr. Vosseller.

30 Q You say that your bus was absolutely at a standstill? A It was.

Q And the trolley car operator beckoned for you to come? A Yes, he did.

Q Did you proceed then? A Well, I motioned for him to proceed, and he motioned for me to proceed, and then I proceeded.

Q What did you do? A Well, I just proceeded very slow around the trolley car in front of the trolley car.

40 Q How close were you to the trolley car? A When I was going around the trolley?

John Pollack, direct.

Q Yes. A Well, about four feet.

Q In front of the trolley car? A In front of the trolley car.

Q How fast was your car going? A Well, about seven or eight miles an hour.

Q Were you in any gear? What gear were you in? A There is no gears in them buses; it is electric driven. 10

Q Does it start quickly or not? A It starts slow.

Q Was it a gas-electric bus? A It was an ACF gas-electric.

Q Were your lights lit? A Yes.

Q When you started around this trolley car, you say you were going seven or eight miles an hour? A Yes.

Q How far did you get around the front of the trolley car before you were struck or before you struck something? A Well, I should judge about twenty feet around. 20

Q And you got twenty feet around? A Yes.

Q When did you first see this B & N bus? A Oh, about a distance of four or five feet.

Q Do you mean that you had gone twenty feet from where you stopped? A Right from where I stopped, right around the trolley car.

Q You had gone twenty feet from where you had stopped? A From the front of the trolley car, right where the car was standing when I started off. 30

Q Let us get this straight. You were standing still? A Yes.

Q And you started to go around the front of the trolley car? A Yes.

Q And from where you were standing to where you were struck, you had gone about twenty feet? Is that what you mean? A Not 40

John Pollack, direct.

where I was standing from; right from where I started to the ten feet.

Q And you had gone about ten feet further?

A The length of the bus. I must have went about the length of the bus.

10 Q Where did this accident take place? A
Just before the Central Railroad bridge.

Q I show you Plaintiff's Exhibit 4, a photograph, and I show you a mark on that over here (indicating). Will you tell me where the impact between your bus and the B & N bus took place? If that is not the correct mark, put your "J" there.

Mr. Brenner: I object to that. I don't think it is proper.

20 The Court: It may be stricken out and reframed.

By Mr. Vosseller.

Q Please mark where the two buses came together on that picture. A Yes, sir (marking the map).

By the Court.

30 Q What did you mark it with? A I put an "X."

By Mr. Vosseller.

Q Put a ring around that so we will know. A Yes, sir (marking the map).

Q When did you first see this B & N bus? How far away from it were you? A Well, about four or five feet or so.

40 Q That is the first time you saw it? A The first time I saw it.

John Pollack, direct.

Q How far from the trolley car were you? How far had you passed the trolley car when you saw it? A Well, I didn't see it at the time I was passing over the trolley track.

Q I didn't ask you that question. I asked you, how far had your bus gone beyond the front of the trolley car when you saw the B & N bus? 10

A Well, I was completely across the trolley there when the trolley was standing, and I just went around the trolley. I didn't see the bus until I—

Q Do you understand the question? You say you saw this bus when it was just four feet away from you? A Yes.

Q Or about four feet away from you? A About four or five feet.

Q How far had the front of your bus gone in front of the trolley car when you saw this bus four or five feet away? A The length of the bus. 20

Q Where was this B & N bus? A Well, just four or five feet from the gutter on the left-hand side going up Morris avenue.

Q Was it under the railroad bridge or not? A Was the B & N bus under the railroad bridge?

Q Yes. A Well, part of it was—I think it was. 30

Q How near to the west curb of Broad street was it? A I don't get that question right.

Q How close was the B & N bus to the west curb of Broad street when you first saw it?

By the Court.

Q The left-hand curb, it was on the left-hand side of the street as it was going, was it? A Yes. 40

John Pollack, direct.

Q How near to the curb on its left-hand side was it? A Well, about five or six feet, something like that.

By Mr. Vosseller.

10 Q What happened then? You say you saw this bus four or five feet away from you. A Well, I just put the brakes on and did everything to stop the bus.

Q How fast was the B & N bus going? A When we hit?

Q No, when it was coming under the bridge on the left-hand side. A I couldn't tell.

Mr. Braun: I object to that.

20 *By Mr. Vosseller.*

Q When you first saw it, have you any notion as to how fast it was going? A No.

Q Was it going fast or slow?

Mr. Braun: I object. He says he does not know. He has no notion.

By Mr. Vosseller.

30 Q Do you know whether it was going fast or slow? A Well, at the time, it must have been going fast, because—

Mr. Braun: I move that that be stricken out.

The Court: Strike it out.

By Mr. Vosseller.

40 Q How long is that bus? A The Public Service bus?

John Pollack, direct.

Q Yes. A About twenty-five to thirty feet long.

The Court: Has not that been agreed to, how long it was?

Mr. Vosseller: The trolley is forty-three feet long, but I don't know about the bus. 10

The Court: There was something said about the bus. It had seven seats on each side?

Mr. Braun: That was the B & N bus.

The Court: They are about the same, are they not?

Mr. Vosseller: I really do not know.

The Court: Let the jury know. There must be somebody here that knows how long it is. 20

By Mr. Vosseller.

Q How many cross-seats are there in that bus? A The P. S. bus?

Q Yes. A I couldn't tell you. I never stopped to count them.

Q How many passengers would it carry without standing? A About twenty-five to thirty passengers.

Q How many? A About twenty-five to thirty passengers. 30

Q Had your bus cleared the front end of the trolley when this B & N bus came through there?

A My bus did clear the trolley.

Q You mean that your bus had gone the full distance ahead of the trolley car? A It did.

Q You had turned to go down Broad street? A Yes.

Mr. Vosseller: Cross examine. 40

John Pollack, cross.

Cross examination by Mr. Braun.

Q You were coming out of East Broad street. Will you just tell the jury where your bus was with relation to the trolley tracks on East Broad street as you started out? A Well, I was coming
10 down here (indicating).

Q You were to the north or the trolley rails?
A On my right-hand side.

Q This arrow is north, so that would place you on the north of the trolley line. A Yes, right about there.

Q Will you put a mark on that map indicating where you came to a stop? Just draw a little outline of the bus.

20 The Court: Oh, no. Let him mark it with his first name, the letter "J."

Mr. Braun: I think it would be fair to ask this witness if he understands that it is ten feet to the inch.

The Witness: I don't know exactly how to judge that.

By Mr. Braun.

30 Q Do you understand the curb line? A Yes. This is the bridge (indicating)?

Q Yes. A The trolley stopped right about here (indicating).

Q Put your last initial where the front of the trolley was.

By the Court.

40 Q Were you riding the tracks or were you north of the tracks? A I was on the north of the tracks.

John Pollack, cross.

Q You were not on the tracks? A No, I wasn't.

By Mr. Braun.

Q You came across the trolley tracks upon which the trolley was standing, and you had previously had some signal between you and the motorman? A Yes. 10

Q You didn't know the motorman, did you? A I did.

Q Was he a friend of yours? A No, just being that he is working there.

Q You knew him and frequently passed him? A Yes.

Q And you usually exchanged greetings as you passed? A Yes.

Q And you smiled to each other? A We did. 20

Q And you proceeded across in front of the trolley? A Yes.

Q After you got past this westerly rail of the northbound trolley tracks when did you first start to turn to your left? A As soon as I passed the trolley I came down this way (indicating).

Q You started to swing as soon as your front wheels cleared that rail? A Not exactly, because the back end would hit the trolley if I was too close to him. 30

Q How close to the westerly side of Broad street did the right front corner of your bus go as you swung around that arch? How close did you go to that curb? A I don't get you exactly.

Q Do you understand this to be the abutment (indicating)? A Yes.

Q How close did you go to the pillar that divides the Railroad Place and North Broad 40

John Pollack, cross.

street trolley rails? A I couldn't give you exact how many feet it was, but enough room for another car or bus to go by—not a bus, but a car to go by. If a car was standing right here (indicating), it could have gone between us.

10 Q You had just about cleared the front of the trolley with your bus when you first saw the other bus, is that right? A No.

By the Court.

Q What is right? A I went the whole length of the bus before I seen that bus.

By Mr. Braun.

20 Q That is what I said. The whole length of your bus had cleared the front of the trolley when you first saw the other bus? A Yes, that is right.

Q It was then four feet away from you? A Yes.

Q It was turned up Railroad Place headed towards Railroad Place? A When we stopped there, he was headed for Railroad Place up Morris avenue.

30 Q Didn't you see which way it was headed when you first saw it? A No.

Q You did not know which way the front of the bus was headed? A At the time of the accident he was headed up Morris avenue, up Railroad Place.

Q Do you mean at the time you came together? A Yes.

Q And this is what you refer to as Morris avenue, indicated on the map as Railroad Place (indicating)? A Yes.

40 Q And the front of your bus struck the door of the other bus, didn't it? A Yes.

John Pollack, cross.

Q And it pushed it sideways? A It did.

Q And where did the other bus come to a stop after the collision? A The bus just kept right on going straight through until my bumper got under his back wheels.

Q Where did it come to a stop with relation to Railroad Place? A He must have gone up— 10

Q No. Did you see where he came to a stop? Did you see where his bus stopped after the accident? A Under the bridge here. The bus was from under the bridge already when he stopped.

By the Court.

Q From under what bridge? A From under the Central Railroad bridge. 20

By Mr. Braun.

Q You had an electric bus? A Yes.

Q What kind of brakes did you have? A Air brakes.

Q What kind? A Air brakes.

Q How fast were you going when you saw this other bus? A Seven or eight miles an hour.

Q What did you do when you saw it? A 30
Tried to stop, tried to avoid it.

Q How did you try to avoid it? A Well, I couldn't swing either way.

Q Why not? A Because he was on top of me.

Q What was the matter with turning into Railroad Place? A I was too late then.

Q Do you mean you did not see him until you could not do anything? Is that right? A That is right. 40

John Pollack, cross.

Q Does that represent where you struck that bus (indicating)? A It does.

Mr. Braun: That is all.

By Mr. Vosseller.

10 Q You put a mark on this map. Do you understand this map? You put a mark and that is your mark as to where the trolley car was, isn't it? A Yes.

Q Now do you understand the map? A Pretty near.

Q Do you know what this is (indicating)? A That is the Pennsylvania Railroad.

Q Was the trolley car entirely out from under the bridge? A No, it wasn't.

20 Q Was the front of it from under the bridge? A Yes.

Q How much of the front of it was from under the bridge? A About half.

Q When you came together with this B & N bus, the B & N bus was under the Central Railroad bridge, wasn't it? A No.

Q I mean at the point of intact. A When we came together?

Q Yes. A The front part was not.

30 Q The front part was out? A Yes, the front part was out.

Q Have you marked this picture wrong, referring to Plaintiff's Exhibit 4? A That is—no, that is about right there.

Q Your mark shows it being under the bridge, doesn't it? A Yes, it does.

Q Are you sure that is where you came together? A Yes.

40 Q There is no doubt about that? A No, it is not.

John Pollack, cross.

By Mr. Brenner.

Q I want to see whether I can't make a physical demonstration of how these buses came together. I think it will help to clear the jury's mind. Assuming that that is the trolley car (indicating). A Yes.

Q I think it is facing in the direction towards East Broad street or towards North Broad street; that is, the way the trolley was facing. A Going to Newark.

Q You came down around East Broad street? A Yes.

Q You had to come in front of that trolley? A Yes.

Q Assume that this piece of paper which I now have in my hand is your bus. Will you come down to this table and show me how far along that trolley you got before the time of the impact? A Do you want me to go down there?

Q Yes. I assume there is no objection to that.

Mr. Vosseller: You can't very well get it on the record, I don't think.

The Witness: That is about where we were standing, that way (indicating).

By the Court.

Q You stood about ten feet apart? A Yes.

By Mr. Brenner.

Q Bring your bus around the front of the car, if you will, please. A All right (indicating).

Q Now bring it to the point of the car where you say the accident occurred. A Right about here (indicating).

John Pollack, cross.

Q How far past the front of the car did you get when you first saw the bus coming in the other direction? A About four feet, I think. I don't know how the back end is.

10 Q I am talking about the front end now. How far along that car did you go at the time that the two buses came together? A We started to go around this way (indicating), and we got about halfway.

Q You say you went about halfway beyond the front of the car? A Not exactly halfway, but at the time of the accident it was about halfway to the trolley.

Q At the time that you first noticed, you say that you were separated about four feet? A Yes.

20 Q Had you also gone about halfway to the trolley car at the time you noticed it? A No, not exactly.

Q About how far at that time? How far had you gone? A I could not give you the exact number of feet I went.

Q I mean with relation to the trolley car. You say that the time you came together that you had passed about half the trolley car. A I would say about fifteen feet.

30 Q Fifteen feet along the trolley car? A Yes.

Q Your bus then was in what position? Just put your bus as it was at the time you first noticed it. A Right about here (indicating).

Q About fifteen feet from the front? A Fifteen feet from the front.

Q Now, with regard to the other bus, when you first noticed him, you say he was a distance of about four feet away? A Yes.

40 Q Just place that bus as you saw it. A That is the way I saw it (indicating).

John Pollack, cross.

Q You showed that bus as more than half the length of the car, that it had come from the back of the car? A I said before I seen the bus.

Q I said at the time when you saw the other bus about four feet away, how far had you gone beyond the front of the car, and you told me a distance of about fifteen feet, and you placed your bus in that position. 10

The Court: So far as the eye is concerned, you are getting distances wrong by having anything of that size. Suppose you use my eye-glass box as the trolley car.

By Mr. Brenner.

Q Please place the Public Service bus first. 20
A Yes, right there (indicating).

Q How far is the front of this bus from the front of the trolley car? A I don't know how many feet; I couldn't tell you how many feet.

Q You said before fifteen feet. Is that a fair estimate? A About fifteen feet.

Q You would not want it all the way to the back of the car? A No.

Q The car is about forty-three feet in length? 30
A Yes.

Q If it is forty-three feet in length, and you went fifteen feet, you would go about one-third of that trolley car, would you not? A That would be about eighteen feet.

Q So that it would go a little less than one-half of the trolley car? A Yes.

Q Suppose you place the other bus where it was at the time you saw it four feet away? A Right there (indicating). 40

John Pollack, cross.

Q That is the relative position, then, of the trolley car and your bus and the B & N bus? A Yes.

Q And you had covered the distance of about eighteen feet, and the other bus must have covered a distance of about twenty-five feet? A I don't know how many feet the other bus covered.

Q A little more than half of the car? A I didn't see the other bus until he was four feet away.

Q Then he had gone a distance of probably twenty-five feet from the end of the trolley car? A I don't know.

The Court: That is argument. He says he did not see that until it was four feet away from him.

By Mr. Brenner.

Q Will you resume the stand, please? A Yes, sir.

Q Can you tell me if the trolley car and the buses were in that position, why it was that you could not see that bus before it got to within four feet of you? A He swung right out in back from the trolley car, and he had very poor lights, and I couldn't see the man coming down.

Q And that is the only reason you can give us? A Yes.

By Mr. Braun.

Q How were your lights? A Very good.

Q How far ahead would they throw a ray? A About fifty feet, if not more.

John Pollack, cross.

By Mr. Vosseller.

Q As I understand you, you never saw this bus until it swung from behind the trolley car?

A Behind the trolley car.

Q And you were then a little less than half-way down alongside of the trolley car? A Yes. 10

Q And this B & N bus swung immediately out from back of the trolley car? A Back of the trolley car.

Mr. Brenner: I object to that. He did not see this bus until it was four feet away.

The Witness: The way it seemed to me, I thought he was going to Newark.

By Mr. Vosseller.

Q You didn't see this bus? Were you looking in that direction? A Yes. 20

Q And you did not see this bus until it swung from behind the trolley car in front of you? A That is right.

Q Were you looking all the time? A Yes.

Q It was right on top of you the minute you saw it, is that right? A Yes.

By Mr. Brenner.

Q Can you tell me the distance between the side of the trolley car and the front or the right-hand side front of the B & N bus at the time the two buses came in collision? A I could not. 30

Q Can you tell me approximately? A No, sir.

Q Maybe you can tell me this: Can you tell me the distance between the side of your trolley 40

John Pollack, cross.

car and the front left side of your bus at the time of the contact? A No, I could not.

Q You cannot tell me that, either? A No, sir.

10 Q Maybe you can tell me this: The distance within which your bus can be stopped by the application of your brakes going at the rate of speed you say you were going of between seven and eight miles an hour? A Well, about fifteen feet—ten or fifteen feet.

Q Would it take that long to stop? A Well, it was all ice there under the arch.

Q It was icy that day? A Yes, sir.

By Mr. Vosseller.

20 Q Can you give us your judgment of the distance that your bus was from the trolley car and the B & N bus was from the trolley car, whether or not it was close or far from it? A I couldn't give you exact, but it was quite a ways from the trolley.

Q It was quite a little ways from the trolley? A Away from the trolley.

Q Can you estimate the number of feet?

30 A Juror: Your Honor, may I make a suggestion? Could the witness place those buses in relation with the trolley car on that map if that map was laid on the table? Would it make the situation any clearer or make it easier?

Mr. Vosseller: I don't object to it, but I think it is doubtful because of the scale of the map.

40 The Juror: I am making that as a suggestion, that is all.

John Pollack, cross.

Mr. Vosseller: I have no objection to it.

Mr. Braun: I think these buses are pretty nearly on the same scale. I imagine they are about forty feet long and this is about four inches.

Mr. Brenner: I have no objection to it. I will do whatever will make it clear to the jury. 10

The Court: Does the jury think it will help?

The Jurors: Yes.

The Court: Very well, if it is not satisfactory to the jury we will put the map down. Let the witness step down by the map.

By the Court.

Q Take a good look at that and remember that ten feet on the ground is one inch on the map. In other words, one inch on the map represents ten feet on the ground. Here are the tracks and under that bridge there are three sets of tracks. There is but one set going north until you reach under the bridge. Then there is one set of tracks that extends towards Morristown or under what is known as Railroad Place. There is another set that extends to the east towards East Broad street, and then there is a set of tracks that go up North Broad street. Now, then, place that eye-glass case, which represents the trolley car, about where it was at the time it stopped. A Right there (indicating). 20 30

Q Now we will give you the green car. Place your car where it was at the time the trolley car was stopped. A About there (indicating).

Q You estimate that as about ten feet away, do you? A Well, I couldn't exactly—this seems more. 40

John Pollack, cross.

Q Well, it is impossible for you to give the exact distance. Shall I move it a little further, about there (indicating)? A Yes, about there.

Q Now take the other one. A I don't know where this one goes.

Q Now move this car and I will hold it when
10 you have moved it to where you say you first saw the other car. A Right there (indicating).

Q Where was the other car, then, when you got there? A He was right out in front of me, about four feet away.

The Court: Are there any questions from the jurors?

A Juror: Was he only four feet away when he saw that yellow bus there?

20 *By the Court.*

Q Did you see that bus when it was coming from behind the rear of the trolley car? A I did not.

By Mr. Vosseller.

Q Place it again so that the jury may get that. A About like that (indicating), this here
30 bus was down further.

By the Court.

Q Shall I put it there (indicating)? A Down further, Judge, and the trolley up further. I should judge about here (indicating).

Q That was about it? A Yes, sir; right about there (indicating).

The Court: Is that all right, gentlemen?

40 The Jurors. Yes, sir.

George Hazelhurst, direct.

The Court: The witness may return to the witness-stand now.

By Mr. Vosseller.

Q Is there any grade that leads from East Broad street down under Broad street Central Railroad bridge? Is there a grade there or is it flat? A Do you mean— 10

Q I mean a hill. Is there a hill there or is it flat? A There is a hill, a grade there.

Q Does it slope toward the railroad bridge? A Towards the Central Railroad bridge.

Q You were going downhill?

By a Juror.

Q You say that when you were going around the trolley car you were traveling about eight miles an hour? A About seven or eight miles. 20

Q Have not those electric buses got a quick pick-up? A You can go seven or eight miles an hour and twice as fast.

Q Can you pick up in twenty feet at twenty miles an hour? A Not in twenty feet.

The Juror: That is all.

Mr. Vosseller: That is all. 30

GEORGE HAZELHURST, a witness produced on behalf of the Public Service Company, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Vosseller.

Q Mr. Hazelhurst, what was your business on January 27, 1928? A My business? 40

George Hazelhurst, direct.

Q Yes. A I was employed as bus operator for the Public Service.

Q Are you still a bus operator for the Public Service? A Yes.

Q Did you see the accident this night? A I did.

10 Q Where were you just prior to the accident?
A Why, I was on Railroad Place.

Q Were you operating a bus there? A I was.

Q On which side of Railroad Place were you? A Coming from Morris avenue into Broad street.

Q On your right side? A Yes.

Q Did you see this trolley car that night? A I did.

20 Q Where was it with relation to the Central Railroad bridge? A The biggest part of the car was right under the Central Railroad bridge.

Q Would you estimate the length of the car that was out beyond the railroad bridge? I mean toward North Broad street. A Probably half the length of the cab. That is where the motorman stands.

Q And all the rest of the car was under the bridge? A Under the bridge.

30 Q Did you see this bus operated by Pallock? A I did.

Q Where was it when you first saw it? A Why, he was about, I should judge, fifty feet from the corner coming down to a stop, coming down to the intersection there.

Q Do you mean the intersection of East Broad street? A Of East Broad and Broad.

40 Q Where did he stop with relation to the trolley car? How many feet away from it, if he did stop? A Well, he stopped right at the

George Hazelhurst, direct.

intersection there. I should say it is quite a wide street. It is like a bowl, and he was on the right-hand side of the trolley track.

Q About how far was he from the front of the trolley car, in your best judgment? A Nine or ten feet.

Q How did you happen to be in this particular spot at this particular time? A I was due at the yards. We have time points to hit and that was my last trip. There is a dead stop there, and when this Union car came down and the bus came down, I had plenty of time, and I automatically stopped to let it clear by before I passed through. 10

Q Did you see any signs pass between the operator of the trolley car and the operator of the bus? A In the Union car I did, but I never seen the bus operator sign. 20

Q What did you see him do? A He just motioned with his hand.

Q What did the bus driver do when he got that motion from the operator? A He started ahead.

Q Will you describe where he went and the relation of the bus and the trolley car and his relation to the trolley car while he made the turn into Broad street? A He came straight for about four or five feet before he started going to the left, because he had to figure on the back of the bus. If you start going before he got there, the back end of the bus will hook onto the trolley car. 30

Q So he had to make a rather wide turn? A Yes, a rather wide turn.

Q Did you see the collision? A I did, yes.

Q Where was the bus when the collision occurred with relation to the trolley car? A The Public Service bus? 40

George Hazelhurst, direct.

Q Yes. A Why, it was—the hood of the bus was just about under the Central Railroad bridge, possibly half a pillar past the first pillar.

Q Had the entire bus passed around the front of the trolley car? A Yes, it had.

10 Q It had? A Yes.

Q Did you see this independent B & N bus? A I did.

Q You saw it prior to the accident? A I did.

Q Where did you first see it? Where was the Public Service bus when you first saw the B & N bus? A Where was the Public Service bus?

Q Yes. A I should say it was three-quarters of the way around the car.

20 Q Then where was the B & N bus? A Why, he was—I don't know what that street is by that arch on the left-hand side. This side of the Times toward the arch there is a street there. From the arch, do you mean how far was he?

Q When you first saw the B & N bus where was it? A Why, it was just about, I should say, twenty-five feet this side of the Times toward the arch. That is, practically to the arch of the Central Railroad.

30 Q Could you tell whether it was coming fast or slow? A I could.

Q How was it coming? A It was coming at a good rate of speed.

Q Can you estimate it? You were standing still at the time, as I understand it. A I could say he was coming twenty-five miles an hour.

40 Q Where was he with relation to the trolley car? A Do you mean in the middle of the street?

George Hazelhurst, direct.

Q Yes, where was he in the street with relation to the trolley car? A I imagine, the way the street looked to me, he was in the rail where the trolley was when I first saw him.

Q Directly back of the trolley car? A Yes, in the same rail, almost in the middle.

Q Did he swing, at any time, to the left of the trolley car? 10

Mr. Brenner: If the Court please, that is leading.

By Mr. Vosseller.

Q That is where you first saw him? A Yes.

Q Describe the movement of that B & N bus from the time you first saw it to the time the accident occurred, until the contact came. A 20
It looked as if he wanted to go to the right of the car. He kind of pulled that way when he got near the arch, and it seems as if he changed his mind and automatically swung hard right to the left.

Q How close was he at that time to the trolley car? A Probably a little over the length of the bus.

Q At that time had the Public Service bus come around the end of the trolley car? A 30
Yes, just about around, just about around the trolley car.

Q Just about around? A Yes.

Q Where was the B & N bus at that time? How far distant from the Public Service bus?

A Why, about thirty feet.

Q How fast was the Public Service bus moving? A It was moving very slow, five or six miles an hour, I should judge. 40

George Hazelhurst, direct.

Q How fast was the other car moving? A The B & N bus?

Q Yes. A About twenty-three or twenty-five miles an hour.

Q Where did they come together? A Why, after it was all over, the B & N bus was right
10 against the second iron girder underneath the Central Railroad bridge.

Q Do you mean the front of it? A The front of it, the left-hand front wheel right by the motor.

Q Did the accident take place beyond the bridge or under the bridge? That is, north of the bridge or under the bridge? A Under the bridge, under the Central Railroad bridge.

Q Did the B & N bus move after the accident occurred? I mean, did it stop right there
20 or did it move any distance? A Do you mean after the accident?

Q Just after the incident of the impact, did it move any distance? A Oh, yes, after they first struck?

Q Yes. A Why, it went almost the length of the bus.

Q Do you mean the distance from the front of the bus to the cab where the driver sits in those gas-electric buses? A To the outside
30 of the windshield do you mean?

Q I mean from the front of the radiator or wheels to where the driver sits in the cab to drive the gas-electric bus. A It is about—the hood is about four and a half feet, I should say six feet.

Mr. Vosseller: Cross examine.

George Hazelhurst, cross.

Cross examination by Mr. Braun.

Q Where do you place the front of the trolley with respect to the railroad bridge? A The cab of the trolley car where the motorman stands was about halfway, I should say, out from underneath the bridge towards Newark. 10

Q How long is the cab? A I should say it is seven feet.

Q That would place the rear of the trolley about fifty-four feet back under the bridge, would it not? A The car is only forty-three feet long.

Q It would place it about how far back under the bridge, the rear of the car? A It is almost to the other end of the bridge, if I remember right, and I think it is almost— 20

Q To the southerly side? A The southerly side.

Q And the B & N bus was how far beyond that when you first saw it?

The Court: What do you mean? I don't understand you.

By Mr. Braun.

Q How far was the B & N bus to the rear of the trolley car when you first saw it? A I think I said about ten feet before. 30

Q It was about ten feet beyond the rear of the trolley when you first saw it towards the south? A Possibly a little more than that. It is a cross-street there where I first saw the bus. I don't know just the distance there. The Times office is there, and right next to the Times there is a side street there. 40

George Hazelhurst, cross.

Q Do you mean on the west or east of Broad street? A It is on the east of Broad street, the Times office.

Q Then it must be at least the width of the street from the end of this railroad embankment that is indicated on the map, is that right? A
10 It is just about the width of a narrow street, and that is a narrow street there. It is just about the width of that street.

Q And you were coming out of Railroad Place? A Railroad Place from Roselle Park.

Q Were you moving all the time? A No, I stopped. I stopped as soon as I saw Pallock coming down, the Public Service bus. When he got almost to the corner, that is when I stopped.

Q After you stopped that you saw the B &
20 N bus? A Yes, it was.

Q Where did you stop with relation to the corner? A I stopped right at the intersection of Railroad Place and Broad street.

Q Where were you going? A Bayway.

Q In which direction is that on the map there? Is it out Broad street? A South on Broad street, by the transport station.

Q You were going to make a right-hand turn? A A right-hand turn.

30 Q And you saw the trolley car standing there? A Yes.

Q And you saw Jolly come? A Yes.

Q He was away over on the other side, still in East Broad street? A Yes.

Q Why didn't you proceed? A It is a dead stop for us there, and I had plenty of time for my last trip, and we kill a couple of minutes with these dead stops.

40 Q Why is that a dead stop? A Because it is a trolley car and bus intersection.

George Hazelhurst, cross.

Q Did Jolly make a dead stop? Is it a dead stop for him, too? A Yes, he did.

Q He could not make his dead stop until after you, could he? He was still in East Broad street? A It was probably a few seconds after I stopped there that he stopped there.

Q Having just got there, why didn't you continue? A I didn't want to be ahead of time on Broad street. I was a little ahead of time and with the Union car there, I figured that if I let the Union car go by I would be just about in time for the transport station. 10

Q You didn't know this operator? A No, I didn't. Possibly I would if I saw him.

Q What made you look way up here under the arch and down here to this building on the other side of the railroad embankment? A I don't know just what did. 20

Q You were not interested in northbound traffic, were you? A When you come to an intersection you are always looking around; you are not looking straight ahead.

Q What was the condition of the street, the pavement? A The pavement was good. It was a little icy underneath the arch there.

Q It was slippery under the arch, was it? A Under the arch it was slippery. 30

Q And that was where the B & N bus had to travel, wasn't it? A Right where it drips down there from the bridge, and it freezes down there.

Q You saw him continue a distance of about ten feet behind the rear of the trolley? A Yes.

Q And you saw him start to make a turn to the right? A Yes.

Q And then make a turn to the left? A Yes. 40

George Hazelhurst, cross.

Q And at the time he made his turn to the right, where was Jolly? A He didn't turn to the right; it looked as if he attempted to steer to the right, but—

10 Q Why do you think that looked as if he attempted to steer to the right? A He did go over a little that way, but he—

Q He started to turn to the right? A Yes.

Q And then he started to turn to the left? A He did turn to the left.

Q When he turned to the left, where was Jolly? A He was around the car, that is, the back of his bus was just past the front of the car.

Q He was already past the front of the car?

20 A The rear of the bus was, yes.

Q Then Jolly had traveled from this side of the street from a dead stop around the front of the car, which was only a short distance out beyond this bridge here, while this bus had traveled a distance of about twenty-five feet behind the rear of the trolley car up to a position about ten feet behind the rear of the trolley car at twenty-five miles an hour, is that right?

A Yes.

30 Q Then Jolly was still going seven or eight miles an hour, wasn't he? A At that time?

Q Yes. A After he cleared the car, it seemed as if he was trying to slow down. That is, he wasn't going any fast; he was possibly just about moving then.

Q He was just moving? A Just moving.

Q He never stepped on it? A No, he didn't. It is kind of a grade down there.

40 Q He never accelerated his speed from the time he left the corner of East Broad street

George Hazelhurst, cross.

and Broad street until the time of the accident?

A At least I never heard the motor racing at all.

Q You saw him? A I saw him.

Q You were watching him? A There is a hill down there, and you don't need to accelerate your motor to get down hill.

Q Did you have to hear the motor to know whether or not he was accelerating the speed? 10

A Sure you would.

Q Could not you see him? A It seemed he was just about like coasting.

Q He was going seven or eight miles an hour?

A Yes, seven or eight miles an hour.

Q And he got all the way down under the bridge before the collision took place? A Yes.

Q At seven or eight miles an hour? A Yes.

Q Where do you say they came together on that map? Do you understand it? A Is this the outside of the Central Railroad bridge here (indicating)? 20

Q That is the northerly side of the Central Railroad bridge? A This is East Broad and this is Railroad Place here? Well, right over here on the far side of Broad street there is pillars starting over there. Where they came together you want?

Q Yes. A They came together possibly a little past the second iron pillar. 30

Q Do you understand that these are the trolley rails (indicating)? A It was right against the curb they came together, probably two and a half—those iron pillars underneath the bridge.

Q About how many feet? A The iron pillars must be—

Q How close to the pillars were they when they came together? A About three and a half feet. 40

George Hazelhurst, cross.

Q What part of the buses came together? A The right front of the Public Service bus caught onto the right front right-hand cab of the B & N bus, tearing it from the cab back to the rear.

Q I show you Exhibit D. 1 for identification. Does that indicate where the Public Service bus struck the B & N bus? A Yes.

Q Right in the door? A Yes.

The Court: The picture shows it. Is there any objection to the picture?

Mr. Braun: I will offer it in evidence.

The Court: By agreement it is in now.

(The picture referred to, having previously been marked "Defendant B & N's Exhibit 1 for identification," was received in evidence and marked "Defendant B & N Exhibit 1.")

Q The B & N bus was pushed sideways into the edge of the abutment there? A It went sideways and went to the left.

Q Because it was slippery there? A It went to the left about three or four feet.

Q And the Public Service bus was right smack up against the door, wasn't it? A That is where they came together. After it happened the Public Service bus was back—it was practically to the rear of the Independent.

Q Where did the Public Service bus stop? A It stopped—with relation to the bus, do you mean?

Q With relation to the embankment and the pillar and the bridge there? A I think it dragged to the right a little.

Q When they came together it stopped, but I think it went to the right a little with the Inde-

George Hazelhurst, cross.

pendent; when he went right against the iron girder, the left-hand side of the Independent and the Public Service drug right with him.

Q What became of the trolley car? A The trolley car, after it happened, it started right off.

Q After it happened? A After it happened.

Q The motorman went right on? A I didn't see any more of him after that. 10

Q It didn't start up as soon as the Public Service cleared the front of it, did it? A No.

Q It waited until the crash and then started up and went on? A No.

Q The motorman did not get out and offer his services or assistance? A No.

Q You did not have any difficulty seeing this B & N bus, did you? A No, I didn't.

By a Juror.

20

Q Do you mind indicating on the map the front of your car at the time you were standing there on Railroad Place? A This is where I came around Railroad Place (indicating), and there is an intersection there. This intersection goes up Morris avenue, and this goes around to Broad (indicating). I was right at the intersection of Railroad Place and Broad street.

Q Were you on the track or to the right of the track? A Do you mean going up Morris avenue? 30

Q You were coming down Railroad Place? A You have to be on the car tracks because the road is only that wide.

Q Did you stop at the crosswalk or before you got to the crosswalk? A There is no crosswalk there; right even with the end of the arch.

Q What do you mean by intersection? Were you about to the center of the intersection? A 40

George Hazelhurst, cross.

North Broad street comes down and crosses—the car coming down North Broad street, it would come right in front of me, and there is an intersection there for us.

10 Q It is not a street intersection? A No, it is only past the cars there.

Q As you were stopped there, was the car underneath the bridge? A The Union car was.

Q On the right-hand side going up toward Newark? A Yes, that would be right in front of me.

20 Q Where did the Public Service bus come to a stop after you had the collision? Was it under the bridge? A Under the bridge, that is, the biggest part of it; probably three or four feet in back was projecting out from underneath the bridge.

Mr. Vosseller: Put your initial and put your mark where your bus was standing.

The Court: Make sure you understand the map.

By Mr. Vosseller.

30 Q You understand that there are two roadways underneath this arch. One goes up North Broad street and one goes up Railroad avenue, and they all come into Broad street. This line indicates the stone mason work, and this indicates the north line of the bridge here. A This is the gravel, the sidewalk.

By the Court.

40 Q You were under the Pennsylvania Railroad tracks, weren't you? A Yes, sir.

George Hazelhurst, cross.

Q And there is the arch that carries the Pennsylvania Railroad tracks (indicating)? A Yes.

Q What they want to know is where you were under the arch? A After I had stopped?

Q Yes. A The front of my bus was right here (indicating). 10

Q Just put the letter "H" there. You had almost got the front of your car completely from under the arch? A Just about, yes.

Q Was any part of your bus out from under the arch? A No.

Q You were entirely under? A All under.

Q How near from under the arch was any part of your bus? A Probably two feet or so.

Cross examination by Mr. Brenner. 20

Q You noticed the driver of the B & N bus veer slightly to the right, as you describe, what was the distance that separated the rear of the trolley car and the front of the bus? A Why, I should say eighteen or twenty feet.

Q And almost directly behind, wasn't it? A Yes.

Q And it veered to the right approximately how far? A Why, probably a foot, something like that, just a very little. 30

Q At that time was he then going about twenty-five miles an hour or twenty-three to twenty-five miles an hour? A Yes.

Q What was the position of the front of the bus with relation to the rear of the car when it made the left turn going from behind the trolley car? What distance then separated it? A When he started to make the left turn?

Q Yes. You say he made a right turn when he was about eighteen or twenty feet away, and 40

George Hazelhurst, cross.

then you say he made a left turn. When he started to make a left turn, what distance was he then away from the rear of the car? A About ten feet.

10 Q So that in making the left turn, the bus made rather a sharp turn from behind the trolley car? A Yes.

Q Did the bus skid at all, going at that rate of speed? A No, I don't believe I could see any skidding at all.

Q It just kept on going straight? A Yes.

20 Q Did the B & N bus decrease its speed at all up to the time of the accident? A I can hardly recall it all, but I heard an awful noise, and it seemed to me he was racing his motor and trying to get it in gear on some speed, but I could hear the gears grinding and the motor racing. I don't know whether he had it in neutral and was trying to get them in third or what.

Q Is there a grade down there towards the bridge? A A very steep grade down there.

Q So you don't know whether he was in gear or coasting down? A No, I don't.

30 Q But you heard what appeared to be the clashing of gears, and the next thing was the contact? A Yes.

Q So, as it appeared to you, he never reduced his speed beyond twenty-two miles an hour up to the point of contact? A It didn't seem like it.

40 Q So far as the Public Service bus is concerned, did that maintain its same speed right up to the point of contact, or did he appear to increase or decrease his speed? A He wasn't going any faster; he seemed to slow down a little, possibly.

Phillip Baumann, direct.

Q To about what speed? A Possibly five miles an hour or so.

Q So that your best judgment of the situation is that when the two cars came together, the B & N bus was still traveling between twenty-three and twenty-five miles an hour and the Public Service bus was still traveling at the rate of at least five miles an hour? A I should say around that, yes. 10

Q Both buses were in motion at the time of the contact? A Yes.

Mr. Brenner: That is all.

PHILLIP BAUMANN, a witness produced on behalf of the Public Service Company, being duly sworn according to law, on his oath saith: 20

Direct examination by Mr. Vosseller.

Q Mr. Baumann, where do you live? A Dewey Place, Elizabeth.

Q You were living in Elizabeth on January 27, 1928? A Yes, sir.

Q Where were you about 11:30 in the evening of that night? A Standing under the Central Railroad arch. 30

Q Was anybody with you? A No.

Q Did you see the accident that occurred there? A Yes, sir.

Q On which side of the railroad bridge were you? Were you on the west or the east side?

A The northwest corner.

Q Was that near where the two buses came together? A About five feet away.

Q You were close? A Too close. 40

Phillip Baumann, direct.

Q What did you see? Where was the B & N bus, that is, the Independent bus? Did you see it before the accident? A I saw it at Grand street, Grand and Broad street.

10 Q Grand street is south of the railroad bridge? A At the top, south.

Q How did you happen to see it? A I was looking up for a number twelve bus coming down, an Independent.

Q Will you describe just what happened to the B & N bus, that is, just how it came down there and on which side of the road it was and so forth? A It came down past Grand street at a pretty good rate of speed.

20 Q On which side of the road was it traveling? A Riding about in the center of the street. After he left the northeast corner of Grand street, he started pulling over to the Central Railroad, between the second and third trolley rail.

Q Where was he when he began to do that? A Right on the north side of Grand street.

Q Was the bus going fast or slow? A Going fast.

30 Q How did it continue down Broad street? A It came down between the second and third rail until it got to West Grand street and then swung to the center between the far rail towards the left-hand side and the center of the two rails.

Q Was there a standing trolley car there at the time? A The trolley car was just stopped there at that time that he pulled into there.

40 Q Where did this B & N bus come with relation to the trolley car? Was it to the one side or the other of it or behind it? A He was riding to the left of it, from the time he left West Grand street.

Phillip Baumann, direct.

Q How far is West Grand street from the Central Railroad bridge, about? A About one hundred yards, I guess, or a little more.

Q Did you see the Public Service bus before the accident? A Before the accident?

Q Yes. A Yes.

Q Where was it when you first saw it? A It was just coming past the lunch wagon on East Broad street.

10

Q What did the driver of the bus do? A He stopped. I heard the brakes squeal where he stopped.

Q Where was the front of the trolley with relation to the bridge, the north side? A The motor's head was right under the north part of the Central Railroad bridge.

20

Q What part of the trolley car would you say stuck out from under the bridge? How many feet? A About two feet, not counting the light on the front. The light is about a foot.

Q Did you see the Public Service bus pull around in front of the trolley? A Not right away.

Q I mean, did you see it? A I saw it pull around, yes.

Q When it pulled around in front of the trolley, where was the B & N bus? A Coming down right off—I don't know what the street is.

30

Q Was it under the bridge yet? A Not quite under the bridge.

Q You say it was coming how? A It was coming down on the left of the road and looked as though it was swinging in. I realized that it was a special bus, and I thought it was swinging in to catch that New York train.

40

Phillip Baumann, direct.

Q Was there any congestion of cars or automobiles or other vehicles on the right-hand side of the trolley car? A Nothing.

Q There was nothing there? A No.

Q Where did the accident take place? A About ten feet away from the real northwest corner under the arch, under the Central rail-
10 road.

Q Do you mean that it was ten feet south of the end of the bridge? A By the second stanchion that goes up to the arch.

Q Had the Public Service bus passed the front of the trolley car at the time of the accident? A After he was motioned to come ahead.

Q I mean at the time of the accident, at the minute of the accident, had the Public Service bus passed the front of the trolley car? A
20 Completely around it, except about—well, I don't know how much. I was on the opposite side, but the majority of the bus was around the trolley car, just cutting his wheels to the right to get straightened out to go up the grade.

The Court: We will take a recess at this time until 1:30 o'clock this afternoon.

(A recess was had until 1:30 P. M.)

30

Direct examination (continued) by Mr. Vosseller.

Q You cannot say whether or not the rear end of the bus had passed the front of the trolley car? A No, I couldn't.

Q Was it on an angle with the trolley car or had it turned so that it was parallel with the trolley car? A Just about parallel with it.

Q You understand what I mean? A Yes, I
40 know.

Phillip Baumann, direct.

Q I mean, was it pointed toward the west side or was it pointed south? A Pointed about south by east, the radiator part.

Q When it turned around the trolley car and got pointed in that direction, where was the B & N bus? A The B & N bus was just starting to pull to the left again after it looked as though he made a mistake and was going up toward that one street—I don't know the name of it, but it is on the south of the railroad.

10

Q Right close to the south of the railroad? A By the Times building.

Q Do you mean the one that goes to the Central Railroad station? A Towards the New York trains.

Q That is practically at the bridge, isn't it? A At the start of the bridge.

20

Q Had it slackened speed or anything of the kind at that point? A There was an awful racket there as though he was trying to get it in gear.

Q Was the bus rolling fast or slow? A Rolling fast, the B & N bus.

Q You drive an automobile, don't you? A Yes.

Q For how many years have you been driving? Many? A Yes.

30

Q There is a sharp grade leading under the bridge from south to north, is there not? A There is.

Q Would you say that that was a steep grade or just a gradual grade? A It is a steep grade with a load of people in the bus, with the weight.

Q Have you any notion as to the width of the Central Railroad bridge there? A I don't know just about how many feet it is.

40

Phillip Baumann, cross.

Q From the two farthest girders? A No, I couldn't tell.

The Court: The map will tell that.

Mr. Vosseller: May I put that sixty feet on there?

10

The Court: All right.

Cross examination by Mr. Braun.

Q Do I understand you to say that you were standing on this corner of Railroad Place and Broad street around here? A Mostly on Broad street.

Q And you were going where? To Newark?
A No, I was waiting for the bus to come to go up Acme street. There is a Union car going the other way, and a number twelve bus.

20

Q Going south? A It would be west when you go around it, and the bus comes south over Broad street, and the trolley goes up West Jersey street.

Q In other words, it would go south under the bridge, wouldn't it? A Yes, it would.

Q Why did you say that you saw the B & N bus because you were looking in that direction? You were waiting for another bus? A I wait for that trolley so often that I know when the buses are due. The number twelve bus is due about the same time, so I stand a chance of getting the number twelve or else getting a Union car.

30

Q But the bus was going the opposite direction from that in which you were going? A I know, but I can figure starting walking up to where the bus stops, because there is no stop

40

Phillip Baumann, cross.

there for a bus outside of the dead stop for no passengers.

Q There is no stop where? A Where I was standing there is no stop for passengers.

Q Why were you standing there? A I always stand there and figure on getting a ride home probably from people I know. 10

Q This was in January? A Yes.

Q And it was a cold night? A It wasn't so cold. I didn't think so.

Q It was thawing, wasn't it? A No—well, it was thawing from the stones.

Q Wasn't there ice under the bridge? A There was from the drippings from the Pennsylvania arch.

Q You were timing this by the Union trolley car? A Timing which? 20

Q The bus you expected to get? A No, I was timing the Union trolley car by the Union trolley car.

Q You were timing the vehicle that you wanted by the Union trolley car that was there then? A That was there then.

Q And where had you come from? A The lunch wagon.

Q Where is that located? A One hundred feet away from the arch on East Broad street. 30

Q On which side of East Broad street is it? The north side or the south side? A The north side.

Q How long had you stood there before the trolley came, this Union trolley car that was going north? A I guess it must have been about twelve minutes, because I just missed number twelve bus going up.

Q And the trolley came in and stopped? A What trolley? 40

Phillip Baumann, cross.

Q The Union trolley. A A few minutes after I was standing there, ten minutes after.

Q It came there and stopped? A Yes.

Q And when that trolley got there, usually a car going in the opposite direction arrived about the same time? A No, a few minutes later.

10 Q Why did you continue to look towards the south instead of towards the north, the direction in which you were expecting the trolley you wanted? A Because I just figured I wanted to get off up Elmora avenue and get the bus instead of the trolley, because I figured I knew the policeman up there on the beat and I wanted to see him.

Q How did you expect to get to Elmora avenue? A By taking number twelve bus that was coming through after the Union car.

20 Q And you were going in the opposite direction from which you really intended to go? A No, going in the same direction, but on a different route.

Q Would not that be going north? A It would be going north when I boarded either the trolley or the bus.

Q Where would you get that bus? A I would have got the bus right around where the dead stop is made.

30 Q You mean to say they stop there for passengers? A Coming in the bus stops there; going north they stop under the bridge.

Q Don't they stop up here by the candy store or paper store on the east side of Broad street? A Everybody stops there.

Q That is a regular bus stop? A Not on East Broad street; on Broad street.

Q On the east side of Broad street? A Yes.

40

Phillip Baumann, cross.

Q That is a regular bus stop, isn't it? A Yes, for all buses, yes.

Q When the trolley got there, you were looking south on Broad street, weren't you? A When the trolley came to a stop?

Q Yes. A I was looking at the motorman in the trolley. 10

Q Had you seen the B & N bus? A No, I didn't.

Q How long was the trolley there before you saw the B & N bus? A It was just a turn of my head from the motorman up to Broad street south.

Q And the B & N bus was there when? A The B & N bus was just at Grand street.

Q Did you continue to watch it? A Certainly. 20

Q And the trolley was about at a point about opposite you but extending a little bit north of a point opposite where you were standing? A No, it was right dead north.

Q The motorman was right opposite you? A Yes, probably a foot or a little glance to the north.

Q Were you under the Central Railroad bridge? A At that time I was right up against the first pillar, the first stanchion. 30

Q After looking at the motorman, you looked south and you saw this B & N bus coming? A Yes.

Q And you continued to watch it? A Yes.

Q Where was it traveling then? A It was just about pulling out in between the first and second rails of the railroad tracks, of the car tracks.

Q Which car tracks? Do you mean the north or the southbound tracks? A Well, he 40

Phillip Baumann, cross.

would be in between the southbound tracks. He would be on the east side of the southbound tracks, and he would be on the inside of the northbound tracks.

10 Q Where did he pull from? A He pulled from—well, the center of the bus was riding the eastbound track, the first track on the right.

Q You were looking around this pillar, weren't you? A No, I wasn't looking around the pillar; I was up against the pillar.

Q On which side of the pillar were you? A I couldn't say I was on either side, because I was resting against the pillar with my heels on the curb.

20 Q Your body was faced towards the trolley car, wasn't it? A No, my body wasn't faced towards the trolley.

Q Which way was it faced? A I was facing over towards the Times building.

Q That would be in which direction? A Southeast or east south.

Q What part of your body was resting against this pillar? A Right about the—the corner of the pillar was in the center of my back.

Q Which corner? A Well, it would be east by south.

30 Q And you continued to watch the bus? A Certainly.

Q And the bus came right on? A It came right on.

Q And it swung to its right, and then swung to its left? A No, swung to its left.

40 Q It did not swing to its right first? A It made a pull a little to its left to get in between the third and the second rail, as though he was going to make a turn up in the New York side of the railroad station.

Phillip Baumann, cross.

Q Where was it when it started to swing to its left? Was it further south than the map shows here? A I don't know on the map. I can tell you on the picture, because I ain't sure of that map.

Q Had he reached the Central Railroad bridge? A No. 10

Q How far from the Central railroad bridge was he when he pulled over there? A I don't know the distance to that street, but it is to where the cigar store used to be on the corner.

Q Can't you give us some idea? A Well, I ain't sure of it.

Q It was about one hundred yards away when you first saw it, wasn't it? A The bus?

Q Yes. A No, not the B & N bus.

Q Didn't you say on your direct examination that the bus was about one hundred yards away? A No, I didn't. 20

Q When you saw it coming down the hill? A No, I said it was at Grand street.

Q How far is Grand street from where you were? A Well, it is one block, whatever a block is equal down on there.

Q Now you have got it pulled to its left, and it is between which trolley rails? A Where at?

Q You say when it pulled to its left? A He was pulling to his left all the way after he passed Grand street. 30

Q When he reached the southerly side of the Central Railroad bridge, where was he with relation to the trolley rails? A Just going from the third rail over to the fourth rail.

Q When you say the third rail, which rails do you mean? Do you mean the north or the southbound rails? A They are all north and southbound. I mean he was cutting from the 40

Phillip Baumann, cross.

second rail on the right-hand side over to the third rail from behind the trolley.

Q And that is as far over as he had cut in that block? A Before he came in that—well, it is an oval-shape spot down there. It is no block.

10 Q How far was he from the rear of the trolley then? A About the width of the street down there by the Times. I don't know what street it is.

Q You don't know how far? A No.

Q Can you give it to us in feet? A I should judge about thirty feet.

20 Q Then what did he do? A Then he realized that he could not make it on the left, and he started pulling to the left, and he kept right on going with that noise still in the motor as though he was out of gear.

Q Well, he was starting to go under the railroad bridge then, wasn't he? A He was.

Q And he pulled still further to his left? A Kept pulling right to his left.

Q And you were watching him all the time? A I was.

30 Q You were paying very close attention to what he was doing? A Yes, I was, on account of passing the bus passengers there.

Q How far did he get before you saw the Public Service bus? A When I took my eyes off of him, he was just coming around the left of the trolley, and I glanced quickly to see the Public Service bus.

40 Q Why did you glance to see the Public Service bus when you saw this bus going in a strange manner? A Because I knew there was going to be some trouble, because it is a bad corner.

Phillip Baumann, cross.

Q You didn't know that the Public Service bus was coming, did you? A I knew he was coming there, because I saw him out of the lunch wagon before that riding along real slow.

Q You had seen him before that? A Out of the lunch wagon, the Public Service was coming up East Broad street. 10

Q Was that before or after you saw the B & N bus? A Before I first saw the B & N bus.

Q Was that before or after the trolley had stopped? A It was about the same time as the trolley had stopped.

Q Did you actually see the Public Service bus pull from the corner of East Broad street and North Broad street? A No, I didn't. 20

Q Where was it when you first saw it after you had seen it back of the lunch wagon? A Coming around the front of the trolley car, mostly around.

Q And the front of the trolley car was right opposite you, right near the northerly edge of the railroad bridge? A The motorman was opposite me only for a glance.

Q Was this Public Service bus traveling in the trolley rails? A No. 30

Q Where was he? Was he to the right of the East Broad street trolley rails? A He was riding in between the north rail and the curb.

Q How close to the front of the trolley car did he pass? A Well, I should judge the front—before he made the turn it was about four feet.

Q And he was still to the right of the north rail of the East Broad street trolley rails? A Not when it got to the center of the Pennsylvania railroad arch. 40

Phillip Baumann, cross.

Q Did he cut into the trolley rails? A He had to.

Q He had to cut into the trolley rails and run out of East Broad street into Broad street?

A Yes.

10 Q Why? A Because it is a grade there, and to save the pull, he cut that way to give the other traffic going up a chance to go around the back of him.

Q You say that by cutting to his left, he gave the traffic going north a chance to go around the back of him? A Yes.

Q And he was about four feet in front of the trolley as he passed the front of it? A Yes.

20 Q Where was he when you saw him give this signal to the motorman? A I didn't see him give the signal to the motorman.

Q Did you see the motorman wave to him? A I did not see the motorman wave to him.

Q Didn't you testify on direct examination that you saw the motorman wave him on? A No.

30 Q Then, as he came around the front of the trolley, where would you place the B & N bus? It had almost passed the Central railroad bridge, had it not? A No.

Q How far under had it gotten? A When he got hit, it was right about the second station.

Q When you saw the Public Service bus passing the front of the trolley, how far under the bridge had the B & N bus gotten? A It got about halfway in under.

40 Q Was the driver's seat of the Public Service bus past the trolley at that time? A Pretty near parallel with the trolley.

Phillip Baumann, cross.

Q Had it reached beyond the west side of the trolley rail so that the driver would have a vision south on the west side of Broad street? A He would, as far as from Grand street up south.

Q How far apart were the two buses then?
A About four feet.

Q Do you understand that question? A How far were the buses apart? 10

Q When the front of the Public Service bus got far enough beyond the westerly side of the trolley for the driver to see south on Broad street and the other bus was halfway through the railroad bridge, how far were the buses apart then? A About four feet.

Q After the accident what did you do? A I looked to see—after the accident occurred? I looked to see if I could open the emergency door on the back of the B & N bus. 20

Q Then what did you do? A I found out I could not reach it to open it, so I went around the front of the B & N bus.

Q Then what did you do? A Then I crawled over the Public Service bus and saw them all coming out of the B & N bus.

Q Then what did you do? A Then I stood there and the crowd gathered around and the policeman came, and I looked to see if anyone was hurt, and they all got talking around there and the crowd came around. 30

Q Did you leave then? A No, I stayed there.

Q How long did you stay there? A About ten minutes.

Q Did you talk to anybody while you were there? A A fellow came up and asked me did I see it.

Q Who? A The bus operator. 40

Phillip Baumann, cross.

Q Which bus operator? A The Public Service.

Q Did you know him? A Well, I didn't know him; I knew him, but I didn't know him.

Q Whom do you work for? A I work for the cousin in Queens Village, Long Island.

10 Q And you live in Elizabeth? A I live in Elizabeth.

Q Where were you going? A Do you mean who did I work for at the time of the accident?

Q Yes. A Burnham Boiler Company.

Q Where were you going at the time you were waiting there? A Going home.

Q This was about eleven-thirty? A Yes.

Q And you wanted to go up to see this officer first? A Yes, sir, my intentions was when I got there, but when I saw it was that late, I figured I would not go up.

20

By Mr. Vosseller.

Q What was the position of the Public Service bus on the street after the accident? Was it parallel with the road or was it at an angle across the road? A After it was hit, it was kind of on an angle.

Q Was it on an angle before it was hit? A
30 It was parallel. That would be the nearest to it.

Q Did not the front right of the Public Service bus hit the right front of the B & N bus?

Mr. Brenner: I think that is very leading your Honor.

The Court: Yes.

By Mr. Vosseller.

Q What part of the B & N bus was hit by the
40 Public Service bus? A I saw the B & N bus hit the Public Service bus.

William Sperry, direct.

Q What part of the B & N bus hit the Public Service bus? A The right front door, the entrance door.

Q And what part of the Public Service bus was hit? A Right in between the shell of the radiator, the outer shell of the radiator.

10

Mr. Brenner: I have no questions.

WILLIAM SPERRY, a witness produced on behalf of the Public Service Company, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Vosseller.

Q Mr. Sperry, where do you live? A In Hillside, Hurden street.

20

Q Do you remember the twenty-seventh day of last January? A Yes.

Q That is a year ago? A A year ago.

Q Where were you at the time of this accident? A In a Union trolley car.

Q Where was the Union trolley car? A On Broad street, underneath, mostly underneath the Central railroad bridge.

30

Q Can you say how much of the trolley car protruded beyond the bridge north? A The front end of the trolley?

Q Yes. A About—part of the motorman's platform was sticking out from under the bridge.

Q Where were you sitting in the trolley car? A In about the middle.

Q Do you remember the trolley car stopping there? A Yes, it did.

40

William Sperry, direct.

The Court: Just let him tell his story. Let him tell the jury all he knows about this accident.

Mr. Vosseller: I have just one question, if your Honor please.

10 *By Mr. Vosseller.*

Q Did that trolley car start after it once stopped? A No, it didn't, not until it went on after the accident.

Q What did you see of this accident? Just tell what you saw. A Well, do you mean just before the accident?

Q All that you saw. Tell all that you saw. A The trolley car came up as usual, and they usually stop underneath the bridge, and this
20 particular trolley stopped, and it seemed to me that he was stopping longer than he should, so I looked up from the paper and noticed the motorman beckoning to him, what seemed to be a bus driver, as I afterwards saw, to come in from East Broad street, for him to go ahead of the trolley, and then I looked and saw who he was beckoning to, and I saw the Public Service bus coming out of East Broad street and start up,
30 and he went around. I watched his lights from where I could see them in the trolley, coming around in the front of the trolley car, and as he came around, I heard a noise behind me. It sounded like a grinding of gears to the left rear of the trolley, and of course, I turned my head to see what it was, and I saw this Independent bus just as it was—well, it was moving. I didn't see it hardly moving at all before it hit the Public Service bus.

Q Where was it on the street? A It was
40 alongside of me on my left.

William Sperry, direct.

Q On the left of the trolley car? A Yes, on the left of the trolley car.

Q Could you say what distance it was from the west curb? A No, sir.

Q You could not say whether it was near or far from it? A Well, it was, I should judge, halfway over; I don't know the distance. 10

Q You saw them come together? A I saw them just as they hit, yes.

Q Did you get out of the trolley car? A Yes.

Q What was the position of the Public Service bus, and what was the position of the B & N bus just immediately after the accident? A Immediately after the accident they were more or less in the middle of the street, with the rear end of the bus just clearing the front of the trolley car, and then after they hit, at the impact, they hesitated for a second, and then the weight of the two vehicles slowly slid the two of them over against the pillar there of the Central railroad bridge. 20

Q Could you say what distance the rear of the bus was from the front of the trolley when the accident occurred?

The Court: Which bus? 30

Mr. Vosseller: The Public Service bus.

A The rear of the Public Service, I should judge, it must have been just about at the end of the trolley, just clearing the front end of the trolley, and then after they slowed, it slid over far enough for the trolley to get through.

Mr. Vosseller: That is all.

William Sperry, cross.

Cross examination by Mr. Braun.

Q The trolley car did not pull out immediately after the accident, did it? A No, the motorman and myself both got out and walked over to the accident to see if we could help.

10 Q And you had been reading the paper? A Yes.

Q You were seated on which side of the trolley car? Were you on the right or left facing the front? A Facing the front on the left.

Q What kind of seats were they? Were they the long seats or those short seats? A The cross-seats, the regular straw seats, railroad seats.

20 Q Were you next to the window? A Yes, I was alone.

Q And the trolley stopped there what seemed to be a longer time than you were accustomed to? A Well, it stopped, and then, as I began to realize it was a little longer than usual, I noticed the motorman, and with that, that accounted to me the meaning for the wait.

30 Q Of course, you were not paying any particular attention to the relative positions of the car and the bus and so on, and you were just wondering what was going on? A I looked up to see what was the matter, and I saw him waving.

Q Then you saw this bus come across the front and the next instant later the other bus came and they came together? A Yes.

Q You don't know who struck? A I know that the Independent bus struck the Public Service bus.

40 Q What part of it struck the Public Service bus? A Just behind—on the right-hand side it

William Lawrence, direct.

hit. I don't know the exact position of the bus that it hit, but it was somewhere between—from the rear wheels which are about two-thirds way back on the bus or maybe three-quarters, from between those wheels and the door, it hit somewhere in there.

Q Do you mean between the door and the rear wheels of the Independent bus? A Yes, between the front side of the door. 10

Q That struck the Public Service bus? A That struck the Public Service bus.

Mr. Braun: That is all.

WILLIAM LAWRENCE, a witness produced on behalf of the defendant, Public Service Company, being duly sworn according to law, on his oath saith: 20

Direct examination by Mr. Vosseller.

Q Mr. Lawrence, where do you live? A Hillside.

Q Were you on a trolley car on this night in question? A I was.

Q Do you remember the trolley car stopping under the bridge? A I do. 30

Q Do you remember whether or not it started again after it stopped, until after the accident occurred? A It did not.

Q It did not? A No.

Q Did you see any part of the accident? A I did.

Q Will you detail to the jury just what you did see? A I was sitting in the trolley in the left-hand side, and we had stopped at the switch 40

William Lawrence, cross.

there, which I know is there, and we were there a little longer than what I thought would be necessary, and I saw this other bus shoot out in front of his, that is East Grand, on the East Broad street section there. They were going in front, and as it was going around, I was watching it clearing the bus, the front of the trolley, 10 so as it was getting over and clearing the Union trolley, I was watching the front of the bus, not the rear. Then this other bus came up and they collided.

Q On which side of the street was the B & N bus or the Independent bus? A The left-hand side.

Q Do you know whether it was near the west curb? A It was.

20 Q How near to the west curb would you estimate it to be? A It was in the tracks.

Q After the accident where was the rear of the Public Service bus? A After the accident?

Q Yes. Just immediately after the accident? A Well, a very little distance from the front of the trolley.

30 Q Was the bus parallel with the street under the railroad, or was it at an angle across the west side of the street? A It was parallel; it was across the tracks.

Cross examination by Mr. Braun.

Q You were not paying much attention to what was going on except to the trolley, were you? A Sir?

Q You were not paying much attention to what was going on except to the trolley, were you? A In what respect?

40 Q The thing that attracted your attention was when you, as you say, saw this Public Service

Thomas Jennings, direct.

bus shoot out of East Broad street? A Yes, I was watching that bus going across.

Q Which bus do you say struck which bus? A It happened so quickly I couldn't just say truthfully.

Q Do you know what part of them came together? A I do. 10

Q What part of the Public Service bus came in contact with the other bus? A The front of the bus and the side; the back of the door of the Independent bus.

Q And you say the Independent bus was in the trolley rails? A Away over on the trolley rails.

Q It was on the trolley rails running into Railroad place, wasn't it? A On the outer side.

Q Of the trolley rails going into Railroad Place? A Going into that turn there. 20

Mr. Braun: That is all.

THOMAS JENNINGS, a witness produced on behalf of the Public Service Company, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Vosseller. 30

Q Mr. Jennings, you work for the Public Service Company? A Yes.

Q What do you do? A Switch the tracks.

Q Where? A Under the arch.

Q Were you on duty on January 27, 1928, at 11:30 o'clock? A Yes.

Q What are your duties? What do you do? You say you are a switch boy? A Well, switch the tracks. 40

Thomas Jennings, direct.

Q From Railroad avenue and so forth? A Yes, there is a switch there.

Q Did you see the Union trolley car there that night? A Yes.

10 Q Where were you? A I was right in the front—the second switch by East Broad street.

Q Were you ahead of the trolley? A Yes.

Q Where was the trolley located? Was it all under the bridge or partly under the bridge? A It was about three feet away from the bridge.

Q How much of the trolley car was under the bridge? A It is about four or five feet under the bridge, from the end of the bridge, this end.

Q Was the motorman under the bridge? A Yes.

20 Q And the rest of the car was out beyond the bridge, is that right? A Yes.

Q Did you see this Public Service bus?

The Court: The motorman was under the bridge, and the rest of the car was out beyond the bridge. The motorman was in the front of the car.

By Mr. Vosseller.

30 Q The front of the car was beyond the bridge, wasn't it? A Yes.

Q It was north? A Yes.

Q According to that the car would be under the bridge.

By the Court.

40 Q Come down here, son, and just point out. Do you know that map? You have seen it before? A Yes.

Thomas Jennings, direct.

Q The switches are this way (indicating)? A Yes.

Q Turn right around and tell these gentlemen the story of this accident as you remember it. Just tell everything that happened. A The Union car came down going north. There is one switch there (indicating). He was about three feet away from that switch, so there is another switch about here (indicating), and he was about five feet away from the end of the arch altogether, so I went out there to throw the switch, and I threw the switch straight so that he could go ahead to Newark, and then the first bus came down. 10

Q It came down what street? A Came down East Broad street, and he came down about here I guess (indicating), and there is an Independent bus coming down, and he came down, and he went on the left of the trolley about five feet behind the trolley, and he turned around say about here (indicating), and the first bus came down, after the operator told him to come down from the trolley, so he came down and he went about four feet, I guess, in front of the trolley and turned and then he hit. 20

Q What was the position of the bus after the collision occurred? A The front of the Public Service bus was about at the door of the Independent; smashed it in. 30

Q Was the Public Service bus straight with the west curb or was it on an angle? A About on an angle, I guess.

Q How near was the rear of the bus to the front of the trolley car? A About five feet, I guess.

Karl McBrady, direct.

Cross examination by Mr. Braun.

Q How old are you, son? A Fifteen.

Q And you were standing where when the accident actually happened? A About here I was standing when it happened. I had to go out to
10 throw the switch for the Newark avenue car.

Q And you have been over this map with the attorneys and other people from the Public Service? A I didn't go over it with them.

Q Didn't you tell them what you saw? A Yes, I told them what I saw.

Q Didn't you look at the map and explain it? A They had a map up in the office, a small map.

Q A map like this (indicating)? A Yes.

20 Mr. Braun: That is all.

KARL McBRADY, a witness produced on behalf of the Public Service Company, being duly sworn according to law, on his oath saith:

Direct examination by Mr. Vosseller.

30 Q Where were you on the night of January 27, 1928? A Right underneath the arch.

Q Were you with the boy who was last on the witness-stand? A Yes, sir.

Q What were you doing there? A I wasn't standing right with him.

Q Where were you standing? A I was standing over by the Times building under the arch, but near the Times building in that direction.

40 Q That is the south end? A Yes, sir.

Karl McBrady, direct.

Q What did you see of this accident? A Well, I was standing under there, me and another boy who was with me, and a Union trolley car came down and stopped about three feet past the second switch towards North Broad street, and I noticed the First street bus come out of East Broad street at about twice as fast as a man can walk, and then I happened to hear a lot of noise behind me, and I turned around and I seen the Independent bus coming down about eighteen or twenty miles an hour. 10

Q Where was it on the street? A Over towards the second tracks when I seen it.

Q What do you mean by the second tracks? A The Union trolley car was on the first track going up to North Broad street, and there is a second track coming down, and he was going over there. 20

Q Is that to the west or east, right or left? A The left, if you face down.

Q If you are facing North Broad street? A Yes.

Q How far back of the trolley car was it? A Well, it was about by the Times building when I seen it first, I guess about twenty-five or thirty feet back of the trolley car when I first seen it.

Q Describe what it did from there on. A When I noticed it, it was going over towards the other side of the bridge. 30

Q Do you mean west or left or what? A To the left of the bridge, and he kept—he was about six feet away from the gutter when he started going over to the bridge, when he came right near the bridge, and he kept going along there, and the Public Service bus was coming out and he got down there right by the bus, and he went right on there. 40

Karl McBrady, cross.

Q What was the position of the Public Service bus with relation to the sidewalk under the Central Railroad bridge? A It was lying at an angle.

10 Q Where was the rear of the bus as related to the front of the trolley car? A Well, about in the middle of the trolley car, I guess.

Mr. Vosseller: Cross examine.

Cross examination by Mr. Braun.

Q Did you talk this over also with somebody before you came here? A Yes, just with the lawyer.

20 Q Did you tell them how fast the man could walk? A Well, I believe about seven or eight miles an hour, six or seven or eight miles an hour.

Q So that this bus, going twice as fast as a man could walk, was going twelve or fourteen miles an hour? A No.

The Court: That is not what he said.

30 *By Mr. Braun.*

Q Didn't you say that this bus was going twice as fast as a man could walk? A Yes, but a man can't walk—

The Court: He did not say that a man walks seven or eight miles an hour.

Mr. Braun: That is what I am trying to straighten out.

40 The Court: Do it without implying that he said it.

Karl McBrady, cross.

By Mr. Braun.

Q Didn't he ask you how fast you estimated a man could walk? A Yes.

Q What did you tell him? A About three or four miles an hour.

Q Where was this Public Service bus when you first saw it? A When I first seen it it was just coming out from the bridge out of East Broad street. 10

Q Where was the B & N bus then? A The B & N bus, I spied it just before I seen the Public Service bus.

Q Where was it? A Right by the Times building, about twenty-five to thirty feet in back of the trolley car.

Q Didn't the trolley car block your vision of the two buses coming together? A No, sir. 20

Mr. Braun: That is all.

Mr. Vosseller: That is our case, your Honor, the defendant Public Service Company rests.

(The defendant Public Service Co-ordinated Transport Company rested.)

Mr. Braun: If the Court please, I should like to offer these interrogatories in evidence. 30

The Court: You may read them.

Mr. Braun: I will just offer them, your Honor, and let the jury take them.

(The papers referred to were received in evidence and marked "Defendant B & N Transportation Company Exhibit 3.")

Mr. Braun: We rest.

(The defendant B & N Transportation Company rested.) 40

Motion for Direction of a Verdict.

10 Mr. Vosseller: If the Court please, at this time I should like to renew my motion for a directed verdict on the ground that the whole case shows a violation of what was paragraphs ten and eleven of section two of the Traffic Act of 1915, that is 1915 as amended, and under the case that I have already quoted of *Cairn v. Public Service Corporation*, which, as I said before in my motion for a non-suit, embodied the same principles and the same set of circumstances almost as embodied in this case. I therefore ask for a directed verdict in favor of the Public Service Co-ordinated Transport Company.

20 The Court: This has given me a great deal of concern. This collision would never have occurred if the B & N bus had lived up to the law which required it to pass a trolley car, located as this trolley car was located, on the right of the trolley car.

According to the uncontroverted evidence in this case, what I have just said is an inevitable conclusion.

30 The Traffic Act which was in force at the time of the accident provides that a vehicle proceeding in the same direction as a street car operated on the tracks in the center of any public street, when passing a moving car, shall pass such street car on its right.

40 Of course, if this car was standing at the time, that does not make any difference, so far as the application of this law is concerned, "Provided however when through narrowness of the road or street or through congestion of traffic standing at the curb or side of such road or street, it is impossible or unsafe to pass that street car as above, then by exercising exceptional

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caution, the vehicle may pass on the left of such street car."

I am again stating that if the driver of the B & N bus had lived up to that traffic regulation this collision would never have occurred. The only question is whether there was any exercise of that high degree of care, which was incumbent upon the driver of the Public Service bus, so far as its passengers were concerned, and whether there was any failure to exercise the high degree of care so incumbent in the relationship with their passengers, and whether there was anything left undone or committed by the driver of the car, that is, the Public Service bus, which was in any way the proximate cause of this accident either solely or contributorily.

10

I should like to hear you on that, Mr. Brenner.

20

Mr. Brenner: I am inclined to agree very much with your Honor as to the situation of this bus going to the left of the car and that had there not been any violation of the Traffic Act, unquestionably this accident would not have occurred. However, it seems to me there is sufficient evidence to have the jury pass upon the question of whether or not there was any negligence upon the part of the driver of this bus which contributed to the occurrence of this accident.

30

The Court: Just what do you think was negligence on his part.

Mr. Brenner: In this particular, if the Court please, that which developed this morning on the actual physical demonstration by the driver of the Public Service bus when we took the two little cars and your Honor's eye-glass case as the

40

Motion for Direction of a Verdict.

10 trolley car; when he indicated that he had passed
 a distance of some fifteen or twenty feet past
 the front of that trolley car, and that the B & N
 bus had passed practically the same or a greater
 distance, and that notwithstanding that fact, he
 says he never saw the B & N bus until a time
 when it was a distance of some four feet away.
 It seems to me that the jury has a right to pass
 upon the question as to whether, in the exercise
 of due care, he should have seen that bus at a
 time when the front of it came from behind the
 rear of that trolley car, and whether, going at a
 rate of seven or eight miles an hour, which he
 said he was going at that time, his bus was not
 out of proper control, because if it was in proper
 20 control, he could have stopped his car, according
 to his own testimony, within fifteen feet on the
 pavement as it existed at that time under the
 Central railroad bridge. It seems to me that that
 presents a jury question.

Of course, you must also take into considera-
 tion on this motion the testimony of Mrs. Mc-
 Cusker herself, who says that she observed the
 B & N bus coming from the rear of the car, from
 behind the rear of the car at a time when the
 Public Service bus had then not reached the
 30 front of the car, and that it went a considerable
 distance, being operated at a rate of speed of
 some twenty miles an hour, up to the time of the
 contact. Of course, it is conceded on the record,
 and your Honor said you would probably take
 judicial notice of the fact, that that is a built-up
 portion of the city.

The Court: Surely.

Mr. Brenner: That being so, the requirement
 of the Traffic Act, as it existed in the early part
 40 of 1928—

Motion for Direction of a Verdict.

The Court: Isn't she the only one that says that it was going at such a rate of speed as it passed the front of the car?

Mr. Brenner: I think she is. The B & N bus driver makes no calculation. The driver of the Public Service bus says he was going only seven or eight miles an hour, but of course, where there is a conflict of evidence, he may be entirely wrong about it, and the jury may find that she is a poor judge of the speed of an automobile. After all, it presents such a conflict that it seems to me the jury must pass upon it. 10

The Court: Although the jury might, I cannot see how they could find anything except that the Public Service bus actually came to a stop and started again and went around comparatively very slowly to the front of that car. I do agree with Mr. Brenner to the effect that the plaintiff did say that it was going about twenty miles an hour, and she is the only one that says it was going around at any such speed as that. 20

Here was a huge car, huge in the sense that it was forty-three feet long. The height of it is not given, but it was a huge vehicle. In making that turn around that corner, the Public Service bus driver said that he did not see the other car until it was within about four feet of him. Almost all of the evidence is to the effect that this man, the driver of the B & N bus, came from behind this huge vehicle forty-three feet long and turned to the left. 30

Of course, I realize that if there is any question of fact at all that the Court should leave it to the jury. I may have a strong personal opinion about that myself, but it is not my province to pass upon questions of fact where there is any controversy about them at all. 40

Discussion.

The motion is denied and you may have an exception, Mr. Vosseller.

Mr. Vosseller: Thank you.

A Juror: Would that be considered as one street at that particular point where that car lay?

10 The Court: I don't quite understand that.

The Juror: There are three streets coming in there together. Could you consider that as one street where that trolley car laid at that time?

The Court: One street in respect to what?

A Juror: Well, for the B & N bus going by the trolley on the left side. You say this street is forty feet coming from this way: Is he entitled to sixty feet down by that car?

20 The Court: What do you mean by sixty feet?

The Juror: We are just assuming that this is forty-nine feet. Now the width of this street is about forty feet.

The Court: That is a street, and am holding that under the Traffic Law, it was his duty to keep on the right and to pass that car on the right. The law is that in making a turn you are to keep on the right, as I put the question to the driver of the B & N bus. It is their duty, in making those left-hand turns, to keep to the right of the street they are on until they get about to the center of the intersection, so that when they are into the other street, they are still on the right.

30 Mr. Braun: May I take exception to your Honor's remarks to the jury and also your Honor's remarks and ruling?

The Court: Give me your reasons.

40 Mr. Braun: My reasons are that the Traffic Act does not say positively that he must keep

Discussion.

to the right of the intersection. It is where possible, and I say that when there is a trolley car and another bus in the street that blocks his chances of making that turn, he has a right to pass to the left in going into that other street.

The Court: Why do you say that?

Mr. Braun: Because the law says that where possible, any vehicle turning into another road to the left shall before turning, when possible— 10

The Court: We are talking about passing the trolley car. The juror asked me as to the passing of the trolley car. What section of the Traffic Act are you referring to?

Mr. Braun: Section 6-A.

The Court: That is not the section at all. It is Section 11.

Mr. Braun: The juror was inquiring about the right of the road, whether that was one street or whether it was to be considered as several streets. 20

The Court: There are three distinct streets involved. The juror asked whether that was a street under the Central arch. That is one street, and East Broad street is another street. The street to the left as you look north on that map, called Railroad Place, is another street. That is to the left. 30

Mr. Braun: What the juror asked, as I understand it, was what you considered this point up here that was marked by the driver of the Public Service bus as the position of the front of the trolley car, whether that was to be considered as Broad street, East Broad street, or Railroad Place.

Discussion.

The Court: That is the intersection of the three of them. Why do you dispute the statement of the law as the Court has given it to you?

10 Mr. Braun: Because I say that if we turn into that side street, he is not passing a trolley car going in the same direction. He is turning off and making a left-hand turn, and he has a right to pass to the left of the trolley. He is not paralleling the trolley's course.

The Court: I don't understand you.

Mr. Braun: I will demonstrate it on the map. I say that the trolley, going this way, and intending to turn this way, has a right to bear off. It does not have to wait until that trolley goes on or pass around to the front of the trolley and come back. If that trolley was far enough out in
20 here (indicating) to prevent him from going out this way, he had a right to follow this course around there (indicating).

The Court: Do you mean to say, as a matter of intelligent interpretation of the law, that simply because there is a trolley standing, that will permit you to make a left-hand turn that will cut the corner?

Mr. Braun: Yes, sir, if it is impossible to carry out the provisions.
30

The Court: I am going to charge that that is not the law.

(Argument.)

THE PLAINTIFF RESTED.

(The defendant Public Service Co-ordinated Transport Company rested.)

(The defendant B & N Transportation Company rested.)

Colloquy.

(Mr. Vosseller made a closing address to the jury on behalf of the defendant Public Service Co-ordinated Transport Company.)

(Mr. Braun made a closing address to the jury on behalf of the defendant B & N Transportation Company, during the course of which he said:)

10

He had a right to do that.

The Court: Why do you say he had a right to proceed that way? You are stating a matter of law.

Mr. Braun: This is a break in the road, and I say that under the law, as I understand it, and under the law as I believe your Honor should charge it, and under the facts, as I understand them—

20

The Court: I am asking you again why you say he had a right to do that.

Mr. Braun: I say he had a right to make a left-hand turn at that point, if the trolley were as far out as was indicated by the bus driver.

The Court: The point that I am making is this: If you said to the jury that it was for them to pass upon whether or not it was right for him to make that turn under the circumstances, that would be one matter, but when you make a positive declaration to the jury that he had a right to do it, then you are stating something you are not justified in stating. It is for the jury to pass upon what would have been the conduct of a reasonably prudent person under the circumstances, but you are saying to them that he had a right to do that. That is something for them to pass upon, as to whether or not he had a right to do that.

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Colloquy.

Mr. Braun: I say he had a right to do it, if the facts were as I stated.

The Court: Again I say to you that the jury might believe that you are stating that as a matter of law.

10 Mr. Braun: I don't want the jury to get that impression, and it is not my intention to give the jury any such impression. They are supposed to be guided by your Honor's charge, and if there is any such idea in their minds, I want to clear that up now. I am stating my understanding of the facts and of the law applicable to the facts, as I understand them, and I am not trying to usurp your Honor's prerogative to charge the jury on the law.

20 The Court: You evidently do not appreciate the point that I make. When an attorney stands up before a jury, he is recognized by them as a lawyer, and when you say to the jury that a man had a right to do a thing, it is quite likely that they are assuming that you are stating a matter of law. If you said to the jury, "It is for you to say whether or not he had a right to do it under the circumstances," it would be perfectly proper.

30 Mr. Braun: I think I have been entirely within my rights, your Honor. I certainly intended to be, and if I have overstepped the bounds of my position, I am sure your Honor will correct it, and I want the jury to pay strict attention.

The Court: The only point I am making is this, and I again make it: If you appeal to the jury as a matter of reason, "Gentlemen, did not this man, under the circumstances, have a right to make this left-hand turn? I am submitting to you that he had a right to make that left-hand

40

Charge to Jury.

turn," that would be perfectly proper, but you are asserting as a positive thing; you are personally asserting to the jury as a positive thing that he had a right to do it, and that is one of the questions for them to pass upon.

Mr. Braun: I just say that he had a right to under my understanding of the facts. 10

The Court: It is a jury's understanding of the facts that control. It is all right, since you qualify it.

(Mr. Braun continued and completed his address to the jury, on behalf of the defendant B & N Transportation Company.)

(Mr. Brenner made a closing address to the jury on behalf of the plaintiffs.)

20

CHARGE.

Court's charge to the jury by Honorable Peter F. Daly, Circuit Court Judge, as follows:

Gentlemen of the Jury: This case has already taken so long—I am not saying unnecessarily long in view of the importance of the question involved—but it has taken so long that I am constrained to ask you to finish it tonight. 30

There is not a scrap of evidence in this case, nor has there been a serious contention made that the plaintiff in any way contributed to the happening of this collision.

Therefore, if this collision was the result of negligence upon the part of either one or both of the defendants, which negligence was the proximate or immediately effective cause of her injuries from the collision which occurred, she is entitled to a verdict. 40

Charge to Jury.

If she is entitled to a verdict, she is entitled to a verdict that will compensate her for the physical injuries which she sustained and for the pain and suffering which accompanied those injuries.

10 If she is entitled to a verdict, she is entitled to a verdict which shall include a reimbursement to her of all the expenses that she reasonably and properly incurred in the reasonable and proper treatment of her injuries.

As to the injuries which she has already suffered and as to the pain which she has already gone through, whatever the extent of that may be, that is not easy to determine, but it is comparatively easy as compared to the question of determining what, if anything, she will suffer in the future, so far as pain and so far as actual
20 bodily injury are concerned.

Because it is so much more difficult for the mind to determine what the future will develop as compared with what is already a past fact, our law says that before a jury can compensate for permanent or continuing injury, they must be satisfied that there is permanent continuing injury and that that permanent or continuing injury flows from the accident so-called. They
30 must be satisfied as to the nature and extent of that permanent and continuing injury, and as to how long it will continue. They must be satisfied upon the basis of a preponderance of the evidence to a point of reasonable certainty before they have a lawful and just right to compensate.

If you believe on the basis of the preponderance of the evidence, as a matter of reasonable certainty to your impartial minds that there is
40 permanent or continuing injury flowing directly

Charge to Jury.

and exclusively from the collision, then this woman, if she is entitled to a verdict, is entitled to a verdict that shall include fair compensation for that.

It must impress you good men, as it impresses me in cases like this, that it is remarkable that we have men of apparently high intelligence and splendid standing in their profession who so radically differ as to the condition of the human body, and who so radically differ as they have differed in a case like this. I know that to the lay mind there must be a difficulty of comprehension as to how it could honestly be that professional men of apparently high character and of apparently profound ability could so radically differ as to the character of the injuries of the human body and as to the cause. How they can expect a jury to accurately determine those questions when they so differ is beyond my candid opinion.

Yet that is a duty that you good men must pass upon in this case, because you know that the doctors have seriously differed. Some claim that this woman has no permanent or continuing injury as a result of the injuries which she received in this collision, and some of the doctors assert with equal positiveness that she has. Some assert that her present condition is of such a nature and extent, and some assert that it is of a vastly different nature and extent, and you good men must pass upon those questions.

If this woman is entitled to a verdict, then she is entitled to a verdict that will fairly compensate her for any past injuries and any injuries there may be in the future that you believe to a point of reasonable certainty there will be in the future, and which injuries were caused by the collision

Charge to Jury.

on this night of January 20, 1928, because, as I have already stated, there is no serious contention that there was any act of commission or any act undone on the part of this woman that in any degree contributed to this so-called accident.

10 It might be wise to refer to that word "accident." You know, gentlemen, that the word "accident" in use in its precise meaning means some physical happening which ordinary prudence could not have anticipated to guard against. It means something that is unavoidable from the standpoint of what would have been the conduct of an ordinarily prudent person, but we have grown accustomed to use that word "accident" in a rather loose way in referring to a happening of this kind. We use the word "accident" in the
20 sense that it was a happening that was not intended by the parties, and when the jury understand the use that we put to this word, then there is no harm done. If it is an unavoidable accident nobody can be held responsible.

For example, if you were in your automobile and something happened that no matter how careful you might have been from the standpoint of an ordinarily prudent person you could not have avoided, nor could anybody else from the standpoint of ordinary conduct have avoided, then it
30 would be wrong for a law to make you responsible for what you could not have controlled through the exercise of a proper regard for the life and limb of your fellow man.

However, that is not this happening, is it? Was this an unavoidable accident? Was not someone responsible for this accident? Was it the driver of the B & N Bus Company or was it the driver of the Public Service bus, or were both
40 negligent?

Charge to Jury.

I have been asked to charge as a matter of law by the B & N Transportation Company that "the mere violation of a provision of the traffic law cannot alone be properly made the basis of a right of recovery, but is to be considered by the jury along with other testimony on the issue of negligence."

10

That is entirely true.

We have a traffic law, and that traffic law is there to be obeyed. That traffic law is intended to make the use of our highways safe to vehicular traffic and to pedestrians as well.

A violation of one of these traffic regulations, as I have charged you by request, is not in itself negligence, but if the jury find that there was a violation of one of these traffic regulations, then they have the duty to consider that as an element or factor in determining whether or not there was negligence, and if a jury finds from the preponderance of the evidence that there was a violation of the Traffic Act which an ordinarily prudent person would not have been guilty of under similar time, place, and circumstances, and such violation of the Traffic Act that an ordinarily prudent person would not have been guilty of under similar time, place, and circumstances was the proximate cause of the happening, then such violation is negligence.

20

30

We have a traffic regulation that is to be considered by you so far as the proper determination of this case is concerned: "A vehicle turning into another road to the left shall, before turning, pass, when possible, to the right of and beyond the center of the intersection of the two roads."

The B & N bus in this case, according to the uncontroverted evidence in the case, was to turn

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Charge to Jury.

to the left. The driver of the bus admits that, and there is no dispute about that. Was it possible for him to turn to the left by going to a point, by keeping to his right to a point beyond the center of the intersection before making his turn to the left? What was there physically to stop him from living up to that regulation? What did it mean by "when possible"?

For example, there might be a permanent physical situation there, an immovable physical situation so that it could not be done, but here was a trolley car which some day had stopped and started again. The greater number of witnesses claim that it was actually stopped at the time of this accident. Was there anything physically that made it impossible to have gone beyond that front of that trolley car? Where is there anything in this case to justify the contention that it was not physically possible to have lived up to this traffic regulation?

That is to be considered. That is to be considered when you pass upon not only the question of whether or not there was negligence upon the part of the driver of the B & N truck but also whether or not there was negligence upon the part of the Public Service bus.

You men have already heard some discussion as to the obligation of the Public Service bus so far as Miss McCusker was concerned, that there was a high degree of care imposed upon them because they were carriers for hire.

That is true.

They had the duty of exercising a high degree of care for the protection of the life and the limb of their passengers, and they were being paid to do it; but when you come to pass on whether or not the driver of the Public Service bus was negligent, you must ask yourselves this:

Charge to Jury.

Did the driver of the Public Service bus have any duty from the standpoint of the conduct of an ordinarily prudent careful driver to assume, anticipate, or even suspect that so far as those going north on Broad street under the Central Railroad bridge were concerned, they would have made a left-hand turn that might be called "cutting a corner," in other words, make a turn on the left-hand side of Broad street instead of keeping to the right on Broad street to get to a point beyond the intersection before making the turn? 10

Unless there is something to indicate otherwise to the ordinary prudent person, you and I, in our relationships with our fellow men, have a right to assume that the law is going to be lived up to by our fellow men. 20

In this case you are to ask yourselves, so far as the driver of the Public Service bus was concerned, what did he do, if anything, that was the proximate cause of this collision, or what did he omit to do, which omission was the proximate cause of this accident? What was there? I am leaving that question to you.

When he passed in front of this standing trolley car—because he claims it was standing—and after he had seen for the first time this other bus on the left-hand side of Broad street as that other bus was going, what was there that from the standpoint of an ordinarily prudent, careful, competent driver he could have done to have avoided that collision? 30

He had the duty to do it, if he could have done it from the standpoint of what would have been the conduct of an ordinarily prudent person, but what was there that he could have done? That is for you to pass upon. 40

Charge to Jury.

Of course, in order to hold that company responsible, you must be satisfied that there was something that he, in the exercise of the conduct of an ordinarily prudent driver of such a bus, could have done or would have refrained from doing that would have avoided that collision, because, even if the other bus driver was negligent, yet he had the duty in the exercise of his obligation to exercise a high degree of care to have avoided the effect of another's negligence so far as the passengers in his bus were concerned, if he could have done it, from the standpoint of the conduct of an ordinary prudent driver, but you will ask yourselves fairly, from that standpoint, what could he have done or where was there anything done or left undone by him that was the proximate cause of this accident. That is for you to pass upon.

I have already spoken about these different traffic laws. For example, there is this traffic regulation also:

“A vehicle proceeding in the same direction as a street car operated on tracks in the center of any public road, street, highway, or turnpike when passing a moving street car shall pass that street car on its right, provided however when through narrowness of road or street or through congestion of traffic standing at the curb or side of such road or street it is impossible or unsafe to pass that street car as above, then, by exercising exceptional caution the vehicle may pass on the left of such street car.”

After all is said and done, although these traffic regulations are there, when it comes to determine whether or not there was negligence the jury are to consider all the facts in the case, and they

Charge to Jury.

are to determine from their good sensible minds whether or not there was negligence.

Anything that may have been said in the discussion of this case between the attorneys or between the attorney and the Court can have no effect in changing what I am telling you under my charge, which I am now delivering, so far as the law is concerned. 10

The mere refusal to grant the motions of the Public Service Corporation is not to be taken by you as any conclusion upon the part of the Court that they are responsible. That is a question entirely for you, and those motions are properly made by the attorneys in the discharge of their duty.

The question of fact involved in this case is entirely and exclusively within your province, and you are the sole arbiters. You are the sole sovereigns when you get into that realm of the domain of fact, and you put to yourselves these two practical questions: 20

Does the preponderance of the evidence satisfy my impartial mind that there was some act done by the defendant or the defendants which an ordinarily prudent person would not have done under similar time, place, and circumstances, and from the doing of which there proximately, directly, and effectively resulted this accident? 30

That is one question.

If the answer is in the affirmative, then whoever was guilty of that act was guilty of negligence, and he is responsible.

The other question is: Was there any act left undone which an ordinarily prudent person would not have omitted under similar time, place, and circumstances, and from which omission or act 40

Defendant B & N Company's Requests to Charge.

undone there proximately or immediately or effectively resulted this accident?

If there was such omission, then whoever was guilty of that omission was guilty of negligence.

You may take the case.

10 (The jury retired to consider their verdict.)

Mr. Braun: If your Honor please, I should like to take an exception to your Honor's refusal to charge the second request of my requests to charge the jury.

The Court: All right.

DEFENDANT B & N COMPANY'S RE-
QUESTS TO CHARGE.

20 (1) "The mere violation of the provision of the traffic law cannot alone be properly made the basis of a right of recovery, but is to be considered by the jury along with other testimony on the issue of negligence."

30 (2) "At the time of the accident upon which this suit is based, there was a provision in the traffic laws that a vehicle on making a left-hand turn at an intersection shall pass, when possible to the right of the center of the intersection, but the legislature has since passed a law as a guide to the reasonably prudent man requiring him to keep to the left of the center of the intersection and you have a right to consider this also in determining what reasonably prudent drivers would have done under the circumstances in the case."

EXHIBIT D. 3.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

EMMA McCUSKER,

*Plaintiff,**vs.*PUBLIC SERVICE COORDINATED
TRANSPORT, a corporation of
New Jersey, and B & N
TRANSPORTATION Co., a cor-
poration of New Jersey,*Defendants.*

10

*Action
at Law.**Interroga-
tories to
Plaintiff.*To Patrick J. O'Connell, Esq., attorney of
plaintiff.

20

SIR:

TAKE NOTICE that the defendant, B & N Transportation Co. in the above stated cause requires answers under oath from the plaintiff to the following interrogatories proposed in the above cause within ten days after service thereon upon you.

30

1. Describe particularly the manner in which you were injured and what physical injury you suffered by reason of the accident complained of.

Answer. While riding in an automobile bus owned by the P. S. Coordinated Transport it collided with another bus owned by the B & N Transportation Co., thereby throwing me forward causing me to strike my head against the gate of the bus and then throwing me back-

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Exhibit D. 3.

ward, causing me to strike my spine against one of the seats.

2. Were you confined to your bed by reason of the injury complained of, and if so, for how long?

10 Answer. Yes, one week.

3. Were you confined to your house by reason of the injury complained of, and if so, for how long?

Answer. Yes one month.

4. How much did you expend for physicians' bills, if anything?

Answer. \$15.00, other physicians' bills have not been paid.

20 5. Did you expend anything for medicine? If so, how much, from whom and at what address did you procure it?

Answer. Yes \$5.00, Edell Pharmacy, Elizabeth, N. J.

6. For what number of days, if any, were you prevented from earning money at your occupation as a consequence of the accident, and on what day did you return to your occupation after the accident?

30 Answer. More than a month. Not working yet.

7. Are you entirely cured of the injuries you sustained by reason of the accident? If not, state fully and particularly in what respect you still suffer from the injury you claim to have sustained.

40 Answer. No. Spinal trouble, severe headaches, nerve in right eye troublesome, nervousness and dizziness.

Exhibit D. 3.

8. Give an itemized statement of the disbursements and losses incurred by you by reason of the injuries alleged.

Answer. Physicians' bills; medicines and four weeks' wages at \$20.00 per week.

Yours respectfully,

10

SCHNEIDER & SCHNEIDER,
Attorneys of Defendant,
B & N Transportation Co.

STATE OF NEW JERSEY, }
COUNTY OF } ss.

EMMA McCUSKER, being duly sworn on her oath according to law says that she is the plaintiff in the suit in which the foregoing interrogatories and answers thereto are made, and that she is familiar with the case, and that the facts set out in the said answers and the statements made therein are true to the best of her knowledge.

20

EMMA McCUSKER.

Sworn and subscribed to before me,
this 11th day of July, 1928.

30

PATRICK J. O'CONNELL,
Master in Chancery of N. J.

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#80

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

EMMA McCUSKER, <i>Plaintiff-Appellee,</i> <i>vs.</i> B & N TRANSPORTATION COM- PANY, <i>Defendant-Appellant.</i>	}	<i>Action at Law.</i> <i>On Appeal from Supreme Court, Union County.</i>
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BRIEF OF DEFENDANT-APPELLANT.

This is an appeal from a verdict rendered on February 14, 1929 in favor of the plaintiff in so far as the same affects the defendant B & N Transportation Co.

The Facts.

The plaintiff was injured on January 20, 1928 when a bus belonging to defendant Public Service Coordinated Transport in which she was riding ran into a bus owned by the defendant B & N Transportation Company. The accident occurred in the City of Elizabeth, New Jersey, at a point where Broad street terminates by intersecting with Railroad Place, East Broad street, and North Broad street (see map, Exhibit D PS 1 in back of the state of the case).

There were trolley tracks located on all of the streets named, and the northbound rails located on Broad street switched off first to the left into Railroad Place and then into the right on East Broad street, and then to the left on an angle into North Broad street. The bus of the defendant B & N Transportation Company approached the scene of the accident travelling in

a northerly direction. A trolley car also headed north on the northbound rails was located somewhere in the intersection, the exact location being sharply disputed by the various witnesses. As the B & N bus neared the rear of the trolley, the trolley started up and at the same time the bus swung to the left in order to make a left-hand turn into Railroad Place. As the bus started to make this turn, the trolley came to a sudden stop, and the bus in which the plaintiff was riding, coming west on East Broad street, made a left-hand turn around to the front of the trolley and collided with the B & N bus at a point on the right side where the door is located.

The jury returned a verdict of \$12,500 against both defendants and this appeal raises certain alleged errors on the part of the trial court which were prejudicial to the defendant-appellant B & N Transportation Company.

The errors alleged during the course of the trial.

During the course of the trial, the trial court, in ruling on a motion made by the defendant Public Service Coordinated Transport Co. for a direction of verdict in favor of said defendant, made the following statement:

“The Court: This has given me a great deal of concern. This collision would never have occurred if the B & N bus had lived up to the law which required it to pass a trolley car, located as this trolley car was located, on the right of the trolley car.

According to the uncontroverted evidence in this case, what I have just said is an inevitable conclusion.

The Traffic Act which was in force at the time of the accident provides that a vehicle proceeding in the same direction as a street car operated on the tracks in the center of

any public street, when passing a moving car, shall pass such street car on its right. Of course, if this car was standing at the time, that does not make any difference, so far as the application of this law is concerned, 'Provided however when through narrowness of the road or street or through congestion of traffic standing at the curb or side of such road or street, it is impossible or unsafe to pass that street car as above, then by exercising exceptional caution, the vehicle may pass on the left of such street car.'

I am again stating that if the driver of the B & N bus had lived up to that traffic regulation this collision would never have occurred." (C. 266, ll. 17-40; C. 267, ll. 1-8).

This was set up as the first ground of appeal.

The second ground of appeal is with respect to the statement made by the trial court in answer to a question by one of the jurors, which statement is as follows:

"The Court: That is a street, and am holding that under the Traffic Law, it was his duty to keep on the right and to pass that car on the right. The law is that in making a turn you are to keep on the right, as I put the question to the driver of the B & N bus. It is their duty, in making those left-hand turns, to keep to the right of the street they are on until they get about to the center of the intersection, so that when they are into the other street, they are still on the right." (C. 270, ll. 24-34).

As a third ground of appeal it is contended that the trial court erred in refusing the defendant B & N Transportation Company's request to charge as follows:

"(2) At the time of the accident upon which this suit is based, there was a provision in the traffic laws that a vehicle on making a left-hand turn at an intersection

shall pass, when possible to the right of the center of the intersection, but the legislature has since passed a law as a guide to the reasonably prudent man requiring him to keep to the left of the center of the intersection and you have a right to consider this also in determining what reasonably prudent drivers would have done under the circumstances in the case." C. 284, ll. 26-40).

The first and second grounds are so inter-related that for the convenience of the Court they will be argued as Point I.

POINT I.

The Trial Court erroneously and prejudicially made remarks when ruling on the motion of defendant Public Service Coordinated Transport, and so erroneously stated the law that said remarks and statements practically constituted a direction to the jury to find in favor of the plaintiff and against the defendant B & N Transportation Company.

As previously stated in the grounds of appeal, the trial court, in ruling on a motion affecting the defendant Public Service Coordinated Transport Co., made the following statements with respect to the operation of the B & N Transportation Company's bus, and stated the law as follows:

"The Court: This has given me a great deal of concern. This collision would never have occurred if the B & N bus had lived up to the law which required it to pass a trolley car, located as this trolley car was located, on the right of the trolley car.

According to the uncontroverted evidence in this case, what I have just said is an inevitable conclusion.

The Traffic Act which was in force at the time of the accident provides that a vehicle

proceeding in the same direction as a street car operated on the tracks in the center of any public street, when passing a moving car, shall pass such street car on its right.

Of course, if this car was standing at the time, that does not make any difference, so far as the application of this law is concerned, 'Provided however when through narrowness of the road or street or through congestion of traffic standing at the curb or unsafe to pass that street car as above, then by exercising exceptional caution, the vehicle may pass on the left of such street car.'

I am again stating that if the driver of the B & N bus had lived up to that traffic regulation this collision would never have occurred."

Such a statement, that the evidence is uncontroverted, was not only in conflict with the evidence in the case, but was so prejudicial that it practically amounted to a direction of a verdict against the appellant. There was a sharp conflict of testimony as to whether the trolley was located, but there was evidence that it was well out to the intersection and opposite or beyond the northwest corner of Broad street and Railroad Place (See testimony of Gillette, C. 21, ll. 28-32; and testimony of Pollack, C. 208, ll. 32-35; also see Exhibit D PS 1 in back of the State of Case upon which Pollack marked "P" for the location of the trolley car.

If the trolley were located as Gillette and Pollack placed it, and if the B & N bus was making a left-hand turn into Railroad Place without paralleling the trolley's course (C. 31-40), and if the trolley started up as the driver of the B & N bus started to make the left-hand turn (C. 23, ll. 31-34), and if at the time of the accident the B & N bus was headed up Morris avenue (C. 200, ll. 31-34), then Chapter 156 of the

Laws of 1915, Part 2, Section 10, part of which was quoted by the Court in making the statement complained of, had no application whatsoever to the case, and it was error for the Court to suggest or imply or emphatically state that "if the driver of the B & N bus had lived up to that traffic regulation this collision would never have occurred."

The same facts as testified to and referred to above also made it error for the Court to state to the jury as follows:

"The Court: That is a street, and am holding that under the Traffic Law, it was his duty to keep on the right and to pass that car on the right. The law is that in making a turn you are to keep on the right, as I put the question to the driver of the B & N bus. It is their duty, in making those left-hand turns, to keep to the right of the street they are on until they get about to the center of the intersection, so that when they are into the other street, they are still on the right."

Not only did the Court erroneously state that under the circumstances it was the duty of the driver to keep on the right and to pass the trolley car on the right, irrespective of the question of where the trolley and the Public Service Bus were at the time the B & N bus endeavored to make its left-hand turn, but the trial court also erroneously quoted the law with respect to making left-hand turns by omitting a qualification. Chapter 156 of the Laws of 1915, Part 2, Section 6, reads as follows: "A vehicle turning into another road to the left shall, before turning, pass **WHEN POSSIBLE**, to the right and beyond the center of the intersection of the two roads." The very important words **WHEN POSSIBLE** omitted by the Court gave

the jury no discretion in their analysis of the facts and circumstances which they resolved out of the mass of conflicting testimony with respect to the location of the various vehicles. It is respectfully contended that the legislature had just such a situation in mind as was presented in this case by some of the evidence, and the jury should have had the right to consider whether or not, if the trolley car was located as placed by the witnesses Gillette and Pollack (C. 21, ll. 28-32; C. 208, ll. 32-35), beyond the second switch and opposite or beyond the northwest corner of Broad street and Railroad Place, the bus in making a left-hand turn would have had the right to pass to the left of the center of the intersection since a left-hand turn past the center of the intersection into Railroad Place with the trolley car located as described by the above-referred-to testimony would obviously have been impossible.

Under these facts, it is respectfully contended that a clear and distinct jury question is raised as to the negligence of the appellant, particularly under the cases of *Cadie v. Mercer & Trenton Traction Corp.*, VI N. J. Adv. Reports 870, 140 Atl. 806; and *Podolsky v. Sautter*, 102 L. 598, 133 Atl. 199; in which it was held that where facts and circumstances are such that reasonable minds might reasonably differ as to the fair inference to be drawn therefrom on the question of negligence, a jury question is presented.

It is therefore respectfully contended that by taking a stand which practically eliminated the question of negligence in so far as the appellant is concerned, and misquoting the law, the trial court was guilty of prejudicial and reversible error.

POINT II.

The Trial Court erroneously refused the defendant B & N Transportation Company's request to charge as follows: "At the time of the accident upon which this suit is based, there was a provision in the traffic laws that a vehicle on making a left-hand turn at an intersection shall pass, when possible, to the right of the center of the intersection, but the legislature has since passed a law as a guide to the reasonably prudent man requiring him to keep to the left of the center of the intersection and you have a right to consider this also in determining what reasonably prudent drivers would have done under the circumstances in the case."

The second of the two requests to charge submitted to the trial court by the appellant consisted of the question set forth in the heading of the point (C. 284, ll. 26-40).

While Chapter 156 of the Laws of 1915, Part 2, Section 6, provided that a vehicle in making a left-hand turn into another road should pass, when possible to the right of and beyond the center of the intersection of the two roads was in existence at the time of the accident upon which this suit is based, the legislature in Chapter 281 of the Laws of 1928, Article, 14, Section 1, amended this provision to read as follows: "A vehicle when intending to turn to the left shall approach such intersection in the lane for traffic to the right of and nearest to the center line of the highway, and in turning left shall pass immediately to the left of the center of the intersection, passing as closely as shall be practicable to the left of the center of the intersection."

In the case of *Evers v. Davis*, 86 L. 196, it was held that when the legislature by Public Statute established a certain standard of conduct in order to prevent a danger that it foresaw it, as in this regard, forewarned the ordinarily prudent man. Under the case cited it would appear that the jury could and should properly be instructed as to what the legislature's most modern and recent ideas are as to what the ordinarily prudent man would or should do under certain circumstances.

Since these statutes are passed as guides to the ordinarily prudent person, and since the driver of the B & N Transportation Company bus was obliged to conduct himself as the ordinarily prudent person would, it would be unfair and unjust to unqualifiedly bind him with a rule of conduct which had been subsequently nullified and superseded by the legislature with an entirely different rule.

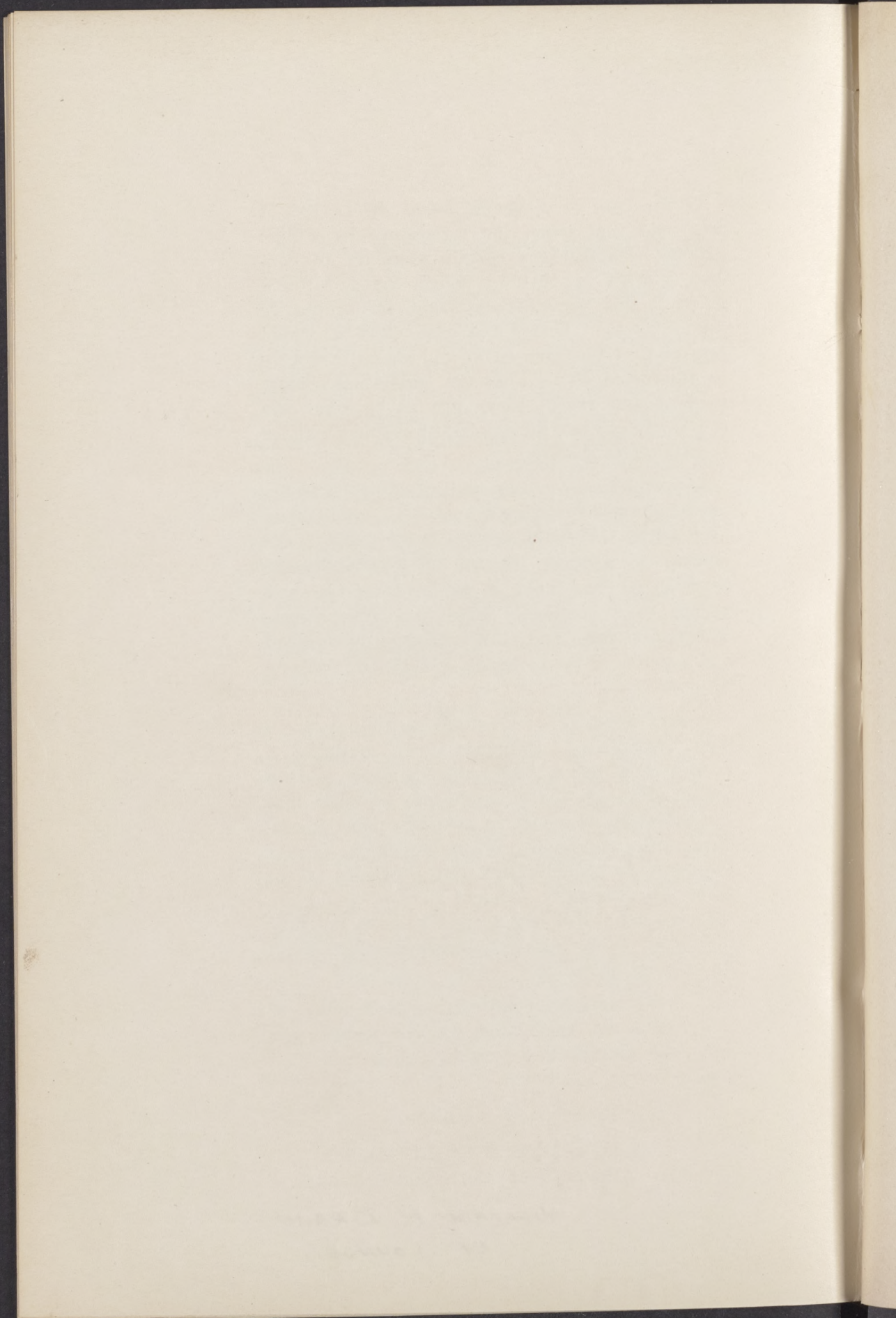
A mere violation of the traffic act is not prima facie evidence of negligence if, in so doing, a person acts as a reasonably prudent person would, although this violation may be taken into consideration by a jury in passing upon the conduct of the defendant. If the legislature should subsequently consider that this provision is not what the ordinarily prudent person would do, then the defendant had a right to have the jury instructed as to how the legislature felt about its original warning.

It is respectfully contended that in view of the errors set forth, the verdict against the appellant should be set aside and a new trial granted.

Respectfully submitted,

SCHNEIDER & SCHNEIDER,
Attorneys of Defendant-Appellant.

WILLIAM P. BRAUN
OF COUNSEL



New Jersey Court of Errors and Appeals

<p style="text-align: center;">EMMA McCUSKER, <i>Plaintiff-Appellee,</i></p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">B. & N. TRANSPORTATION COM- PANY, <i>Defendant-Appellant.</i></p>	}	On Appeal.
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BRIEF OF PLAINTIFF-APPELLEE.

Statement of Facts.

On January 20th, 1928, Emma McCusker was a passenger riding in a bus owned and operated by the Public Service Coordinated Transport. This bus collided with one belonging to and operated by the B. & N. Transportation Company. Mrs. McCusker was injured as a result of the collision and brought suit against the owners of both buses. On February 14th, 1929, after trial lasting several days, a verdict was returned in her favor against the owner of each bus in the sum of \$12,500.

Application for new trial was made by the defendant Public Service Coordinated Transport. A rule was granted and is now pending decision in the Supreme Court.

Appeal was taken into this Court by the B. & N. Transportation Company. Three grounds of appeal are urged which will be hereinafter set forth at length.

The story of the manner in which the accident occurred may be gathered from the testimony of Eugene Gillette, the driver of the B. & N. Transportation Company bus, who testified:

He was driving the bus involved in the accident proceeding northerly along Broad Street, Elizabeth, in the general direction of Newark (Case, p. 21). A trolley car had come to a stop under the arch of the Central Railroad Company, which he attempted to pass on the left, intending to make a turn into Railroad Place (Case, pp. 21-22). When his bus had cleared the rear of the trolley car and had proceeded a distance of five or six feet, he observed the headlights of another bus coming toward him from around the front of the trolley car. He swung sharply to the left and the collision occurred (Case, pp. 24-25).

POINT I.

The Court did not err in commenting upon the evidence and law applicable thereto during discussion of the motion to direct a verdict made in behalf of the Public Service Coordinated Transport.

At the conclusion of the trial, motion was made by counsel for the Public Service Coordinated Transport for a direction of verdict as to that company.

It is now urged as a ground of appeal that the Court erred in addressing counsel relative to the motion as follows:

“The Court: This has given me a great deal of concern. This collision would never have occurred if the B. & N. bus had lived up to the law which required it to pass a trolley car,

located as this trolley car was located, on the right of the trolley car.

"According to the uncontroverted evidence in this case, which I have just said is an inevitable conclusion.

"The Traffic Act which was in force at the time of the accident provides that a vehicle proceeding in the same direction as a street car operated on the tracks in the center of any public street, when passing a moving car, shall pass such street car on its right.

"Of course, if this car was standing at the time, that does not make any difference, so far as the application of this law is concerned, 'Provided, however, when through narrowness of the road or street or through congestion of traffic standing at the curb or side of such road or street, it is impossible or unsafe to pass that street car as above, then by exercising exceptional caution, the vehicle may pass on the left of such street car.'

"I am again stating that if the driver of the B. & N. bus had lived up to that traffic regulation this collision would never have occurred. The only question is whether there was any exercise of that high degree of care, which was incumbent upon the driver of the Public Service bus, so far as its passengers were concerned, and whether there was any failure to exercise the high degree of care so incumbent in the relationship with their passengers, and whether there was anything left undone or committed by the driver of the car, that is, the Public Service bus, which was in any way the proximate cause of this accident either solely or contributorily.

"I should like to hear you on that, Mr. Brenner" (Case, pp. 266-267).

In disposing of the contention now made that the making of this statement constituted prejudicial error it is ^{PROBABLY} ~~properly~~ sufficient to direct attention to the fact that no exception was taken, nor objection noted thereto.

Unless exception is taken or objection noted, no ground of appeal is afforded.

Bonhard v. Gindin, 142 A. 52.

It may be argued that the exception later taken (Case, p. 270, lines 35-37) applied to that now objected to. An examination of the colloquy following this exception will clearly indicate to the contrary that it applied to the statement, to a juror, immediately preceding (Case, p. 270, lines 3-34) now urged as the second ground of appeal (Case, p. 3, lines 15-30).

Assuming, however, that objection was properly noted, no case is cited by appellant and none can be found by the appellee supporting a theory that a trial judge can not comment upon the evidence while debating with counsel the propriety of a motion.

Instructions to the jury in the course of the charge of the Court are certainly of more importance than remarks made upon a motion. Yet it has been held that comment upon the evidence made as a part of the charge is not improper.

Busch v. Carter, 32 N. J. L. 554-565;

Stein v. Wagenheim, 144 A. 118.

POINT II.

Comment made in answer to an inquiry made by one of the jurors was not improper.

In answer to an inquiry made by one of the jurors, the Court said:

“That is a street and I am holding that under the Traffic Law it was his duty to keep on the right and to pass the car on the right. The law is that in making a turn, you are to keep on the right as I put the question to the driver of the B. & N. bus. It is their duty in

making left-hand turns to keep to the right of the street they are on until they get about the center of the intersection, so that when they are into the other street they are still on the right." (CASE P. 270)

The evidence of the driver of the B. & N. bus previously referred to at length, indicates quite clearly that instead of passing the standing trolley car to the right, he attempted to pass to the left, in direct violation of the Traffic Act.

The Traffic Act specifically provides (P. L., 1915, Chapter 156, p. 287):

"Every driver or operator of any vehicle following any street car when passing such street car while it is stopped to take on or discharge passengers shall only pass such street car on the right and shall keep at least 8 feet on the right-hand running board or low step of said car and shall give an audible indication of the approach to said car and shall exercise due precaution not to interfere with or injure the passengers getting on or off the car.

"If 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 road, or for any other reason it is not possible to observe such distance of eight feet, then such driver or operator shall bring his vehicle to a full stop until the car shall have taken on or discharged his passengers and again started * * *."

The statement of the Court relative to the requirements of the Traffic Act in making a left turn is also justified by the provision of that Act, the language of which is as follows (P. L., 1915, Chapter 156, p. 286):

"A vehicle turning into another road to the left shall before turning pass when possible to the right of and beyond the center of the intersection of the two roads."

It is now argued that the Court erred in omitting that portion of the provision of the Act which provides that the vehicle shall pass "when possible" to the right of and beyond the center of the intersection.

There is no testimony indicating any impossibility of making the turn in the manner prescribed by the Statute, with the exception of the position of the trolley car in the roadway, which, under the direct prohibition of the Statute, the driver of the B. & N. bus was not permitted to pass, except upon the right. If he had observed the requirements of the Act by passing the trolley car on the right, then there was nothing to prevent him from likewise passing on the right of the center of the intersection.

It will further be observed that any omission in the comment to the juror is supplied and completely overcome in the charge to the jury in which the Court in the language of the Statute states the law as follows:

"A vehicle turning into another road to the left shall, before turning, pass when possible to the right of and beyond the center of the intersection of the two roads" (Case, p. 279, lines 31-38).

The Court further particularly comments upon this portion of the Statute in remarks made immediately subsequent, in which it is said:

"The B. & N. bus in this case according to the uncontroverted evidence in the case was to turn to the left. The driver of the bus admits that and there is no dispute about that. Was it possible for him to turn to the left by going to a point by keeping to the right to a point beyond the center of the intersection before making his turn to the left? What was there physically to stop him from living up

to that regulation? What did it mean by 'when possible'? For example, there might be a permanent physical situation there, an immovable physical situation, so that it could not be done, but here was a trolley car, which some say had stopped and started again. The greater number of witnesses claimed that it was actually stopped at the time of the accident. ^{WHERE IS} ~~WAS~~ there anything physically that made it impossible to have gone beyond the front of that trolley car? ~~WHERE IS~~ ^{WHERE IS} there anything in this case to justify the contention that it was not physically ~~i~~ possible to have lived up to this traffic regulation?" (Case, p. 279, lines 39-40; Case, p. 280, lines 1-23.)

From a reading of the previous comment made to the juror, coupled with the correct reading of the Statute and the explanation thereof, it certainly can not successfully be argued that the jury did not receive a clear understanding of the entire situation.

"So long as the law is stated correctly and intelligently the ultimate test of the soundness of instructions is not what the ingenuity of counsel can at leisure work out the instructions to mean, but how and in what sense under the evidence before them and the circumstances of the trial would ordinary men and jurors understand the instructions as a whole. *Cargman v. Carlo*, 85 N. J. L. 632; 90 Atl. 292."

POINT III.

The Court did not err in refusing to charge request.

Request was made in behalf of the B. & N. Transportation Company to charge as follows:

"At the time of the accident upon which this suit is brought, there was a provision in the Traffic Laws that a vehicle on making a

left-hand turn at an intersection shall pass when possible to the right of the center of the intersection. But the Legislature has since passed a law as a guide to the reasonably prudent man requiring him to keep to the left of the center of the intersection and you have a right to consider this also in determining what reasonably prudent drivers would have done under the circumstances."

The first portion of this request had been charged. Concerning the latter portion, it would probably be sufficient to say that the request does not follow the language of the Statute, such language being:

"* * * ^{SHALL} and when intending to turn to the left ~~it~~ approach such intersection in the lane for traffic to the right of and nearest to the center line of the highway and in turning left ~~it~~ ^{SHALL} pass immediately to the left of the center of the intersection, passing as closely as shall be practicable to the left of the center of the intersection (P. L., 1928, Chapter 281, p. 761, Article XIV, Section 1)."

Under the request as made, the jury would have a right to infer that a driver intending to turn to the left could drive to the left of the center line of a street long prior to his reaching the center of the intersection and could make a left turn into an intersecting street without passing closely to the point of intersection of the two streets, which is not what the later Statute says or the Legislature intended.

The Court, however, was certainly not obliged to change a portion of a Statute adopted more than a year after an accident occurred as indicating the conduct expected of a reasonably prudent man. Persons using the highway have a right to assume that other users will observe the traffic laws then existing, so the driver of the Public Service bus

coming in the opposite direction would have a right to assume that the driver of the B. & N. bus would observe the traffic rules by keeping to the right of a standing trolley and make a turn to the right of the center of the intersection of two highways.

To follow to a conclusion the contention now made by the appellant, if subsequent to the time of the accident the Legislature should adopt a Statute requiring all users of the highway to keep to the left of the center of a public road instead of to the right, and a person was injured by a vehicle traveling to the left or wrong side of the road, that such person might be barred of a right of recovery by the subsequent adoption of such a Statute.

Such contention is no more absurd or ridiculous than the one made in the present instance.

For the reasons urged, the verdict should not be disturbed.

Respectfully submitted,

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Attorney of Plaintiff-Appellee.

ALFRED BRENNER,
Of Counsel and on the Brief.

