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Summons.

(Filed June 20, 1924.)

10

STATE OF NEW JERSEY, ss.:

To D. Farrand Sturgis and Lewis F. Sturgis, partners, doing business under the firm name of Sturgis Brothers.

[L.S.] You are summoned to answer the annexed complainant of Emma H. Van Pelt in an action at law in the New Jersey Supreme Court.

20

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

Witness, WILLIAM S. GUMMERE, Chief Justice, Supreme Court at Trenton, this 19th day of June, 1924.

30

EDWARD J. KELLEHER,
Clerk.

KING & VOGT,
Attorneys.

40

Complaint.

(Filed June 20, 1924.)

NEW JERSEY SUPREME COURT.
MORRIS COUNTY.

10

EMMA H. VAN PELT,

*Plaintiff,**vs.*D. FARRAND STURGIS and LEWIS
F. STURGIS, partners, doing
business under the firm name
of STURGIS BROTHERS,

20

*Defendants.*Action at
Law.

Plaintiff, residing in the town of Morristown, in the County of Morris and State of New Jersey, says that:

30

1. On or about November 2nd, 1923, and for some time prior thereto, the defendants were engaged in making repairs and alterations to a certain building occupied by the Morris County Savings Bank, on the corner of South Street and DeHart Street, in the town of Morristown aforesaid.

40

2. On or about that time, and for some time prior thereto, defendants negligently, carelessly and unlawfully placed, or caused, or suffered to be placed, certain stones and building materials, and left the same unguarded, on the public sidewalk on South Street, in front of the building above mentioned.

Complaint.

3. On or about that time plaintiff, while walking in a lawful manner on the public sidewalk on South Street, fell over certain of said stones and/or building materials.

4. Because of the negligence and carelessness of the defendants, or its agents, and servants, as aforesaid, plaintiff sustained various injuries, to wit: her nose was broken, her eyes were injured, her knees were injured, and she was otherwise bruised and damaged in and about her body, and suffered both temporary and permanent injuries, and was obliged to spend a considerable time in the hospital, and was confined to her home for a long period of time, and has and is still suffering, and will in the future undergo severe pain and suffering, and has been and will be obliged to expend large sums of money by reason of her said injuries. 10 20

5. Also because of the negligence and carelessness of the defendants, or its agents, and servants, as aforesaid, plaintiff sustained great damage to her clothing and was obliged to expend a considerable sum of money for the repair and replacement thereof.

6. Also because of the negligence and carelessness of the defendants, or its agents, and servants, as aforesaid, plaintiff was unable to pursue in her usual way her usual vocation, and suffered the loss of large sums of money thereby. 30

Plaintiff demands as damages the sum of \$25,000.

KING & VOGT,
Attorneys for Plaintiff.

Answer.

(Filed June 24, 1924.)

NEW JERSEY SUPREME COURT.**MORRIS COUNTY.**

10

EMMA H. VAN PELT,*Plaintiff,**vs.*D. FARRAND STURGIS and LEWIS
F. STURGIS, partners, doing
business under the firm name
of STURGIS BROTHERS,

20

Defendants.Action at
Law.

The defendants having a place of business at 20 Washington Street, Morristown, New Jersey, for answer to the complaint herein filed jointly and severally say:

FIRST DEFENSE.

30

1. The first paragraph of the complaint is admitted.

2. So much of the second paragraph of the complaint as alleges that certain building materials were on the sidewalk on South Street in front of the building therein referred to is admitted, but all other allegations of the second paragraph of the complaint are denied.

40

3. Defendants have no knowledge or informa-

Answer.

tion sufficient to form a belief as to any of the matters alleged in the third paragraph of the complaint.

4. These defendants have no knowledge or information sufficient to form a belief as to the extent of any injuries which may have been sustained by the plaintiff, but deny that any such injuries were because of any negligence or carelessness on their part or on the part of any one for whom they are responsible, and the fourth paragraph of the complaint is therefore denied.

5. - 6. These defendants have no knowledge or information sufficient to form a belief as to any of the matters alleged in the fifth and sixth paragraphs of the complaint, except so much thereof as alleges that any of the damage sustained by the plaintiff was because of negligence and carelessness on the part of the defendants, which is denied.

SECOND DEFENSE.

Whatever of injury and damage were suffered and sustained by the plaintiff at the time and place mentioned in the complaint were caused and contributed to by the plaintiff's own negligence in that she did not make sufficient observation and look out for her own safety, and negligently and carelessly exposed herself to the risk of such an accident as occurred, and neglected to take precaution and exercise care to guard and protect herself against such an accident; moreover at the time and place mentioned in the complaint she was conducting herself in a careless, negligent and reckless manner and was not exercising care or taking proper precaution, but on

the contrary proceeded in immediate proximity to the building materials upon the sidewalk, although there was ample space of clear passage for her to pass along the sidewalk without placing herself near such building materials.

KELLOGG & CHANCE,
Attorneys for Defendants.

10

Reply.

(Filed June 26, 1924.)

NEW JERSEY SUPREME COURT.

MORRIS COUNTY.

20

EMMA H. VAN PELT,

Plaintiff,

vs.

D. FARRAND STURGIS and LEWIS
F. STURGIS, partners, doing
business under the firm name
of STURGIS BROTHERS,

Action at
Law.

30

The plaintiff, residing in Morristown, Morris County, New Jersey, in reply to the defendants' answer herein filed, says:

REPLY TO FIRST DEFENSE.

Plaintiff joins issue with the defendants on the first defense set forth in the answer.

40

REPLY TO SECOND DEFENSE.

Plaintiff denies the facts, matters and things set forth in the second defense of the answer, and joins issue with the defendants thereon.

KING & VOGT,
Attorneys for Plaintiff.

10

Postea.

(Filed June 6, 1925.)

NEW JERSEY SUPREME COURT.

MORRIS COUNTY.

EMMA H. VAN PELT,

Plaintiff,

vs.

D. FARRAND STURGIS and LEWIS
F. STURGIS, partners, doing
business under the firm name
of STURGIS BROTHERS,

Defendants.

Action at
Law.

20

30

This cause was tried before Judge Peter F. Daly, with a jury, at the Morris Circuit on May 28th and 29th, 1925.

The jury rendered a general verdict against the defendant, D. Farrand Sturgis, surviving partner, etc., and in favor of the plaintiff for the sum of \$1,500.00.

PETER F. DALY,
Judge.

40

Judgment.

(Entered June 6, 1925.)

NEW JERSEY SUPREME COURT.

10	EMMA H. VAN PELT,	}	Action at Law. On Postea.
	<i>Plaintiff,</i>		
	<i>vs.</i>		
	D. FARRAND STURGIS and LEWIS F. STURGIS, partners, doing business under the firm name of STURGIS BROTHERS,		
20	<i>Defendants.</i>		

KING & VOGT,

Attorneys.

30	\$1500.00 62.38	Judgment entered this sixth day of June, A. D. nineteen hundred and twenty-five, in favor of plaintiff and against the defendant for the sum of fifteen hundred dollars damages and sixty-two dollars and thirty-eight cents costs.
	\$1562.38	

WILLIAM S. GUMMERE,

C. J.

40

Notice of Appeal, with Ground Stated.

(Filed September 10, 1925.)

NEW JERSEY SUPREME COURT.**MORRIS COUNTY.**

<p style="text-align: center;">EMMA H. VAN PELT, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">D. FARRAND STURGIS and LEWIS F. STURGIS, partners, doing business under the firm name of STURGIS BROTHERS, <i>Defendants.</i></p>	}	10
		Action at Law.
		20

To MESSRS. KING & VOGT,
Attorneys of Plaintiff.

SIRS :

PLEASE TAKE NOTICE that the defendant D. Farrand Sturgis, surviving partner of D. Farrand Sturgis and Louis F. Sturgis, partners, doing business under the firm name of Sturgis Brothers, appeals to the Court of Errors and Appeals of New Jersey from the whole judgment entered in the case wherein Emma H. Van Pelt is named as plaintiff and D. Farrand Sturgis and Louis F. Sturgis, partners, doing business under the firm name of Sturgis Brothers, are named as defendants, and

Notice of Appeal, with Ground Stated.

ALSO TAKE NOTICE that the following are stated as grounds of appeal:

- 10 1. The Trial Judge when requested on behalf of the defendant refused to charge the jury as follows: "A pedestrian is bound to exercise ordinary care, not only to avoid dangerous places known or seen, but also those of the existence of ~~the existence of~~ which she is ignorant", to which refusal exception was duly taken and noted.
2. The Trial Judge erred in denying the defendant's motion for the direction of a verdict, to which denial exception was duly taken and noted.
- 20 3. The Supreme Court erred in giving judgment in favor of the plaintiff and against the defendant, whereas it should have given judgment in favor of the defendant and against the plaintiff.

Respectfully,

KELLOGG & CHANCE,
Attorneys for Defendant-Appellant.

Dated, September 4th, 1925.

Endorsed:

- 30 Service of within notice of appeal is hereby acknowledged this 8th day of September, 1925.

KING & VOGT,
Attorneys of Plaintiff-Respondent.

Testimony.

NEW JERSEY SUPREME COURT.

MORRIS COUNTY.

EMMA H. VAN PELT,

Plaintiff,

10

*vs.*D. FARRAND STURGIS and LEWIS
F. STURGIS, partners, doing
business under the firm name
of STURGIS BROTHERS,*Defendants.*

Morristown, New Jersey, May 28th, 1925.

20

Before:

HON. PETER F. DALY, Judge,
and a Jury.

APPEARANCES:

KING & VOGT, Esqs., by Elmer King, Esq., and
Horace C. Jeffers, Esq.

30

Attorneys for the Plaintiff.

KELLOGG & CHANCE, Esqs., by R. Robinson
Chance, Esq.,

Attorneys for the Defendant.

A jury having been found satisfactory,
were duly sworn.Thereupon Mr. Jeffers opened the case to
the jury in behalf of the plaintiff.

40

Colloquy.

Thereupon Mr. Chance opened the case to the jury in behalf of the defendant.

10 MR. CHANCE: This is a suit against D. Farrand Sturgis and Lewis F. Sturgis. Lewis F. Sturgis is dead and I think that something should be noted on the records—

MR. KING: Isn't that sufficient, the surviving partner is charged with closing out the partnership.

MR. CHANCE: The death of Mr. Sturgis occurred January 3rd this year, which was sometime after issue was joined in this case.

20 THE COURT: It is on the record as an admission of fact on the part of the parties that at the time of this accident the partnership of Sturgis Brothers consisted of D. Farrand Sturgis and Lewis F. Sturgis, both of whom were living at that time. That on January 3rd, 1925, Lewis F. Sturgis died and that the partnership, of which he and his brother were the entire membership, is still continued by D. Farrand Sturgis, the surviving partner. Does that state the fact?

MR. CHANCE: It does, your Honor.

30 THE COURT: We will adjourn at this time until ten o'clock tomorrow morning.

Morristown, New Jersey, May 29th, 1925.

Trial Resumed.

40

Edward Howell—Direct.

EDWARD HOWELL, sworn on behalf of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. JEFFERS:

Q. Mr. Howell, what is your business? A. Civil Engineer and Surveyor. 10

Q. How long have you been engaged in that business? A. Thirty-five to forty years.

Q. Where is your place of business? A. Morristown, New Jersey.

MR. CHANCE: Qualifications admitted.

Q. I show you a map and ask you if it was prepared by you? A. This map was prepared by me from a survey. It shows the intersection of De Hart Street with South Street in Morristown. The map is drawn in scale of three feet to one inch. Shows the width of the roadway in South Street and in De Hart Street and sidewalk and curb line on either side of De Hart Street and South Street. Shows the building on South Street, the Savings Bank Building, the opening in South Street side representing the doorways to the building. It shows the Hipson Building on South Street and steps there, one step high. 20 30

Q. That map shows the relationship of the different points thereon as they exist? A. Yes.

Q. To your knowledge were the same conditions in existence on November 2nd, 1923, with reference to the streets and buildings that are marked? A. As far as the streets, curbs, sidewalks and buildings are concerned and two fire hydrants there, the Hipson Building conditions are the same. 40

Edward Howell—Cross.
William A. McMurtrie—Direct.

MR. JEFFERS: I offer the map in evidence.

MR. CHANCE: No objections.

(Received in evidence and marked Exhibit
 P-1.)

10 CROSS EXAMINATION BY MR. CHANCE:

Q. What is the distance shown by your map as the width of the sidewalk in front of the Savings Bank on South Street? A. Eighteen feet nine inches; about eighteen feet seven inches right at the corner.

Q. And how long is the Savings Bank Building? A. Forty-eight or forty-nine feet.

20 Q. How far is it from the corner of De Hart Street side of the bank up to the first doorway in the Savings Bank? A. Approximately twenty feet.

Q. How wide is the entrance to the Bank Building? A. The main entrance seven feet.

MR. CHANCE: I think that is all.
 (Witness excused.)

30

WILLIAM A. MCMURTRIE, sworn on behalf of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. JEFFERS:

Q. Dr. McMurtrie, you are a physician engaged in general practice? A. I am.

Q. Where do you practice? A. Morristown.

40 Q. How long have you been practicing? A. Since 1905.

Q. What schools did you attend and what work did you do in preparation for your prac-

William A. McMurtrie—Direct.

tice? A. Lafayette College, Colon University and Intern at Orange Memorial Hospital.

Q. Have you attended Miss Van Pelt at her home since November 2nd, 1923? A. I have.

Q. Did you see her on November 2nd, 1923? A. I did.

Q. Where did you see her on that day? A. **10**
First in my office, the second at her home.

Q. At what part of the day did you see her in your office? A. It was sometime the latter part of the morning; I don't know the time.

Q. She was brought to your office on that day? A. She was there when I got there. They sent for me.

Q. By the way, where is your office located with reference to the intersection of South Street and De Hart Street in Morristown? A. It's the corner of De Hart Street and Maple Avenue. That's one block from South Street. **20**

Q. When you examined Miss Van Pelt on the morning of November 2nd, what condition did you find? A. Well, she had the nose crushed in, the bridge of her nose here, it was a crushing blow with the edges all lacerated and then she was in a dazed condition. She would not sit still, would not stay seated, she wandered around the office. As she came back and I tried to fix her nose she got up to move again. **30**

Q. What was the condition of the bones in the nose that morning? A. The soft parts were crushed in for about an inch or three-quarters of an inch right across here and the edges were crushed and torn. I probed the nose, the probe went down in about a half an inch and I stopped and the bones were pushed between there down into the nasal fossa. I worked on it the best I **40**

William A. McMurtrie—Direct.

could, taking a lot of pains with the appearance of her nose than I did the inside. With this crushing blow it is danger of the soft part becoming inflamed so I got the soft part up the best I could and held them there and treated her nose to keep it clean and dry and prevent any infection.

10 Q. What was the condition of the nose at that time with reference to the forehead, where the nose more or less joins the forehead? A. Well, the nasal bones right here were broken. I don't know what you mean, with reference to the forehead.

20 Q. Was there any affect to the muscles of the upper part of the nose resulting from this break and the cartilages of the nose? A. This part of the cartilage of the nose that's below the nasal.

Q. Did you at that time notice any other injury to Miss Van Pelt's face except the broken nose itself? A. Did not.

Q. Were there any bruises of any kind in evidence? A. On the face?

Q. Yes? A. Not then.

37 Q. After you treated Miss Van Pelt's nose at your office on that morning, where did you send her? A. Home.

Q. Did you see her later at her home on this day? A. I did.

40 Q. At that time did you find any change in the condition which you had seen at your office that morning? A. No, except a swelling. There was blood over the face at the time but there was more swelling but I did not take the dressing off.

Q. You did not prescribe any further treat-

William A. McMurtrie—Direct.

ment at that time? A. I don't remember, I don't think so.

Q. Did you find any other injury? A. She was suffering from the injury to her nose. She spoke about her knee, said she must have hurt her knee and she had a large concussion about an inch or an inch and a half long and a half an inch wide right on the knee joint. The knee then was swelling some and this gradually increased in the swelling and then I came two or three days later and I noticed the black and blue marks on the skin that comes after injuries that show up about the second or third day and gradually increase for a week and stay there several weeks before they disappear. At that time I sent her to the hospital; she was in a boarding house. I had her in the hospital and had an X-ray. It showed no break or dislocation. Then I suggested putting on ice bags for awhile and rest. 10 20

Q. What have you to say as to the fact that Miss Van Pelt did not call your attention to her knee at the time when she was in he office?

MR. CHANCE: Object to that.

MR. JEFFERS: I withdraw it. 30

Q. Did you, after you sent Miss Van Pelt to the hospital, continue to treat her for the injury to her nose and for the injury to her knee? A. I did.

Q. How often did you visit her? A. Oh, every day at first, probably. I stopped in when I was in the hospital to see her.

Q. Did you continue the same treatment which you had prescribed immediately after the accident of ice bags? A. You mean the knee? 40

William A. McMurtrie—Direct.

Q. Of both knee and nose? A. Kept spraying the nose to keep down infection.

Q. Do you know how long Miss Van Pelt was in the hospital? A. I do not.

10 Q. After Miss Van Pelt left the hospital, did she continue under your care? A. She did.

Q. How frequently did you examine her at that time? A. I saw her at home every other day or so and she would come in the office except when she was away, she would come in the office.

Q. Since the time of this accident, during your treatment of Miss Van Pelt, have you had occasion to treat her for anything other than for the nose and the injuries to the knee?

20 MR. CHANCE: Object, that might not have anything to do with this accident.

THE COURT: Well, if it does not, I will strike it out.

MR. JEFFERS: The answer is yes or no.

A. Yes, I treated her.

Q. Were there symptoms of this injury in the nervous condition which followed the injury? A. There was.

30 Q. What was the nature of that nervous trouble? A. Well now, all I can tell is as she described it. In the first place, at the time of the accident, she indicated a dazed condition, around the face, I could not keep her mind on what I was trying to do. She would not sit still long enough to do much. I would get her seated and then she would get up while I was working and walk across the room and go back and then after she complained about a peculiar nervous sensation in her head. I can't describe that. She
40 said it was a loss of consciousness, it was a pecu-

William A. McMurtrie—Direct.

liar loss of sense of where she was at, came on two or three a day sometimes and sometimes she would have them a couple of times a week. A sense of confliction about the head, that's the way she described that. She called the condition in the back of the head and down the spine, that's the confliction too the way she described it. She didn't sleep, at least, she said she didn't. 10

Q. Did you prescribe for these various conditions which you have just described? A. I did the best I could.

Q. And have you continued down to the present time to prescribe for these conditions? A. I have.

Q. What have you to say as to the pain which would naturally result to Miss Van Pelt by reason of the injury to her nose and to her knee? 20
A. Why, anybody with a broken nose undoubtedly has pain and she evidently had pain. She pressed on her knee and that began to swell there and if she kept around and tried to use her knee it puffed and she said it pained her and I had no reason to doubt her and her other knee started and that became swollen; probably because she favored her left knee, and she said that pained her. I don't doubt but what it did. 30
It was swollen up and when I examined it she said it was tender right around the knee joint.

Q. Since the time of the accident and after you started using the ice bags, what treatment have you given to Miss Van Pelt, any? A. Well, for awhile I strapped them, ordinarily around the knee itself to support them, and they got better and I used elastic bandages and then took the bandage off and rubbed them and exercised 40

William A. McMurtrie—Direct.

them and she still bandages them once in a while yet.

Q. You spoke something about difficulty with the other knee. What was the nature of that difficulty? A. That was evidently a strain of the other knee from putting so much weight on it, I
10 think. She favored the other knee and that knee became sore and swollen and tender to the touch.

Q. Did the trouble which Miss Van Pelt have with her knees affect her walking? A. Oh, yes.

Q. What was the result of her walking? A. Well, she limped and said it pained her. Limped in her walking evidently because her knees were sore.

Q. Was it at your request that Miss Van Pelt
20 began to get around, or your suggestion, rather, that she use a cane when she was walking? A. I don't remember whether I told her to or not.

Q. Do you consider that the use of a cane was required by her accident? A. I think it eased her walking.

Q. In your examination of Miss Van Pelt's knees from time to time did you find anything to indicate a condition of chronic arthritis? A.
30 The X-ray showed it.

Q. Could the condition of injury to the knee which you have described solely result in that trouble?

MR. CHANCE: Object to the question, "could". The question is "what was".

Q. What was the cause of these injuries to the knee which you have described Miss Van Pelt had? A. Repeat that.

40 Q. What was the cause of the various injuries

William A. McMurtrie—Direct.

to the knee which you have stated you found in Miss Van Pelt's case? A. That's impossible to answer. She injured her knee; that's one injury; that's enough to make the knee sore and painful and swollen and then even if you have no chronic arthritis, if you use one more than the other it becomes sort of sore and strained. 10

Q. Assuming that the condition of chronic arthritis were present, could the condition be aggravated? A. It certainly would.

Q. What do you mean by that term, doctor, arthritis? A. The knee would give fifty or forty percent extension, being a simple circulation and it functions fairly well until we get a little extreme strain and then they ache and swell and we have what is called chronic rheumatism. All 20 the joints instead of being smooth in the knee are so rough with calcium deposits.

Q. In the course of treatment, did you at any time recommend that she have treatment other than what you were giving her? A. For her nose.

Q. What treatment did you recommend? A. Go to see Dr. Sutphen and see if he could repair her nose, the bone of her nose. 30

Q. Did she go to Dr. Sutphen? A. She did.

Q. I show you a paper and ask you if that is the account which you rendered to Miss Van Pelt for your services in her case since this accident? A. It is.

Q. What is the total amount of that bill? A. Two hundred and ninety-one dollars.

Q. Can you tell us approximately how many visits are included in that and if they are itemized? A. I don't know. 40

William A. McMurtre—Cross.

MR. JEFFERS: I offer the bill in evidence.

MR. CHANCE: Object to the bill. He has testified as to the amount and that is sufficient.

10 THE COURT: All right, you object to the bill, then we will ask him to tell everything he has charged for and we will take up that time and if he cannot tell from memory he may refresh his memory. That's the only effect of the objection.

MR. CHANCE: What is this on here, doctor?

THE WITNESS: This shows what months she paid some on. I don't keep my own books, I don't know.

20 MR. CHANCE: Objection to the bill is withdrawn.

THE COURT: It is admitted, there being no objection to it. (Admitted as P-2). Do you regard these charges as reasonable for the services you rendered, doctor?

THE WITNESS: I do.

CROSS EXAMINATION BY MR. CHANCE:

30 Q. Now, doctor, when did you first treat Miss Van Pelt for trouble with her knee? A. Well, the second or third day after the accident, when she told me about it.

Q. Did you never treat her for trouble with her knee before November 2nd, 1923? A. I did not.

Q. Did you treat her for any trouble before that date? A. I did.

4 Q. Did you treat her before that date for any condition to either of her limbs? A. No, I did not.

William A. McMurtrie—Cross.

Q. Did you treat her for any nasal difficulties?

A. I treated her for only bronchitis and head cold in the spring of 1923.

Q. You had an X-ray taken; did you take the X-ray? A. Of her knee?

Q. Yes? A. Yes, sir, at that time.

Q. Well, you speak of it showing some roughening at the bend of the bone. That wasn't caused by the accident, was it? A. No, sir.

10

Q. Now, the first day she came in to see you, she said nothing about her knee, did she? A. She did not.

Q. And the next day when she came in to you or whenever it was, she called and first spoke to you about the knee, did I understand you to say she thought she must have hit her knee? A. She was home that day.

20

Q. At her home she said that? A. Yes; I don't know whether she said she thought she must have hit her knee; she drew my attention to her knee.

Q. Now, with regard to this nervous condition that she described to you, can you tell us any physical condition of hers that you observed, any objective symptoms that showed there was such a condition? A. That's hard to say; I don't know. She was very nervous. She would draw her knees up when she talked; she was trying to concentrate; she would start to give me the story and she would go off in a tangent, and she would change to some other subject or work something else in; if that is what you mean, that's all she showed.

30

Q. Have you any way of saying from the condition that you observed that her going off in a tangent might not have been a condition of hers

40

William A. McMurtrie—Re-Direct.

on November 2nd, the day of this accident? A. I don't know.

Q. There's no way for you to tell that the first time she got that condition was when you saw her first, then? A. Well, going off in a tangent was a figure of speech. I meant in talking she would not stick to the subject I was trying to get at.

Q. There wasn't anything in her condition which would make you able to tell that was a development since the 2nd of November? A. Not a bit; I am just telling you since.

Q. Now, when was it that you sent her to the nose specialist or eye specialist? A. Some time the last part of January, I think it was, 1924.

Q. About three months? A. About three or four months after, February, the first part, or the latter part of January.

MR. CHANCE: I guess that is all.

RE-DIRECT EXAMINATION BY MR. JEFFERS:

Q. Doctor McMurtrie, do I understand that when you treated Miss Van Pelt in the spring of 1923 for a cold that that was the only time you had treated her before this accident? A. In the spring of 1923? This accident was 1923.

Q. Yes? A. In the spring of 1923 for a cold, I saw her a few times then.

(Witness excused.)

40

Edward Blair Sutphen—Direct.

EDWARD BLAIR SUTPHEN, sworn on behalf of the plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. KING:

Q. Doctor Sutphen, what is your age? A. Forty-nine. 10

Q. Occupation? A. Physician and surgeon.

Q. How long? A. Since 1902.

MR. CHANCE: Qualifications admitted.

MR. KING: Oh, no.

A. (Continued) I graduated from the College of Physicians and Surgeons in 1902 and was in general practice for two years, at the same time assisted my father in Newark in the Eye, Ear, Nose and Throat work. I have been connected— 20

Q. Yes, so the jury can tell how much importance that they will give to your evidence? A. Since then I have been connected with the New Jersey Eye and Ear, St. Michaels, All Souls, Morristown, here, Overlook Hospital in Summit and State Hospital in Morris Plains, that in capacity of either attending or assistant eye, nose and throat or ear surgeon. I have practiced this specialty since 1904 exclusively, that is, eye, ear, nose and throat in Newark and Morristown. In Morristown I have for the last eighteen years approximately. 30

Q. Did you examine Miss Van Pelt? A. I did.

Q. When? A. First January 17th, 1924.

Q. What did you find her condition to be? A. I found that she had a broken nose with almost complete ellusion of the left nostril. 40

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THE COURT: What do you mean by that?

THE WITNESS: She could not breathe through her left nostril; that was practically closed up. That was practically due to the fracture or the broken bone and subsequent swelling over the part and more or less congestion that could not be avoided, which always occurs after such condition.

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Q. What did you do to relieve that condition?

A. The nose was lacerated inside and was in such condition I was afraid to operate for fear perhaps bringing on meningitis and her death and I tried it for a little while and operated somewhere about a month later or a little more at the Memorial Hospital under general anaesthetic. At the time when I advised an operation, I advised it with the idea that I would make as much room as I could through that left nostril on account of the swelling, I could not tell until I got her under anaesthetic, I could not discover how much injury had been done or just how much I would have to do by the operation. At the operation we found that she had a break of the septum of the nose, that little partition and a splintered bone through the wall of the antrum, that's the sinus in the cheek, this splintered bone in the antrum belonging to the canal for the tears that run down from the eyelid into the nose. I performed at that time what we call a sub-mucous operation of the septum. That's removing part of the middle partition of the nose that was bent over that side and opened more widely the antrum, that's the sinus here, for better drainage and at the same time removing the splintered bone. She did very nicely

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except that it was very hard on account of the tearing of the membrane mucous, membrane over the septum to get in and get hold of the septum where the bone is partly covered with mucous membrane. I don't know whether that covers your question or not. Since then I have treated her off and on to date. 10

Q. What have you to say about the condition of hearing as the result of this accident? A. I find her hearing reduced as far as I can say from the accident. If it had been due to anything before the accident, it could not have gotten better with treatment that was given for the condition caused by the accident. Her hearing now is practically normal; not quite in the left ear, but almost. It was markedly reduced. I forget without my notes how much. If it was due to the accident, which I believe it was, it was due to the infection and thickening of the mucous membrane which extends from the nose to the top of the inner ear. 20

Q. Did you find she had a weeping eye? A. Yes, she had more than she has now. But she had less in October and September than she had when I examined her now. 30

Q. Please tell the jury what that is? A. Weeping eye is an eye where the tears do not go down into the nose as they should. It is due always to some closure or partial closure of the tear duct or inflammation of the sack which is just at the opening of the tear duct. She had no particular trouble with the sack, it's in the canal, due to the thickening of the mucous membrane or possibly some little particle of the bone that can be seen by X-ray and can be seen by me or anybody else, but there is some little stoppage of 40

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10 the tear canal. If she has a stoppage in the tear canal and weeping eye she would be more likely to have it because of some permanent injury to that canal on the particular side. I have seen her once or twice when she had mucous purulent. She hasn't that now. She has some slight puffiness of the under lining of the lid and which will vary according to the way the tear passage is. She also showed a little puffiness, I can faintly see it from where she sits, of the left lower eyelid. It's quite apparent.

Q. Now, what are your conclusions as to her present condition; her need of treatment and her complete recovery, if it is possible? A. I don't consider that there is any real danger of 20 her life by her present nose and eye condition unless of course she may have to have an operation and then the danger is very little. There may be some danger if she needs subsequent operation upon her nose, particularly of the septum; there's always some danger of meningitis and death, but it's very rare. The danger of life if she should need any subsequent operation on the tear passage, which she might, is nothing at 30 all; there's no danger. I really believe that she will not need any subsequent operation but it is quite probable she may. If she does, it will be an operation for the septum, to remove any excessive membrane and there may be an operation upon the tear passage, either probing or even the removal of the tear sack itself. I should think that she will probably go along not having much trouble with her nose or eye; occasionally 40 having the eye bother some and occasionally having to be probed or using some drops. I think that her nose might not bother her to any extent

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or it might become a little dry and she may have to grease it a little bit or give it some treatment for that. I think she is going to be just a little bit uncomfortable with this nose always.

Q. Have you any charge against her for the services you performed? A. Yes. 10

Q. I am assuming your charges are reasonable? A. I think they are, sir.

Q. Is that your bill? A. I think it was until the last visit. I believe I saw her the other day and went over her eyes, nose and throat, charging her ten dollars, making it three hundred dollars all told.

MR. KING: I offer it in evidence. 20

THE COURT: No objection, it is admitted.
(Bill received and marked Exhibit P-3.)

CROSS EXAMINATION BY MR. CHANCE:

Q. How old is Miss Van Pelt? A. I don't know.

Q. Do elderly people normally have a tendency to have some watering of the eyes? A. No, sir.

Q. That is not an ordinary accompanying of old age, according to your experience? A. No, sir. 30

Q. What is sinusitis? A. Inflammation of the membrane of the cavity adjacent to the nose and leading into the nose.

Q. Well, is there one branch of this they speak of as frontal sinusitis? A. One locality.

Q. If a person has frontal sinusitis would that have any effect on the hearing? A. No, sir, it would not. 40

Q. If it should appear that Miss Van Pelt had

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that condition before the date of this accident, do you think that would possibly have anything to do with the reduction of hearing that you speak about? A. No, because she had no frontal sinusitis at the time I examined her.

10 Q. Didn't you tell us that the lacerated condition inside was so much when you first examined her that you could not determine what the condition was and no man could say? A. I could not determine the extent of it but one does not have to look inside the nose to determine about frontal sinusitis.

Q. Where do you look? A. Transillumination from in the part or X-ray.

20 Q. Did you see any indication that she had been thus affected? A. There was no evidence of frontal sinusitis when I examined her.

Q. And the date of that examination was—
A. January 17th, 1924.

Q. You never treated Miss Van Pelt before that date, did you? A. I did not.

30 Q. Do you know whether Miss Van Pelt wore glasses prior to this occasion? A. I don't know her age but one is apt likely if they are over forty and I think she is.

Q. What is the necessity for her wearing glasses if over forty? A. Ordinarily normal eyes if a person becomes over forty years of age become so that they need slight glasses for reading. I am taking it that she had normal eyes. If they were abnormal, it might be different.

Q. What is conjunctivitis, what is that? A. Inflammation of the lining of the eyelid and the outside of the eye ball.

40 Q. Would a great deal of reading and fine

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tone work, which is required of one who does painting, tend to cause the inflammation of the conjunctiva? A. None of the kind she had, and never in one eye alone.

Q. Well, how is it it could not be one eye? A. Because eye strain if it causes symptoms of conjunctivitis always goes in both eyes. I don't consider there is no possibility of one eye being strained more than the other one.

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THE COURT: What is conjunctivitis?

THE WITNESS: It's an infection and an inflammation of the tube that connects the eyeball with the cornea.

THE COURT: Isn't that called pink eye?

THE WITNESS: There's a lot of different meanings of conjunctivitis. There is just some that is noticed by a little pinkning of the eye, one might rub their eye and get a little conjunctivitis. Then there's that kind that has pus in it, that's purulent and that might be caused by any kind of germs. Pink eye is not a form of conjunctivitis, you may have that in one eye. That's due to infection in one eye. The trouble she had was in one eye. That's the reason you can get pink eye in one eye and transfer it to the other.

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Q. Do you think there is any impairment to Miss Van Pelt's vision? A. I do not—I beg your pardon, I might have mispoke myself. I don't believe there is any impairment to Miss Van Pelt's vision due to the injury.

Q. And you do not think there is any probability that there will be impairment develop at

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this time that would be caused by that accident?

A. I do not believe that she will have any impairment to her vision due to that. It's possible, but not likely. The only way I can see how it would be at all possible would be a re-loading up of her sinus condition and sometimes we do get
 10 complete blindness from sinusitis.

Q. What do you mean by loading up? A. That would be perhaps some infection in there which would form a disease and a chronic thickening of the membrane would be more apt to cause trouble than if the membrane had never been diseased and in such cases we occasionally, just the last few years we have practically, found
 20 a good many cases of blindness came from sinus trouble. They are very rare however and I don't believe she will have such but you asked the question and it is possible she may complain of pain in that eye from the sinus trouble.

Q. Now, what was there about this examination that you speak of as revealing no sinusitis to you at the time that would enable you to tell whether she ever had been thus afflicted? A. This frontal sinusitis, is that your question
 30 about frontal sinusitis? The sinusitis that she had was in the antrum.

Q. Yes, that? A. The maxillary?

Q. Yes, that? A. Here were she showed the pain, right in this upper jaw bone.

Q. Well, your examination did reveal she had trouble in the antrum? A. Well, she may have more trouble than I observed on one examination, one cannot tell, one can tell almost as much.

Q. Could you tell from the examination then
 40 as to when she had first been affected with this sinusitis in the antrum? A. No, nobody can tell

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that only by the use of the speculum, by pushing it in the antrum, it's reasonable to suppose it came from the injury and it started at the antrum.

Q. What other ways could it start? A. Most any different ways, from a bad tooth, from a tooth that extended up into the antrum, from a cold; there are loads and loads of people had it in 1918 and there are lots of them have it without any perceptible cause. 10

Q. Well, if she had had some terrible colds in the head in April, 1922, would you think it could be possible that that may have had some connection with the condition? A. I don't believe it had a particle of connection with it.

Q. Just what is there that makes you say that it hadn't a particle to do with it? A. Well, if I found a man with a piece of steel stuck in his eye and he lost his eye because of it and he had a little missile in his eye two years before, you could not say the missile had anything to do with the loss of the eye. 20

Q. Why do you compare a little missile with this condition that you said you found much more severe? A. I didn't compare the missile with that. I compared the condition I found with the piece of steel stuck in his eye. I compared what you said. 30

Q. Wasn't the thing which was revealed to you when you made the operation of a much more extensive nature than the day when you first saw her? A. No, I thought there was a great deal of trouble in there. Of course when I operated I found more than I could find— 40

Q. It was a surmise before you operated? A. It wasn't any surmise after I operated. 40

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Q. Well, is it a surmise which makes you state you think the way it originated? A. I found the condition, the bone projecting in the antrum and it's only reasonable to suppose that was the cause of it. However, that has cleared up since I removed the bone.

11 Q. Well, the removal of the bone wasn't the only thing you did when you made the operation? A. The only thing I did was to repair the nose from injury.

Q. Didn't you remove the bone and scrape away any infection? A. No.

Q. You left the infection in? A. I didn't scrape away any infection in a case like that; if you did you would have a dead patient.

22 THE COURT: What did you do to get the infection away?

THE WITNESS: You simply make good drainage in the antrum and nature had to do it. Sometimes you have to give it outside drainage. In a case like this you simply give it good drainage and expect nature to clear the thing up gradually.

30 Q. Now this sequestrum you have been talking about, will you just describe the nature of that; what does it consist of? A. You want me to refresh my memory with any notes or just off the hand?

THE COURT: To the best of your recollection.

40 A. I should say it was about somewhere around an inch long and perhaps a half inch wide and perhaps a sixteenth of an inch thick.

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THE COURT: What's the difference between a sequestrum and a splinter?

THE WITNESS: No difference.

Q. Was there anything which enabled you to see the course which this piece of bone had taken to get where you found it? A. It pushed to the septum where the septum was torn into the antrum and through part of the turbinate bone. It was not entirely disconnected with the septum and it was somewhat difficult to dislodge it and get it out. 10

Q. How thick is the bone of the septum? A. Depends entirely on different individuals. In this case you could find probably it would be about one sixteenth of an inch thick. 20

Q. What did your examination and operation reveal to you in regard to the septum which Miss Van Pelt had? A. It simply revealed she had a broken septum.

Q. Did it not reveal anything as to the shape of the septum? A. Why, just like every septum more or less that I would find in this room. Certainly less trouble than in my own, less difficulty.

Q. Well, have you considerable difficulty in yours? A. I say I have quite a little. 30

Q. Well now, what is the effect of a deformed septum? A. I don't understand you.

Q. Assuming that Miss Van Pelt had as you say a septum which wasn't perfect before this accident, the same as most people, what effect would that have on her breathing? A. Depends entirely upon the degree of deformity. She had no deformity of her septum that would cause any difficulty with her breathing. 40

Q. What kind of deformity did she have be-

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fore this accident? A. I can't remember that, I know she had a slight irregular septum.

10 Q. Can you recall whether that interfered with her breathing, anything you found in regards to the deformity? A. That's my business to find it. That septum does not interfere with breathing as a normal one where you have no deformity.

Q. And you found this splintered bone through the antrum when you examined her? A. Yes, after the accident.

Q. And do you know whether there was any through the antrum before? A. That bone through the antrum could not be caused without accident.

20 Q. You cannot tell whether that would not be natural with her? A. Because I know what I say.

Q. You think? A. I don't think, I know. Anybody could have a special condition but I know when I see a bone through the antrum, anybody could.

30 Q. Now, just answer this question. Was there any trouble at all with the mucous membrane of Miss Van Pelt's nasal passages other than was caused by this accident that you noticed? A. No, sir.

Q. Are there any now; are there any difficulties of the mucous membranes of the nasal passages which she has at the present time which were not caused by the accident? A. None that I know of.

MR. CHANCE: I guess that is all.

(Witness excused.)

Emma H. Van Pelt—Direct.

EMMA H. VAN PELT, sworn on her own behalf as plaintiff, testifies as follows:

DIRECT EXAMINATION BY MR. JEFFERS:

Q. Miss Van Pelt, you are plaintiff in this case? A. I am. 10

Q. Where do you live? A. 31 Miller Road, Morristown.

Q. How long have you lived there? A. Since the 17th of September, 1924.

Q. Prior to that time, where did you live? A. 73 Maple Avenue.

Q. Were you living at that address on November 2nd, 1923? A. Yes.

Q. How long had you been living at that address at that time? A. From—at the time of the accident— 20

Q. How long had you been living there? A. Just about a month. I had gotten back from a summer away.

Q. On the morning of November 2nd, 1923, did you come out down to the center of Morristown? A. I did.

Q. What was the course which you took from the time of leaving your house that morning? A. 30 I left 73 Maple Avenue, where I was rooming and passed through Miller Road, past the library to South Street and I crossed South Street, coming uptown toward the business center on the right hand side, as I had an errand on that side and was going to the Post Office.

Q. Then when you went up South Street, do I understand correctly, you were on the west side of South Street, as the directions are shown on 40

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this map—on the east side? A. Yes, the east. I should call it east, possibly a little north, South Street does not run straight.

Q. This map shows north is at the top and south is at the bottom and east is the right; that is on that side? A. Yes.

10 Q. Do you know what time you left your house that morning? A. Shortly after nine o'clock.

Q. Where did you go after you got to South Street? A. After I got to South Street I stopped at a fruit shop a few steps this way, I should say, from what is known as Smith's corner, and after one errand, I went on to the Post Office.

Q. Did you stop at the Post Office? A. Yes.

20 Q. After leaving the Post Office, where did you go? A. I retraced my steps to what has always been known as Smith's Corner and crossed over to Day's restaurant, as I had an errand there.

Q. You stopped in at Day's? A. I stopped in at Day's and I did my errand.

30 Q. Do you know what time it was when you left Day's? A. When I came out I noticed, from force of habit because I had a teaching engagement at eleven, I noticed the large clock in front of the American Trust Company registered quarter after ten.

Q. Where did you go after you came out of Day's? A. Noticing it was only after ten and my lesson not due until eleven, I thought I would embrace the rare opportunity to go down to the library, so I headed down South Street.

40 Q. That is on what side of South Street? A. That was on the right side of South Street, going down South Street, or the west side.

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Q. Did you continue that course down South Street until you came to the Savings Bank Building at the corner of De Hart Street? A. Yes, I did.

Q. Was it your intention to continue on down South Street until you reached the library? A. Yes, I took my course in that direction. 10

Q. As you came—as you approached the corner of De Hart Street where the Savings Bank Building is located, will you tell us just what happened? A. Shall I use the map here?

Q. If you like. A. I was then coming in this direction (indicating). This is leading down toward the library. A number of years ago they broadened the street here now what is called Exchange Place, the lines I see are different, and that South Street runs on a slant; it always did and I approached Day's and up here and came in this direction to attend to some shopping and it is very difficult to make this busy crossing, to come down South Street to the library. 20

Q. When you reached this corner tell us just what happened? A. As I reached this corner, I traveled what is the common line of travel toward the bias crossing, that accustomed line of travel is in from the corner of the sidewalk. 30

Q. I think, Miss Van Pelt, you are a little ahead of the story. I asked what happened at the corner? A. Why, I was tripped at the corner by the lower of two marble blocks, the lower one projecting further than the other one.

Q. When you approached the Savings Bank Building or as you were in front of the building, were there people coming in and out of the bank? A. Yes, I am conscious of that, at quarter after 40

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ten or twenty minutes after, I think it was that time, it's a very busy corner.

Q. Were there people going back and forth around the corner of De Hart Street? A. Yes, there were.

10 Q. As you got up to where these people were coming and going, in what general direction did you shift your course in order to continue on down the street? A. It was necessary, the bank being at my right, it's necessary for everyone to shift to the left. Naturally you take a straight line to the corner, it is on a slant and you go straight for the crossing as you come toward it.

Q. Did you shift your course in that direction that morning? A. I did.

20 Q. Did you reach the crosswalk? A. No.

Q. What prevented you reaching it? A. I was tripped by this marble stone.

Q. How near were you to the corner when you were tripped? A. I think the stone—I was so stunned but of course I got the consciousness as I was going down, they may have been perhaps twelve feet from the corner.

30 Q. Were you at a point where you were able to see out up De Hart Street? A. I was at a point where I could see things, the parking signs have been put here lately, it was a parking road and of course I could not tell in the rush of the morning because it was more or less hidden by the parking on both sides but as I approached the corner, I was probably twelve feet or so from the corner.

40 Q. Did you look out De Hart Street or attempt to look out De Hart Street? A. With the natural intention for safety, it's the duty to look up and see what automobiles were turning into

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South Street and look up and see if possible what automobiles were coming out into South Street and turning in both directions in order to see if my way was safe to cross.

Q. As you approached this place where you tripped, Miss Van Pelt, did you see any obstructions on the sidewalk? A. I was conscious of them in a general way. **10**

Q. Of what obstruction were you conscious? A. Why, in a general way I was conscious of high building material out toward the curb.

Q. Approximately how high was that pile of building material? A. It would seem to me about as high as that (indicating).

Q. How high is that? A. Three feet or more, there were a pile of boards there— **20**

Q. Was it that pile of boards that you fell over when you reached this spot? A. No, it was not.

Q. What was it that you fell over? A. The lower of two marble blocks.

Q. Where were these blocks? A. Relative to the corner, I should think about there (indicating).

Q. Where were these blocks in relation to the high pile of building material you have spoken about? A. The building material was three feet or so on this walk. **30**

Q. Where were the marble blocks with reference to the building material? A. Well, I was making my way toward them; I think in the neighborhood of six or seven feet out from the curb.

Q. The question was, where were the marble blocks with reference to the pile of building material? A. Running parallel with it. **40**

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Q. How near to it? A. From the edge of the curb, I should say between six and seven feet.

Q. How near were the pile of building material to these marble blocks, I don't quite understand?

A. There was probably a space of a foot or two of mixed debris between the blocks and the high material.

10

Q. As you came down the street and saw this pile of material, did you see the blocks which you speak of? A. No, I did not.

Q. As you fell, did you see the blocks? A. No, I had the consciousness that comes to look for something high enough to take hold of.

Q. What part of your body first struck, Miss Van Pelt? What part of your body first met the obstruction? A. I don't know.

20

Q. Before you fell, you say you tripped; did your foot catch? A. No, I came around the top of the upper block, which was relatively here (indicating) and the lower block, that projected beyond it. It was through the lower block projecting out.

Q. Do you remember that you were struck? A. Do I remember when I was struck? I remember the crash of that and then everything was black.

30

Q. Miss Van Pelt, going back to the pile of building material which you have described along the curb side of the walk, how far into the walk from the curb did that high pile of material project? A. The high pile, I should judge perhaps three feet into the walk, on the level, you mean.

Q. Was it a high pile directly on the edge of the curb or was it set in a short distance from the curb? A. I don't know.

40

Q. You spoke of some debris being between the

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high pile and the marble blocks. What was the width of that pile of debris that you speak of? A. I don't know, it was a feeling there wasn't enough of anything to take hold of.

THE COURT: She has already said there was about a foot of debris. 10

Q. How far into the sidewalk from the inside line of the high pile did this smaller marble block protrude? A. If it was a matter of only one foot, that would make it two feet, I believe.

Q. Were the marble blocks two feet further in the sidewalk than the high pile? A. Yes, fully.

Q. Did you see these marble blocks before you got there? A. I did not.

Q. After you had fallen, Miss Van Pelt, what happened to you? A. I didn't know for a time and then someone was standing over me, "Oh Miss Van Pelt, what can I do"? 20

Q. Never mind what they said; were you assisted to rise? A. Yes.

Q. Who helped you? A. Miss Alice Beach of Morristown.

Q. Is Miss Beach present in the court room? A. She is not. 30

Q. Did you attempt to have her present? A. I did.

Q. Why were you unable to have her here? A. She is taking care of a brother's child and they went to the shore as is their custom, I have known, early in May.

Q. After Miss Beach helped you to get up, what did you do? A. She wished to waylay a motor or help me in that way to quickly get to Dr. McMurtrie's, that was just in there in 40

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De Hart Street. The accident was possibly here and Dr. McMurtrie's office is here (indicating).

Q. Did Miss Beach help you to Dr. McMurtrie's office? A. She did.

Q. Were you able to walk? A. I was dragged, rather. Yes, she assisted me, I got there.

10 Q. Miss Beach assisted you in walking? A. Yes.

Q. When you arrived at Dr. McMurtrie's office, what did you do? A. Miss Beach rang the bell and a nurse came to the door.

Q. After you were inside of the office what did you do? A. The nurse took me across to the treatment room. There she cared for the flowing of the blood.

20 Q. Was Dr. McMurtrie there? A. Dr. McMurtrie had left ten minutes prior.

Q. Was Dr. McMurtrie there? A. He was not.

Q. Did he come in later? A. Yes.

Q. What treatment did Dr. McMurtrie give you at that time? A. In the office; cleansing the wound, washed it and dressed it.

30 Q. After he had treated you, where did you go? A. They called a taxi and with the three to help me, I was taken back to 73 Maple Avenue, where I was lodging.

Q. What did you do when you got back there? A. His directions were I be put straight to bed.

Q. Did you go straight to bed? A. Yes.

Q. When did Dr. McMurtrie come to see you again? A. Later in the day; late afternoon or early evening.

40 Q. Did Dr. McMurtrie upon the first day give you any treatment other than for your knees and nose? A. Ice bags in so far as they could be

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made in the house because I was hurt all over.

Q. When did you first call Dr. McMurtrie's attention to the injuries to your knee? A. I don't know, because I was still somewhat dazed, whether it was that night or the next night I spoke about it. I didn't know where I was hurt exactly, I was hurt all over and I didn't know until they put me to bed that I was hurt all over as bad as I was. 10

Q. Did you suffer pain as the result of these injuries that you have spoken about? A. Yes, I did.

Q. What pain, in what locality? A. At that time all over.

Q. Wasn't your pain more pronounced in the particular place of the injuries? A. Yes, and Dr. McMurtrie, as every physician knows the pain is worse the second day. 20

Q. Subsequently, Miss Van Pelt, did you go to the Memorial Hospital? A. The next day.

Q. And is that in Morristown? A. Yes, the accident was Friday, November 2nd, and Dr. McMurtrie sent me to the Memorial Hospital, he didn't wish me moved at night and that was Saturday. 30

Q. How long were you in the hospital? A. Nineteen and a half days, November 3rd to the 22nd.

Q. During the time you were in the hospital how frequently did Dr. McMurtrie visit you? A. He came in almost daily; not always, not each day for treatments, sometimes just looked in the door and say, how are you getting along.

Q. Did you have any other medical treatment other than that which Dr. MrMurtrie gave you? 40

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A. The Interu who was there came in with him and assisted him in the dressing of the wound.

Q. Did you have a private nurse? A. The nurse helped with the dressing of the wound.

Q. Did you have a private nurse? A. No, I did not.

10 Q. Then you left the hospital nineteen days and a half after you had gone there, then, where did you go? A. I was taken back to my room at 73 Maple Avenue.

Q. After you got back, were you confined to your room? A. Yes, I was confined to my room.

Q. Were you confined to your bed? A. Up and down, from on the bed to a big easy chair by the window a few feet from it.

20 Q. For how long a period were you confined to your room? A. A week or ten days.

Q. After that time, what did you do? A. I was still confined to the room but I was invited to go to a well equipped hospital at the school where I teach, the Morristown School for boys on the Whippany Road where they have nurses and assistants.

Q. Is that known as the Infirmary? A. Yes.

30 Q. Well, at the Infirmary, were you confined to a room? A. On that floor. They kindly put a set of crutches at my disposal and I went out walking following the Friday and Saturday I went out there.

Q. How long were you there? A. Almost three weeks, to the beginning of the Christmas holiday; approximately I should think about December 21st, until school closed and the Infirmary nurses had their vacations.

40 Q. After you left the Infirmary, where did you go? A. Back to 73 Maple Avenue.

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Q. Were you still confined to your room at 73 Maple Avenue? A. I tried it occasionally but for quite a long while the stairs were too much for me and it was impossible; I drove back and forth to go to the doctor's and for treatments.

Q. Going back, Miss Van Pelt, to the injury which you received, what was the effect of the injury to your knees? A. Why, a great deal of continuous pain and I suppose shock generally. I simply didn't have the vim to put in my work I should have. 10

Q. Do you still have pain as the result of the injury to your nose? A. I do.

Q. Has Dr. McMurtrie continued to attend you for your general condition down to the present time? A. Yes, I go every other day for one treatment. 20

Q. What treatments have you had for your knee? A. Strapping at one time for five months by Dr. McMurtrie and then again for a shorter time and I had the bandage on and off for months at a time, first only on the left but later both, because I strained the right as well.

Q. Did any doctor other than Dr. McMurtrie attend you for the injury for the knee? A. Last summer at Nautucket, where I teach at the Colony, I was driven to a doctor's office and he applied treatment similar to what Dr. McMurtrie had been doing. 30

Q. What had been the effect of the injury to your knee on your walking? A. There was a stiffness in that knee, a stiffness sometimes all the way up to the thigh and I had been using a cane but tried to do without it. 40

Q. Have you been using the cane for walking ever since the accident? A. Ever since.

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Q. Were you accustomed to using a cane prior to the accident? A. Never.

Q. Do you still feel it necessary to use a cane for walking? A. I am very much better but I can walk better with the cane.

10 Q. Do you still have any pain in your knee?
A. Yes, may I say—

Q. How frequently? A. I don't whether I am allowed to say it, but it localized so much in the knee as in the least way it hurts me tremendously, the pull and strain is constantly.

Q. When are you usually troubled with this pain? A. When I have strained it and put the ordinary natural use to it, in getting in and out of cars.

20 Q. Since the time of the accident do you have trouble with what is known as watering eye? A. Yes, great trouble.

Q. Does that condition exist all the time or only occasionally? A. It exists all the time and it is there or potentially, I feel the effect of it.

Q. What is the effects of this watering eye? A. The effects of that is that it is not only uncomfortable and unpleasant—

30 Q. Does that water run down your cheeks? A. Yes until it strikes on the sidewalk or wherever I may be.

Q. And this condition still exists? A. Still exists.

Q. Dr. McMurtrie has testified that since this accident he has treated you for nervous condition? A. Yes.

40 Q. What has been the nature of that nervous condition, Miss Van Pelt? A. It's been a matter of sleepiness largely and something of pain all around here. Dr. Sutphen explained there are

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conditions there existing and he said naturally would exist and that states it better than I can tell you.

Q. Had you had any such nervous condition prior to this accident? A. No.

Q. Had you been having treatment prior to the accident? A. Yes, I have had Dr. McMurtrie for a cold he spoke of. 10

Q. Miss Van Pelt, what is your occupation? A. I am a teacher, teacher largely of drawing and painting.

Q. Where do you teach? A. I teach three mornings a week at the Morristown Preparatory School for boys on the Whippany Road and one afternoon a week in Epiongal School of St. John, at Rolston, New Jersey, and private pupils. 20

THE COURT: Were you teaching in these places at the time of this accident?

THE WITNESS: Yes.

Q. For how long a time after the accident were you unable to attend to your classes at Morristown School? A. I insisted upon taking up the work and I again went back to the Infirmary after the Christmas holiday. I was there then a number of weeks until I came down for the operation with Dr. Sutphen. They came, sent me up in the school car— 30

MR. KING: Won't you pardon me, but if you will listen to Mr. Jeffer's question and answer just what he asks the jury will be able to get it so much better. It's your case and not mine.

THE WITNESS: Thank you very much. 40

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Q. (Question read) A. Through November and December.

Q. Did you lose any money by reason of not being able to go to these classes at the Morristown School? A. Not at the Morristown School.

10 Q. How long after the accident was it before you were able to continue your classes at the Convent? A. Not until March 15th.

Q. Prior to the accident how frequently were you in the habit of going to the Convent? A. One afternoon a week.

Q. What was your compensation for each afternoon of teaching there? A. Twelve dollars.

20 Q. How many weeks of actual teaching did you lose because of this accident? A. I have a list, you will find a list of loss from lack of ability to work there. The teaching loss of that is totaled here, two hundred and twenty four dollars. That includes twenty dollars of a little girl who had begun her lessons. Most of my work was being mapped out.

Q. What else does that include?

30 MR. CHANCE: Object to this until we have more definite information as to what reasonable expectation there was, that there would have been in such earnings of the things you are talking about.

MR. JEFFERS: Perhaps after I have my percentage, the number of weeks can be got.

THE COURT: Can you get an idea?

Q. Your class at Rolston that had started prior to the accident? A. It had.

40 Q. And was to continue week by week? A. Yes.

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Q. The times when you were unable to attend those classes were days when there would have been classes if you could have been there? A. Yes.

Q. And your compensation for each of those days was to have been twelve dollars? A. Twelve dollars. 10

Q. How much did you lose by reason of the class which you were not able to attend to at Rolston? A. That would make it two hundred and four dollars.

Q. In addition to your class, did you also have any private pupils? A. This little girl who had begun, twenty dollars without a lesson, ten lessons, children's lessons at two dollars a lesson.

Q. You had enrolled her but she had paid at the time in full? A. She was enrolled for ten lessons, yes. 20

Q. And how did they pay? A. They paid monthly.

Q. How much a month? A. It was two dollars, I make that a lesson, it was eight dollars, four weeks a month.

Q. After you recovered, did you continue teaching this little girl? A. I gave her two lessons before I went to the Memorial Hospital again for the operation. 30

Q. How often were you in the habit of giving her lessons? A. One morning a week.

Q. When you say that you lost twenty dollars by reason of that pupil, do you mean that you missed ten lessons at two dollars each? A. Why, approximately, the lessons will be at another time, there would be ten lessons in that time. 40

Q. Then you figure the twenty dollars loss by

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reason of not being able to go on and teach this little child? A. There was all of November with five days in it. I have it in my satchel somewhere and all of these teaching days in St. John's is there, five in November; there were three in December; that makes eight, two missed in the second treatment and after affects at the Memorial Hospital in February.

10

Q. Miss Van Pelt, I show you a bill of the Memorial Hospital and ask you if that is the bill which was rendered to you for your treatment there in November, 1923? A. It was for room and care.

MR. JEFFERS: I offer that in evidence.

20

(Bill received in evidence and marked Exhibit P-4).

MR. JEFFERS: The bill is for one hundred and ninety-five dollars.

Q. Miss Van Pelt, when you were in the hospital in November, did you have an X-ray? A. Yes.

Q. I show you a bill and ask if that bill for twenty-two dollars and twenty cents, is for the X-ray taken at that time? A. Yes.

30

MR. JEFFERS: I offer that in evidence.

(Bill received in evidence and marked Exhibit P-5.)

Q. Dr. Sutphen has testified, Miss Van Pelt, that you were operated on by him in February, 1924? A. Yes.

Q. Where did that operation take place? A. Memorial Hospital.

40

Q. How long were you in Memorial Hospital

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at the time? A. I went the morning of the 19th and left the morning of the 22nd of February for the Infirmary at Morristown School.

Q. I show you a bill for thirty-five dollars and ask you if that is the bill rendered you for your room and board at the Memorial Hospital at that time? A. It is. 10

MR. JEFFERS: I offer the bill in evidence.

(Bill received in evidence and marked Ex-

hibit P-6).

Q. When you were in the hospital in February, Miss Van Pelt, did you have an X-ray? A. Before going; two or three days before going.

Q. I show you a bill of the Memorial Hospital for ten dollars and ask you if that is the bill for that X-ray? A. That is right. 20

MR. JEFFERS: I offer the bill in evidence.

(Bill received in evidence and marked Exhibit P-7.)

Q. Miss Van Pelt, you have testified that while in Nantucket, you consulted a doctor there? A. Yes.

Q. What was the name of that doctor? A. Dr. John Girard. 30

Q. Do you know the amount of his bill? A. These visits were at three dollars; I paid by check. The last visit was before I left and my account was settled in the Nantucket Bank and I paid him with cash.

Q. How many visits did you have? A. Two.

Q. Miss Van Pelt, as the result of this accident, was it necessary for you to get new glasses? A. Yes, sir. 40

Q. Why was it necessary? A. Because these

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usual glasses which are simple magnifiers I used for only reading or sewing and could not rest on the injured part of the bridge of the nose. I tried handling them with ribbon but that would not do; I could not do anything with them. I had to have these reading glasses with me and on them
 10 shifting down I so escaped a more painful part of the accident.

Q. Where did you buy these new glasses? A. Parker and Van Cleve.

Q. I show you a bill of Parker and Van Cleve for six dollars and ask you if that is the bill that they sent you? A. It is.

MR. JEFFERS: I offer the bill in evidence.
 (Bill received in evidence and marked Ex-
 20 hibit P-8.)

Q. Miss Van Pelt, as the result of this injury, was there any damage to the clothing you were wearing at the time? A. Yes, my winter cloak suit was soaked with blood stains to my shoes.

Q. What did you do with this suit? A. I had it sent to Christine's for cleaning.

Q. I show you a bill of Lawrence M. Christine for seven dollars and ask you whether that is the
 30 bill you paid for cleaning that suit? A. That is right.

MR. JEFFERS: I offer the bill in evidence.
 (Bill received in evidence and marked Ex-
 hibit P-9.)

Q. Miss Van Pelt, at times when you had to go to the Doctor's office, what way were you conveyed there? A. Taxi.

40 Q. Do you know the amount you paid in taxi

Emma H. Van Pelt—Cross.

charges, taking you back and forth from the hospital and the doctor's office? A. I had that on my notes, I think it was fifteen dollars; possibly seventeen dollars. I have a great many figures to recall but I had them tabulated.

Q. As a result of this accident, Miss Van Pelt, was it necessary for you to incur certain bills for medicine and so forth? A. Yes. 10

Q. Where did you purchase these articles? A. Carrell's Pharmacy.

Q. Do you know what was the amount of your account at Carrell's Pharmacy? A. Eighty-eight dollars and some cents for things only incident to the accident.

Q. Miss Van Pelt. I show you a number of bills from Carrell's Pharmacy and ask if included in the charges in these bills are those for medicines and so forth occasioned by this accident? A. They are. 20

Q. Is there any note on the bill to determine which charges were the result of the accident and which were other charges? A. There is, as each bill came in I went over them and marked an "A" by the accident charges.

MR. JEFFERS: I offer these bills in evidence. 30

THE COURT: If there is no objection these different bills will be admitted.

(Bills admitted and marked Exhibit P-10.)

CROSS EXAMINATION BY MR. CHANCE:

Q. Miss Van Pelt, this watering eye condition that you speak about, is it any worse today than usual? A. No. 40

Emma H. Van Pelt—Cross.

Q. You have been on the stand quite a number of minutes. Have you found it necessary for you to use your handkerchief at all to wipe away the watering condition today? A. No, not today.

10 Q. Now, as you were approaching the place where this fall occurred, did you see the marble blocks at all before you fell? A. No, I did not. I was conscious of a mass of material.

Q. Now, Miss Van Pelt, if you will just answer my questions, we will get along better. Do you know how many feet there were between the marble and any obstruction on the other side of the sidewalk in the space between which you started to pass? A. Out to the curb from the marble?

20 Q. How much open passage way is it your recollection there was on that sidewalk on the day in question? A. This side was somewhat occupied by material; there was material in here for approximately three feet with a lot of debris and flat stone; it may be three or four or five feet here and three feet, possibly or four feet along in front of the bank. That is an eighteen foot walk, it would leave approximately seven or eight feet
30 passage way.

THE COURT: Is the sidewalk marked?

MR. CHANCE: Eighteen feet and some inches.

40 Q. And as you approached the place where these marble blocks were, you passed the place where there was other material which extends further toward the middle of the sidewalk than these marble blocks, did you not? A. No, not as I understand your question, the lower material was toward the middle.

Emma H. Van Pelt—Cross.

Q. And other materials on both sides of the sidewalk, that is next to the Bank Building and also on the street side of the walk; I base my estimate on what you said about the height of material as four feet out from the Bank Building? A. I did not see it.

10

Q. You did not see the materials? A. It was at my right and I did not see it.

Q. You were walking toward the direction where these materials were that you say there was no need for you to see, were you not? A. Not at all; I was walking toward the crossing, materials were on the other side.

Q. How far to the north there had you proceeded? A. I was coming from the north in this direction.

20

Q. Yes, you had walked from a distance up beyond what is shown on that map? A. Yes, up by Day's.

Q. Well, then, as you approached this place, did you notice the materials which were on the walk particularly? A. A consciousness in a general way of materials, of the higher ones, not of the lower one.

Q. What is your recollection as to what material you saw as you approached that place? A. Nothing other than masses of boards or perhaps barrels. It was about the third time I had been up town since my return and seldom on that side.

30

Q. You were seldom on that side. How many times on that side since your return? A. I think approximately—I should say that I had been to town but three times perhaps.

Q. Well, you had been up there at this Bank Building since it had been under repair? A. Had been, but I used the farther side, as I almost al-

40

Emma H. Van Pelt—Cross.

ways went on the farther side of South Street.

Q. Well, you knew the morning you were walking down there on the day of this accident that the building was under repair, didn't you? A. Yes, in a general way; it was printed about in the papers.

10 Q. Now, as you were proceeding toward the place where the accident occurred, did you pass the American Trust Company building? A. Yes.

Q. How far back was that from the place of the accident, a block or a half a block or what?

A. Oh no, it's approximately, I should think would be about there (indicating).

20 THE COURT: That means nothing on the record.

A. (Continued) Perhaps about six buildings frontages; it was not far back.

Q. Now, where is that with respect to Day's Restaurant that you mentioned a moment ago?

A. It's next door to it or next door but one.

Q. And as you were proceeding along the sidewalk there, did you tell us that you looked at the clock in front of the American Trust Company building? A. Yes.

30 Q. Where were you when you looked at that? A. Why, I just stepped out from the stairway.

Q. And what else do you recall having seen between the time you stepped out from Day's doorway and the time of the accident? A. People going to and fro that busy time of the morning, that was all.

40 Q. You said something about automobiles parked in De Hart Street? A. I am still to speak of that; you left me at the American Trust Company.

Q. Tell us everything that you saw that you

Emma H. Van Pelt—Cross.

recall from the time that you passed the American Trust Company up to the time of the accident?

A. Coming out from the store and looking at the big clock, I shifted my course to go down South Street to spend a little time at the library before an eleven o'clock lesson and I came down—

Q. Just tell us what you saw? A. I saw people going to and fro; that's all I recall having seen.

10

Q. Up to this point here (indicating)? A. Yes, and I went to get to the corner and I noticed the automobile traffic through De Hart Street around this corner.

Q. Well, were you observing these automobiles around the corner at the time you fell? A. I glanced up quickly to see whether it was safe to take the crossing, which everyone has the right to do and just as I glanced up to see what was at the crossing I fell.

20

Q. Just as you glanced up, you fell? A. Yes, stubbed my toe.

Q. Now, as you came down to the place where you were nearest any of the building materials, did you make any observation at all as to the condition of the street and the sidewalk where you were walking? A. I was clear of them other than for the conflicting lines of travel.

30

Q. Well, did you look at the pavement at all? A. No, not in the sense of itemizing. I knew the building materials in a general way were there.

Q. Now, did you see these marble blocks or did you see any part of the building materials which were there with sufficient clearness to describe to us what the nature of them was? A. I saw some of the high ones, boards and barrels along the curb.

40

Emma H. Van Pelt—Cross.

Q. Did you see these marble blocks which you say you fell over at all? A. No.

10 Q. You don't know how long they were? A. I got a quick impression, a consciousness before I fell and I fell that quickly but as I fell I had the consciousness of them being approximately three feet, I should think.

Q. Well, did you visualize the two of them as being of any particular height, from the ground, A. Yes, I think eight or ten inches each, probably.

Q. Each, or the two of them?

THE COURT: She said each. One on top of the other?

20 THE WITNESS: Yes, one on top of the other. I could not see clearly whether they were the same width but I should say approximately so, long cappings of white sills or blocks that height.

Q. And how long is it your recollection they were? A. Padron me I have told you, or how wide?

30 Q. How wide were they from the top as you visualized them at the time—I heard you say a foot wide. Now, who is this Miss Beach you speak about as not being here? A. She lives in an apartment the other side of the square, used to be a teacher in one of the schools here, I knew slightly.

Q. Is she a friend of some near standing of yours? A. No, just an acquaintance.

THE COURT: We will take an adjournment at this time until one-thirty.

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AFTER RECESS.

Emma H. Van Pelt—Cross.

EMMA H. VAN PELT, Recalled:

FURTHER CROSS EXAMINATION BY MR. CHANCE:

Q. Miss Van Pelt, how long have you worn glasses? A. I have worn the reading glasses since—I don't know.

10

Q. Well, one year—two or three months after the accident? A. Yes, over a year, reading glasses.

Q. What kind of glasses did you wear before this accident? A. Simple magnifying glasses, no correction.

Q. How long did you wear these prior to the accident? A. I don't know.

Q. You cannot give us any idea at all as to the length of time you have used glasses? A. Well, for some years for reading or fine sewing; not on the street at any time.

20

Q. Ten years? A. Eight or ten years.

Q. Now, you told Dr. Reed that you had been bothered with sinusitis in 1922, didn't you? A. Yes.

Q. How did you know that was the trouble with you in 1922? A. In connection with a bad cold, Dr. McMurtrie spoke about that.

30

Q. And did you have trouble with your limbs prior to the date of this accident? A. No, I did not.

Q. None whatever? A. No, no trouble I should say no pain.

Q. Now, as you came down to some place in here where this accident happened, just before the accident, how far down De Hart Street did you see, if at all? A. Approximately a foot; I

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Emma H. Van Pelt—Cross.

can't see around this corner; I was to cross here (indicating).

10 Q. Well, from what position was it possible, as you recall it, for you to see further up De Hart Street than the point where the continuation of the front of the bank intersects De Hart Street? A. I should say to here (indicating).

Q. Well, how many feet would you say it was that you could see up De Hart Street from the continuation of the line of the bank building? If our line of the bank building continued to cross De Hart Street, how far into De Hart Street could you see from the point of the accident? A. Three or four feet.

20 Q. Have you any recollection of what you saw in that three or four feet? A. People turning the corner to De Hart Street, that's all.

Q. Did you see any automobiles? A. I remember one car and part of another.

Q. Did you see anything coming in the roadway, either north or south on South Street just before the accident? A. Yes.

30 Q. What did you see? A. Automobiles passing up and down South Street and turning to go into De Hart Street.

Q. How far were you from the place where you fell when you noticed any of these occurrences? A. I don't know exactly, at the spot where I was tripped up.

40 Q. When you were exactly at the spot where you say you were tripped up, what is the last thing that you saw before you felt yourself going down? A. I looked first for the automobiles turning from South Street in and the last thing I saw was an automobile turning from De Hart Street, I could see portions of it.

Emma H. Van Pelt—Cross.

Q. Then do I understand you to say that you had your eyes upon that automobile at the time you tripped? A. I did, yes.

Q. And how far back from this crosswalk which is on the northerly side of De Hart Street were you at the time you saw the automobile in De Hart Street, as far as you can recall? A. 10
Twelve feet, I should think.

Q. Twelve feet from the continuation of the crosswalk in South Street? A. No, from this lower—from that edge.

Q. And how wide do you think it is from the side of De Hart Street to the side of the bank building? A. I should think eight or ten feet.

Q. Do you recall the mail box at the corner of the crosswalk on the sidewalk on the westerly side of South Street? A. That morning, no. 20

Q. Well, do you know whether there is one there or don't you recall one there? Do you recall whether there is a mail box right at the corner of the crosswalk of South Street and the sidewalk of De Hart Street? A. No.

Q. Well, is there any object along the side of the bank or along side of the side of the sidewalk by which you can describe the position that you were back from the sidewalk on De Hart Street? A. No. 30

Q. Can you compare it with the entrance doorway to the bank as to whether you had passed that? A. I had passed that, yes.

Q. How far do you recall that you were past the doorway of the bank? A. Six feet or so.

Q. About six feet or so southerly from the entrance to the bank, that's correct? A. Yes. 40

MR. CHANCE: I guess that's all.

(Witness excused)

D. Farrand Sturgis—Direct.

10 MR. JEFFERS: Before we close our case, I would like to read into the record the testimony of Mr. Sturgis, taken before trial. This is a portion of an examination before trial of the defendant, D. Farrand Sturgis, taken before David F. Barkman on April 18th, 1925.

Thereupon Mr. Jeffers reads the testimony thus taken, as follows:

D. FARRAND STURGIS, being first duly sworn according to law, on his oath deposes and says:

20 DIRECT EXAMINATION BY MR. JEFFERS:

"Q. Mr. Sturgis, what is your business? A. Building contractor.

"Q. Are you in business for yourself? A. At the present time.

"Q. With whom were you associated in November, 1923? A. With my brother, Lewis F. Sturgis, as a partner.

30 "Q. At that time was your partnership doing work in connection with the alterations to the building of the Morris County Savings Bank? A. It was.

"Q. What was the nature of the work you were doing there? A. We had the general contract for the alterations.

40 "Q. Do you know whether or not on November 1st and 2nd, 1923, there were certain building materials piled on the sidewalk in front of the bank? A. There was.

"Q. What materials were there? A. A vault

D. Farrand Sturgis—Direct.

door, a pile of boards, two pieces of marble, sill, a small derrick and some rubbish.

“Q. How long had those materials been there?

A. Some of them had been there a month or more.

“Q. How long had the marble blocks been there? A. I’m not sure, but I think about a week. 10

“Q. What were the marble blocks there for?

A. There were two old marble sills that had been moved from two doorways.

“Q. Why were they left on the sidewalk? A. Because it wasn’t convenient to take everything away every day.

“Q. By whom were these marble blocks put on the sidewalk? A. By workmen at the direction of the foreman. 20

“Q. By that you mean your foreman? A. My foreman.

“Q. Do you know what was the position of the marble blocks with relation to the other material on the sidewalk? A. They were piled one above the other with small pieces of wood between them close up against a pile of boards.

“Q. Were they nearer the curb than the boards?

A. They were under the boards near the building. 30

“Q. How far onto the sidewalk from the edge of the curb did the pile of boards protrude? A. The pile of boards was three feet six inches wide and set back three inches from the edge of the curb.

“Q. How far in from the boards did the marble blocks protrude? A. The width of them, twelve inches. They were tight against the boards.

“Q. When did you first know of the injury sustained by Miss Van Pelt? A. I think that 40

F. Grendon Reed—Direct.

afternoon but I am not sure, it was either that afternoon or the next morning, I am not sure.

“Q. Subsequent to that time did you talk with Miss Van Pelt concerning this accident? A. Never.

10 “Q. Did a representative of your firm talk with her? A. Not to my knowledge.

“Q. If you know, when were these marble blocks moved after the accident? A. They were there the next two weeks after that and I do not know but three.

“Q. During that time was their position the same as on the day when Miss Van Pelt was injured? A. Always, so far as I know.

20 “MR. WALDRON: No cross examination.

MR. JEFFERS: That is the plaintiff's case, your Honor.

F. GRENDON REED, sworn on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. CHANCE:

30 Q. What is your profession? A. I practice medicine.

Q. Duly licensed to actually practice in this State? A. I am.

Q. Where is your office? A. 20 Elm Street, Morristown.

40 Q. From what institution do you hold diploma and certificate? A. Long Island College Hospital, New York, Newark City and New York Post Graduate.

Q. At my request, did you make an examina-

F. Grendon Reed—Direct.

tion of Miss Van Pelt, the plaintiff in this case?

A. I did.

Q. When did you make that? A. The evening of October 30th, 1924.

Q. Where did you make this examination? A. At her home on Miller Road.

Q. Just state to the jury what you saw and found with regard to her at the time of that examination? A. Why, I made a professional call with Dr. McMurtrie, her physician. She met us in the living room; she was bent way over on one side, resting on a cane and she walked across the floor and seated herself. She evidently moved with a great deal of discomfort. She walked very slowly and apparently placed much weight on the stick. I examined her ears for the function of hearing and her eyes for the function of sight and gave her a superficial examination of the nose and working of the knee. She said they were the only parts of the body she was having any trouble with whatever. When her attention was called to it when we were talking about her knee, she seemed to move with a great deal of difficulty. There were bandages on the knees and legs below and Dr. McMurtrie who was there at that time helped me take them off and said they had nothing to do with the injury, she had had swollen legs for some time. I asked him if he thought she had any kidney trouble with the swelling of the legs and he said he didn't think so but on account of the swelling he thought he would bandage them. When we were not giving particular attention to her knee she would move them very much more satisfactorily, she didn't have any trouble elevating them or putting them down.

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F. Grendon Reed—Direct.

10 So far as her ears were concerned and her sight, I did the same test I had done on many such cases at the hospital and in my work in testing hearing and sight and so forth. On examining her hearing, she told me she had been somewhat deaf since the accident and so with my head turned so she could not see my lips move I asked her questions sometimes in a whisper and sometimes in a very low voice. When we were talking to her she seemed to hear as any normal person, she had very good hearing. Her vision is all right for longer distances because she recognized me about a week ago on the street at a much further distance than I recognized her. I examined her knees and when I asked if her knees were—

20 MR. KING: Just a moment, I suppose it is not a rule of law for a person to question a patient—

THE WITNESS: That's part of my examination—

MR. KING: I am addressing the court. He has no right to say what she said to him, the examination was not under an order of the court.

30 MR. CHANCE: I think it is admissible where it is put up to a person what someone else admitted.

(Exception.)

40 A. When I would press her knees and ask her if it would function, she would say yes, when I would press her knees she showed no tenderness, when I pressed on her nose she would show no tenderness either. Later in the afternoon when we got ready to leave, she left the room in a

F. Grendon Reed—Direct.

normal way. Her cane was resting against a table and she walked from the fireplace over to the hallway as well as any normal person would.

Q. Were X-ray plates shown to you by Dr. McMurtrie? A. They were.

Q. What did they reveal with regard to the knee? A. Chronic arthritis, infection of the knee joint as shown by little patches in the knee joint. There was no evidence of any acute arthritis, had there been there would be a cloudiness of the knee at this point. The X-ray would have shown a soft tissue over the knee and that is something I could not see. I have been examining X-rays for the last four years. 10

Q. Now, the things which you say the X-ray revealed as of a chronic condition, can you tell us whether the kind of condition which you observed was one which came from the fall that she had? A. It was not. It could not be due to a fall because these changes require usually years of development. It's a very slow process, requires a long time to come to it. You differentiate a good condition by the soft parts and increased density in the space between the bones. It's impossible for a bone to produce new bone in a short space of time. 20 30

Q. Did she say anything to you with regards to any illness that she had before this accident? A. She said she had frontal sinusitis. She called it that herself. She said that in the presence of Dr. McMurtrie.

Q. What in your opinion would be the effect of frontal sinusitis on the antrum of the nostril? A. Frontal sinusitis is an infection. An infection can cause changes in nearly every part of the body 40

F. Grendon Reed—Direct.

through the sinuses, through the eye and entering into the nasal and that can travel down and give a chronic infection to the nasal cavity. The sinusitic effects would not differ in frontal sinusitis than infection from an infected tooth or adnoids or any part of the body. That infection has to be removed regardless of where it is.

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Q Yes, this weeping eye, what is it, did you notice anything in regard to a watering eye? A. Neither that time or since.

Q. Have you observed Miss Van Pelt as she has been here in Court? A. I have.

Q. In regard to any watering of the eye? A. I have.

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Q. When did you see her here in court? A. I saw her yesterday afternoon and I have seen her several times today. I met her on the street about a week ago.

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Q. Upon any of these occasions you have last mentioned, did you notice any watering of the eye that required her to use a handkerchief? A. No, if there had been watering of the eye naturally there is a passage blocked up. There is only two places the tears can go; they can go out through the lower lid or the nasal duct. If the nasal duct is closed the tears would flow through the lower lid and flow there all the time.

Q. What permanent injury, if any, in your opinion is present as the result of her fall? A. I cannot detect any permanent injury. She has a slight scar over her nose.

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Q. Now, this nasal bone, is that pressed in? A. That has a very small bend, less than an eighth of an inch long and narrow; I cannot find any permanent result of the injury.

F. Grendon Reed—Cross.

CROSS EXAMINATION BY MR. KING:

Q. When you examined this lady, to what portion of the physical examination did you first direct your attention? A. Her eyes, I believe.

Q. What did you do to discover the condition of her eyes other than to this mark on the lid that you readily saw? A. I determined whether— 10

Q. No, what else did you do? A. I asked her to close her eyes and then asked her to open them, I noticed whether the iris was contracted, whether it was not normally contracted, the parts over the eye pupils. I asked her to watch my finger and made it move in circles about her eye and noticed whether or not there was any trouble of a muscular kind whatever. There was no trouble there. 20

Q. She says that in her business of picture painting or instruction in painting that there are times when both eyes became clouded with water and that interferes with her teaching. From your one examination are you willing to say that her statement in that respect is not true? A. When I see a person of her age the trouble she has would be perfectly proper, having her eyes fill with water. 30

Q. You testified a little while ago if the eyes leaked out, that water came out of them, they would leak all the time, and you noticed her here, and had not seen tears run down; explain that statement with the statement you now make? A. If the eye is irritated it would be a miracle if it did not momentarily water—

Q. That's not what I was asking— 40

F. Grendon Reed—Cross.

MR. CHANCE: Object to the interruption.

MR. KING: I am asking for an explanation based on this case and there are no miracles in this case. She says at times when she is giving instruction in painting that the eyes become dim and tears run from them and you say you discovered nothing that intimated that; that unless the tears were running down her face now they would not be running at all; in other words they are continuous. Explain then, where she is not true when she makes that statement?

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THE WITNESS: Tears that form in the eyelid, they must either flow over the lower lid or pass down the nasal passage, and by the way, that was one of the tests I gave her, seeing if the eye retained tears in the eye and immediately both eyes filled with water and very soon they were clear and no tears went down over either eye.

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Q. Do you say that when she says the tears ran down her face until her eyes won't see when giving these lessons she is trying to, that that statement is not true?

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MR. CHANCE: Object to that.

THE COURT: Objection sustained.

Q. Well, do you say that you differ with her?
A. I differ in this respect.

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Q. Let's hear that? A. I say that the tears will not, if the nasal duct is full of tears, the tears must necessarily ride over the eyelid. If the nasal duct is not blocked and there is no other injury the tears will run out naturally in a normal way down through the nasal duct. Now,

F. Grendon Reed—Cross.

if she works the eyes hard, it is very possible that in a short time there would be more tears than can be carried away by the duct and if no more tears are produced they will be carried away through the nasal duct.

Q. Then you do believe it is possible she can have this condition of which she speaks? A. I think it is possible for her to have watering eyes at times, yes. 10

Q. Now, you speak of testing her hearing? A. Yes.

Q. And you came to the conclusion, as I understand you, that when her attention was not called to the fact that the examination was proceeding, that the test was being made, the signs were normal? A. You understand correct. 20

Q. Then you came to the conclusion that when her attention was called to that particular part of the examination that she did show an impairment in that function? A. She was asked about this, yes, and she showed signs.

Q. She showed limitation in function when she knew what you were trying to do? A. Evidently.

Q. Well, to put it commonly, she was trying to fake you? 30

MR. CHANCE: Object to that question.

THE COURT: Why.

MR. CHANCE: Because it is not proper to ask a witness to characterize the conduct of another. He can testify as to what he saw and what she did. It's for the jury to draw the conclusion as to whether she was faking or not.

THE COURT: That's entirely different, I will allow the doctor, if the doctor is willing to say this woman was faking, in other words, 40

F. Grendon Reed—Cross.

if she did not respond to his question or if he formed an opinion as to it.

THE WITNESS: In common language, I believe she was faking.

Q. Now you speak of her walk? A. Yes.

10 Q. Because you say she passed in the room in an ordinary way? A. Yes, at the time we left, just before we left.

Q. And that also was a suspicious circumstance in your mind? A. Very much so inasmuch as she had just been walking, leaning hard on a cane a few minutes before that.

Q. Did you hear her say this morning that at times she had difficulty getting up and down stairs? A. Yes.

20 Q. You did hear her say that? A. Yes.

Q. Did you test her as to going up and down stairs? A. No.

Q. And yet you had your suspicion as she passed over the floor? A. Yes.

Q. You did see her lean on a cane? A. Very heavy cane.

30 Q. Did that in itself raise any suspicion in your mind? A. That certainly did; that's the reason I watched her afterwards when she thought we were not watching her walk.

Q. I think you said she recognized you further than you recognized her? A. Yes.

Q. Now, if you didn't see her, how do you know she recognized you? A. Because I saw by the expression of her face she recognized me.

40 Q. Then you did recognize her? A. I did not recognize her; I didn't know that she was Miss Van Pelt. I saw a woman coming to me with the expression of recognition.

Q. What was peculiar about that expression?

F. Grendon Reed—Re-Direct.

A. Undefined expression of recognition, no one can describe it.

Q. Then there is something rather pleasant on a face of a woman when she recognizes you? A. I was very much pleased to meet Miss Van Pelt.

Q. You had a better opinion of her then than you did when you made the examination? 10

MR. CHANCE: I object.

MR. KING: I withdraw that.

Q. I only want to know if you can tell me how you can testify to the condition of an individual when you say that she recognized you before you recognized her? A. I can't say.

Q. I want to hear that? A. I recognized the fact that there was a person coming to me who apparently recognized me from the expression on her face. I did not know she was Miss Van Pelt. 20

Q. Did you subsequently greet her? A. Why yes, we talked for several minutes. That's the time again I noticed her eyes were pretty dry and she was walking very normally.

Q. Did she have a cane? A. Yes.

Q. And did she lean heavily on it? A. No, not that I saw, I think she could get on just as well without the cane. 30

Q. Do you think that had anything to do with it, that talk with you? A. I don't know, very often people do seem in better spirits after talking with me.

RE-DIRECT EXAMINATION BY MR. CHANCE:

Q. On cross examination you were asked something about infection. What infection was that you referred to, infection before or after this accident? A. Before. 40

(Witness excused.)

D. Farrand Sturgis—Direct.

D. FARRAND STURGIS, sworn on his own behalf as defendant testifies as follows:

DIRECT EXAMINATION BY MR. CHANCE:

10 Q. What is your full name? A. Daniel Farrand Sturgis.

Q. Are you one of the gentlemen who did business under the name of Sturgis Brothers? A. Yes.

Q. Lewis F. Sturgis, the other partner of that concern is now dead? A. Yes.

20 Q. In November of 1923, did you have a contract with the Savings Bank at the corner of De Hart Street and South Street to do some work for them? A. I did.

Q. And on that date, November 2nd, 1923, was the work actually in course of being done? A. It was.

Q. And on that date were there some building materials in front of that building which had either come from the bank or which were to be used in it? A. There were.

30 Q. I show you a sketch here and ask you what it is? A. That's a plan showing the front of the Savings Bank, of the sidewalk in front; the sidewalk on De Hart Street and of the material that was in front of the Savings Bank.

Q. Who made this sketch? A. I did myself.

Q. There are certain measurements noted on there, who made the measurements? A. I did.

40 Q. That truly and correctly portrays the condition of the sidewalk so far as the materials thereon were situated? A. That's the condition on the day of the accident.

D. Farrand Sturgis—Direct.

MR. CHANCE: I offer it in evidence.

MR. KING: We consent.

THE COURT: Of course if they consent it's admitted.

(Marked in evidence D-1.)

MR. KING: What is this D. H. at the bottom? **10**

THE WITNESS: That's the same relative position only on a larger scale.

Q. Just explain to the jury what this sketch shows and what the various articles thereon are?

A. This is also the front of the Savings Bank and that's the corner next to De Hart Street. De Hart Street walk is eight feet wide. The walk in front, out on South Street is about eighteen feet wide here and eighteen feet nine inches up here, making about eighteen feet eight inches across the center. That is the doorway that now goes into the present bank and went into the old bank. At the time of this accident that was the doorway that went into a store that was used by the bank at that time as a banking room and that entrance there went to the offices upstairs. This represents a pile of rubbish, one or two iron beams laid there and that was a barrel set right in there and that is a door that was taken out and stood up here; it was four feet six inches and one or two inches wide and this is a pile of boards sixteen feet long which was used for curbing in the floor. That is three foot six wide and set about three inches back from the edge of the curb and three foot eight inches high. This is a pile of rubbish. These are the two marble slates in question. They were taken out of two doors that went to the director's room. They are about **20**
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D. Farrand Sturgis—Cross.

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~~ten~~ inches wide and eight inches thick. They were about twenty inches high and they were just at the edge of that pile of boards and there was seven feet ten inches between the edge of that marble and the edge of the debris here (indicating).

10 Q. Was there any obstruction of any kind between the marble blocks and the debris on the side toward the bank? A. Not a particle of anything, it was as clean as any sidewalk would come.

Q. Did you tell us the length of this door? A. That was seven foot long and stood about two or three inches back from the edge of the curb.

20 Q. And what was the total width from the side of the curb to the inside of the marble? A. About four feet and eight inches from the edge of the curb to the inside of that marble.

Q. How did the size of the marble blocks compare with each other? A. I think one block was two inches shorter than the other; I think there was a difference of two inches in the width of the doors.

30 CROSS EXAMINATION BY MR. KING:

Q. And what was the color of the sidewalk? A. The sidewalk.

Q. Yes? A. Why, that's the color of an ordinary sidewalk.

Q. Bluish gray? A. Dark.

Q. How nearly did it correspond with the color of these sills you had taken out? A. It did not correspond at all. The sills were pure white
 40 marble.

Q. Wasn't the color of the sidewalk the ordin-

D. Farrand Sturgis—Cross.

ary concrete? A. Well, it had lamp black in it, it was a slight color.

Q. Has it still a slight color down there? A. I think there is lamp black in it, I won't swear to that, but I think there was lamp black in it when it was put down.

Q. I don't care what was in it, does it show at this time? A. I don't know.

Q. Does it show now? A. I can't tell because I don't know whether lamp black was put in all the sidewalk or the bank sidewalk.

Q. Now, the lumber you had there was straight up and down? A. Yes.

Q. How high? A. Three foot six-inches or eight inches.

Q. So far as you know it is correctly designated on your map? A. Yes.

Q. And these blocks were about in the center of that and close up against them? A. Yes.

Q. And the difference between the inside side of the blocks and the piece on the other side was seven foot three inches; the distance left for passage way in between these blocks and this edge was seven feet? A. Seven feet ten inches.

Q. What was the distance between this point here at the door you had taken out and the building itself? A. Seven foot four inches from eighteen foot eight inches would be eleven foot four inches.

Q. And the height of these blocks were each twenty inches? A. Two eight inch blocks and two inches under them and two inches between them.

Q. These boards had been a pile of boards that were left there for a few days? A. The boards had been there a couple of weeks.

D. Farrand Sturgis—Cross.

Q. How long had the blocks been there? A. Somewhere between four days and a week and the door had been there longer.

Q. And then this pile over next to the building?
A. We had left that pile next to the building because it was not convenient to take them away
10 and I think there was ample sidewalk from the eighteen feet, ample width enough for anybody to pass through.

Q. You have to argue your case. What was the width, about? A. Seven foot ten inches.

Q. Isn't that better? A. I told you seven foot ten inches before.

Q. Well, you told me you thought seven foot ten inches plenty wide enough, didn't you, for
20 anybody to get through? A. I should think so.

Q. That's since the Volsted act is in force. Did you learn the plaintiff had had an accident by falling over these— A. I didn't learn it until late that afternoon or early the next morning.

Q. And then you made your survey or your sketch in reference to the actual condition existing? A. I did.

Q. And that sketch does actually represent that
30 condition? A. I know that's right.

Q. Now, there has been some question where the lady was when she took a view down De Hart Street. Counsel for the other side has been asking her and I think she generally represented herself as being in there (indicating). Won't you please tell from your map how far these stones are from the near edge of the sidewalk? A. Well,
40 I should say the middle of this stone or the end of this stone is probably twelve feet from that line.

John F. Anderson—Direct.

Q. What is the scale which you made this map? A. One half inch to a foot.

Q. Now, how many feet is it from the side of this stone— A. Six inches and a half, that would be thirteen feet from the upper end of them.

Q. And when she says there was three or four feet, that's just right? A. (No response).

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(Witness excused.)

JOHN F. ANDERSON, sworn on behalf of the defendant, testifies as follows:

DIRECT EXAMINATION BY MR. CHANCE:

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Q. What is your name? A. John F. Anderson.

Q. For whom were you working in November of 1923? A. For Sturgis Brothers.

Q. What job were you engaged on that date? A. On the Savings Bank Building.

Q. You know what that is; that paper? A. Yes, sir.

Q. What is that? A. Building permit.

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MR. CHANCE: I don't suppose there is any objection.

(Permit received in evidence and marked Exhibit D-2.)

Q. What was your position on that job? A. Foreman.

Q. Do you remember the pieces of marble that we are talking about here today? A. Yes, sir.

Q. They were somewheres on the sidewalk in

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John F. Anderson—Direct.

front of the building on the day in question? A. Yes.

Q. Where were they? A. They was up against a heap of boards toward the street side.

10 Q. How far were they away from that heap of boards? A. They were dead up against the boards.

Q. And how long were these blocks? A. Around about three feet.

Q. Could you see these blocks—what have you to say as to your ability to see these blocks? A. Why, you could see them in plain sight; anyone could see them.

Q. Were they the same color as the pavement of the sidewalk? A. No, sir.

20 Q. What difference? A. Well, the blocks were pure white and the sidewalk was dark or gray; rather dark sidewalk.

Q. Can you tell how they were piled? A. We had some other pieces of two by four on the sidewalk and then we laid one block on this two by four and then we had two other pieces in between the blocks.

30 Q. How high altogether were these two blocks, from the sidewalk to the top of them? A. Around, about twenty inches.

Q. And how long? A. Two blocks?

Q. Yes? A. About three feet.

Q. And how wide? A. About twelve inches.

40 Q. I call your attention to this map which was marked D-1 in evidence; did you see there anything between the marble blocks and the building material which is up right against the bank building which would interfere with the passage? A. No, sir.

Direction of Verdict.

MR. CHANCE: Cross examine.

MR. KING: No cross examination.

(Witness excused.)

MR. CHANCE: I think we will rest on that.

MR. KING: We have no rebuttal.

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MR. CHANCE: I would move, if your Honor please, for a direction of verdict on the ground that the duty of a pedestrian was to use reasonable care, not only of obstruction which she may know of but those of which she had no knowledge. The evidence is clear here that there was this open space between seven and eight feet, as she admits herself and as Mr. Sturgis says, that she could have gone along without running against these obstructions. It seems to me that it is clearly a case of contributory negligence on her part and that it does not make a jury question of the matter and for that reason I ask for a direction of a verdict on the ground of the plaintiff's contributory negligence.

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THE COURT: Your motion is denied.

(Exception allowed and sealed.)

Thereupon Mr. Chance summed up to the jury in behalf of the defendant.

Thereupon Mr. King summed up to the jury in behalf of the plaintiff.

Thereupon the court charged the jury as follows:

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Charge.

10 DALY, J. Members of the Jury, in this case, if you find that the plaintiff is entitled to a verdict, then she is entitled to a verdict that will be fair and adequate compensation to her for the pain and sufferings she endured, for the physical injuries that she endured and for whatever permanent injuries there may be; and as to permanent injuries, you cannot find for that item of damage unless from the evidence you are satisfied as to its extent and as to its character from the standpoint of reasonable certainty. Of course those injuries must result from the liability of the defendant in order for her to be entitled to a verdict in any event whatever.

20 In addition to compensation that will be fair and adequate from a standpoint of dollars and cents for the pain and suffering, for physical injuries, she is entitled also to be reimbursed for all the expenses that she reasonably incurred in the proper treatment of her injuries and she is also entitled to be compensated for whatever loss of time as represented in money she suffered as the result of these injuries.

30 Of course, you will not reach that question or that task of figuring unless you have first determined that under the law this defendant, in the application of that law to the facts of the case, is liable. Now, you will want to know what right Mr. Sturgis or the partnership had to placing these materials, this lumber in this street and if he had such a right how far that right extended, and I cannot do better in explanation of that than by reading to you from one of our decisions.

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Charge.

It is undoubtedly the right of land owners to deposit in the street building materials required in the improvements of their property although the public using the street may be and in many cases they necessarily are to some extent incommoded thereby. Of course the right is to be reasonably exercised in view of the rights of the public. It is manifest that every deposit of building material of the character now in question necessarily means the temporary exclusion of the public from the space thus occupied. The reasonable inference is the public easement is rightful. If the public be unreasonably endangered by it, they may be indicted for maintaining a public nuisance or may be required to remove the obstruction.

Mr. Sturgis was engaged in the alteration, repairs and improvements of the Savings Bank and in doing that, although he was not the land owner, as the contractor he was doing this work and had the right to reasonably use a part of that sidewalk for the reasonably placing of materials necessary to the construction of that building and these repairs and improvements. You can see that if you are an owner of a building or owner of the land, for example, that almost necessarily in every case you must use a part of the sidewalk or street that abuts your property in order to construct the house, but that must be reasonably exercised and if it is not reasonably exercised with regard to the use that the people have a right to of the sidewalk or the street, then it is a public nuisance and if it is a public nuisance and a pedestrian, for example, meets with injury because it's a public nuisance, then the party responsible for the placement of the nuisance

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Charge.

is responsible to whoever may suffer from the existence of that nuisance. And so the first question you will have to pass upon is the question of fact as to whether or not Mr. Sturgis in the exercise of the right of the land owner and as the land owner's representative reasonably used this street, whether his occupancy was reasonable in view of the right of the land owner to such use in order to make the repairs and improvements, additions and alterations of this building. Now, if he did this, there was no public nuisance. Now, if you find that he did not use it reasonably and that he used it in such a way as was grossly negligent in respect to the rights of the pedestrian, that it was dangerous to them, that there was a probability of the ordinary prudent person using that street to meet with accident, then of course he would be liable.

Another question is the question of whether or not the plaintiff was negligent. You will have to apply your own good common sense in determining whether or not this accident, this fall was the result of her negligence. This was broad daylight, as has been properly argued. What was the space between the piles of lumber and debris and materials on the gutter side and that on the building side. It is undisputed that there was a clear space of seven feet and ten inches. That is Mr. Sturgis's testimony. Now, this lady, the plaintiff, knew the existence of that lumber, knew the existence of the materials next to the bank building itself, but she claims she did not know of the existence of these two pieces of marble. They were steps that had been taken from the inside of the building; this has been explained to you and that she stumbled over these with

Charge.

the result that she met with the injuries complained of. Now, she had the duty of using care, using the prudence and using the observation that a reasonably prudent person would have exercised under the time, place and circumstance, and if she did not then she cannot recover. So, you will take these explanations of the law and apply them to the facts in the case and return with your verdict.

I have been requested to call your attention to the fact that one of the parties who was in and about the accident according to the claim of the plaintiff is not present. Well, there is a rule that if you are within the State and within reach of a subpoena, that you may issue a subpoena in the effort to obtain the witness and if you fail to bring such witness into Court, that is to be considered by the jury and they are to determine whether or not the reason why such witness is not in Court is whether that witness would not corroborate the facts. This refers simply to one witness and that was the lady who the plaintiff says helped to pick her up after the fall, but there is no evidence to show that this lady actually saw the fall. There is no evidence to show this lady could testify to anything excepting to the physical condition of the plaintiff after she fell and she helped to bring her to the doctor's and of course she could testify to that alone. The explanation is made that this lady went away sometime ago and is now along the shore. Whether she is within control of a subpoena, there is no specific evidence along that line. However, you are to consider the fact of her absence, the fact if she were here she could testify as to how the accident occurred.

So, as I have stated before, you will take this case and apply the law as explained and as I have

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Charge—Requests to Charge.

given it to you, to the facts of the case and render your impartial conclusion and if you find the defendant is liable then give us in money what is fair and adequate compensation. If the defendant is not liable then it is equally your duty to bring a verdict of no cause of action.

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MR. CHANCE: I desire to take an exception to the refusal of the Court to charge the defendant's request number two, a pedestrian is bound to exercise ordinary care, not only to avoid dangerous places known or seen, but also those of the existence of which she is ignorant.

20 MR. KING: I desire to take an exception to the Court's refusal to charge the plaintiff's request to charge as made.

(Exceptions to the charge allowed and sealed.)

PLAINTIFF'S REQUESTS TO CHARGE.

1. Streets and sidewalks are presumed to be free from obstructions to the full width, and if a person is injured by reason of an obstruction, he is not bound to show ordinary care, unless the defendant shows that the obstruction was guarded, to warn the public of the danger.

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Durant vs. Palmer, 29 N. J. Law, 544.

2. If you find that the defendant had not taken proper care to warn the public of danger from an obstruction placed on the sidewalk by him, and that the plaintiff was injured by reason of such obstruction, then the plaintiff is entitled to recover whether or not she has shown that she used ordinary care.

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3. A person who obstructs a public sidewalk, or renders its ordinary use dangerous, creates a

Requests to Charge.

public nuisance, and for injuries resulting therefrom to travelers, he is legally answerable.

Brady vs. Public Service Ry. Co. 80 N. J. Law, 471.

4. If you find that the plaintiff's injury was due to defendant's negligence in obstructing a public sidewalk, then the plaintiff is entitled to recover. 10

DEFENDANT'S REQUEST TO CHARGE.

Each of the following numbered paragraphs are presented as a separate and distinct request to charge.

1. It is the undoubted right of land owners to deposit upon the sidewalk, building materials required in the improvement of their abutting property, although the public lawfully using the street may be, as in many cases they necessarily are, to some extent incommoded thereby. 20

2. A pedestrian is bound to exercise ordinary care not only to avoid dangerous places known or seen, but also those of the existence of which she is ignorant. 30

3. The defendant as the contractor of the landowner of the property abutting on the highway had the right temporarily to deposit on the sidewalk, building materials.

4. If you find that the plaintiff in this case was not looking where she was going and was not making reasonable observation as to the condition of the sidewalk ahead of her as she approached the place of the accident, she should be held guilty of contributory negligence and should not recover any damages in this case. 40

5. Failure to call a friendly witness may be construed as an indication that such witness would have testified unfavorably if produced.

Exhibits P-2 to P-10.

Are bills and are omitted by consent.

Exhibit D-2.

No. 110

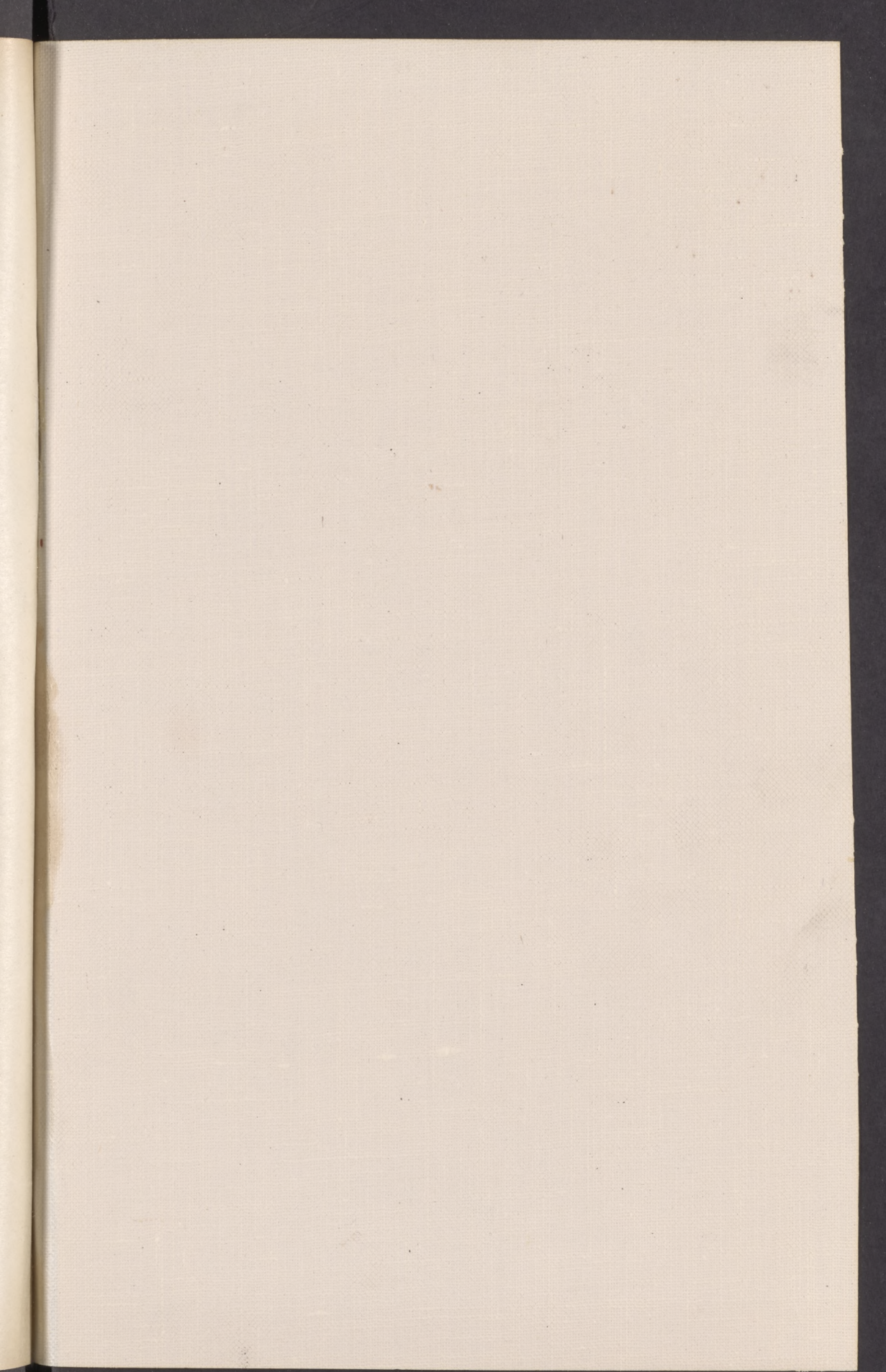
10 PERMIT TO ERECT OR ALTER BUILDINGS WITHIN
THE TOWN OF MORRISTOWN.

Application having been made in writing to me for permission to alter and erect a building situated at Saving's Bank Bld. corner South Dehart Street, Sturgis Bros., within the fire limits of said town, and I having inspected the plans and specifications of the proposed building or alteration filed with the said application, and being satisfied that they comply with the provisions of "An ordinance regulating the construction, alteration and repairing of buildings in the Town of Morristown; fixing and establishing fire limits therein, and prescribing the boundaries thereof," approved April 8, 1904, and the several amendments thereto, do hereby consent to the alteration of said building.

30 ELIAS S. AMENUAN,
Inspector.

Dated, July 11, 1923.

EEE \$45.00



*Edward J. Lynch
C.E. Surveyor
M. 926 1925
Harrisburg, Pa.*

SCALE
3 FT PER
INCH





D-1

South-St

4" from Cor

Vault Door on Edge
2' 1/2" Wide
7' 10" Long - 4' 6" High

Rubbish
Old Brick
Mortar
Etc

Pile of Boards - 16' 0" Long,
3' 6" Wide
3' 8" High.

Marble
12" x 30" x 1/2"

19' 8"
Sidewalk

17' 8"
Sidewalk

Steel Beams - Lumber
Derrick on Edge - Etc.

BANK-BUILDING

Entrance
To Bank
44' 4"

BANK-BUILDING

8' 0"
Sidewalk

95
Exhibit D-1.

New Jersey Court of Errors and Appeals

<p style="text-align: center;">EMMA VAN PELT, <i>Plaintiff-Respondent,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">D. FARRAND STURGIS and LEWIS F. STURGIS, partners, doing business under the firm name of STURGIS BROTHERS, <i>Defendant-Appellants.</i></p>	}	<p style="text-align: center;">Action at Law.</p> <p style="text-align: center;">On Appeal from Su- preme Court.</p>	<p>10</p> <p>20</p>
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BRIEF FOR DEFENDANT-APPELLANT.

Statement.

This is an appeal from a judgment for the plaintiff in a Supreme Court cause tried at the Morris Circuit before Judge Peter F. Daly and a jury. 30

The questions involved are as to whether the trial judge erred in denying defendant's motion for a direction of verdict, and further whether the trial judge erred in refusing one of defendant's requests to charge.

Facts.

In broad daylight, on November 2nd, 1923, the plaintiff fell on the sidewalk in Morristown, N. J. On that date defendants who were making 40

alterations to the Morris County Savings Bank had building materials on a portion of the sidewalk in front of the building (p. 76, l. 27). A map printed in the back of the State of the Case as Exhibit D-1 shows the condition on the date in question as does also the testimony of Mr. Sturgis and Mr. Anderson. From the map and the testimony of these gentlemen it appears that

10 the sidewalk on South Street was over 18 feet wide, that along the curb was a vault door on edge 2 feet wide x 7 feet long x 4 feet 6 inches high; that just past this vault door was a pile of rubbish (old brick, mortar &c.), then a pile of boards 16 feet long, 3 feet 6 inches high. Beside these boards was a pile of marble blocks (2 blocks) 12 inches wide x 3 feet long x 20 inches high. From this marble for a space of 7 feet 10

20 inches toward the inside of the walk there was a place free from obstruction of any kind. Along the inner side of this 7 foot 10 inches of open and unobstructed space was a pile of steel beams and other building materials. The marble blocks above mentioned were pure white while the sidewalk was of a dark material (p. 78, l. 35).

With the sidewalk in the condition above stated the plaintiff who admitted that she was conscious in a way that materials were piled on

30 the sidewalk (p. 56, l. 11, p. 57, l. 27, p. 58, l. 9, p. 59, l. 35), did not look where she was going sufficiently to see said marble blocks (p. 43, l. 18, p. 56, l. 11) 12 inches wide x 3 feet long x 20 inches high, but fell over them.

Judge Daly stated the situation in his charge to the jury in these words:

40 "This was broad daylight, as has been properly argued. What was the space between the piles of lumber and debris and materials on the gutter side and that on the building side? It is undisputed that there

was a clear space of seven feet and ten inches. That is Mr. Sturgis' testimony. Now, this lady, the plaintiff, knew the existence of that lumber, knew of the existence of the materials next to the bank building itself, but she claims she did not know of the existence of these two pieces of marble. They were steps that had been taken from the inside of the buildings; this has been explained to you and that she stumbled over these with the result that she met with the injuries complained of" (case, p. 86). 10

The particulars as to the obstructions which were upon the sidewalk and the perfectly obvious condition both as to the nature of obstructions and the open space through which the plaintiff could have walked without encountering any obstructions will appear from the Exhibit D-1 and the following excerpts from the testimony of Mr. Sturgis and Mr. Anderson. Mr. Sturgis testified as follows: 20

(pp. 77-78) * * * "These are the two marble slates in question. They were taken out of two doors that went to the directors' room. They are about ~~ten~~^{four} inches wide and eight inches thick. They were about twenty inches high and they were just at the edge of that pile of boards and there was seven feet ten inches between the edge of that marble and the edge of the debris here (indicating). 30

"Q. Was there any obstruction of any kind between the marble blocks and the debris on the side toward the bank? A. Not a particle of anything, it was as clean as any sidewalk would come.

"Q. Did you tell us the length of this door? A. That was seven foot long and stood about two or three inches back from the edge of the curb.

"Q. And what was the total width from the side of the curb to the inside of the marble? A. About four feet and eight inches 40

from the edge of the curb to the inside of that marble.

"Q. How did the size of the marble blocks compare with each other? A. I think one block was two inches shorter than the other; I think there was a difference of two inches in the width of the doors."

CROSS EXAMINATION BY MR. KING:

10

"Q. And what was the color of the sidewalk? A. The sidewalk?

"Q. Yes? A. Why, that's the color of an ordinary sidewalk.

"Q. Bluish gray? A. Dark.

"Q. How nearly did it correspond with the color of these sills you had taken out? A. It did not correspond at all. The sills were pure white marble.

(p. 79) "Q. Now, the lumber you had there was straight up and down? A. Yes.

"Q. How high? A. Three foot six-inches or eight inches.

20

"Q. So far as you know it is correctly designated on your map? A. Yes.

"Q. And these blocks were about in the center of that and close up against them? A. Yes.

"Q. And the difference between the inside side of the blocks and the piece on the other side was seven foot three inches; the distance left for passage way in between these blocks and this edge was seven feet? A. Seven feet ten inches.

30

"Q. What was the distance between this point here at the door you had taken out and the building itself? A. Seven foot four inches from eighteen foot eight inches would be eleven foot four inches.

"Q. And the height of these blocks were each twenty inches? A. Two eight inch blocks and two inches under them and two inches between them.

(p. 80) "Q. And that sketch does actually represent that condition? A. I know that's right.

40

"Q. Now, there has been some question where the lady was when she took a view down De Hart Street. Counsel for the other

side has been asking her and I think she generally represented herself as being in there (indicating). Won't you please tell from your map how far these stones are from the near edge of the sidewalk? A. Well, I should say the middle of this stone or the end of this stone is probably twelve feet from that line.

(p. 80) "Q. And then this pile over next to the building? A. We had left that pile next to the building because it was not convenient to take them away and I think there was ample sidewalk from the eighteen feet, ample width enough for anybody to pass through. 10

"Q. You have to argue your case. What was the width, about? A. Seven foot ten inches.

"Q. Isn't that better? A. I told you seven foot ten inches before.

"Q. Well, you told me you thought seven foot ten inches plenty wide enough, didn't you, for anybody to get through? A. I should think so." 20

Mr. Anderson testified as follows:

(p. 82) "Q. And how long were these blocks? A. Around about three feet.

"Q. Could you see these blocks—what have you to say as to your ability to see these blocks? A. Why, you could see them in plain sight; anyone could see them. 30

"Q. Were they the same color as the pavement of the sidewalk? A. No, sir.

"Q. What difference? A. Well, the blocks were pure white and the sidewalk was dark or gray; rather dark sidewalk.

"Q. Can you tell how they were piled? A. We had some other pieces of two by four on the sidewalk and then we laid one block on this two by four and then we had two other pieces in between the blocks. 40

"Q. How high altogether were these two blocks, from the sidewalk to the top of them? A. Around about twenty inches.

"Q. And how long? A. Two blocks?

"Q. Yes? A. About three feet.

"Q. And how wide? A. About twelve inches.

"Q. I call your attention to this map which was marked D-1 in evidence, did you see there anything between the marble blocks and the building material which is up right against the bank building which would interfere with the passage? A. No, sir."

10 **Plaintiff's testimony clearly shows lack of care on her part.**

Plaintiff's testimony clearly shows that she knew the sidewalk was not free from obstruction, but notwithstanding this knowledge proceeded where she knew there were obstructions without taking the trouble to make herself otherwise than conscious in a general way that obstructions existed. In other words she did not take the trouble to observe the obvious conditions which existed, nor to observe that there was an open space of 7 feet 10 inches through which she could have walked. Excerpts from her testimony follow:

20

(p. 41) "Q. As you approached this place where you tripped, Miss Van Pelt, did you see any obstructions on the sidewalk? A. I was conscious of them in a general way.

30

"Q. Of what obstruction were you conscious? A. Why, in a general way I was conscious of high building material out toward the curb.

"Q. Approximately how high was that pile of building material? A. It would seem to me about as high as that (indicating).

"Q. How high is that? A. Three feet or more, there were a pile of boards there—

"Q. Was it that pile of boards that you fell over when you reached this spot? A. No, it was not.

40

"Q. What was it that you fell over? A. The lower of two marble blocks.

"Q. Where were these blocks? A. Rela-

tive to the corner, I should think about there (indicating).

"Q. Where were these blocks in relation to the high pile of building material you have spoken about? A. The building material was three feet or so on this walk.

"Q. Where were the marble blocks with reference to the building material? A. Well, I was making my way toward them; I think in the neighborhood of six or seven feet out from the curb. 10

"Q. The question was, where were the marble blocks with reference to the pile of building material? A. Running parallel with it.

(p. 43, l. 17) "Q. Did you see these marble blocks before you got there? A. I did not.

(p. 56) "Q. Now, as you were approaching the place where this fall occurred, did you see the marble blocks at all before you fell? A. No, I did not. I was conscious of a mass of material. 20

"Q. Now, Miss Van Pelt, if you will just answer my questions, we will get along better. Do you know how many feet there were between the marble and any obstruction on the other side of the sidewalk in the space between which you started to pass? A. Out to the curb from the marble?

"Q. How much open passage way is it your recollection there was on that sidewalk on the day in question? A. This side was somewhat occupied by material; there was material in here for approximately three feet with a lot of debris and flat stone; it may be three or four or five feet here and three feet, possibly or four feet along in front of the bank. That is an eighteen foot walk, it would leave approximately seven or eight feet passageway. 30

(p. 57) "Q. How far to the north there had you proceeded? A. I was coming from the north in this direction.

"Q. Yes, you had walked from a distance up beyond what is shown on that map? A. Yes, up by Day's. 40

"Q. Well, then, as you approached this place, did you notice the materials which were on the walk particularly? A. A consciousness in a general way of materials, of the higher ones, not of the lower one.

10 "Q. What is your recollection as to what material you saw as you approached that place? A. Nothing other than masses of boards or perhaps barrels. It was about the third time I had been up town since my return and seldom on that side.

"Q. You were seldom on that side. How many times on that side since your return? A. I think approximately—I should say that I had been to town but three times perhaps.

"Q. Well, you had been up there at this Bank Building since it had been under repair? A. Had been, but I used the farther side, as I almost always went on the farther side of South Street.

20 (p. 58) "Q. Well, you knew the morning you were walking down there on the day of this accident that the building was under repair, didn't you? A. Yes, in a general way; it was printed about in the papers.

(p. 59) "Q. Just tell us what you saw? A. I saw people going to and fro; that's all I recall having seen.

"Q. Up to this point here (indicating)? A. Yes, and I went to get to the corner and I noticed the automobile traffic through De Hart Street around this corner.

30 "Q. Well, were you observing these automobiles around the corner at the time you fell? A. I glanced up quickly to see whether it was safe to take the crossing, which everyone has the right to do and just as I glanced up to see what was at the crossing I fell.

"Q. Just as you glanced up, you fell? A. Yes, stubbed my toe.

"Q. Well, did you look at the pavement at all? A. No, not in the sense of itemizing. I knew the building materials in a general way were there.

40 "Q. Now, did you see these marble blocks

or did you see any part of the building materials which were there with sufficient clearness to describe to us what the nature of them was? A. I saw some of the high ones, boards and barrels along the curb."

(p. 60): "Q. Did you see these marble blocks which you say you fell over at all? A. No.

"Q. You don't know how long they were? A. I got a quick impression, a consciousness before I fell and I fell that quickly but as I fell I had the consciousness of them being approximately three feet, I should think. 10

"Q. Well, did you visualize the two of them as being of any particular height, from the ground. A. Yes, I think eight or ten inches each, probably.

"Q. Each, or the two of them?

"THE COURT: She said each. One on top of the other? 20

"THE WITNESS: Yes, one on top of the other. I could not see clearly whether they were the same width but I should say approximately so, long cappings of white sills or blocks that height."

Grounds of Appeal.

The errors relied on appear in the following grounds of appeal:

1. The trial judge when requested on behalf of the defendant refused to charge the jury as follows "A pedestrian is bound to exercise ordinary care, not only to avoid dangerous places known or seen, but also those of the existence of which she is ignorant", to which refusal exception was duly taken and noted. 30

2. The trial judge erred in denying the defendant's motion for the direction of a verdict, to which denial exception was duly taken and noted. 40

POINTS.

I. The Trial Judge erred in denying defendant's motion for a direction of a verdict.

II. The Trial Judge refused a proper request to charge the jury.

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Argument.**POINT I.**

The Trial Judge erred in denying defendant's motion for a direction of a verdict.

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On this point defendant's proposition is that the plaintiff was guilty of contributory negligence as a matter of law.

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From the excerpts of the testimony given above and the map Exhibit D-1 it appears that there was 7 feet 10 inches of clear passageway between the marble over which the plaintiff fell and the materials on the other side of the walk. It further appears that the marble blocks against which the plaintiff tripped were 20 inches high and were of white marble which was a contrasting color to the dark sidewalk. Parallel with the marble and just opposite it was a pile of boards 16 feet long and 3 feet 8 inches high. The plaintiff admits that she was conscious that materials were piled on the sidewalk and that she knew the building was undergoing repairs. It was broad daylight. Notwithstanding the situation

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of open and obvious obstructions and her knowledge of it, the plaintiff did not take the trouble

to obtain more than a general consciousness that there were obstructions on the walk. There was nothing to interfere with her seeing the marble blocks had she made any observation at all. It cannot be offered as an excuse for her negligence that she was observing automobiles at the corner for she says that she fell just as she glanced up to see what was at the crossing (case, page 59, line 23). She said, among other things, that she knew the building materials in a general way were there (case, page 56, line 11, page 57, line 27, page 58, line 9, page 59, line 35), but that she did not see the marble blocks before she fell (case, page 56, line 10, page 60, line 1).

10

The plaintiff's position in law is somewhat like that of the plaintiff in *Whalen v. Citizens Gas Light Co.*, a New York Court of Appeals case in 45 N. E. 363 where the court in holding that a verdict for the plaintiff would practically annul and overrule the rule of contributory negligence said:

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"As we have seen, it was a bright day, and about 11 o'clock in the forenoon. The obstacle over which the plaintiff fell was a large flagstone over 4 feet in length and 3 in breadth. There was nothing to obstruct her vision; her eyesight was good and she could see as she was walking along the walk. It is not pretended that anything occurred that momentarily obstructed her vision, and it is difficult to conceive how she could have avoided seeing the obstacle unless she was heedlessly proceeding in utter disregard of the precautions usually taken by careful and prudent people. To our minds the negligence here is greater than that of the plaintiff in the *Weston* case. * * *

30

"The presumption which a wayfarer may indulge that the streets of a city are safe and which excuses him from maintaining a

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vigilant outlook for dangers and defects *has no application where the danger is known and obvious.*"

Another similar case is *Shallcross v. The City of Philadelphia*, 40 Atl. page 818, in which the Pennsylvania Supreme Court upholding a non-suit of the plaintiff because guilty of contributory negligence said:

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"If, as she testified, the stone block projected between four and six inches above the pavement, she either saw it or was negligent in not doing so. If she saw it and nevertheless tripped over it and fell she was negligent in failing to avoid an obvious danger. The condition of the pavement, the bricks being displaced, should have been sufficient notice to her that caution was required."

20 Certainly the condition of the pavement in the last mentioned case was no greater notice to the plaintiff than the knowledge which the plaintiff in the case at bar admitted, that is, that she was conscious of the obstructions in a general way (Case, p. 41, l. 11, p. 56, l. 11, p. 57, l. 28).

30 Numerous other cases are cited in 29 C. J. 698 to the proposition that a traveller injured by a defect which is visible and patent is guilty of contributory negligence, and in 28 Cyc, page 1426, note 43, many cases are cited for the text:

"He is guilty of contributory negligence if by reason of his failure to exercise such care he fails to discover and avoid a defect or obstruction which is visible and obvious."

40 Under the circumstances the plaintiff's running against the materials could only have resulted from her reckless disregard for her own safety and heedless failure to take into consideration the obstructions which she observed and the failure to make such inspection as a reasonably prud-

ent person would have made in view of the knowledge that obstructions were present. The most casual inspection would have shown her that there was 7 feet 10 inches of clear space through which she could have passed with no danger of running against the obstructions, and would have shown her marble 20 inches high which was white and contrasted with the dark sidewalk. Instead of making sufficient inspection to see these obvious conditions she recklessly incurred the peril of collision with the materials along the side of the walk. She took a chance that they did not extend across the course she was taking. As stated by the second syllabus of 67 N. J. L. page 449, "a person cannot take chances and hold himself free from contributory negligence. There is a difference between an unforeseen peril and being overtaken by one recklessly incurred." Miss Van Pelt's peril was recklessly incurred.

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In *Rooney v. Siletti*, 96 N. J. L. 312 and *Vorath v. Burke*, 63 N. J. L. 188 it was held that one going into a dangerous place with knowledge of the condition is guilty of contributory negligence if hurt. It is not carrying the doctrine of these cases too far to say that the consciousness of the plaintiff in the case at bar that obstructions were in the walk was sufficient notice of the obvious conditions to be the equivalent of the knowledge held by these cases to bar recovery.

30

In the face of the clear and undisputed evidence of contributory negligence on the part of the plaintiff, the Trial Judge should have granted the motion for a direction of a verdict and his failure to do so is reversible error.

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POINT II.

The Trial Judge refused a proper request to charge the jury.

10 This point relates to the refusal of the trial judge to charge the second request of the defendant which reads as follows:

“A pedestrian is bound to exercise ordinary care not only to avoid dangerous places known or seen, but also those of the existence of which she is ignorant.”

20 The rule of law which the Trial Judge thus refused to charge is supported by the case of *Quimby v. Filter*, 62 N. J. L. page 766.

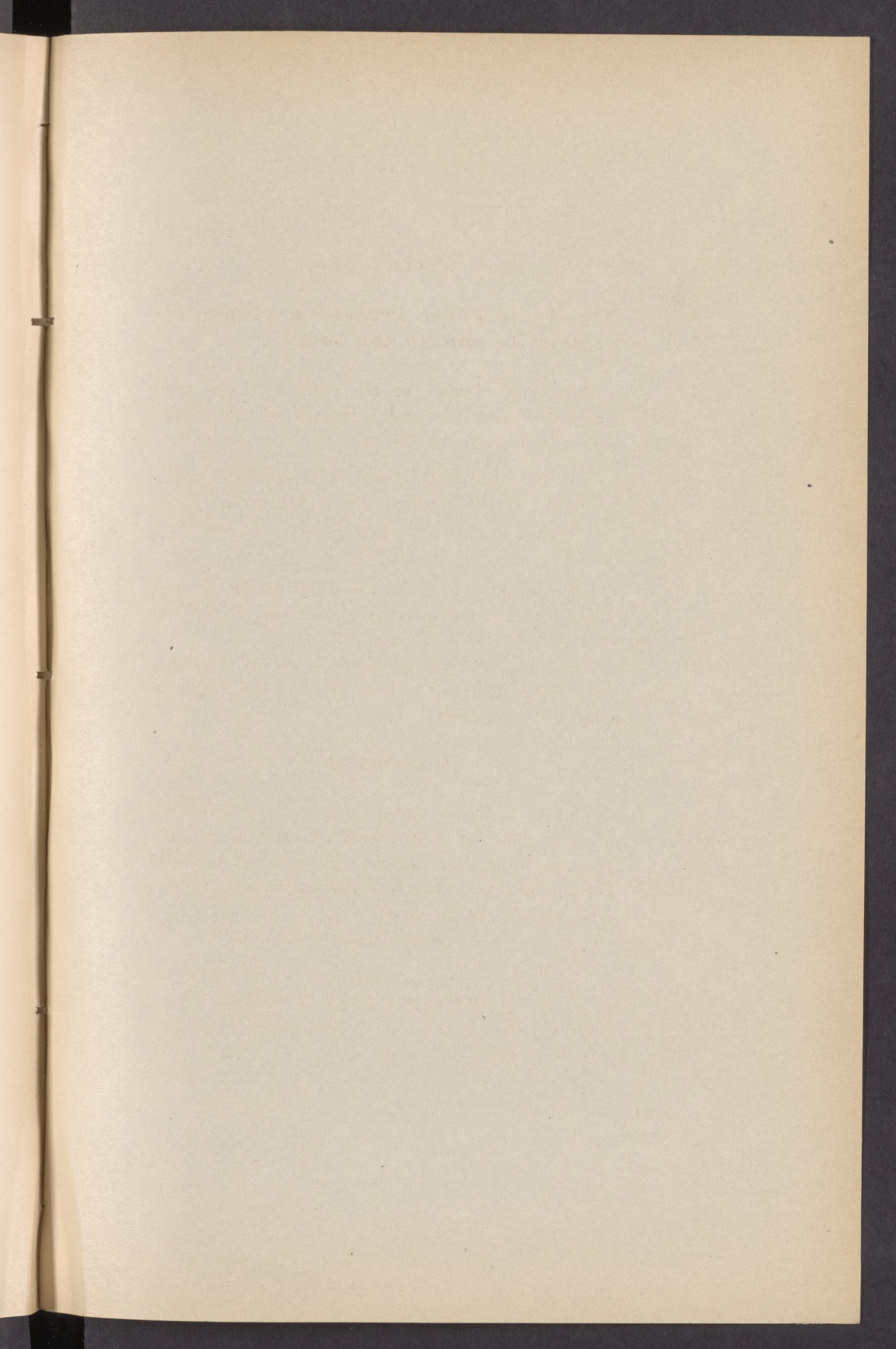
The request to charge correctly stated the plaintiff's duty, and the refusal of the trial judge to charge it was error.

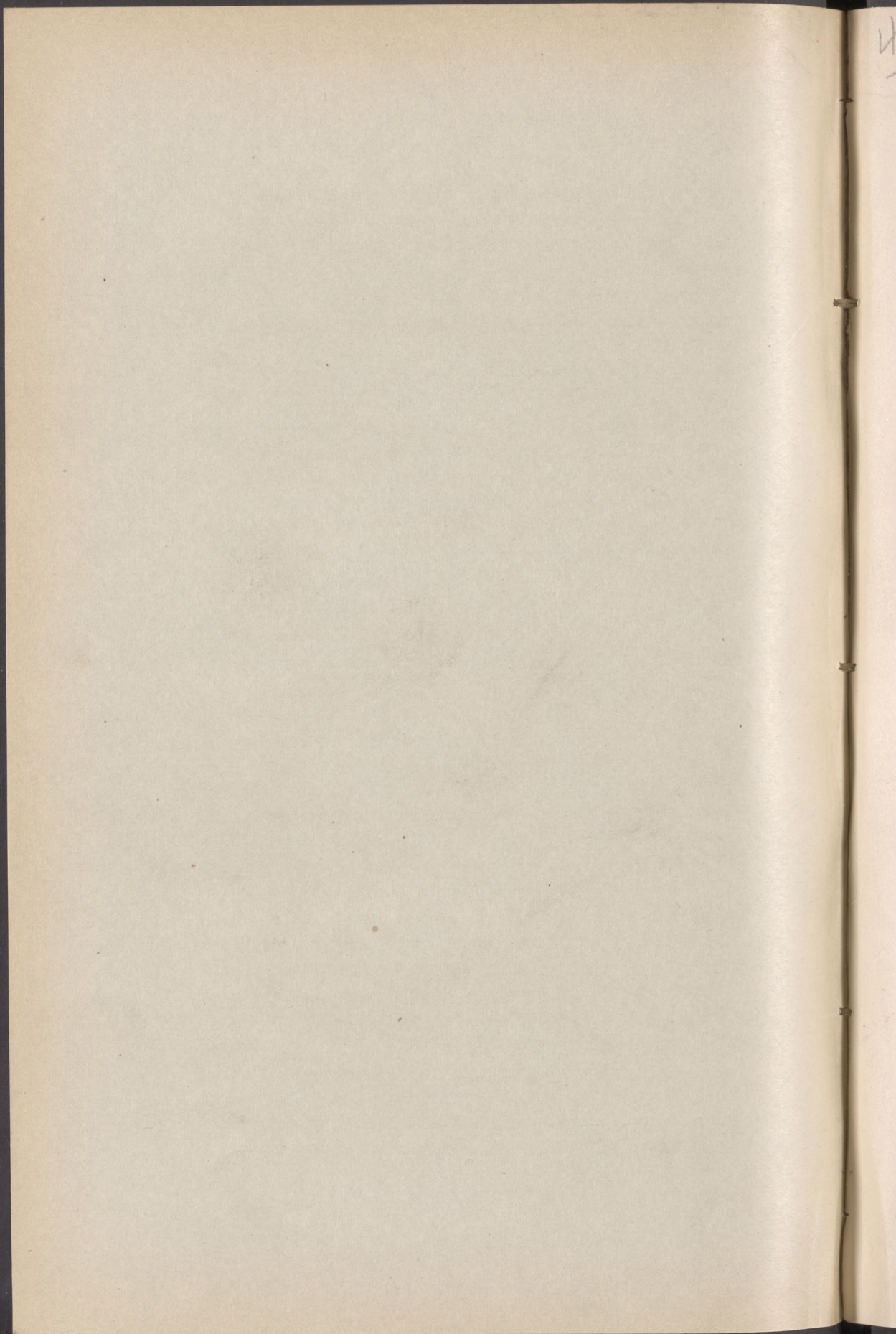
Conclusion.

30 The Trial Judge erred in denying the defendant's motion for a direction of verdict, and the request to charge which was refused properly stated the law. Therefore the judgment appealed from should be reversed.

Respectfully submitted,

KELLOGG & CHANCE,
Attorneys for and of Counsel with
Defendant-Appellant.





New Jersey Court of Errors and Appeals.

EMMA VAN PELT,
Plaintiff-Respondent,

vs.

D. FARRAND STURGIS and LEWIS F.
STURGIS, Partners, doing business
under the firm name of STURGIS
BROTHERS,
Defendants-Appellants.

Action at Law.

On Appeal from Su-
preme Court.

BRIEF FOR PLAINTIFF-RESPONDENT.

Statement of Facts.

On or about November 2nd, 1923, the defendant contractors were altering, repairing or remodeling the Morris County Savings Bank Building at the corner of South Street and DeHart Street, in the Town of Morristown (p. 76, lines 17 to 20), and they admit that on that day there were on the sidewalk, in front of the bank, building materials which had come from the building or were to be used therein (p. 76, lines 24 to 27). Next to the curb, and about 3 inches inside of the same, there was a pile of lumber, 3½ feet wide, 3 feet 8 inches high, and about 16 feet long (p. 77, lines 34 to 38). Inside of this pile, and approximately parallel to it, were two marble blocks or sills 12 inches wide and 8 inches deep (p. 78, line 1), which according to Exhibit D-1 (p. 95), were about 3 feet long. These slabs had been placed one upon the other with small blocks of wood between them.

Opposite these materials, on the inside of the sidewalk, and against the building, was a pile of miscellaneous materials (see Exhibit D-1, p. 95). It is agreed that the total width of the sidewalk at this point is about 18 feet, 8 or 9 inches (p. 14, lines 11 to 16; p. 77, lines 20 to 23). The distance from the inside of the marble slabs to the curb, as stated by the defendant, was approximately 4 feet 8 inches (p. 78, lines 21 and 22). It is agreed that the open space between the marble blocks and the materials which were piled against the building was between 7 and 8 feet (p. 56, lines 29 and 30; p. 79, lines 25 to 29).

On the morning aforesaid, at about 10:15 o'clock (38-32), the plaintiff was walking on the public sidewalk on the West side of South Street in the Town of Morristown aforesaid, and fell over the projecting corner of the lower of the two marble slabs or sills above mentioned (p. 42, lines 21 to 26), from which fall she sustained serious injuries. As the extent of these injuries is not involved in this appeal, they are omitted from the statement of facts.

POINTS.

I. The plaintiff had a right to suppose that there was no dangerous impediment in any part of the sidewalk.

II. The defendants, who obstructed the public sidewalk and rendered its ordinary use dangerous, are legally answerable for injuries resulting directly therefrom to the plaintiff.

III. It was for the jury to decide whether plaintiff was negligent in walking upon a public sidewalk.

IV. It was not error for the trial judge to refuse to charge the defendant's second request to charge.

ARGUMENT.

POINT I.

The plaintiff had a right to suppose that there was no dangerous impediment in any part of the sidewalk.

The plaintiff's case in this instance is very much like that in the well known case of *Durant vs. Palmer*, reported in 29 N. J. Law, p. 544, where the plaintiff fell into an excavation in the sidewalk. In that case the Court of Errors and Appeals held as follows:

“Streets and sidewalks are presumed to be free from obstructions to the full width, and if a person is injured by reason of an excavation, he is not bound to show ordinary care, unless the defendant shows that the excavation was guarded by a light or railing, or in some other way to warn the public of the danger.”

Again, in the case of *Symes vs. The Morris County Traction Co.*, 1 N. J. Miscellaneous, p. 525, the Court held:

“The traveling public have a right to suppose that there is no dangerous impediment or pitfall in any part of the street.”

There is no evidence in this case to indicate that defendant made any attempt to warn the traveling public of the obstructions in question. The defendant admits that the marble sills which caused the plaintiff to fall projected only a few inches above the sidewalk and were far below the level of the eye and of the high piles of debris which were on the walk (p. 77, lines 30 to 39, and p. 79, lines 16 to 20). Moreover, the sills, being but twelve inches wide, nearly the color of the sidewalk, and laid

close against the foot of the lumber which was piled 3 feet 8 inches high (p. 77, lines 34 to 38), were not readily visible, especially since the location was at one of the busiest spots in town, the intersection of South Street with DeHart Street, which latter street the plaintiff was necessarily about to cross (p. 39, lines 1 to 10), and to the traffic of which she was of necessity directing part of her attention (p. 59, lines 18 to 23). In addition, the higher piles of material had been there for some time (p. 79, line 40), and people were accustomed to their location, while the low marble blocks had been there but a few days (p. 80, lines 1 to 3), and plaintiff had been up town but three times in the preceding month (p. 57, lines 35 to 38).

POINT II.

The defendants, who obstructed the public sidewalk and rendered its ordinary use dangerous, are legally answerable for injuries resulting directly therefrom to the plaintiff.

The liability of a person who obstructs a public sidewalk for injury to the traveling public by reason of such obstruction has been definitely established in a long line of cases.

In *Driscoll vs. Carroll*, 50 N. J. Law, p. 28, defendant's employee had in the course of his employment, deposited timbers upon the sidewalk of a street, and had left them there for several days. The plaintiff, while passing along the sidewalk with due care, fell over them and sustained injury. The court held that the defendant was responsible for the damages.

The principle of the last case mentioned was strongly set forth in the case of *Brady vs. Public*

Service Railway Co., 80 N. J. Law, 471, where the Court held as follows:

“A person who obstructs a public highway, or renders its ordinary use dangerous, creates a public nuisance, and for injuries resulting directly therefrom to travelers upon the highway he is legally answerable.”

This theory is discussed in Vol. 29 of *Corpus Juris*, p. 678, in the following language:

“The liability of an individual who without authority of law creates a dangerous condition in the highway, to a person injured thereby, is generally based on the theory that the defect or obstruction constitutes a nuisance, and accordingly it has been decided that the liability of such person is not affected by the question whether he was actually negligent.”

Numerous cases are cited in *Corpus Juris* in support of this rule, one of the leading ones being *Congreve vs. Smith*, 18 N. Y., p. 78, at page 82, which holds that “no question of negligence can arise, the act being wrongful”.

Again in 28 Cyc., p. 1437, we find that “any person who for his own private purposes interferes with a sidewalk and fails to restore it to a safe condition, is guilty of a nuisance and liable to any person sustaining injury thereby”. (See the New York case of *Smith vs. Ryan*, reported in 29 N. E., p. 1033.)

POINT III.

It was for the jury to decide whether plaintiff was negligent in walking upon a public sidewalk.

The question of contributory negligence is one of fact for the jury. This was clearly established by the Court of Errors and Appeals in the case of *Durant vs. Palmer*, 29 N. J. Law, p. 544, in the following terms:

“Want of care or negligence on the part of the person injured is not in general to be presumed, but is to be averred and proved as a matter of defence; and whether there was negligence or not, is a question of fact to be decided by the jury.”

Chief Justice Magie, in an opinion written for the same Court, in case of *Morhart vs. North Jersey Street Railway Co.*, 64 N. J. Law, p. 236, at p. 239, states:

“A passenger along a public highway may expect to meet other passengers on foot or in vehicles. The observation which due care would require him to make as to such obstacles to his safe passage would be of one character. But as to obstructions placed therein not in connection with the ordinary public use of the road and of which no sufficient warning was given, the required observation may be different.

Whether, in respect to such occasional and unusual obstructions, the passenger has exercised due care in observing and avoiding them must generally be a question for a jury.”

In the case at bar, even if it could be assumed that the jury might have been justified in finding the plaintiff guilty of contributory negligence (which plaintiff denies), they did not do so, and

under the rule expounded in the case of *Alexander Dye Works vs. Ronfosse*, 57 N. J. Law, p. 700, the finding of the jury in this respect should not be disturbed. This Court of Errors and Appeals case holds as follows:

“The fact that the evidence was susceptible of finding that the plaintiff was guilty of contributory negligence—Held, not ground for reversing a finding of the jury to the opposite effect.”

POINT IV.

It was not error for the trial judge to refuse to charge the defendant's second request to charge.

Defendant's second request to charge, which was refused by the trial judge, reads as follows:

“A pedestrian is bound to exercise ordinary care not only to avoid dangerous places known or seen, but also those of the existence of which she is ignorant.”

Previously the trial judge had substantially covered these requested instructions in his charge, referring to the plaintiff's duty, in the following language:

“Now, she had the duty of using care, using the prudence and using the observation that a reasonably prudent person would have exercised under the time, place and circumstance, and if she did not then she cannot recover” (p. 87, lines 2 to 6).

This obviously covers unknown dangers, as well as those known and seen.

The Court of Errors and Appeals held in the case of *Herbich vs. North Jersey Street Railway Co.*, 67 N. J. Law, p. 574, that “when the trial judge has

stated to the jury in concrete terms the legal principles applicable to the case, it is not error for him to refuse to charge the abstract principles."

There is a long line of New Jersey cases holding that the denial of requested instructions substantially covered by other instructions given is not error. Some of the more recent cases on this point are the following:

Geyer vs. Pub. Serv. Ry. Co., 98 N. J. Law, 470;
State vs. Dragone, 1 N. J. Misc. 84;
Braelow vs. Klein, 125 Atl. 103;
Osburn vs. DeYoung, 122 Atl. 809;
Eggert vs. Binder, 125 Atl. 106;
Hintz vs. Roberts, 98 N. J. Law 768.

CONCLUSION.

The judgment appealed from should be affirmed.

Respectfully submitted,

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