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Notice of Appeal.

New Jersey Supreme Court.

ESSEX COUNTY.

10

HELEN HAINES and THOMAS
HAINES,

Plaintiffs,

vs.

NICHOLAS BAKER and MONT-
CLAIR BROWN AND WHITE CAB
COMPANY, a Corporation,
Defendants.

Action at Law.

Notice
of Appeal.

20

To HEINE & LAIRD, Attorneys of Plaintiffs, or to
whom it may concern:

Sirs:

Take Notice that the Defendants in the above
entitled cause appeal to the Court of Errors and
Appeals in the last resort in all causes in New Jer-
sey from the whole of the judgment entered in
this cause on the following ground, to wit:

30

1. Because the Supreme Court erred in giving
judgment to the Plaintiffs instead of the Defend-
ants.

Respectfully yours,

GEORGE F. SEYMOUR, JR.,

Atty. of Defendants.

40

Notice and Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	<p style="text-align: center;">HELEN HAINES and THOMAS HAINES,</p>	}	Action at Law.
	Plaintiffs,		
	vs.		
	<p style="text-align: center;">NICHOLAS BAKER and MONT- CLAIR BROWN AND WHITE CAB Co., a Corporation,</p>	}	Notice of Appeal and Grounds.
	Defendants.		

20 To: HEINE & LAIRD, Attorneys of Plaintiffs, or to
whom it may concern:

Sir:

Please Take Notice, that the Defendants in the above entitled cause appeal to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the Judgment entered in this cause on the following grounds, to wit:

30 1. Because the Supreme Court erred in giving judgment to the Plaintiffs instead of the Defendants, in that

a. That the verdict is contrary to the weight of the evidence.

b. That there was no proof of negligence as against the Defendants.

c. That there was no proof of the violation of any duty Defendants owed to the Plaintiffs.

40 d. That the verdict rendered in favor of the

Grounds of Appeal.

Plaintiffs was the result of mistake, passion or prejudice on the part of the Jury.

e. That the verdict is contrary to and inconsistent with the charge of the Court, the issue raised by the pleadings and the evidence adduced in support of the allegations or issue.

10

f. That the Court erred in refusing Defendant's motion for a non-suit at the close of the Plaintiffs' case.

g. That the damages awarded are grossly excessive and resulted from mistake, bias, passion, prejudice or partiality on the part of the Jury.

GEORGE F. SEYMOUR, JR.,
Attorney for Defendants.

20

30

40

Complaint.

Street near the intersection of the same with Claremont Avenue in the Town of Montclair, New Jersey.

2. On or about the date aforementioned the plaintiff Helen Haines was lawfully walking in an easterly direction on Claremont Avenue at the intersection of the same with Grove Street in the Town of Montclair, New Jersey. 10

3. The defendant the Brown and White Cab Company by its servant and agent the defendant Nicholas Baker so carelessly and negligently operated the said automobile that the same ran into and collided with the plaintiff severely injuring her.

4. The negligence of the defendants consisted in this: in operating the said automobile at a fast and excessive rate of speed; in failing to give warning of its approach; in operating the said automobile with its braking appliances in a defective condition; in violation of the traffic laws of the State of New Jersey; in failing to make proper observation for persons lawfully on the street and in other divers respects the defendants were careless and negligent. 20

5. As a direct and proximate result of the negligence of the defendants as aforesaid the plaintiff Helen Haines was severely injured in and about her head, body and limbs, sustaining fracture of the pelvis, fracture of the left transverse process of the first dorsal vertebra and fracture of the scaphoid, right foot; was rendered sick, sore, lame and disabled, was caused great pain and suffering and such injuries so sustained by her will cause her great pain and suffering in the future and she 30 40

Complaint.

is and will remain permanently injured; she has sustained numerous cuts, bruises and lacerations about her head, body and limbs all of which have incapacitated her and prevented her from carrying on her usual works, acts and functions and in the future she will be prevented thereby from carrying on her usual work, acts and functions, all to her damage.

6. As a direct and proximate result of the negligence of the defendants as aforesaid the clothes of the plaintiff were severely damaged.

Wherefore plaintiff Helen Haines demands of the defendants as damages the sum of \$25,000, together with costs of suit.

20

SECOND COUNT.

1. The plaintiff Thomas Haines is and was on the 9th day of January, 1928, and for a long time prior thereto the husband of the plaintiff Helen Haines and as such, is and was, and in the future will be entitled to the companionship, services and consortium of the said wife and has been and in the future will be obliged to expend large sums of money for proper medical and surgical treatment to his said wife because of her injuries as aforementioned.

30

2. The plaintiff Thomas Haines repeats the allegations of paragraphs 1, 2, 3 and 4 and 5 of the first count and makes them paragraph 2 of this count.

40

3. As a result of the negligence of the defendants as aforesaid and the ensuing injury to his said wife the plaintiff Thomas Haines was and in

Complaint.

the future will be deprived of the comfort, services and consortium of his said wife and has been and will in the future be obliged to expend large sums of money in necessary and proper medical and surgical treatment of the said wife's injuries all of which is to his damage.

Wherefore the plaintiff Thomas Haines demands of the defendants as damages the sum of \$5,000. 10

HEINE & LAIRD,
Attorneys for Plaintiffs.

Stipulation.

Filed Sept. 20, 1929. 20

It is Hereby Stipulated by and between Heine & Laird, the attorneys for the plaintiffs, and George F. Seymour, Jr., the Attorney for the defendants, that the *ad damnum* clause of the first and second counts of the complaint in the above entitled cause be amended to read as follows:

First Count:

Wherefore, plaintiff Helen Haines demands of the defendant as damages the sum of Fifty Thousand (\$50,000.) Dollars, together with costs of suit. 30

Second Count:

Wherefore, the plaintiff Thomas Haines demands

Answer.

of the defendants as damages the sum of Ten
Thousand (\$10,000.) Dollars.

HEINE & LAIRD,
Attorneys for Plaintiffs.

GEORGE F. SEYMOUR, JR.,
Attorney for Defendants.

10

Answer.

Filed Dec. 8, 1928.

Defendants answering the Complaint filed in
the above captioned matter, says that:

20

FIRST COUNT.

1. They have not sufficient knowledge or infor-
mation to form a belief as to the allegations con-
tained in Paragraph One, but leaves the plaintiffs
to their proof thereof.

2. They have not sufficient knowledge or infor-
mation to form a belief as to the allegations con-
tained in Paragraph Two, but leaves the plaintiffs
30 to their proof thereof.

3. They deny the allegations contained in Par-
agraph Three.

4. They deny the allegations contained in Par-
agraph Four.

5. They deny the allegations contained in Par-
agraph Five.

6. They deny the allegations contained in Par-
40 nagraph Six.

Answer.

SECOND COUNT.

1. They have not sufficient knowledge or information to form a belief as to the allegations contained in Paragraph One, but leave the Plaintiffs to their proof thereof.

2. They repeat the answers to paragraphs 1, 2, 3, 4 and 5 of the first count as though fully set out herein. 10

3. They deny the allegations contained in Paragraph Three.

FIRST SEPARATE DEFENSE TO THE FIRST AND SECOND COUNTS.

Defendants violated no duty they owed to the plaintiffs. 20

SECOND SEPARATE DEFENSE TO THE FIRST AND SECOND COUNTS.

Defendants are not guilty of the negligence charged in the said complaint.

THIRD SEPARATE DEFENSE TO THE FIRST COUNT.

Whatever injuries were sustained by the plaintiff, Helen Haines at the time and place of the accident alleged in said complaint were caused and contributed to by her negligence, in that she conducted herself in a careless and reckless manner and negligently exposed herself to the risk of such an accident and neglected to take precautions and to exercise care to guard and protect herself against such an accident and the injuries which she may sustained by reason thereof. 30
40

Answer.

THIRD SEPARATE DEFENSE TO THE SECOND COUNT.

Whatever damages were sustained by the plaintiff Thomas Haines, were caused solely and proximately by the intervention of and the carelessness, recklessness and negligence of one Helen Haines.

10

GEORGE F. SEYMOUR, JR.,
Attorney for Defendants.

Reply.

Filed Dec. 10, 1928.

20 The plaintiffs, replying to the answer of the defendants herein say:

1. They deny each and every allegation of the separate defenses therein and join issue thereon.

HEINE & LAIRD,
Attorneys of Plaintiff.

30

40

Judgment.

The above entitled case was tried before Honorable Nelson Y. Dungan, to whom it had been referred for trial, and a jury on April 30 and May 1, 1930, and the jury returned a general verdict in favor of the plaintiff, Helen Haines and against the defendants in the amount of \$3,000.00, and a general verdict in favor of the plaintiff, Thomas Haines against the defendants in the amount of \$2,500.00. 10

Whereupon it is adjudged that the plaintiff Helen Haines do recover of the said defendants Nicholas Baker and Montclair Brown and White Cab Company, a corporation the sum of Three Thousand dollars damages and that the plaintiff Thomas Haines do recover of the said defendants Nicholas Baker and Montclair Brown and White Cab Company, a corporation the sum of Two Thousand Five Hundred Dollars damages together with their costs which have been taxed at the sum of Seventy-eight dollars and sixty cents making in the whole the sum of Five thousand five hundred seventy-eight dollars and sixty cents. 20

Damages \$3,000.00 H. H.
2,500.00 T. H.

Costs \$5,500.00
78.60 30

\$5,578.60

Judgment signed and entered May 6, 1930.

WM. S. GUMMERE,
C. J.

Testimony.

NEW JERSEY SUPREME COURT.

ESSEX CIRCUIT.

Wednesday, April 30, 1930.

10

HELEN HAINES and THOMAS
HAINES,
Plaintiffs,
vs.

NICHOLAS BAKER and MONT-
CLAIR BROWN AND WHITE CAB
COMPANY, a Corporation,
Defendants.

Action at Law.

20 Before HON. NELSON Y. DUNGAN, *J.*, and a jury.

APPEARANCES:

For Plaintiffs appear HEINE & LAIRD (by
JOHN A. LAIRD).

For Defendants appears GEORGE F. SEY-
MOUR, JR.

30

(A jury is called and sworn).

Mr. Laird opens for the plaintiffs.

Mr. Seymour opens for defendants.

40

Mr. Laird: By the way, Mr. Seymour, I
assume that the ownership and operation of
the cab is admitted?

Mr. Seymour: Yes.

Helen Haines—Direct.

HELEN HAINES, one of the plaintiffs, sworn in her own behalf.

Direct-examination by Mr. Laird:

Q. Mrs. Haines, where do you live? A. In Montclair.

Q. And what is your address, please? A. 30 Oxford Street. 10

Q. And is that the same address at which you lived at the time of this accident? A. Yes.

Q. Now, the accident in question happened on the 9th day of January, did it not? A. That is right.

Q. And at that time you had come from where and were going where? A. I came from New York. 20

Q. And can you tell us what time you left New York for Hoboken? A. I left New York in time to get the five o'clock at Hoboken.

Q. That is the five o'clock train for Montclair, is that right? A. That is right.

Q. Now, will you tell us at approximately what time you arrived in Montclair on that train? A. That train is due at 5:39.

Q. And did it arrive at approximately that time? A. Yes. 30

Q. Now, from the station, where did you start?

The Court: Which station did you get off at?

The Witness: The Lackawanna station.

Q. Is that the main station of the Lackawanna? A. That is the main and only station of the Lackawanna.

Q. What course did you take from the station 40

Helen Haines—Direct.

towards your home? A. My home is north from the station, and I walked north on Grove Street.

Q. And on which side of Grove Street? A. On the west side.

10 Q. Now, about how far did you walk before you came to an intersecting street known as Claremont Avenue? A. I crossed Glen Ridge Avenue and then that next block is a very long block, without any intersection, except on one side; Claremont is the next cross street.

Q. What did you do when you got to Claremont Avenue? A. There is a blinker light there, and I just crossed the street at that point.

20 Q. Now, by "crossing the street" you mean you crossed Claremont Avenue? A. I crossed Claremont Avenue, from the south side to the north side.

Q. And will you please describe to us where that blinker light is? A. The blinker is in the middle of Claremont, on the curb line.

Q. That is to say, it is in the middle of Claremont Avenue, on what curb line? A. On the Grove Street line; that is, it is a mid-point in Claremont Avenue but not in the middle of Grove Street.

By the Court:

30 Q. Is it on the west side of the road? A. It is on the west side of Grove Street.

Q. So that you passed directly by that blinker light as you crossed from the south to the north side of Grove Street? A. I passed back of it, as one would have to.

By Mr. Laird:

40 Q. Now, when you crossed Claremont Avenue, that would bring you, would it not, to the north-west corner? A. Yes.

Helen Haines—Direct.

Q. Of Grove and Claremont? A. Yes.

Q. Now, will you please tell us what you did after you reached that point? A. I hesitated there till traffic passed going south.

Q. That is to say, in the opposite direction from which you had been walking? A. Yes. I waited till two cars had passed, as my memory recalls, and then started to cross the street. 10

The Court: To cross which street?

The Witness: I started to cross Grove Street, from the west side to the east side.

Q. And approximately how far from the corner were you when you started to cross? A. Well, right at the corner where people cross. There is no sidewalk at that particular point on Grove Street, and one crosses where the Claremont crossing ends, if you understand what I mean. 20

Q. I think so. Now, will you tell us just what happened from that time and until the time of the accident, as best you can recall it? A. I have practically no memory, except starting across the street.

Q. Now, do you recollect when you started out, as to what direction you were going in, that is to say, whether you were going straight across, diagonally, or what way you were going? A. Oh, I started straight across. 30

Q. Now, have you any recollection of hearing any horn blown? A. Absolutely not.

Q. Or seeing any lights of any car? A. No.

Q. No recollection of that? A. I have no memory of it.

Q. And, as I understand you, you became unconscious, is that true? A. Well, I don't remember anything about it, so I suppose I was. 40

Helen Haines—Direct.

Q. Well, now, when did you first realize you had been involved in an accident? Where were you?

A. I was in Mountainside Hospital, I believe it was, about twelve o'clock, I believe they told me.

Q. About twelve that same night? A. That same night.

10 Q. Now, will you give us your best judgment as to what time it was when the actual accident happened? A. If the train came in on time, which it usually does—Lackawanna trains usually do at that hour in the evening—it probably was six o'clock. It takes one, walking leisurely—I was not hurrying—about ten to twelve minutes to walk to that point.

20 Q. And this being the 9th day of January, what have you to say as to the lighting conditions at six o'clock in the evening? A. Well, it is practically dark, I should say.

Q. Now, what lights are there at the intersection of Grove Street and Claremont Avenue, that you recall? A. This blinker light had been newly put there. The street had very recently been paved all the way through.

30 Q. And what was it paved with? A. Asphalt. It is more or less of a thoroughfare—and, as to the lights, I am afraid I don't know. Montclair rather prides itself on having small street lights, but whether Grove Street has them or not, I am not sure.

Q. Now, is the street lined with houses at that point, or is it vacant land there? A. I think there is no vacant property on Grove Street at that point.

40 Q. And were the houses lit at the time? A. They should have been. I don't remember.

Helen Haines—Direct.

Q. You do not recall that? A. No.

Q. Now, do you know what kind of a light there is on this blinker light, or was at the time, I mean?

A. Well, it is just a light that is rather amber, and keeps doing that (indicating).

Q. Flashes on and off, is that correct? A. Yes; it does not change. 10

Q. Well, now, when you say that you regained consciousness in the Mountainside Hospital, were you suffering any pain at that time? A. Severe.

Q. And can you tell us of your own knowledge what injuries you were suffering from at that time?

A. Well, I did not know at that time.

Q. Well, where did you suffer the pain? A. Well, I could not move my foot, and I had severe pains in my head, neck and shoulders and back—all over, in fact. 20

Q. Well, now, the following day did you suffer any pain? A. Unspeakable.

Q. And in what portions of your body was that pain? A. It is very hard to locate any one place that hurt, because I hurt all over, but I think my head and neck and back, and the hip—my left leg being practically, my foot being—it was entirely useless; I could not move it.

Q. Now, were any X-rays taken of you in the hospital? A. Fifteen. 30

Q. And can you tell me when the first X-ray was taken? A. Before I came back to consciousness—so I am told—they were taken.

Q. Of course, you do not know that of your own knowledge? A. No, I do not; but that is what I say, I was told.

Q. Can you tell us when the next X-ray photograph was taken? A. When I complained of my 40

Helen Haines—Direct.

neck hurting so severely, they took another X-ray, perhaps three; I don't remember just how many.

Q. And of what portion of your body were those X-rays taken? A. I believe in through here (indicating). The head injury was hear (again indicating).

10 Q. And when were the X-rays taken of your spinal column? A. I don't know about the numbers, whether the X-rays that were taken at the time I was in the hospital—I don't know whether they included the back, but after I had gotten home I had such tremendous backaches that I then had these X-rays—the doctor then had these X-rays taken of my back.

Q. And where were these X-rays taken? A. At Mountainside Hospital.

20 Q. The same place? A. The same place.

Q. And can you tell us approximately when you returned to the hospital, when these X-rays were taken—just approximately Mrs. Haines? A. I came home in the latter part of February.

By the Court:

30 Q. Do you remember the exact date? A. I cannot remember the exact date, Judge. I am sorry; but I was still confined to my home, I mean I was unable to get about much to do this thing, and I was suffering very, very much.

Q. The question now is when you returned to the hospital. A. Yes, I do not remember the date.

By Mr. Laird:

40 Q. Well, can you tell me approximately how long after you returned home that you went back to the hospital to have these X-rays taken? A. Well, several weeks, but I do not know the date.

Helen Haines—Direct.

Q. Now, while you were confined to the hospital, did you have the attendance of any nurses? A. I had two nurses for three weeks.

Q. And after the three weeks did you have a nurse for the balance of the time? A. I had a nurse for the rest of the time.

Q. And after you returned to your home, the latter part of February, did you have any attention then? A. I had a practical nurse at the house for five months. 10

The Court: You mean you had a private nurse in the hospital or was it a hospital nurse?

The Witness: I had one private nurse for seven weeks and two private nurses for three weeks. 20

Q. After you returned, somewhere near the end of February, you say you had a practical nurse, who stayed how long? A. She stayed with me from the 25th of February till the 1st of August—five months.

Q. What did that nurse do for you during that period of time? A. She helped me with my own personal toilet, and she waited on me at night, and she did everything that I would have been doing myself otherwise. 30

Q. And what was there about your condition that required her attendance at night? A. I could not get up and down from my bed without some help.

Q. And why not? A. My back and my leg.

Q. And do I understand that you suffered pain during this period of time? A. Yes; very severe pain in my back—and still do. 40

Helen Haines—Direct.

Q. Now, were you accustomed to doing the housework at home at the time of this accident? A. I did the housework.

Q. And what assistance did you have before the accident? A. I had a laundress and a woman to come in once a week.

10 Q. And the balance of the housework you did yourself? A. Yes.

Q. Now, since the time of this accident have you employed anyone else in the house to assist you in any way? A. I had to have more help to do the housework.

20 Q. Now, can you tell us, as definitely as possible, what that additional help consisted of? A. Practically the same kind of assistance of a woman to do more of the things that I did. I don't have someone all of the time.

Q. Well, now, how frequently do you employ a woman, and what is it necessary for you to pay her? A. I pay a woman 50 cents an hour, and I have her two days a week.

By the Court:

Q. How many hours a day? A. Eight hours a day.

30 Q. So it is \$4 more a week that you pay now than before? A. No, I would not say that. Before my accident I had to have a woman one day and a half a day; now I have a woman two days.

Q. So it is \$2? A. Yes, it is just practically that now.

By Mr. Laird:

40 Q. How much did you pay, or did your husband pay, the practical nurse for the five-month period?

Helen Haines—Direct.

A. \$25 a week, without counting her board.

Q. Now, will you please describe to us, Mrs. Haines, your present condition, with particular reference, of course, to the results of this accident?

A. The lump in the left leg, which was there at the time, after the accident, which was caused by the accident, is still there and very sore, just as sore now as it was then. 10

Q. What does that lump consist of and where is it? A. It is in the calf of the leg, slightly, well, right in the center of the calf of the left leg, in the back. The one thing I noticed which was not mentioned in your description of my injuries was the two small breaks of the left ankle, that is chips off the bone. That has caused me a great deal of trouble.

Q. In what way, Mrs. Haines? A. My ankle turns completely over without any provocation. 20

Q. And what, if anything, has that resulted in? A. I fall.

Q. And have you suffered any injuries as the result of those falls? A. Well, I think nothing permanent, but very severe pain at the time.

Q. Before I overlook it, Mrs. Haines, while you were in the hospital, from the 9th of January to somewhere near the end of February, were you confined to your bed for any period of time, and, if so, for how long? A. I was confined to my bed practically the entire time. Toward the very last, the doctors wanted me to try my strength. I was wearing a very tight surgical belt, which I wore almost for five months after I got home, and with the aid of that I took steps about the hospital, with the assistance of someone on either side of me. Do I answer your question? 30

Q. I think so. A. I had not finished about my— 40

Helen Haines—Direct.

Q. Yes, I am going to ask you further about your present condition, of course. Now, will you continue, please, with reference to your present condition? A. I still have very severe backaches and dizziness on lying down.

10 Q. Does that interfere in any way with your sleeping? A. I cannot say that it does.

By the Court:

Q. You mean on first lying down? A. Yes.

Q. It passes away or— A. When I first lie down.

Q. When you first lie down you are dizzy? A. Yes.

20 Q. And then how long does it take for that to pass away? A. Well, not long; a few moments.

By Mr. Laird:

Q. What have you to say as to your general health? A. Well, I think—I haven't the resistance I had, I think. I look pretty well but I haven't the resistance.

Q. Were you in good general physical condition before the happening of the accident in January? A. Excellent.

30 Q. Did you require the attendance of any physicians during the time immediately preceding the accident? A. No. I haven't had a physician for many years, except the one I live with—I mean he does not treat me, either, but perhaps a slight digestive upset; I have had a condition that perhaps once in two years, or three years, but otherwise none.

40 Q. Now, your husband, Dr. Haines, by the way, is not an orthopedic surgeon, is he? A. No; he is a brain specialist.

Helen Haines—Direct.

Q. Now, with reference to the pains which you say you have in your back, Mrs. Haines—where are they situated, in what portion of the back? A. I could show you better than I can tell.

The Court: Just stand and reach to your back.

(Witness indicates.)

10

Mr. Laird: Indicating about the middle of the back, in the spinal region, Mr. Seymour?

Mr. Seymour: I think it is higher than the middle, just above the middle of the back.

Q. And do I understand you to say there are two places in the back which hurt? A. Between my two fingers, there were two places hurt (indicating) but the places were close together, so that the space is in that region.

20

The Court: Indicating within about three inches.

Mr. Laird: Yes.

Q. And when does that pain in your back trouble you most, if at any particular time? A. In certain type of chairs I sit in, or when I get tired, certain positions I rest my arms in.

30

The Court: I suppose you had X-rays of your back?

The Witness: Yes.

Q. At the time of this accident, did you suffer any pain as the result of the fracture of your pelvis or pubic bone? A. Well, I was not allowed to move, not one particle, so that by keeping absolute-

40

Helen Haines—Direct.

ly quiet, with this stiff surgical belt, I was not allowed to move, so that I had no sensation at all.

Q. And how long were you forbidden, as you say, to move? A. Well, for a period of several weeks.

10 Q. And, of course, that refers to a period in the hospital? A. Yes. I had a fracture-frame on the bed, a big fracture-frame on the bed.

Q. Well, describe to us just what you mean by a fracture-frame? A. Well, it is built up over your bed, with uprights and cross-pieces, and then there are places to take hold of, so that you can assist yourself somewhat in moving, to help the nurse, so that she won't have to do all of the lifting.

20 Q. By the way, in the hospital you were treated by what doctors? A. Dr. Seidler was the physician who did my head, sewed up the head; he is a surgeon in Montclair.

Q. What other attention did he give you besides the suturing of this wound? A. He came to see me each day; sometimes twice a day.

Q. And was there any other physician called into consultation? A. When I was taken to the hospital, I believe, I was told—

30 Q. No, do not tell us what you were told. Was there any other physician who attended you—I will put it that way. A. Yes. I was simply going to speak about the interne—Dr. Nikola, an orthopedic surgeon.

Q. And where is his office? A. New York City.

Q. And is he also an attending physician at the Mountainside Hospital? A. I don't know whether he comes in unless he is called; he comes there. He has office hours twice a week in Montclair, in his own office.

40

Helen Haines—Cross.

Q. And what did he tell you, Mrs. Haines? A. Well, he was the one concerned with my paralyzed foot and the hip. Dr. Seidler is a surgeon, and Dr. Nikola is an orthopedic surgeon. The matter was out of Dr. Seidler's hands when it came to the bones of the legs and the trouble there.

10

Cross-examination by Mr. Seymour:

Q. There was nothing the matter with your memory before this accident, was there? A. I think not.

Q. Well, are you sure or are you just thinking? A. Well, I know there was not.

Q. You know there was nothing the matter with your memory then, was there? A. Absolutely not.

Q. What kind of a night was this as to weather? A. It was rather foggy. I had an umbrella but I was not using it; it was not raining.

20

Q. Did you have the umbrella raised? A. I hadn't the umbrella raised.

Q. And there was nothing the matter with your hearing? A. No.

Q. Or your sight? A. No.

Q. How long have you lived at this Oxford Street address in Montclair? A. Up to date?

30

Q. Yes. A. Seven years, I believe.

Q. Well, then, you had lived there five years before the accident, had you not? A. The accident has only been two years, a little over.

Q. Well, if you are living there seven now, and the accident is two, you were living there five years before the accident, weren't you? A. I should say so.

Q. You are quite familiar with this intersection of Claremont and Grove, aren't you? A. Yes.

40

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Q. How often did you pass it? A. I don't go that way every day. It is out of my route unless I am going to the station or going into the little village.

Q. Well, you did not go into New York every day at that time, did you? A. No.

10 Q. How often did you go to New York around that time, just prior to January, 1928? A. Christmas time one goes quite frequently; I don't remember.

Q. Well, what do you mean by "quite frequently"—how many times a week? A. I don't know, perhaps twice.

Q. Well, do you know what business it was that took you to New York at that time? A. Yes, I do.

20 Q. And you do not know how much that required of your time? A. Certainly; that required one day a month.

Q. And that was a matter of business, was it not? A. No, it was a matter of pleasure.

Q. And you only went one day a month? A. To this particular thing, yes.

The Court: What day of the week was it?

30 The Witness: I believe it comes the first Monday in the month. It is the Daughters of Ohio, and they met at the Hotel Waldorf. I had been at that meeting and was returning from there.

Q. Well, how far away from the intersection of Grove and Claremont is Oxford Street—how many blocks? A. Three blocks, three long blocks.

40 Q. That is, three blocks past Claremont or past Grove is it? A. Claremont and Grove is an inter-

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section. There are three blocks farther north before you come to Oxford.

Q. That is, you would have to walk three blocks past that intersection where the accident occurred to get to your street, is that it? A. That is right.

Q. Do you remember whether it was dark or light at that time? A. It was six o'clock in January; it was dark. 10

Q. And you say it was not raining? A. No.

Q. Were the streets wet? A. I don't remember.

Q. Do you know whether it rained during the day? A. I had an umbrella, and it must have threatened rain. I would remember if I had the umbrella up.

Q. You started out that morning? A. No, I started out that noon. 20

Q. And the weather looked such as to cause you to take an umbrella, did it not? A. Yes.

Q. And as you came to the street intersection of Grove and Claremont, did you see the cab at all? A. What cab?

Q. The cab that you are talking about. A. I don't remember to have seen it.

Q. Did you see any cars at all? A. I remember dimly of two cars passing me, going south.

Q. And you stood on that corner and waited for those two cars to pass you to go south? A. Yes. 30

Q. Did you? A. Yes.

Q. Do you know whether or not there were any cars passing to the north? A. I do not.

Q. Well, did you see any cars coming from the north? A. No.

The Court: Coming from the north?

Mr. Seymour: No, going from the south to the north. Did I misstate that? I will put that question again. 40

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Q. Did you see any cars coming from the south, going to the north? A. No.

Q. And you stood on the corner and made an observation, did you not? A. To the best of my knowledge.

10 Q. Well, do you know whether or not you did?
A. I have no memory of that corner except standing there, hesitating a moment until these two cars passed me, going south.

Q. Well, do you know what it was that caused you to hesitate? A. One always does at a street crossing.

Q. Well, is that why you say you hesitated, because one always does hesitate? A. I remember to have done so but I couldn't tell you why I have done so, except that it happened.

20 Q. Well, you stopped on the corner, or, rather, hesitated to allow two cars to pass you going in a southerly direction, did you not? A. Yes.

Q. And at that time did you look to your right or to the south? A. I believe so.

Q. Do you know? A. No.

Q. Don't you know whether you looked to the right? A. I don't know whether I looked either way or not.

30 Q. You do not know whether you looked to the right? A. I hesitated and waited for these cars to pass me, going to the south, and then I remember nothing more about it.

Q. And at that time you were standing at the sidewalk, weren't you? A. Yes.

Q. You had not gotten out into the street at all, had you? A. No.

40 Q. And, standing on the northwest corner, where you were, you hesitated, do you know how far you

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could look south on Grove Street? A. I couldn't tell you exactly. I could tell you approximately. You could see to the next block, possibly.

Q. Well, have you any idea how much that block is in feet? A. No, I do not—

Q. You do not know? A. No.

Q. Do you know how wide Grove Street is at the intersection? A. I can guess, but I don't know. 10

Q. You do not know? A. No.

Q. Do you know how wide Claremont is? A. No, I do not.

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

Q. Do you know whether or not this beacon light was working? A. I think so. I have never seen it not working. I have no reason to believe it was not working. 20

Q. Well, you think it was working, because you never saw it when it was not working, is that right? A. I don't remember anything about the beacon, except there is one there and it was always, up to that point, to my knowledge, working. I don't know anything about its not working.

Q. Do you know what color that beacon flashes? A. Amber.

Q. Are you sure it is amber? A. Yes. 30

Q. You are sure of that part, are you? A. Yes.

Q. That it is an amber flasher? A. Yes.

Q. And this particular time you do not know whether it was working or not, do you? A. I don't know.

Q. Of your own knowledge? A. No.

Q. And do you remember when you left the sidewalk to start across the street? A. I think so.

Q. You remember that. At that time was there 40

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any traffic going north or south on Grove? A. Not that I saw.

Q. Well, did you look for any? A. I don't remember.

10 Q. Well, you remember that there was not any that you saw; you remember that, don't you? A. I don't remember that I saw any and I don't remember that I did not see any; I don't remember.

Q. And you do not remember whether or not you looked, do you? A. I don't remember.

Q. Will you say that you did look or did not look? A. I don't remember.

20 Q. You do not remember looking? Now, you have told us a lot about your injuries, Mrs. Haines, and you were particular to mention two small breaks of the left ankle, weren't you? A. I don't remember, except I mentioned that because they had not been mentioned.

Q. Well, as you remarked at the time—you corrected your lawyer, in that he forgot to mention that when he was opening to the jury, and you reminded him of it, didn't you? A. I mentioned it.

Q. You reminded him of it, did you not? A. I spoke of it simply because I have had severe suffering from that very thing.

30 Q. Well, that suffering is not new, is it? A. Since the accident.

Q. Since the accident? Well, you knew about that suffering, did you not, in September, 1929? A. I had had no falling from it, because I was very carefully taken out with someone else when I went.

Q. Well, did these breaks result from this accident? A. Yes.

Q. They did, didn't they? A. Yes.

40 Q. Then they were present after the accident, in January, 1929, weren't they? A. Yes.

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Q. Didn't they develop or show themselves until September, 1929? A. September?

Q. Yes. A. I just don't understand that date.

Q. Well, let me show you what I think is your signature, an affidavit of yours here. You signed that, didn't you (handing witness document)? A. (Examining) I certainly did not. 10

Q. You did not sign that? A. I did not.

Mr. Seymour: Well, I am going to require Mr. Laird to produce somebody to me—Leo S. Rowe, a notary public of New Jersey.

Witness: Let me get my other glasses on, please.

Q. Surely. A. (Again examining document) It does not look like my signature. 20

Q. You do not think that is your signature? A. What is the date of it?

Q. September 7, 1929. A. It does not look like my signature.

Q. Do you remember going to your lawyer's office on September 7, 1929, and signing any paper for him and making an affidavit to it? A. What lawyer?

Q. Well, Heine & Laird, who represent you, I suppose. A. I was not in his office. 30

Q. Let me direct your attention to this. Is this your signature now (handing witness another document)? A. (Examining) That is mine.

Q. Now, you knew on September 7, 1929, in fact, you swore as to all these things that happened to you in this accident, did you not? A. I suppose so; I don't remember. I don't recall that at all.

Q. You do not recall that. Let me direct your 40

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attention to this affidavit and ask you if you can find on it anything there about two breaks of the left ankle.

The Court: You know whether it is there or not, Mr. Seymour.

10 Mr. Laird: I suggest that you offer it in evidence, and the jury can see for themselves what is in there and what is not.

The Witness: I have them, whether it is there or not.

Q. Did you read this before you signed it? A. I don't recall anything about it. Where was it done? That is my signature (indicating).

20 Q. I assume it was done at Mr. Laird's office. It may have been done at your house. I do not know. A. If I signed it I read it, and I did sign it.

Q. And what it says is true, isn't it? A. Yes.

Q. You swore to the truth of this, didn't you? A. Yes, certainly.

Q. And you appreciated that at that time you were taking oath as to the truth of this? A. I certainly did.

30 Q. How long are you married? A. I was married in 1912.

Q. And you always had good health prior to the accident, didn't you? A. Yes.

Q. Have you ever had any children? A. No.

Q. Who was your doctor before the accident? A. I seldom had one. I had Dr. Kirkwood in Montclair once for an indigestion.

Q. Is your husband a doctor of medicine? A. He is an M. D.

40

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Q. He does not practice medicine, does he? A. He practices medicine.

Q. In Montclair? A. No.

Q. Where? A. New York City.

Q. And does he conduct his own business? A. He has his own private practice. He is a mental and nervous disease specialist, a brain specialist.

10

Q. He specializes in mental and brain diseases? A. Yes.

Q. Have you any information as to these medical expenses that you put in these interrogatories? A. What do you mean, do I have any? Did I pay for them myself, do you mean, or—

Q. Yes. A. Well, not out of my own income, no.

Q. Well, were they paid? A. My husband paid all the expenses.

20

Q. And at the hospital you had a private room, did you not? A. I did.

Q. All the time you were there? A. Yes.

Q. And— A. (Interposing) Except the first few hours, when they thought I would not be living by the next morning, and they put me in a room with someone else.

Q. You say that they thought you would not be living until the next morning and they put you in a room with someone else? A. Yes. They did not have any room and they put me in a corner room, and they did not think I would be there—

30

Q. When they came up there and thought you were not going to die they put you in a private room? A. No. When I came to myself I insisted on being put into a private room.

Q. You have in here, in your interrogatories, "Medical and surgical service, \$1,150." Who re-

40

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ceived that, do you know? A. I know nothing about the services there. My husband attended to all that.

Q. You do not know anything about the bills either, do you? A. I know about the amounts of the hospital bills.

10 Q. Well, do you know anything about the \$1,150? Who received that? A. What is that down as?

Q. "Medical and surgical services, \$1,150." A. I think Mr. Laird explained that to the jury.

Q. Well, would you mind explaining it to the jury now? A. I believe that, he said, was correct.

Q. Not what Mr. Laird said, please, lady. Do not repeat what Mr. Laird said. Tell us what you said about it.

20

Mr. Laird: If what I said was the truth—

The Court: (Addressing the witness) It is not what you say about it; it is what you know about it. Tell us what you know about it.

30

The Witness: The courtesies between physicians are such that the members of physician's families are not charged with medical bills or for medical services, I should say; but these doctors were asked what such services would be had they not been in the service of a family of a physician, and that was the bill rendered. Had I not been a physician's wife, that would have been the bill and the amount which should be paid them, because they were many weeks.

40 Q. What coat were you wearing that day? A. I was wearing a fur coat.

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Q. What kind of a fur coat was it? A. A gray squirrel.

Q. Was it new? A. I had gotten it that winter.

Q. It was new in the winter of 1928-1929? A. 1928.

Q. Well, when did you get it? A. I got it the latter part of 1927. 10

Q. And you had it for the winter of 1927? A. I got it the latter part of 1927, and my accident was in 1928. I still had it as a new coat.

Q. What part of 1927 did you get it? A. Around Thanksgiving time, I believe; I don't remember exactly.

Q. Around November, 1927? A. Probably; I don't remember.

Q. Then you wore it all through the winter of 1927, after November, did you not? A. Yes. 20

Q. And you wore it through the winter of 1928, up to January, 1929? A. Well, it was not—I don't know why you are saying all this—1929, that was a year after the accident.

Q. Oh, was the accident in 1928?

The Court: 1928.

Mr. Seymour: Well, that is my mistake.

I thought it was 1929. 30

Q. Well, then, you wore it from November, 1927, up to the time of the accident, did you not? A. I had had it on for six or eight times.

Q. And where did you get it? A. New York.

Q. Well, what is the name of the place? A. Day Bros., furriers.

Q. What is their address? A. Corner of Sixth Avenue and 23rd Street. 40

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Q. And what did you pay for it? A. I paid—I forget; I don't remember.

Q. Well, you were there when it was paid for, weren't you? A. I don't remember.

Q. You do not remember being there when you got your coat? A. I don't remember the cost of it.

10 Mr. Laird: The witness did not say that.

The Witness: I was not answering that question. I did not realize that I was.

Mr. Seymour: I will be perfectly willing to have that struck from the record.

The Court: It will be.

The Witness: I am sorry.

Q. Were you the one who went to Day Bros. and
20 picked up the coat? A. I had quite a lot of the fur, and I took it to the man, and he put with it a lot of new fur to make my coat—I don't know.

Q. The fur, the squirrel fur that you brought him, was old fur, was it not? A. Part of it.

Q. Well, did you bring him some new squirrel fur, too? A. No, he had the new squirrel fur.

Q. And you ordered the coat made, did you not? A. I did.

Q. And I suppose you had the coat fitted on you?
30 A. Yes.

The Court: I am wondering whether that is an element of damage that is to be included in the case, because nothing was said about it in the direct examination.

Mr. Seymour: Well, it is in the interrogatories, sir.

The Court: Is that an omitted matter?

Mr. Seymour: Maybe Mr. Laird forgot it.

40 Mr. Laird: Well, I did not take it up, be-

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cause it is not of great moment, compared with the injuries themselves. If Mr. Seymour wants to go into it, I have no objection.

Q. Did you engage Day Bros. to make this coat for you? A. Yes.

10

Q. And did you make the contract with them for the price of it? A. Yes.

Q. And what was that price? A. I really don't remember. I am very frank with you. I don't remember. Mr. Day told me, when my coat was finished, that the coat would have cost me \$650 at any other store, because of its extreme beauty and the quality of it; but just what I paid him wasn't that much; I don't remember—about three hundred, I think; I am not positive.

20

Q. Have you, always, all your life, had a bad memory, Mrs. Haines? A. I don't think I have now.

Q. You think your memory is better now than it was then? A. No.

Q. Well, your memory is bad as to what occurred in November, 1927, is it not? A. Had I known that you wanted the price of my fur coat, I should have looked in my papers before I came, but I did not know that you would want that.

30

Q. Well, you bought and ordered this coat in November, 1927, and you do not remember what you paid for it, do you? A. No.

By the Court:

Q. You think it was about \$300? A. Yes, but the damages, of course, on that fur coat were not the original value of it. I don't know just why that has to be brought into it. The damages were

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\$50. The fur coat was not destroyed. I am still wearing it.

Q. It was not destroyed? A. No.

10 PAUL ROBBINS, sworn in behalf of plaintiffs.

Direct-examination by Mr. Laird:

Q. Mr. Robbins, where do you live, please? A. Do you mean at the time of the accident or now?

Q. Well, suppose you tell us where you lived at the time of the accident. A. 136 Ashland Avenue, Bloomfield.

20 Q. And did you happen to be near the intersection of Grove Street and Claremont Avenue on the evening of this accident? A. Yes.

Q. And can you tell us approximately what time the accident occurred? A. Between quarter of six and six; I cannot say exactly. I was getting ready to go home.

Q. And on what side of the street were you when the accident happened? A. Well, I had started out from Grove Street, 88 Grove Street; that is on the southwest side; and then I crossed over Claremont Avenue on the northwest side.

30 Q. In other words, you had started across Claremont Avenue from the southwest corner to the northwest corner, is that right? A. That is correct.

Q. And in what direction were you walking, north, is that correct? A. That is correct.

40 Q. Now, how far away from Claremont Avenue were you when your attention was attracted to anything unusual? A. I don't know exactly how many feet it was, maybe it was around fifteen

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paces; I cannot say; may be more, maybe less.

Q. What first attracted your attention to anything unusual? A. A car. I heard this car coming, and I just kind of glanced over my right shoulder. Being no sidewalk on that side of the street, right at that particular place, I was walking in the street, and as I heard this taxi—I didn't know what it was at the time—but I heard this car coming, and I glanced over my shoulder, and just about then I saw the car and the noise and everything else—just kind of a side glance, without seeing anything directly. 10

Q. Now, as I understand you, there is no sidewalk on the westerly side of Grove Street at that point, is that correct? A. Right at that point there, but further on there is.

Q. And how about the easterly side of Grove Street, is there a sidewalk there? A. Yes, there is a regulation sidewalk. 20

Q. Now, after you heard this noise of the automobile, did you hear any other sound? A. Well, just about the same—well, I heard a noise of the car coming, and as I kind of glanced around, wondering if the car was coming my way or just where it was, I heard this thud.

Q. What did you do then? A. Well, I was kind of excited at the moment, and I saw something laying there in the street, and I went over. I didn't know what it was. 30

Q. Did you cross the street then? A. Yes, I crossed the street.

Q. Now, will you just describe to us what you saw after you crossed the street? A. I saw something laying there; I didn't know at the moment what it was—but it was a woman—and I got there and I saw that she was laying there, and I asked 40

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her if she was hurt, and she did not answer me.

Q. Well, now, where at that time was the taxicab, I mean with reference to where her body lay in the road? A. I don't remember exactly where it was.

10 Q. Can you tell us approximately how far from the curb Mrs. Haines was lying? A. Oh, around five feet.

The Court: Which curb?

The Witness: The east curb.

Q. And have you any independent recollection, Mr. Robbins, as to how far away from Claremont Avenue she was lying? A. Well, it is around, I should say around ten paces; I am not exactly sure.

20 Q. And was the taxicab further north?

The Court: Was it south or north, where she was lying?

The Witness: North.

Q. And do you recall whether the taxicab was north of where her body lay in the roadway, or south of it? A. Just a trifle north, as I remember it.

30 Q. In other words, your best recollection is that she was lying to the rear of the cab? A. Well, I wouldn't say to the rear; it was about midway of the car.

Q. Now, what did you do, if anything, at the time, after you discovered her lying in the roadway? A. Well, I tried to ask her and talk to her to find out who she was, if she was badly hurt or just what it was; and in the meantime other people came, and I rushed across the street to where I

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had started out from originally, and called for an ambulance, and then I came back and I helped Mrs. Haines in the car, and went down to the hospital with her.

Q. Well, now, did you have any conversation with her at the scene of the accident? A. No; I couldn't.

10

Q. In other words, did you get any response to your inquiries? A. I couldn't, because she was knocked out, unconscious.

Q. Now, did you ride with her to the hospital? A. I did.

Q. And did you have any conversation with her on the way to the hospital? A. No, until I got down a little ways; I didn't have any conversation then, but she kind of mumbled something, and I asked her her name, or tried to find out something—it was not really conversation, because she wasn't quite to.

20

Q. Now, after you arrived at the hospital, were you present when she was carried inside? A. Yes, I was.

Q. And can you tell us whether she was conscious or unconscious at that time? A. Well, she was in the same condition, kind of moaning and semi-conscious.

30

Q. You had no conversation, did you, with the taxicab driver at that time? A. No, sir.

Q. Did you notice any blood spots on the roadway at the time? A. On the road?

Q. Yes. A. No, not on the road.

Q. Well, where did you notice them? A. On my slicker; it was ruined.

Q. And where was that blood coming from? A. From her head, because her head was leaning against my shoulder.

40

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Q. Did she have a cut on the head at that time?

A. Well, I don't know; it must have been a cut, because the blood was coming from there.

Q. Did you notice any other injuries about her at that time? A. I couldn't say; I don't know.

10 Q. Did you notice anything about the condition of her clothing? A. Well, only that it was kind of mussed up from being knocked down.

Cross-examination by Mr. Seymour:

Q. Did you telephone for an ambulance? A. Yes, sir; I did.

Q. Did the ambulance get there? A. No, it did not; not until we got into the hospital, and then it came up afterwards.

20 Q. Well, when you got to the hospital—you don't know whether the ambulance went to this intersection or not, do you? A. It did, and then continued on down. They were told that we had taken her in the cab.

Q. As a matter of fact, she was taken to the hospital in the cab, wasn't she? A. Well, in a cab; I don't know whether it was the one that knocked her down or not. I don't remember that.

30 Q. You did not see any cab knock her down, did you? A. Well, just what do you mean? As I said before, the car, as I was walking along the street, I heard this car coming, and I kind of glanced over my shoulder wondering where it was, and at the same time I kind of—as you will out of the side of your eyes, or glance over your shoulder—I heard a thud, and I looked more and I saw the woman laying there just under—laying there in the street.

40 Q. Well, you did not see the woman before you

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heard a thud, did you? A. No, I did not.

Q. And you were facing in her direction, too, weren't you? A. No, I was not; I was going north.

Q. On what street? A. Grove Street.

Q. And what attracted your attention to this car coming? A. Well, I was in the street, being no sidewalk on the west side of Grove Street, and walking in the street, I just wondered where it was coming from, which way, and if he was coming my way or not. 10

Q. Well, did you cross the intersection of Grove

A. What do you mean there? I didn't cross Grove Street until after the accident happened.

Q. Well, you were going from the east side of Grove Street to the west side, weren't you? A. No, I was—say that again, will you, please? 20

Q. Then you were crossing Claremont Avenue, is that right? A. That is right.

Q. Then you were going from the south to the north of Claremont? A. Right.

Q. As you started to cross there did you see anyone standing on the northwest corner of Grove and Claremont? A. I don't remember.

Q. Well, there is a lamp on the northwest corner of Grove and Claremont? A. I don't remember.

Q. What? A. I don't remember; I don't know. 30

Q. Well, are you familiar with this— A. (Interposing) Yes, I am.

Q. How long had you been going around there prior to the accident? A. A couple of years, two years.

Q. And you do not know whether there is a gas light on the northwest corner of Grove? A. I think there is one on each corner.

Q. There is one on each corner, isn't there? A. I think there is one on each corner, yes. 40

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Q. And there is this flashing beacon in the middle of the road, is that right? A. That is right; in the middle of Claremont, on the west side of Grove Street.

Q. And you were walking, weren't you? A. That is right.

10 Q. The car that you heard came from your rear, from the back of you, did it not? A. Yes, it did. I don't know if it came from the—it came from the rear of me, because it was not coming from the way I was going.

Q. And as you looked back, how far to the south of Claremont Avenue was this car? A. How far south?

Q. Yes. A. Of Claremont?

Q. Yes. A. It was not south of Claremont.

20 Q. Well, was it north of Claremont? A. It was north of Claremont when I looked around.

Q. Had it passed the beacon light? A. Yes.

Q. The car had passed the beacon light had it not? A. Yes.

Q. And as you started to cross this street, going from the south to the north, across Claremont—
A. (Interposing) Right, on the west side of the street.

30 Q. (Continuing) The car that directed your attention had passed you, had it not? A. No, it had not.

Q. Wasn't it in front of you? A. No, it was not in front of me.

Q. Was it behind you? A. It was behind me.

Q. Had you passed the beacon light? A. Yes, I had passed the beacon light.

40 Q. And do you know how close you were to the northerly curb of Claremont? A. Well, I passed

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the other side of the curb. I was going up Grove Street, as I said before, around fifteen paces past Claremont.

Q. Then you were completely across Claremont, weren't you? A. That is right.

Q. Then you were walking on the sidewalk of Grove, weren't you? A. No, there is no sidewalk at that particular place. 10

Q. Well, were you walking north on Grove or west on Claremont? A. North on Grove.

Q. And how far had you gotten past the northwest corner of Claremont and Grove? A. Around fifteen paces.

Q. And what do you think a pace is? A. Oh, an ordinary footstep, walking step.

Q. You mean the length of your foot? A. No, I mean when you take a step, I should say maybe about two feet, or maybe two and one-half feet. 20

Q. You think that a pace is two to two and one-half feet? A. Well, I mean of my pace.

Q. Well, it is your pace we are talking about, is it not? A. Yes, that is right.

Q. And you think you had made at least ten of them? A. Around.

Q. After you had passed the corner? A. Around ten or fifteen; maybe more, maybe less; I don't exactly how many paces. 30

Q. And it was then, after you had made ten or fifteen of those paces, that you heard the car to your rear, wasn't it? A. That is right.

Q. And that was ten or fifteen paces past the intersection of Claremont and Grove, wasn't it? A. That I heard the car?

Q. Yes. A. Yes.

Q. And did you see Mrs. Haines or any other 40

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person standing on the corner or around the corner? A. No, I don't remember of anybody standing there at the time. You mean the north-west corner of Claremont?

Q. Yes. A. No, I don't remember.

10 Q. In fact, there wasn't anyone on the corner when you passed, was there? A. I don't remember.

Q. Well, what was so unusual about the noise of this automobile as to attract your attention?

A. Well, there wasn't any special noise, only I was walking in the street. If you are walking in the street and you hear a car—

Q. But you were walking on the west side.

20 Mr. Laird: I think the witness should be permitted to finish his explanation. He has been asked for one.

The Court: Had you finished your answer?

The Witness: Which answer do you mean?

The Court: I guess he has forgotten it.

The Witness: You get me all balled up.

30 Q. I am not trying to get you balled up. You were there, you saw this thing, or pretty near saw it, and we all like to know how it happen. Now, as you got past this intersection at Claremont and Grove, do you remember whether there was any traffic of automobiles going north or south on Grove? A. No, not until I heard this car.

By the Court:

40 Q. You know that there wasn't any traffic? A. Well, I don't remember any traffic.

Paul Robbins—Cross.

Q. Well, that is what we want to know, whether you know whether there was or whether you do not remember. A. I do not remember.

By Mr. Seymour:

Q. As you glanced over your right shoulder, after you had made ten or fifteen paces past Claremont and Grove, and this car or some car making a noise attracted your attention, you looked back towards your right, over your right shoulder? A. Glanced over my right shoulder. 10

Q. And where was the automobile then? A. Well, around ten paces past the corner, I should say; maybe it was less and maybe it was more; I can't say exactly how many feet it was.

Q. But it had passed the corner, had it not? A. Yes, it had passed the corner. 20

Q. And if you had made ten or fifteen paces from the corner, and, as you glanced around, this car was ten paces from the corner, then the car was only about five paces to the rear of you, isn't that so? A. Well, around that.

Q. Around that? A. Around that, yes.

The Court: Was that before or after you heard the thud?

The Witness: Just about as I heard the thud. 30

Q. Well, didn't you look back at this car before you heard any thud? A. No, it happened just about at the same moment I heard the car coming, and as I kind of glanced around my shoulder the thud came, and I saw the car about the same time. You really can't get a good look at a thing unless

Paul Robbins—Cross.

it is directly in front of you. I kind of glanced over my shoulder.

10 Q. If you are facing in this direction and you turn your head and look to the right, you get just as good a view? A. Yes, but I did not turn my head really back, I turned it only like that (indicating).

Q. Would you mind demonstrating to the jury just what you did there, demonstrating what you did there? A. I can't remember it exactly. I just kind of glanced over my shoulder, as you would go to cross a street, not taking a real good look.

Q. You cannot remember what you did do, can you? A. Well, I remember that I took just a quick glance, that is all.

20 Q. And there wasn't any reason up till that time, there wasn't any unusual thing to cause you to look back that way? A. No, sir.

Q. Glance back? A. Nothing at all.

Q. You mean you made a quick glance and observation like that (indicating)? A. I just kind of glanced over my shoulder as I heard this car coming, wondering if it was coming my way.

By the Court:

30 Q. What Mr. Seymour wants is to have you show us just how you made the glance. Can you just stand up and show us? A. I don't know if I can make it good enough.

Q. Just as you think you made it. A. This was about fifteen paces, where I heard the car coming, and I just kind of glanced over my shoulders (indicating).

40 Q. Just as you now illustrated it? A. Yes, sir; and you can't get a real good look that way.

Paul Robbins—Cross.

By Mr. Seymour:

Q. And in that glance you did not even see the color of the car, did you? A. No.

Q. Could you see any earmarks about the car? A. No.

Q. Any signs or anything on it that were such that would make it look different than the ordinary car? A. No. 10

The Court: You could not recognize it as a taxicab?

The Witness: Oh, no, you could not, from any other car.

Q. And was it at that same instant as you made this glance to the rear that you heard a thud? A. Yes. 20

Q. Did you hear any noise made, any sound of human voices made? A. No, not to my knowledge.

Q. You did not hear anybody shout or say anything? A. No.

Q. Were there lights on this car? A. I don't remember that.

Q. You do not remember whether there were lights on it or not. A. I don't remember if there were lights on it or not. 30

Q. Do you remember whether the night was dark at that time or light? A. Well, it was dusk.

Q. Just dusk? A. Well, I don't remember just exactly how dark it was.

Q. Do you remember whether or not the houses in this locality were—whether or not they were lighted? A. Yes, they were lighted.

Q. They were lighted? A. Yes.

Q. Do you remember whether or not prior to the accident you had seen automobiles carrying lights? 40

Paul Robbins—Cross.

A. No, I don't remember, because I had been in the house.

Q. And, since you left the house and walked up this street, this was the first automobile you had seen then, is that right? A. Well, I don't remember.

10 Q. You do not remember? A. No, I do not.

Q. And you do not know whether there were any lights on this car, do you? A. I don't remember.

Q. Well, had the car passed you? A. You mean the car that struck Mrs. Haines?

Q. Well, did you see a car strike Mrs. Haines? A. I did not see any car strike Mrs. Haines, and I did not see any other cars.

20 Q. Well, you did not see anything strike Mrs. Haines, did you? A. Only that fleeting glance of something being hit, that is all.

Q. Well, did you see anything being hit? A. Well, as I turned over my shoulder, glanced over my right shoulder, I heard a thud and I saw something fall.

Q. You heard a thud? Would you mind explaining a little more in detail what you call a "thud"?

30 A. Well, something hitting, bumping into something rather soft.

Q. Would you say that if a person fell down he would make a thud when he hit the ground?

Mr. Laird: I am going to object to this question unless Mr. Seymour will state that he denies the taxicab struck this lady; of course, it has no materiality otherwise.

The Court: That is denied, is it, Mr. Seymour?

Paul Robbins—Cross.

Mr. Seymour: It is denied, sir, that the taxicab hit the woman.

The Court: The question may be answered.

Mr. Laird: Then I have no objection to the question.

The Witness: Just what is the question now? 10

Q. (Read.) A. They possibly might, if they were thrown down; I don't know if just by falling down.

Q. Well, did you see this lady, who afterwards developed was Mrs. Haines, that you saw on the ground—did you see her struck by anything? A. Only as I said before, in looking over my shoulder, at a fleeting glance I saw something just about the same time. I was not looking right at the thing, to see her knocked down. 20

Q. Did you see an automobile hit this lady and knock her down? A. At a fleeting glance I did.

Q. Well, in the fleeting glance what else did you see? A. That is all.

Q. That is all? A. Yes.

Q. And as you glanced to the back, you saw the automobile strike her, and then you turned immediately front again, did you not? A. No, I did not. I just watched, I looked over my back then, but that was all that happened. 30

Q. Did you go to the place? A. Well, I went over in a second or two.

Q. Well, then, you had more than a fleeting glance, didn't you? A. No.

Q. Well, you did not walk backward to get there, did you? A. I had to walk kind of diagonally across the street. 40

Paul Robbins—Cross.

Q. Why, the thing was behind you, was it not?
A. Yes, that is right.

Q. Well, to get there you either walked backward or you turned and went toward it, didn't you?
A. That was—the car was about ten paces from the corner.

10 Q. Yes? A. And I was around ten or fifteen—now, I can't say exactly, and I had to kind of go back to get to the car.

The Court: The question Mr. Seymour is asking is whether you walked backward to where this woman was lying, or whether you turned around and walked back, or turned to your right.

20 The Witness: I turned to my right and walked over there.

Q. Well, then, as you made this fleeting glance, and you say you saw the automobile strike this lady, you immediately turned and went there, didn't you?
A. Well, in a second or two, as I said before.

Q. Second or two—you did it instantly, didn't you?
A. No, I did not.

30 Q. Do you mean to say that you stood there a second or two after seeing a person struck by an automobile and lying in the street?
A. Well, I didn't know exactly what it was. I saw something struck, but I didn't know what was struck.

Q. You said you heard a thud, didn't you?
A. I did.

Q. What?
A. I did.

40 Q. And didn't you also say that a thud to you sounded as though something was thrown to the ground, a soft thing?
A. I don't know if the thud

Paul Robbins—Cross.

was the noise from the woman being thrown to the ground, but I heard a noise.

Q. I asked you if you would say that a thud was the sound of a person striking the ground from a fall, and you said no, it was when they were thrown to the ground, didn't you? A. Yes.

Q. When you heard the thud and saw this fleeting glance to the right, you did not know it was a human being there in the street? A. No, I didn't know what it was. 10

Q. Well, how long did you stand there before you went back there? A. As I said before, a second or two.

Q. Did you carry a watch? A. No, I did not at that time.

Q. Do you carry a watch now? A. Yes, I do. 20

Q. Will you please hold your watch for one second—is that how long you stood there?

Mr. Laird: I object to the question; we have no foundation.

The Court: The question may be answered.

A. I don't know how long I stood there. It is so darn long ago that I don't remember.

Q. You do not really know what happened there, do you? A. No, I do not. 30

Q. You do not know whether the woman fell to the ground or whether she was struck by anything, do you?

The Court: He said that, Mr. Seymour.

Mr. Seymour: And he also said afterwards, sir, that he saw the automobile strike her, as I understand it.

The Court: But he did not know what it 40

Paul Robbins—Cross.

was. He says that he saw the automobile strike something, but he did not know what it was.

10 Q. And then you went to the place, and the something you saw struck by the automobile turned out to be this lady lying in the street, is that right? A. That is right.

Q. Now, did you see her struck by this automobile?

Mr. Laird: I object to the question on the ground that it is repetition.

The Court: I will sustain the objection. I think the question has been asked and answered several times.

20 Q. When you went to the place where this lady was lying in the roadway was there an automobile there?

Mr. Laird: Objected to on the same ground.

The Court: The question may be answered.

30 A. Was there an automobile? There was a car there right beside her, yes.

Q. Right beside her? A. Well, right near her.

Q. Was she lying in front of that car or to the rear of that car, or to the side of that car? A. To the side.

Q. To the side. And what side was she at with reference to the car? A. East side.

Q. Well, I mean to the right or to the left of the automobile? A. To the right of the car.

40 Q. To the right. And how far was the right of

Paul Robbins—Cross.

the car off of the easterly curb of Grove Street?

A. Around five feet.

Q. Is there a curb in Grove Street? A. Yes, there is.

Q. And are there sidewalks in Grove Street? A. There are sidewalks on the east side of Grove, I mean on that side of Claremont Avenue. On the west side of Grove Street there is no sidewalks. 10

Q. And that is the side you were walking on, weren't you? A. That is correct.

Q. Do you know how wide Grove Street is at the intersection of Claremont? A. Around five cars wide.

Q. Five cars wide? A. About five cars wide.

Q. And what do you say that an automobile is in width? A. I don't know; around four or five feet, around five feet. 20

Q. You think it is five feet? A. Yes.

Q. And you say five of those cars would be the width of Grove Street, is that right? A. Around that.

Q. And you would say Grove Street is about twenty-five feet wide? A. Around that; maybe more, maybe less.

Q. Can you tell us how far the right side of this car that was standing there—and it was standing there, was it not? A. Yes, it was. 30

Q. When you got there? A. Yes, it was.

Q. In fact, the car that was there never passed you at all, did it? A. No.

Q. What? A. It did not pass me at all.

Q. No car passed you, did it? A. No, no car passed me then at that time.

Q. From the time you left Claremont Avenue to walk to Grove, no automobile passed you, did 40

Paul Robbins—Cross.

it? A. I did not hear the question.

Q. From the time you left the southwest corner of Claremont Avenue, to cross Claremont Avenue, and until you had gotten ten or fifteen paces past the intersection on Claremont Avenue, no automobile passed you going in your direction?

10 Mr. Laird: I object to it on the ground he has already answered it.

The Court: I will sustain the objection. It is already answered.

Q. Well, did any automobile pass you?

Mr. Laird: I object on the same ground.

The Court: I will sustain the objection.

(Addressing the witness) Did any automobile meet you?

20 The Witness: I don't remember that.

Q. Now, what part of the automobile struck this lady? A. I don't know; probably the front part of it.

Q. You say "probably the front part"? A. She was going across from the west to the east side of Grove Street there.

30 Q. How do you know how she was crossing the street? You did not see her, did you? A. From what I heard Mrs. Haines say before.

Q. I see. But you did not see her prior to the accident, did you? A. No, I did not.

Q. And she was apparently crossing directly across the street, ahead of you, wasn't she? A. Well as she was saying—I did not see her.

The Court: You say ahead of him?

Mr. Seymour: In front of him, yes.

40

Paul Robbins—Cross.

The Witness: No, there was no one in front of me.

Q. Was there anyone in front of you? A. Not to my knowledge.

Q. Did you see anyone who came and started to pass across the street behind you? A. No, not to my knowledge. 10

Q. And you did not see anybody standing on the corner when you passed there? A. No, not when I passed there.

Q. Did you see anyone around there walking at all? A. I don't remember.

Q. You do not remember that? A. No. It is so long ago, I cannot remember it.

Q. And you do not know what part of the car struck her at all, do you? 20

The Court: That question has been answered.

Mr. Seymour: But he said, "Probably the front," sir.

The Court: He said he did not.

Q. You do not know what part struck her?

The Court: He said he did not. 30

Redirect-examination by Mr. Laird:

Q. Just one more question, Mr. Robbins. Is the intersection of Grove Street and Claremont Avenue a built-up section? By that I mean are the houses close together or is it vacant property there? A. Do you mean close to the corner?

Q. I mean the general neighborhood in the sec- 40

Paul Robbins—Redirect.

tion. A. It is kind of a residential section. The houses are not close together.

The Court: How far apart are the houses there?

The Witness: Do you mean apart or from the curb itself?

10 The Court: No, apart.

Q. How are they separated, one from the other?

A. Oh, anywheres from fifteen feet more or less.

HUGH SEERY, sworn in behalf of plaintiffs.

Direct-examination by Mr. Laird:

20 Q. Officer, you are connected with the Montclair Police Department, are you not? A. Yes, sir.

Q. And what was your job with the Police Department in Montclair on January 9, 1928? A. Well, Police Lieutenant at the desk.

Q. On desk duty? A. Yes, sir.

Q. Now, on the evening of January 9th, was there a report made to you by one Nicholas Baker? A. Yes, sir.

30 Q. And did you interview him at the time following this accident, on the evening of January 9th? A. Yes, sir.

Q. Can you tell me at approximately what time you saw him? A. Well, to the best of my recollection, it was around eight o'clock at night.

Q. Now, did you make any record of the statements that he made to you at that time? A. Yes, sir.

40 Q. Will you refer to your records, please, and

Hugh Seery—Direct.

tell us what he said to you on that evening? A.
 (Consulting book) (Reading): "On January 9,
 1928, statement of auto accident of Nicholas Ba-
 ker, of 293 Heywood Street, Orange, New Jersey;
 driver's license 565617; car license O-2969T, New
 Jersey. I was driving north on Grove Street
 about 7:10 P. M. I slowed down on coming to
 the crossing at Claremont Avenue. I saw a woman
 stepping from the curb on the northwest corner of
 Claremont Avenue, walking in an easterly direc-
 tion—

10

Mr. Seymour: I think at this time I should
 interpose an objection, unless it appears, by
 the testimony of the witness, that he is now
 reading a record as dictated by the driver.
 My recollection is he testified that the driver
 made a statement to him and that he made a
 record of it; and I think that, under the cir-
 cumstances, it ought to appear in his testi-
 mony now—probably I am a little late—to
 the effect that he wrote this down as the dri-
 ver told it to him; otherwise it is going to be
 conclusions on his part.

20

The Court: What is the fact about that,
 Mr. Seery?

The Witness: As he made the statement
 to me, I had written it down word for word.

30

The Court: She was walking easterly?

The Witness: (Continuing reading):
 "Walking in an easterly direction on Clare-
 mont Avenue. When she got to the center
 of Grove Street, she hesitated, and then
 started again and walked in front of my
 automobile. I struck her with my front
 bumper, about in the center, and knocked

40

Hugh Seery—Direct.

10 her down. I stopped as quick as possible. The street was wet. I stopped in about eight or ten feet. I was going about twelve miles per hour at the time of the accident. I got out and put the woman in my taxicab, and took her to the Mountainside Hospital. The woman's name: Mrs. Thomas Haines of 30 Oxford Street, Montclair. I did not blow my horn on coming to the crossing as I slowed down.' ”

Q. Did he say anything else to you officer? A. Well, nothing more than just his statement as he gave it.

The Court: That is the end of it?

The Witness: Yes, sir.

20 Mr. Laird: Is Nicholas Baker in court?
(Spectator rises in the rear of the court room.)

Q. Can you identify this gentleman as being the man who made this statement to you (indicating the spectator)? A. Yes, sir.

Cross-examination by Mr. Seymour:

30 Q. Is this in your handwriting, Officer (indicating statement previously read by the witness)? A. Yes, sir.

Q. Every word of it? A. Yes, sir.

Q. And it was all written as he dictated it? A. Yes, sir.

Q. What? A. Yes, sir.

40 Q. Was there anyone else present? A. I don't remember; I don't think so; I don't remember, really.

Hugh Seery—Cross.

Q. Now, he told you what time it was, 7:10 P. M.? A. Yes, sir.

Q. And that is what you wrote down? A. Yes, sir.

Q. And everything else he told you you wrote it down as he told it to you? A. Right there in black and white as he told me; yes, sir.

10

Q. And did you write it down in his presence? A. Yes, sir.

Q. And did you read it to him after you had written it down? A. No.

Q. Did you tell him what you had written down? A. No.

Q. It was in the Montclair Police Station, was it not? A. Yes, sir.

Q. And at about what time did you take the statement? A. I think, to the best of my recollection, it was around eight o'clock.

20

Q. Now, this statement of January 9th, of William H. Grayson, the one that precedes this, that is also in your handwriting, is it not? A. I don't know, sir.

Q. This is? A. (Examining) No, sir; this is not.

Q. Isn't that your handwriting? A. No, sir.

Q. What time did you go on duty that night? A. Four o'clock in the afternoon.

30

Q. And this was the first statement you took that day? A. Yes, sir.

Q. What? A. Yes, sir.

Q. And you did not take any other that day, did you? A. I don't remember.

Q. Well, any statement you did take you would put in the book? A. Yes, sir.

Q. Well, you did not take any other statement,

40

Hugh Seery—Redirect.

did you? A. Very evident there ain't, because if I did it would be there.

Redirect-examination by Mr. Laird:

10 Q. By the way, Officer, Mr. Baker was not under arrest at the time, was he? A. No, sir.

Q. He came in voluntarily and made that report? A. He came in voluntarily to make his statement of the accident.

Recross-examination by Mr. Seymour:

Q. He was not under arrest? A. No, sir.

Q. Wasn't he locked up that night? A. Not that I remember of.

20 Q. Wasn't he locked up while you were on duty? A. Not that I remember of.

Q. What time did you go off duty? A. Twelve o'clock.

Q. Then you were on from four till twelve? A. Yes, sir.

Q. Well, after he gave you this statement, did he leave the station house? A. I don't remember just what happened after that, whether he left or whether he did not.

30 Q. You do not? A. No, sir.

Q. Well, as the lieutenant in charge of the desk, you would have to make a record of his arrest if he had been arrested, wouldn't you? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Wasn't he brought to the police station by the officer that you sent to the Mountainside Hospital? A. I don't remember.

40 Q. Well, do you remember sending an officer to

Hugh Seery—Recross.

the Mountainside Hospital? A. I don't remember sir.

Q. Well, your best recollection is that this fellow walked in without anybody and just told you this statement? A. To the best of my recollection, he came in and made a voluntary statement, as I remember it.

10

Q. As the lieutenant in charge of the desk, are you in charge of the patrolmen who are on the same shift with you? A. Yes, sir.

Q. And you do not know anything about a policeman under you going to the Mountainside Hospital? A. I don't remember what happened on January 9, 1928. It is a good ways off, and I have handled a lot of stuff since that time.

Q. Well, then, how do you know that he was not under arrest? A. Well, I don't remember.

20

Q. Well, you said he was not under arrest. A. Not that I know of; I don't remember.

Q. Well, as the lieutenant at the desk, if he had been arrested you would have to make a record in the book of it, wouldn't you? A. I certainly would.

Q. And you do not remember whether you did that, do you? A. No, sir; I haven't got that record book here.

30

Q. But you are positive that every word that you have written down on that record he dictated to you that night, aren't you? A. I am positive; yes.

Q. Why are you so positive about that? A. Because I remember him making the statement as I wrote it down.

Q. But you do not remember placing him under arrest or locking him up, do you? A. Did not place him under arrest.

40

Hugh Seery—Recross.

Q. Was he put in a cell that night? A. I don't remember anything such.

Q. Well, if he was arrested and placed in a cell in the Montclair Police Station that night, on your shift, you do not remember it, do you? A. I don't remember it.

10 Q. But you do remember it distinctly that you wrote down word for word as he dictated it? A. Yes, I wrote it down as he dictated it.

THOMAS H. HAINES, one of the plaintiffs, called on behalf of plaintiffs.

Mr. Laird: The doctor desires to be affirmed.

20 The Court: Why, Doctor?

The Witness: I think it is the manly way to say one will tell the truth. I object on religious grounds.

The Court: Well, a person must be sworn unless they say that they are conscientiously scrupulous of taking an oath.

The Witness: I am.

30 The Court: If you say that, you may be affirmed.

(The witness was thereupon affirmed.)

Direct-examination by Mr. Laird:

Q. Doctor, you are the husband of Helen Haines, who was injured in this automobile accident? A. Yes.

40 Q. What is your profession, Doctor? A. The practice of medicine.

Thomas H. Haines—Direct.

Q. And do you specialize in any particular branch? A. Psychiatry.

Q. You are not what is ordinarily termed an orthopedic surgeon or general practitioner, are you, Doctor? A. No, neither of those.

Q. Now, when did you first learn that Mrs. Haines had been involved in an automobile accident? A. I cannot state the time by the watch but I do know that on that evening I came from New York, leaving Hoboken on a six o'clock train, and it was shortly after I arrived at my home, 30 Oxford Street, that my neighbor informed me that she was in a dangerous condition at the Mountain-side Hospital. 10

Q. And did you go to the Mountainside Hospital, Doctor? A. I did.

Q. Can you tell us approximately what time you arrived there? A. Putting those facts together, it must have been between 7:15 and 7:45. 20

Q. And did you see Mrs. Haines on your arrival at the hospital? A. Shortly thereafter.

Q. And will you describe, please, her condition as you then found it to be? A. She was under an anaesthetic, and Dr. Seidler was about through with his operation, closing the wound in the scalp.

The Court: Dr. Seidler will be a witness? 30

Mr. Laird: Yes, sir; at least I expect him to be here at two o'clock. He is operating this morning.

Q. And will you give us your best recollection as to what time she regained consciousness? A. It is hard to answer that. I saw her several times during the evening. The last time was after midnight, I know. She was not herself then. The re- 40

Thomas H. Haines—Direct.

covery from the anaesthetic and the recovery—

Q. Now, Doctor, would the fact that she was given an anaesthetic before you arrived at the hospital indicate that she had regained full consciousness prior to your arrival at the hospital? A. Not by any means.

10 Q. What would be the object of giving her an anaesthetic, Doctor, if she were already unconscious? A. It is not the practice of surgeons to operate on even unconscious human beings without an anaesthetic.

Q. From your observations, made that evening, can you tell us anything further about what her condition appeared to be, as far as the injuries were concerned? A. We were very much in the dark as to what fractures might have resulted. A
20 serious scalp wound led to most serious apprehensions as to cranial injuries. X-rays were taken during the evening.

The Court: After you arrived?

The Witness: Yes. There were no X-rays before my arrival; there had been no time for that.

Q. And did you see her the following day, Doctor? A. Yes.
30

Q. Will you describe to us, please, what her condition was then? A. She was suffering from pain and she was still—

Mr. Seymour: I object to the conclusion of the witness. I have no objection to him saying that she complained of pain, but I do not think that he ought to say that she suffered from pain, because he is here in a dual
40 capacity: he is not only a plaintiff, and the

Thomas H. Haines—Direct.

husband of the other plaintiff, but he is also qualifying as a doctor of medicine, and my objection, sir, is to his being both; in other words, he ought not to be Jekyll and Hyde at the same time.

The Court: I doubt if you can divorce his medical knowledge from his personal testimony in this case. Expert knowledge may assist the observations of a person who has expert knowledge on the subject; and if the doctor knew, from observation, that she was suffering from pain, I think he may testify to that. If there were real manifestations of pain, I think he may state them.

10

Mr. Laird: I will try to confine it, as far as I can, to what the Doctor observed.

20

Q. Now, will you tell us please, Doctor, what you observed about her condition the following day? A. She was in distress.

Q. And was that evident from observation, Doctor, that distress? A. Yes.

Q. Now, will you tell us what there was, so that the jury may form its conclusions as to her condition? A. Naturally, she was confined to bed. She could not move herself about any more than she could the evening before. She was mentally trying to find out, trying to connect up with her past, prior to the accident.

30

Mr. Seymour: We are in it again.

The Court: That will be stricken out.

Mr. Laird: I will consent.

Q. Had any X-rays been taken at that time, Doctor, when you saw her on the following day? A. Yes.

40

Thomas H. Haines—Direct.

Q. And did you yourself see the X-rays? A. Yes.

Q. Now, will you tell us very frankly, Doctor, whether or not your experience as a physician qualifies you to read those X-ray plates? A. Not as an expert.

10 Q. All right. That is what we want. Now, how long was Mrs. Haines confined to her bed in the hospital? A. She was in the hospital until February 25th, and she was on her feet very little during that time—simply experimental walking to ascertain her ability to get into an automobile and get to her home.

Q. And can you tell us how near the end of her stay it was that she was able to take those experimental steps? A. Just to the best of my recollection, a week or ten days prior to February 25th, I should guess.

Q. Now, you say on February 25th she was taken home, that is correct, is it not? A. To the best of my knowledge, that is the day.

Q. And what was her condition at that time? A. She was very doubtful about her ability to trust herself one hundred feet.

30 Mr. Seymour: I ask that that be stricken out.

The Court: It will be stricken out.

Q. Did she complain of any pain at that time, Doctor? A. Yes.

Q. And where did she complain of pain, if you recollect? A. Pains in her back; pains upon the use of her leg.

40 Q. Now, what was the condition of her health, Doctor, prior to the accident? A. Very good.

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Q. And what have you to say as to the condition of her health today, by comparison? A. She has spells of dizziness; she has backaches, and she has a liability to turn her ankle.

Q. And have you, Doctor, made any tests, I mean from a medical standpoint as to the condition of her nervous system?

10

Mr. Seymour: I object to the doctor testifying as to what he did as a physician. I do not understand that he was offered here as a medical expert. I understood he was offered as one of the plaintiffs, and I submit sir, that if the doctor is going to qualify now as an expert, I think I ought to have a right to cross-examine him to find out if he is an expert.

20

The Court: Yes, you may do that.

Mr. Laird: I have no objection.

By Mr. Seymour:

Q. Where is your office, Doctor? A. 471 Park Avenue, New York City.

Q. Are you a licensed physician in the State of New Jersey? A. No.

Q. Have you ever practiced medicine in New Jersey? A. No.

30

By Mr. Laird:

Q. Now, doctor, will you tell us whether or not you made any tests of your wife's nervous system?

Mr. Seymour: Now, I object to that. The witness himself has testified that he is not legally qualified to practice medicine in New Jersey, and I do not think he can be heard to testify medically in this case.

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10 The Court: I, at many times, when I was at the bar, called from New York experts who examined clients, and, many times, defendants, when I was a Prosecutor, in New Jersey, and had them make examinations in New Jersey. I never understood that they would be disqualified from testifying simply because they were not admitted in New Jersey, if they were qualified for the branches to which they testified in the state in which they were legally qualified.

20 Mr. Seymour: I appreciate that, sir. I can understand how this doctor might have taken a patient in New York—we will say that he is admitted in New York—and he might have done something in New York, and the doctor would be qualified—

The Court: Suppose he had made his examination in New Jersey. Would he be disqualified?

Mr. Seymour: I respectfully urge, sir, he is not competent to testify to any examination made in New Jersey.

The Court: Of his own family, of his own wife?

30 Mr. Seymour: Yes, sir. I do not think the law makes any distinction whether the doctor doctors his wife or anybody else, and I object.

The Court: The objection will be overruled.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

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By Mr. Laird:

Q. Doctor, you are a licensed, practicing physician in the State of New York? A. Yes.

The Court: Suppose, Doctor, you explain to us what you mean when you say that you make a specialty of psychiatry—what does that include? 10

Mr. Laird: I am going to eliminate any difficulty along this line, because on reflection I have concluded that perhaps the interest which the doctor would have in his own wife, as distinguished from a doctor examining an outside patient, would make it advisable for me to eliminate the medical questions.

The Court: I think that is a very wise conclusion. 20

Q. Now, Doctor, were there any expenses connected with your wife's stay at the Mountainside Hospital? A. Yes.

Q. Can you tell us, Doctor, from memory, the Mountainside Hospital bill? A. No.

Q. What have you that you can use to refresh your recollection on that subject? A. Cancelled checks. 30

Q. Have you those with you? A. No.

Q. Were any medical bills rendered, Doctor, in this matter? A. No.

Q. Now, will you explain to us whether or not you ascertained from Dr. Seidler and Dr. Nikola what a reasonable charge for their services would be?

Mr. Seymour: There isn't any testimony 40

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insofar as what their services were. I object to that.

Mr. Laird: I cannot prove it all at once.

Q. (Read.)

10 The Court: The objection will be sustained, because the question involves obtaining the information from someone else. Of course, if he knows what services they rendered, and he knows what the reasonable value of those services would be worth, as I suggested a while ago, I suppose we cannot divorce him from his expert knowledge on those subjects, if that be a matter of expert knowledge, from his personality as a plaintiff in this case.

20

Q. Doctor, can you tell us, please, what treatments were rendered to your wife and what services were rendered to her by Dr. Seidler?

The Court: Isn't Dr. Seidler going to be a witness?

Mr. Laird: I expect to call him, but I cannot guarantee his appearance.

30 The Court: Well, now it is almost one o'clock, and you will know by two o'clock?

Mr. Laird: Yes, sir.

The Court: Then if you have to do that with this witness, you may recall him, but I think your conclusion in the other matter would be a wise one in this respect. The doctor's interest in this matter—

Mr. Laird: Perhaps your Honor is right.

40 Mr. Seymour: I was going to suggest, sir, if you will permit me, that if it develops that

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Mr. Laird cannot get his doctor, he can recall this witness.

Mr. Laird: Dr. Nikola, who is the orthopedic specialist, I know I cannot get. He has informed us that he is engaged this afternoon in a matter which will prevent his appearance. He says he would be very glad to come tomorrow morning, but I fear that will be too late. So may I ask this witness with reference to the services by Dr. Nikola?

10

Mr. Seymour: Yes.

At one o'clock P. M. the court takes a recess until two o'clock P. M.

AFTER RECESS.

20

THOMAS H. HAINES resumes the stand.

Direct-examination (continued) by Mr. Laird:

Q. Can you tell us, Doctor, what services Dr. Nikola rendered to your wife? A. Dr. Nikola was really put in charge of the case after the operation by Dr. Seidler. It was a case of serious bone injury which came to his department of medicine, surgery.

30

Q. And just what did he do for her? A. He placed her in bed; he arranged the lifting apparatus that was described this morning; he measured her for a belt, and had the belt applied; he put the foot in a loose case to prevent the toe dropping, which was very likely to happen if she flexed her muscles of her foot.

Q. And how frequently did Dr. Nikola see Mrs. Haines, if you know? A. Daily, I believe, while she was in the hospital.

40

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Q. That was January 9th to February 25th? A. Yes.

Q. And did he treat her at any time after she returned to her home from the hospital? A. Yes.

10 Q. And can you tell us how frequently? A. Probably twice a week for two months, and there was physio-therapy being administered under his direction in that time.

Q. What kind of treatment did that consist of, physio-therapy? A. Massage and electric light therapy.

Q. Who is Edith Gustafson? A. The physio-therapist.

Q. And did she treat Mrs. Haines? A. Both in the hospital and at home.

20 Q. And do you know the amount of her charges, the total? A. No. I haven't that data in my head; I don't carry my accounts around.

Q. Now, you, at the request of the counsel for the defendants, submitted certain answers to certain questions, did you not? A. Yes.

30 Q. I will ask you to glance at these questions and answers, and see if you can refresh your recollection as to the item involved in the hospital expense (handing witness document). A. (Examining) The first item?

Q. The first item. A. For room and board, seven weeks at the hospital, for board of nurses at hospital, for use of operating room.

Q. Well, now, give us the amounts of the hospital bill itself as a single item, Doctor. A. I don't remember the costs per day of the room.

By the Court:

40 Q. He has asked you to give the total bill. A. I cannot do it. It is not here.

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Q. Cannot you give us the total of the hospital bill? A. The total of the hospital bill?

Q. That is what he asked you. A. \$645.25.

By Mr. Laird:

Q. And what was the bill for nurses at the hospital? A. For services of nurses, \$485. I am not sure whether that includes their maintenance or not. 10

Q. Well, assuming that it does, Doctor. Now, can you tell us how much you paid for a practical nurse at home after Mrs. Haines returned from the hospital? A. \$805; twenty-three weeks' service and maintenance.

The Court: That is at \$25 a week?

The Witness: \$25 was her wage, and I estimated \$10 a week for maintenance. 20

Q. Now, Doctor, I hold in my hand some checks which appear to be signed by Mrs. Haines, and made to the order of Edith Gustafson. I understand—I hope you will pardon me for leading a little, Mr. Seymour, just to shorten it—that these are in payment for services rendered by a masseuse, is that right? Edith Gustafson was a masseuse? A. She was administering the physio-therapy and, as far as I know, anything that was paid to her was paid to her for such services. 30

Q. Now, did you supply the money which went to pay these bills which are paid by Mrs. Haines' checks? A. I did.

The Court: Suppose you show them to Mr. Seymour. There may be no objection. Are they all to Edith Gustafson?

Mr. Laird: Yes, sir; all of those checks. 40

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10 Mr. Seymour: I will not object to their being offered, sir, subject to the fact that they are going to be connected up; or, in other words, that he is going to be able to testify that they were used for this particular purpose. I think it is a fact that should be brought out by the primary plaintiff, because they are checks of hers and not of this witness.

Mr. Laird: Yes, but he says he supplied the money with which they were paid.

The Court: Will the other plaintiff be here again?

Mr. Laird: Yes, sir.

The Court: Then I think it will be perfectly simple to connect them up.

20 Mr. Laird: I offer these checks, then.

The Court: They may be marked for identification.

Mr. Laird: They total \$103.

(Checks referred to are marked, as one exhibit, P-1 for identification).

30 Q. Were any sums paid to Edith Gustafson in addition to the amounts indicated by those checks of Mrs. Haines? A. I presume there were. I don't know the relationship between the sum total of those checks and the amount paid, as on the statement.

Q. You have no independent recollection of paying her yourself anything in addition, then? A. I think I did.

Q. But you do not recall the amount, is that it? A. That statement was made out with all the data on hand at home.

40

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Q. Then I call your attention to Item 6, which is listed for physio-therapeutic treatments.

Mr. Seymour: Now if your Honor please, I object to that, for the purpose now of attacking the credibility of his own witness, because Answer 6 here is an amount that is entirely different than an amount that he offers in his checks. Now he wants his witness to testify to \$103, and now he is showing him what he swore to in his interrogatories, to have him swear to a different amount. 10

Mr. Laird: I think counsel misapprehends.

The Court: I do not think it is objectionable for that reason. The doubt I have about it is whether it is a proper memorandum, made up for purposes of the case. However, there seems to be no objection on that ground, and if that be all the objection, it may be used. 20

Mr. Seymour: I won't urge that objection.

The Court: I notice you did not when the other items were spoken about; and if you do not object as to that—

Mr. Seymour: I will withdraw the objection. 30

Q. Referring to Item 6 for physio-therapeutic treatment, the total amount that you calculated was spent on that was the sum of \$135, was it not?

Mr. Seymour: The witness is asked to calculate on what he paid as an element of damage.

The Court: I think that makes the question leading, if he is using that as a memo- 40

Thomas H. Haines—Direct.

randum to refresh his recollection.

Mr. Laird: I will withdraw the question. It is too small an item to bother about.

10 Q. Now, Doctor, will you please tell us if you have noticed any difference in the physical condition of Mrs. Haines at the present time, from the way she was prior to this accident? A. I thought I answered such question before the recess. Shall I repeat?

The Court: You said her health was very good before, and since that time she had spells of dizziness and backaches, and liability to turn her ankle.

Mr. Laird: That is right; he has covered that.

20

Cross-examination by Mr. Seymour:

Q. Were you home when word came to the house that your wife had been in an accident? A. I was at home when I received word that she had been in an accident.

Q. And do you remember what time that was? A. I stated this morning—I beg your pardon—it was shortly after my return to the house from a train due to arrive at Montclair at 6:27, as I recollect the time.

30

Q. And did you walk home from the station that night? A. Yes.

Q. And do you know about how long it takes you to walk home? A. About twelve minutes.

Q. And you do not recall as to whether or not the train was on time or late that night, do you?

A. No.

40

Thomas H. Haines—Cross.

Q. And the train was due at 6:27? A. That is my recollection of the schedule.

Q. Then you were in the house when word came that your wife had been in an accident, is that right? A. Yes.

Q. And that she was over at the Mountainside Hospital? A. Technically, I was in the house when I was asked to go to a neighbor's, and it was at the neighbor's that I learned that she had been in an accident. 10

Q. And you immediately went to the hospital, did you not? A. Yes.

Q. And you do not recall what time you reached the hospital, do you? A. No.

Q. Did you go by automobile or did you walk? A. I walked or ran; I think I ran most of the way. 20

Q. And do you know how long it took you to do that, to get from your house to the hospital? A. It is very close by; it is four or five blocks.

Q. And when you came there Dr. Seidler was completing the suturing of this wound to the scalp, wasn't he? A. That was what I found to be the case when I got admitted to the operating room.

Q. And you say that your wife was under an anaesthetic? A. I believe so. 30

Q. How do you know she was? A. Only my olfactory sense.

Q. Well, what anaesthetic was it, ether? A. Ether.

Q. There is always a smell of ether around hospitals and surgical rooms, isn't there? A. True.

Q. You do not know of your own knowledge whether or not Dr. Seidler had given her ether as an anaesthetic, do you? A. No, I was not there.

Q. Did she speak to you at all? A. No. 40

Thomas H. Haines—Cross.

Q. Did you speak to her? A. No.

Q. Now, after the next day or so, you saw her in the hospital, did you not? A. I saw her the next day, and saw her several times that evening.

10 Q. Was it you that engaged the services of Dr. Nicola? A. No; I did not engage the services of any doctors.

Q. Well, was Dr. Nicola on the staff or in the service of Mountainside Hospital at that time? A. I believe so.

Q. Does he specialize in any kind of medical practice or surgical practice? A. He does.

Q. What is it? A. Orthopedic surgery.

Q. An orthopedic surgeon. And he was the man that was in charge of your wife's case, was he? A. 20 Practically so, after the operation.

Q. Well, what operation was that? A. The operation performed by Dr. Seidler.

The Court: He asked what that was.

The Witness: Cleansing the wound, and putting in drainage and sewing it up.

Q. Well, didn't he sew or suture the cut in the scalp at that time? A. That is what I am speak- 30 ing of.

Q. He was completing that when you came in, wasn't he? A. He was.

Q. You say that he sutured the wound, and sewed it again, and left drains in it? A. He did.

Q. He left drains in the wound to the scalp? A. I believe so.

Q. Well, you are a medical doctor and one of the plaintiffs. Do you know whether or not he sutured that scalp wound and left drains in it? 40 A. It is my impression that he did.

Thomas H. Haines—Cross.

Q. Do you know? Have you any knowledge of it? A. I do not.

Q. What? A. I am telling you the best of my knowledge.

Q. Well, were you there when he was completing the operation, as you call it? A. The operation was just about completed when I got to the room.

Q. Well, he had not bandaged the head after the operation, had he, at that time? A. No.

Q. The head was open, no bandages on it, were there? A. No bandage at the moment I entered the room, I believe.

Q. You saw the wound, did you not? A. I did.

Q. And he stayed on the case how long, I mean Dr. Seidler? A. He looked in on her every day for several days; I cannot tell you when he stopped. It was the healing of this wound, the scalp injury, which was his special interest.

Q. Well, there wasn't anything necessary to be done after the suturing or stitching, was there, to the wound in the head? A. Not unless it was the drain taken out.

Q. Well, if there were drains put in, the drains were taken out, weren't they? A. They certainly were.

Q. But, so far as your knowledge goes, you don't know whether there were drains in there or not, do you? A. I have said I do not.

Q. You don't know. And in your direct examination you said that your wife at that time was under an anaesthetic, did you not? A. It was my impression that she was.

Q. Well, then you testified in direct from your impression and not from your knowledge of the fact, did you? A. How could it be my knowledge of fact?

Thomas H. Haines—Cross.

Q. Do not argue with me, please.

The Court: Read the question.

Q. (Read.) A. I did.

Q. Now, you made up these answers to interrogatories which you swore to, did you not (handing witness document)—I will withdraw that question. I hand you a paper and ask you if that is your signature. A. (Examining) That is.

Q. Did you sign that in the presence of a notary public and swear to the truth of what is in that paper? A. Yes.

Q. And at that time you said that the hospital bill was \$645.25. Have you any bill from the hospital? A. I had a good many bills from the hospital.

Q. Have you any of them with you? A. No.

Q. And have you any check here which would show what you paid the hospital? A. No.

Q. Do you keep any books of account? A. My check book is my principal account book.

Q. Well, all your disbursements go through your check book, is that right? A. No, that is not so.

Q. Well, do you keep any other books of account other than a check book? A. No—a cash book.

Q. Well, is the cash book that you keep, is that a daily record of the items of cash received and disbursed? A. No, it is hardly worthy of the name.

Q. Have you anything to corroborate this \$645.25 as paid to the Mountainside Hospital, with you? A. Cancelled checks of mine possibly will figure up to the amount.

Q. And there are such cancelled checks, are there not? A. There are.

Q. And you have not brought those checks along with you? A. I have not.

Thomas H. Haines—Cross.

Q. You knew this case was on, did you not? A. Yes.

Q. You have been sitting around here two or three days, waiting for this case, haven't you? A. Yes. I think that figures up just about that amount of time that I waited for it.

Q. Now, you also put down here, for services of nurses from January 9, 1928, to February 5, 1928, inclusive, \$485. Who were those nurses? A. The name of one was Smith; I cannot recall the name of the other at the moment. 10

Q. Did you pay them by check? A. I did.

Q. And have you any bill from them as to what you paid them? A. No.

Q. Did they give you any bills for their services? A. No.

Q. How many weeks did they work for this \$485? A. Through the time of the hospital residence, approximately seven weeks; one of them four weeks, I think, a day and a night nurse. 20

Q. Well, which one worked four weeks? A. I believe it was Miss Smith.

Q. And how much per week did she receive? A. She received \$49 a week.

Q. And the other one, what was her name, do you remember? A. I do not. 30

Q. Do you remember what you paid her? A. The same amount.

Q. \$49 a week? A. Yes.

Q. Did you pay them together or did you pay them separately? A. Separately.

Q. And you have here, for medical and surgical services, \$1,150. To whom was that paid? A. May I remark about the payment?

Q. I wish you would answer the question. I am 40

Thomas H. Haines—Cross.

going to ask the Court to instruct the witness—I am trying to save time. A. You asked me if I had any bills from these nurses. I have cancelled checks from those nurses.

Q. And those checks aren't with you, are they?
A. No.

10 Q. You did not bring them? A. No.

Q. Now, you have an item here for medical services, \$1,150. To whom was that \$1,150 paid? A. That has not been paid.

Q. Have you a bill for it? A. No.

Q. Well, to whom is it owed? A. In my notion, it is owed to the surgeon and to the physicians who treated my wife.

Q. What is the name of the surgeon? A. Seidler is one, Nicola is another.

20 Q. How much do you owe Dr. Seidler? A. I estimate about \$300.

Q. How much has Dr. Seidler ever asked you for? A. Nothing.

Q. Did you speak to him about what you owed him? A. No.

Q. You did not ask him at all, did you? A. No, not personally; he has been asked for me.

30 Q. Well, you personally have not asked Dr. Seidler how much he wants for his services, have you? A. No.

Q. So that when you said \$300 for Dr. Seidler, that is a matter also of your presumption, isn't it? A. Yes.

Q. Now, about the \$850, which is the balance of this item, is that supposed to be due to Dr. Nicola? A. About \$700.

40 Q. About \$700. Were there other doctors, too? A. Yes.

Thomas H. Haines—Cross.

Q. All right. Who is the other doctor? A. Dr. Kirkwood.

Q. And did he also attend your wife while she was in the hospital? A. Yes.

Q. What did he do? A. He is a neurologist.

Q. And did he give her any treatment, surgical treatment? A. He was in consultation on the lameness of her foot. 10

Q. And you think that you owe him \$150, is that right? A. Yes.

Q. Has Dr. Kirkwood ever asked you for any money or any pay? A. No.

Q. Has Dr. Nicola ever asked you for any money or any pay? A. No.

Q. Well, then, when you swore on September 7th to these interrogatories and put down \$1,150 for medical and surgical services, that was an amount that you fixed in your mind, without anyone giving you any bills of any kind, is that right? 20
A. That is approximately correct.

Q. Now, we have another item: for practical nurse and maintenance, twenty-three weeks, \$805. What is her name? A. Sheldon.

Q. What is her first? A. I think it is Annie.

Q. Well, she lived in your house for twenty-three weeks, did she not? A. Yes. 30

Q. Day and night; and you think her first name is Annie? A. I believe it was.

Q. You paid her \$25 a week, did you? A. Yes.

Q. Well, to whom did you pay \$10 a week board for her while she was in your house? A. We boarded her.

Q. You boarded her yourself, didn't you? A. Yes.

Q. And you put down here that it cost you \$10 40

Thomas H. Haines—Cross.

a week to feed this practical nurse, is that right?

A. That was.

Q. You and your wife were living in the house at the time, weren't you? A. I think we paid the hospital more than that for the board of nurses in the hospital.

10 Q. Well, because you paid the hospital more than that for board, you thought that you were entitled to charge \$10 a week for the board of this practical nurse, didn't you? A. It certainly cost us to keep her.

Q. I am not asking you what it cost you. That is the reason you made the charge, isn't it? A. Because it cost us—because we made outlays there.

Q. It cost you \$10 a week to board this woman? A. Naturally we had to estimate that.

20 Q. Tell me what the cost is. How do you make it up? A. Do you expect me to make up how I estimate?

Q. No, you said it cost you that. A. I estimated it cost us that.

Q. That is an estimated cost? A. Yes.

Q. You did not charge any rent against her, did you? A. People who board don't pay for rent.

30 Q. Doesn't board include rent? A. Yes; a person who is boarding has expenses for rent.

Q. So if you board somewhere you pay rent in addition to your board? A. I mean just the other way about: a man who pays board pays the person with whom he boards for the rent, for his proportionate share for the use of the house.

Q. In this \$10 per week that you charged for maintenance, how much of that did you allocate for rent of the house that she used? A. I couldn't tell you.

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Thomas H. Haines—Cross.

Q. Well, do you mean to say it cost you \$10 a week for the food that that practical nurse ate? A. I mean to say \$10 covered approximately what it cost us per week to have her with us, in addition to her salary.

Q. Is she a nurse? A. She is a practical nurse.

Q. What experience has she had in nursing? A. I couldn't tell you.

10

Q. Who engaged her, you? A. My wife engaged her.

Q. Your wife engaged her. And do you know from your knowledge as to whether or not she had any nursing experience before she came to your wife? A. I never knew her before.

Q. Well, did you ascertain or make any inquiry as to what she had done prior to the time she came to your house, in the way of nursing? A. She was recommended by a physician for whom she had worked.

20

Q. And the physio-therapeutic treatments, Miss Gustafson, you did not engage her either, did you? A. She was in the service of the patient at the hospital. I selected her no more than I selected the physicians.

Q. And you were not present when she gave your wife these treatments, were you? A. I think I have been in and out sometimes when they were being given; I am not sure.

30

Q. Well, from your knowledge do you know how many treatments she did give to your wife? A. I haven't that knowledge available at the present moment.

Q. But that knowledge is in existence, isn't it? A. I think we can ascertain the number of treatments from the hospital bills, and from her bills, or the checks paid to her.

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Thomas H. Haines—Cross.

Q. All right. Now, No. 7. You have here for extra help during the year since nurse was discharged, \$1,040. Was that extra help one person?
A. No.

Q. More than one person? A. There is, of necessity, a decidedly intangible element in such an estimate.

10 Q. Well, are all your figures intangible? A. Indeed they are not.

Q. Or are some of them concrete? A. They are not intangible. Everyone of the items you have discussed so far, excepting that concerning physician's services, down to this one, I believe are actually summations of payments made by check. There is no reason why the checks are not here and available to the Court, except I haven't been asked
20 to bring them.

Q. But all of these figures you have here are the computations from figures that are actually in existence, are they? A. Those items of which I have just now spoken are.

The Court: I think what Mr. Seymour refers especially to now is this item of extra help, \$1,040.

30 The Witness: That comprises a number of days of labor, a number of persons in to help get and serve dinner; a number of times, when, on account of the change in my wife's condition and her ability to manage the house, we have taken guests out to dinner instead of having them at home.

Q. Then, if since the accident you and your wife have taken your guests out to eat, on your invita-

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Thomas H. Haines—Cross.

tion and at your expense, that, too, is in this \$1,040, is it?

Mr. Laird: I object, on the ground that there has been no claim made in this case for any additional expense other than a charge of \$2 a week.

The Court: That is true, and it is not an element of damage in this case, but I expect, on the subject of those things which have been proven and claimed as damages, counsel has a right to cross examine upon these other items as indicating the accuracy of those items which you do claim and which have been proven. That is the only ground, of course.

10

Mr. Laird: I have no objection, of course, to going into these matters, except that it does not appear material to me.

20

The Court: It takes a lot of time, but I think it is not improper if counsel thinks they may be important, any of these items you claim, that is, the item for medical services, \$1,150, or this item for extra help, \$1,040, as damages in this case.

Mr. Seymour: I think this whole list, sir, is claimed as damage. It may not be in the testimony but it is in the pleadings.

30

The Court: Well, if counsel will say now that he does not claim them, I think that will settle that proposition.

Mr. Laird: I have made no claim for them. All the witnesses who testified to damage have been on the stand, and no mention has been made of those items other than by Mr. Haines.

The Court: So that you mean to say, at

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Thomas H. Haines—Cross.

the close of this case, you will not claim them as elements of damage?

10 Mr. Laird: I am a little bit uncertain in my own mind with reference to these physician's bills. Now, it is true that the doctors have not, as a matter of professional courtesy, demanded payment; but, as I say, I am somewhat concerned in my own mind as to whether or not the reasonable value of their services is not a proper element of damage, regardless of that feature. Now, I will be very glad to be guided by the Court in that matter, if I may be privileged to call on the Court for assistance, because frankly I do not know.

20 The Court: I think Mrs. Haines' explanation of that is a complete answer to your suggestion: that is, that there is a professional courtesy existing between physicians which would make it quite improper for one physician to render a bill against the other; and against this should be an obligation of the doctor. Of course, the fact that he has not paid it would make no difference; but unless this would be an obligation of the doctor, aside from this law suit, and he would be obliged to pay these bills if it were not for this law suit, then of course they are not a proper element of damage in the case.

30 Mr. Laird: When I opened the case I explained, as I thought, the situation fully, to the Court and jury, but, at the same time, does your Honor not feel that if the plaintiff in this case were to have a recovery, that there would be an obligation on the part of
40 Mr. Haines to make payment out of a sum

Thomas H. Haines—Cross.

awarded him for the doctors for their services?

The Court: Well, if he feels a moral obligation, all right; but it must be more than the moral obligation, it must be a legal obligation.

Mr. Laird: That is where the doubt arises in my mind. 10

The Court: I think it must be a legal obligation.

Mr. Laird: Then I will say at this time I will withdraw any claim for them.

By Mr. Seymour:

Q. Before I leave Item 7: Have you any record, that you can produce here, as to the names of the persons whom you hired, and the amount that you paid to these different persons, making up this total of \$1,040? A. No, that constitutes the intangibility of that item. Those items were paid out of one's pocket. Day's wages were so paid, generally. 20

The Court: I understand that is withdrawn also, Mr. Seymour, because that stands in the same situation as the doctors' bills.

Mr. Seymour: I hate to waste the time. I am going to try to get along a little faster than I have been. 30

The Court: I see nothing to this case, if we cannot conclude it by four o'clock, but for us to go over until Monday of next week.

Q. There is one item here I will ask you about

Mr. Laird: If I may address the Court 40

Mary Whalen—Direct.

on this subject: If that were possible, it would be a great assistance to me, because I can get Dr. Nicola here, and I cannot get him here today, and I am seriously embarrassed by his absence.

10 Mr. Seymour: The reason for going into it with any exactitude of this witness was for the purpose of affecting his credibility.

The Court: I assumed that was so.

Q. One more item I will ask you about. You have Item 8 down here: "The loss of time from my business on account of the accident and injury to my wife, January 9, 1928—\$2,475." Have you any records showing the \$2,475? A. No man can estimate what he would have made in his business if
20 he had been there.

The Court: But you have estimated it.

Q. But you have sworn to \$2,475. How did you estimate that? A. Roughly, it was two or three months' time—that fraction of a year's absence.

30 MARY WHALEN sworn in behalf of plaintiffs.
Direct-examination by Mr. Laird:

Q. Miss Whalen, you are employed where? A. Mountainside Hospital.

Q. And what are your duties at that institution? A. My duties?

Q. Yes. A. Well, we take histories of all private patients.

40 The Court: Historian, are you?
The Witness: Yes.

Mary Whalen—Direct.

Q. And have you produced, under subpoena, the hospital records of the case of Helen Haines? A. I have.

Q. And have you also produced the X-ray photographs of her case? A. All but one.

Q. One X-ray is missing, as I understand it. A. Yes.

Q. And did you make an effort to locate that one X-ray? A. Yes, they searched for quite a time.

Q. And this X-ray envelope, with these two plates, that I hold in my hand, are the X-rays produced by you under this subpoena? A. Yes, sir.

Q. And this other booklet that I hold in my hand is the hospital record? A. Yes, sir.

10

Mr. Laird: I ask to have those marked for identification.

20

The Court: They will be.

(Envelope referred to is marked Exhibit P-2 for identification.)

(Hospital record referred to is marked Exhibit P-3 for identification.)

Q. I also find, in the packet with the hospital reports, a bill directed to Mrs. Helen Haines from the Mountainside Hospital. Was that also produced by you with this record? A. Yes.

30

Q. And do you know whether the amount of that bill, as is indicated here, has been paid, according to the records? A. It has been paid.

Mr. Laird: Any objection to the offer of this bill, Mr. Seymour?

The Court: Is it in the same amount?

Mr. Laird: The figure is \$620.25.

Mr. Seymour: No objection.

Mr. Laird: I will offer that.

40

Mary Whalen—Cross.

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

Cross-examination by Mr. Seymour:

10 Q. These records that you have produced, they are not records which are in your personal possession, are they? A. No, they are not.

Q. You had to ask someone else for the X-rays, didn't you? A. Yes; that is separate department.

Q. That is kept in a separate place altogether? A. Yes.

Q. And all you know is, you asked for the X-rays of Mrs. Haines and what they handed you were these, is that right? A. Yes.

20 Q. As to the record or the history of Mrs. Haines, while she was in the hospital, that is not a matter that is within your knowledge either, is it? A. Well, it is not in my knowledge, but it is in the knowledge of the other historian, and she is positive they are Mrs. Haines' records.

Mr. Laird: Will you consent to the use of these X-rays without the necessity of my producing the technician?

30 Mr. Seymour: No, sir.

Mr. Laird: Dr. Seidler, who can identify them, I believe, is on his way here, and he promised to be here by three o'clock; and with your Honor's permission I will put on my medical testimony as soon as he comes. I have had Dr. Brothers make an examination, but I want him to testify to the X-rays, but until Dr. Seidler identifies them, I am afraid I will be handicapped in having him

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Mary Whalen—Cross.

go on the stand; so, with your Honor's permission, I will reserve that.

The Court: (Addressing Mr. Seymour) I suppose you want to hold your medical testimony until Dr. Seidler appears?

Mr. Seymour: Yes.

Mr. Laird: We rest, your Honor.

Mr. Seymour: If your Honor please, at this time the only thing that is left open in the plaintiffs' case is the medical testimony, and I want to move at this time that there be a non-suit, because there is no testimony in this case to show that there has been any negligent act on the part of the defendant, or either of the defendants. I am not going to repeat the testimony, but there is no testimony here, either by the primary plaintiff, Mrs. Haines—she knows nothing about it, that is admitted—the only testimony that might be said to know anything about the accident is this man Robbins, which your Honor will remember, who does not know what happened; he does not know that we did anything. All there is to the testimony in this case at this time is that there was an accident.

I respectfully urge at this time that the fact that there has been an accident does not raise the presumption of negligence, and it is not one of the class of cases that comes in the *res ipsa loquitur*; and I respectfully ask at this time that I be granted a non-suit on the plaintiffs' case.

The Court: The motion will be denied and an exception will be granted.

Edna Van Nostrand Aiello—Direct.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

10 EDNA VAN NOSTRAND AIELLO, sworn in behalf of defendants.

Direct-examination by Mr. Seymour:

Q. You live in Montclair, do you not? A. Yes, sir.

Q. And you were the passenger in the cab that night? A. Yes, I was.

Q. You remember the night very distinctly, don't you? A. Yes, sir; I do.

20 Q. And do you remember coming into the intersection at Claremont Avenue or Claremont Street, whichever it is? A. Claremont and Grove, yes; the young man, he stopped his car.

Q. As the cab came into that intersection that night, what, if anything, did the driver do? A. He stopped his car, and there was three cars going up Claremont Avenue. The young man stopped his car.

30 Q. Well, did he stop his car dead? A. Well, almost. He had to stop and shift his car to go ahead.

Q. And did you see what, if anything, he did before he proceeded across Claremont Avenue? A. No, I did not; my eyes were straight ahead.

Q. What was the speed of the car as it crossed Claremont and got into North Grove Street? A. Well, it was very slow; it couldn't have been any more than ten or twelve miles an hour.

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Edna Van Nostrand Aiello—Direct.

Q. He was going slowly, was he? A. Yes, he was going very slowly.

Q. And do you remember whether or not he passed the intersection of Grove and Claremont after crossing the street? A. Yes, he went past.

Q. He went past? A. He went past.

Q. Now, something happened after he went past that intersection? A. Yes, something did happen. 10

Q. About how far beyond the intersection? A. Well, it was about forty or fifty feet on the other side of the street.

Q. After he had passed the intersection? A. Yes.

Q. Then what happened, to your knowledge? A. Well, the boy stopped his car.

Q. Stopped his car? A. Stopped his car.

Q. And what else after that? A. All I know, 20 I looked back and I saw something like a bundle laying in the street, and that is all I know.

Q. And you got out of the car, didn't you, with him? A. Yes, sir; I did, and I went and I assisted, and did what I could, and of course Mrs. Haines should know that I went to the hospital, and I did everything for her which it was possible to do; and the young man, he went and called a car. He looked around for somebody, but there 30 wasn't anybody there, but another Brown & White taxi at Claremont Avenue, at the second house.

Q. And she was taken over with a Brown & White cab to the hospital? A. Yes, she was taken with the boy whose car I was in.

Q. And you went in the other cab? A. I went in that other cab that was on Claremont Avenue, and I got there before she did.

Q. When you got to the hospital and Mrs. Haines was taken inside, do you remember whether Mrs. 40

Edna Van Nostrand Aiello—Direct.

Haines was conscious or unconscious? A. She was moaning and asking for her husband, and asking for Gretchen Quigley—just names, sister or mother, I don't know which it is—because I was the one that went and called—

10 Q. Her sister? A. Well, it is just names, sister or mother; I don't know which is Gretchen, whether it is the mother or the daughter.

Q. And she was a neighbor of Mrs. Haines, wasn't she? A. Yes; she lives next door.

Q. Well, that is all you know about it? A. That is all; and I was the one that came over to Mr. Quigley's house, and I went to her mother's house and told her about this accident, that she was calling for Gretchen Quigley, and the nurses know that I did what was possible in the hospital,
20 but I guess there wasn't any thanks for it—

Q. Well, never mind that. In the hospital Mrs. Haines told you about getting word to Mrs. Quigley? A. She called for Dr. Haines and Gretchen Quigley.

Q. And did she ask you to go to the Quigleys and ask them to assist or something? A. No.

Q. How far past the intersection did you say it was?

30 Mr. Laird: I object to that as a repetition.

A. I said thirty or forty feet.

Q. And you did not see the woman or anybody else prior to the accident, did you? A. No, I did not.

Q. How was the cab going at the time he stopped? Was he going fast or slow? A. No, he was going very slow.

40 Q. And where was this, what you thought at that

Edna Van Nostrand Aiello—Direct.

time was a bundle, where was it lying in the street?

A. Laying on the street here near the side.

Q. The car had not passed it yet, had it?

Mr. Laird: Objected to as leading.

A. I couldn't tell you, because I didn't see it.

Q. Well, you say it was lying on the side of the car? A. I saw a bundle laying like it was in the street here (indicating), and I couldn't tell whether it was a woman or what it was. 10

Q. Well, had the whole of the taxicab passed it at that time? A. Well, it must have come to a stop right then and there, because as I looked out of the side window, that is what I saw.

Q. You are not in any way interested in the Brown & White, are you? A. No, I am not.

Q. Or Baker? A. No. 20

Q. Now, your house, or, rather your land of your house, and the land of Mrs. Haines, they adjoin in the back, do they not? A. Well, partly, on the side.

Q. Well, you two live behind each other, on different street? A. Well, Mrs. Quigley lives in back of me, and Mrs. Haines lives alongside of Mrs. Quigley.

Q. And you know Mrs. Haines since this accident, do you not? A. Well, I have never called on Mrs. Haines, and Mrs. Haines and Dr. Haines never called on me. 30

Q. Well, there are no social arrangements between you two? A. Yes.

Q. But you see her, do you? A. Yes, I see her in the yard, and we just passed the time of the day.

Q. And Mrs. Haines gets around the yard, doesn't she? A. Yes. 40

Edna Van Nostrand Aiello—Cross.

Q. You have seen her digging in the yard? A. Well, I have seen her fussing around. I don't see very much of her, because I don't go in my back yard.

Cross-examination by Mr. Laird:

10 Q. As I understand it, Mrs. Aiello, on the evening of this accident you were riding as a passenger in a Brown & White cab, that is true, isn't it? A. Yes.

Q. And where had you gotten into the cab? A. At Bloomfield Avenue, 336 Bloomfield Avenue.

Q. About how far away is that from the scene of this accident? A. Well, Bloomfield there is three blocks on to Bloomfield Avenue at Grove, and it is practically two blocks up.

20 Q. In other words, about five blocks in all away? A. Yes, but they are pretty good sized blocks.

Q. And you were, of course, riding as a passenger in the rear seat of this cab? A. Yes.

Q. And was there anything that particularly attracted your attention about the way this cab was being operated before the time of the accident? A. No.

30 Q. Just the usual, normal manner in which a taxicab is usually operated? A. Yes.

Q. And as you sat in the rear seat, I suppose you looked around from left to right and ahead in a casual way, didn't you? A. No. When I come to Grove Street—

Q. Just a moment, please.

Mr. Seymour: I ask that the witness be allowed to answer.

40 The Court: The answer was no. Cross-examination requires a categorical answer.

Edna Van Nostrand Aiello—Cross.

Q. So you were not looking to your right, or to your left, or ahead at all? A. No.

Q. Just sitting, riding in the car? A. I was watching to see if a train was coming along, which there are train tracks over there, and that is one thing my eyes always rest on, to see if there is a train coming.

10

Q. How far away are the train tracks from Claremont Avenue? A. Well, I guess maybe 150, 200 feet; maybe more.

Q. Which way? A. Well, right across Grove Street.

Q. Right straight ahead? A. Yes.

Q. Did you feel any bump? A. No, I did not.

Q. Did the cab come to a sudden stop? A. He came to a stop, yes.

Q. Did he come to a sudden stop? A. No.

20

Q. He slowed down gradually? A. He was slowing, yes.

Q. And after the accident was over, you looked out of the window on the right side of the cab? A. Right hand side.

Q. And saw a bundle, as you describe it? A. Yes.

Q. Lying somewhere to the rear? A. No, nearer the side here (indicating). It wasn't in the rear; it was nearer the side.

30

Q. Well, you stated on your direct-examination, if I am not mistaken, that you looked back and saw this bundle. A. Well, naturally—can't you look out of the side window like that (indicating)?

Q. Well, did you look out of the back? A. I looked through the side window.

Q. Well, now, let me ask you again. I do not want to press you unduly, but you did say on your

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Edna Van Nostrand Aiello—Cross.

direct examination that you—as I took it down—looked back of the cab and saw a bundle lying there. Now, is that correct or not correct? A. That is to the side, just like that (indicating).

By the Court:

10 Q. The question is now, Mrs. Aiello, did you look out of the back or did you look out of the side? You said, upon your direct-examination, that you looked out of the back. A. No, I didn't. I beg your pardon.

Q. You did say that, exactly that. Now, the question is, did you look out of the back or out of the side? A. No, I did not; I looked out of the side.

By Mr. Laird:

20 Q. When you looked out of the side window, did you look back? A. No, I did not.

Q. But this bundle that you saw then was between the line of the right side of the taxicab and the right curb, is that correct? A. Mrs. Haines was here (indicating).

Q. That is to say, to the right of the cab? A. To the right of the cab.

30 Q. Between the half of the cab on Grove Street and the right-hand curb, is what I mean? A. That is where it would be; yes.

Q. Now, can you tell me approximately how far out from the curb she was lying in the roadway, to the best of your recollection? A. Well, according to the way we were in the bus I rode, we was at least ten feet away from the road.

Q. Ten feet away from the curb, you mean? A. From the curb, yes.

40 Q. And approximately how far would you say

Edna Van Nostrand Aiello—Cross.

she was away from the cab, four or five feet? A. It wasn't very far, because the boy, when he discovered that, he stopped his car.

Q. And would you say approximately four or five feet away from the cab that she was, or about what distance would you place it now? A. It is hard to tell just in feet things like that, because this is so long ago that people can't refresh their minds on these things. 10

Q. Yes, I appreciate that fact. That is the reason why I am asking you for your best recollection. Now, will you give us your best recollection of about how far away from either the right-hand curb or from the cab this lady was? Would you say about in the middle? A. Oh, no; she was not in the middle. She was just about—well, I could look out of the car window and see her (indicating). 20

Q. And you would not like to say in feet how many feet she was away from the cab? A. No, because I don't know how long the taxi is.

Q. Well, away from the side of the cab then, how far? A. Well, I suppose you could say about over here (indicating).

By the Court:

Q. Indicating about here (indicating)? A. Well, maybe a little bit beyond that, because there is a mudguard on the car. 30

Q. Indicating three or four feet? A. About that.

By Mr. Laird:

Q. About three or four feet from the cab? A. Well, say five and get it over with.

Q. And the right-hand side of the cab itself was 40

Edna Van Nostrand Aiello—Cross.

about ten feet away from the curb? A. Yes.

Q. Now, I understand that you went to the hospital in a different cab? A. I went with the other Brown & White cab, yes.

10 Q. Now, before you left the scene of the accident, to go to the hospital, of course you did what you could for Mrs. Haines; I understand that. A. Yes, I did.

Q. And you say she was moaning and groaning at that time? A. Yes, she was groaning in the car.

20 Q. And did you notice anything about either the condition of her clothing or the condition of her person? A. Well, I could tell there was blood from the back of her head, because that was where her cut was, and a little blood that was on the back of her fur coat.

Q. And did she require to be carried or lifted into the taxicab, do you know? A. Well, she was carried. I helped with her, yes, and another young man with the taxi helped put her in the car.

30 NICHOLAS BAKER, one of the defendants, sworn in behalf of defendants.

Direct-examination by Mr. Seymour:

Q. You drove this cab that night, did you? A. Yes, sir.

Q. Are you employed now by the Brown & White cab, Montclair? A. No, sir.

Q. Do you remember this night? A. Yes.

Q. How long have you been driving cabs? A. About six, seven years.

40 Q. And this particular night we are talking

Nicholas Baker—Direct.

about—what kind of a night was it as to weather?

A. I would say it was a dry night.

Q. A dry night? A. Yes, sir.

Q. Was the roadway where you were riding— was it wet? A. No, sir; perfectly dry; just about a foot out from each curb it was kind of damp, and the road on the right side of the road and the middle of the road was perfectly dry.

10

Q. Now, did you have lights on that car? A. Yes, sir.

Q. Were they lighted at this time? A. Yes, sir.

Q. About what time was it that the accident occurred? A. Well, I didn't have any watch; I just took a guess at the time. I think it happened around seven, or ten after seven.

Q. Well, as you came into the intersection of Claremont Avenue, what, if anything, did you do?

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A. I come to a complete stop and looked up and down Claremont, to see if there was any traffic coming, and I put it in first to proceed across.

Q. And did you get across the street all right?

A. I started to go across the street, and on the northwest corner there was a lady standing, and just as I started to cross she stepped off the curb, and started to walk along the intersection. Well, I knew that if she stayed—

30

Mr. Laird: I object to this as a conclusion.

The Court: Not what you knew; just what happened.

Q. She stepped off and started to walk? A. Along the intersection.

Q. As you started across the intersection, is that right? A. Yes, sir.

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Nicholas Baker—Direct.

Q. All right. Did you get over the intersection?

A. Yes, sir.

Q. And did you see the lady after that? A. No, sir; not until I was 45 or 50 feet below the intersection.

10 Q. Well, 45 or 50 feet past the intersection of Claremont and Grove Street, what did you see? A. Why, the woman stepped directly in front of my cab, right into the front of it.

Q. You saw a woman do that? A. Yes, sir.

Q. And at that time about what speed were you going? A. I should say from ten to twelve miles per hour.

Q. And what did you do? A. I jammed on all the brakes and pretty near come to a complete stop, when I just pushed her to one side.

20 Q. What side was she pushed to, to the right or left? A. She was pushed to the right side.

Q. Did any part of the car, except the part she walked into, touch her? A. No, sir.

Q. What? A. No, sir; I stopped it short.

Q. The wheels did not touch her, did they? A. No, sir.

30 Q. Well, after that, what did you do? A. I seen that she didn't move, so I just naturally swung the cab around so it would be facing the Mountainside Hospital, and got another driver, what happened to be a few doors away, down below, and we helped to put her in a taxicab.

Q. And you took her to the Mountainside Hospital? A. Took her right to the Mountainside Hospital; yes, sir.

40 Q. And did you go to the police station after that? A. Well, I was down at the Mountainside Hospital; I went downstairs in the ambulance room, where they generally take the patients, and

Nicholas Baker—Direct.

I told them down there that there is a party outside that may need attention, and they says go upstairs; so I went upstairs in the Mountainside Hospital and told them up there, and they says go downstairs.

Q. Well, that is immaterial. You got her in the hospital, did you? A. Yes. Well, I waited about five minutes, and the police come, about three or four of them, and they took her in in their own stretcher.

10

The Court: You mean they came with their ambulance?

The Witness: Well, it is a police patrol and an ambulance, I suppose.

Q. Did you go to the police station then, subsequently, or what? A. Yes, sir; they told me I would have to go to the police station.

20

Q. And you did go, didn't you? A. Yes, sir.

Q. And down there you saw this lieutenant that was on the stand this morning? A. Yes, sir.

Q. And what happened down there? A. Why, he took my statement and he told me that they would have to keep me there.

Q. That lieutenant told you that he would have to keep you there? A. Yes, sir.

30

Q. What for? Did he tell you why? A. Until they found out the extent of the woman's injuries.

Q. And did he keep you there? A. I was kept there until the following morning, about seven or eight or nine o'clock, I forget which.

Q. And they put you in a cell and kept you there? A. Yes, sir.

Q. He has testified to a statement which he said that he wrote down and you dictated it, word for

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Nicholas Baker—Direct.

word. You heard that statement read this morning? A. Yes, sir.

Q. Did you tell him the things that he testified to this morning? A. No, sir; I explained everything the way I explained it right today. What he put on that paper, I don't know. He did not give it to me to read.

10 Q. You did not tell him those things? A. No, sir.

Q. As you talked to him did he take his pen and write it down in his book, word for word, as you talked with him? A. While I was talking he was writing. I don't know what he was writing.

Q. Well, were you talking at the same rate that you are talking now, or word for word? A. Why, I was telling him at the same rate I am talking now.

20 Q. Were the brakes all right on that car? A. Perfect.

Cross-examination by Mr. Laird:

Q. Mr. Baker, as I understand it, you came along Grove Street, and when you got up to Claremont Avenue you brought your car to a complete stop, is that right? A. Yes, sir.

30 Q. That was to make an observation, I take it, to your left and right, to see if any traffic was coming? A. Yes, sir.

Q. Now, where had you picked up this passenger? A. Why, at 336 Bloomfield Avenue, or near Gates Avenue, in Montclair.

Q. And that is about how many blocks away, would you say? A. From the scene of the accident?

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Nicholas Baker—Cross.

Q. Yes. A. About, I don't know—around four, I imagine.

Q. And did you come to a complete stop on all of those four crossings before you came to Claremont? A. No, sir, because they are not like Claremont and Grove Street. Claremont and Grove seems to be a very bad corner.

Q. It is built up right there, isn't it, with buildings, solidly up to the corner? A. Yes, houses.

Q. So you brought your car to a complete stop at that crossing, because you know it is a bad corner, right? A. Very bad; that is right.

Q. And this night you say was not a wet night; it was a damp night, is that it? A. Why, it had been raining hours before that, but the road was perfectly dry.

Q. So that the water that you refer to was water running in the gutters from the rain? A. That is all.

Q. And the roadway, apart from that, was perfectly dry, and the night was clear? A. Perfectly dry; yes, sir.

Q. Now, when you came to a complete stop there and looked to your left and right, you saw nothing—that is true, isn't it—so you started up your car? A. Yes, sir.

Q. And at the time when you started up your car you saw this lady cross to your left, on the northwest corner, is that it? A. Yes, sir.

Q. Now, the next thing you saw of her, as I understand you, was when you were about forty feet past Claremont Avenue, on Grove Street, is that correct? A. That is correct.

Q. Well, did you make any observation of her from the time you started up your car until the time the collision happened? A. When I seen

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Nicholas Baker—Cross.

that she was going to walk across the intersection, I didn't pay any more attention to it.

The Court: Just read the question.

10 Q. (Read.) A. When I started up my car, I made an observation of her stepping off the curb and walking along the intersection.

The Court: What do you mean by "walking along the intersection"?

The Witness: Walking from west to east, across Grove Street.

Q. In other words, seeing a pedestrian step off cross the street directly in the path of your car, you knew that she was going to do that?

20 Mr. Seymour: That is objected to, if the Court please. That is certainly improper cross-examination.

The Court: I think the form of your question is improper.

Mr. Laird: Perhaps it is.

The Court: The form of your question would assume that he had said what you are now indicating.

30 Q. Mr. Baker, when you started up your car, do you say that you saw her at that time starting to walk from the westerly side of Grove Street toward the easterly side? A. She stepped off the curb to do so; yes, sir.

Q. And did you also say that, having observed that, you paid no further attention to her? A. I paid no further attention to her; no.

40 Q. In other words, seeing a pedesrian step off the northwest corner of Grove and Claremont Ave-

Nicholas Baker—Cross.

nue, walk toward the southwest corner, it would bring her across the path of your car, wouldn't it?
 A. It would take her across the path of my car; certainly.

Q. And, knowing that she was walking in that direction, you made no further observation of her?

A. Absolutely, I did not.

10

Q. Well, have you told us everything that you did in the operation of your car, from the time you started up Claremont Avenue until the accident was over? A. Why, yes; I have told everything.

Q. So you did not blow any horn, did you? A. No, I did not.

The Court: Could you tell whether or not this lady, as she came in front of your cab, was walking or running?

20

The Witness: She came in front of me so fast I couldn't tell what she was doing. She was just running right in the front of it, she came into the front of the cab so quick.

Mr. Laird: I ask that the latter part be stricken out, because he is now absolutely telling what he does not know, he having already testified that he did not see her until she was in front of the car.

The Court: It will be stricken out.

30

By the Court:

Q. The question is whether or not you know, when she came in front of the taxicab, she was walking or running. Do you know? A. No, I couldn't say that.

Q. And as you passed over the north crosswalk of Claremont Avenue, about what was your speed? A. I should judge around—it couldn't have been over seven mile an hour, along that.

40

Nicholas Baker—Cross.

Q. But at the time of the contact you were going ten or twelve? A. Ten or twelve; yes.

Q. And then you were increasing your speed? A. I wouldn't say I was increasing it.

10 Q. I mean from the north crosswalk to where the accident was. A. Well, if you put her into first speed in the street, naturally your speed would not be increased.

Q. I say, as you crossed the north crosswalk you say you were going about seven miles an hour, is that right? A. Yes, sir.

Q. When the contact came you were going ten to twelve? A. Yes, sir.

Q. Then I say you increased your speed from the north crosswalk to the time that the accident happened? A. Yes, sir; it increased.

20 Q. Now, what is the width of Grove Street? A. Well, I should judge about from 45 to 50 feet wide.

Q. At what part of Grove Street was it that she came in contact with your automobile; that is, I mean, you were running on the right side of the street, I suppose? A. Yes, sir.

30 Q. How close to the right curb was it where she came in contact with the taxicab? A. Why, I must have been around five or six feet away from the right curb.

By Mr. Laird:

Q. About how wide is Claremont Avenue? A. About 35 or 40 feet.

Q. So from the time you started up your car to the time of this collision, Mrs. Haines had gone a distance, from the northwest corner, the width of Grove Street, also 45 feet away from Claremont Avenue, is that correct? A. That is correct.

40 Q. And you say now it was the right part of

Nicholas Baker—Cross.

your front bumper that came in contact? A. It was the left. I hit—it was—she walked in to the left, between the left front headlight and the radiator.

Q. And after the accident was over she was on the right hand side of the car? A. Right-hand side.

Q. And she was just pushed very gently, wasn't she, by the left side of the car? A. There wasn't even a bump to it; it was just a shove, because I had the speed of the car cut down to about three or four miles an hour. 10

Q. In other words, she did not do any very serious damage to your taxicab? A. I don't know what she did to the taxicab.

Q. But after the accident was over, you are sure that she was on the right-hand side of the cab? A. She was on the right-hand side of the cab, yes. 20

The Court: Where, with reference to the rear end of the cab, was she?

The Witness: She was right by the front wheel. I stopped immediately.

Q. Now, when was it that you swung the cab around to face it toward the hospital? A. As soon as I seen that she didn't move. I didn't even bother getting out, but I just swung it right around. 30

Q. You did not think that anything very serious in the way of an accident had occurred, did you? A. Well, there was no place to think; it was a place to act, not think, and that is which I did.

Q. Well, am I to understand that you say you acted without thinking? A. Why, I didn't know there was any trouble; naturally, it is best to bring it to a place to find out whether there is trouble. 40

Nicholas Baker—Cross.

Q. So, in spite of the fact that the contact between your car and this lady was a very gentle one— A. (Interposing) It was only a push, yes.

Q. Just a push? A. That is all.

10 Q. You swung your car around and headed for the hospital, didn't you, before you got out of the car? A. I did.

Q. And, although she was hit somewhere between the left front headlight and the radiator, she

Mr. Seymour: I think there is a distinction there. He testified that she walked into the cab.

Mr. Laird: All right. I will withdraw my question.

20 Q. So your testimony is that although this lady walked into your taxicab, between the left front headlight and the radiator, and received a gentle shove, that after the accident was over she was on the right-hand side of the cab, between the cab and the curb, is that right? A. That is right.

Q. Now, after you went to the hospital you returned to the police station? A. I did.

30 Q. And you were interviewed by the lieutenant at the desk? A. I was.

Q. While you were talking to him he was writing something down, but you do not know what it was? A. No.

Q. Now, did you have any idea, any suspicion what it was? A. I suppose he was trying to write down what I was telling him.

40 Q. And, of course, the lieutenant at the desk did not have any information about this accident other than what you gave him, so far as you know, did he? A. I don't know what he had.

Nicholas Baker—Cross.

Q. Well, so far as you know, he did not? A. As far as I know, yes.

Q. Well, did you tell him on that evening that you were driving north on Grove Street, Montclair, about 7:10 P. M.? A. I did.

Q. You thought that was the time the accident happened? A. I thought—that was just naturally a guess. 10

Q. And you told him that you slowed down on coming to the crossing at Claremont Avenue, didn't you? A. I told him I stopped dead.

Q. So that if he wrote down that you said "slowed down" that was an error on his part, wasn't it? A. That was an error on his part, yes.

Q. And you also told him that you saw that woman stepping from the curb on the northwest corner of Claremont Avenue, walking in an easterly direction—you told him that, didn't you? A. Yes. 20

Q. You also told him that when she got to the center of Grove Street she hesitated and then started again—did you tell him that? A. I told him exactly—

The Court: No, just answer the question.

The Witness: No, I did not tell him that.

Q. Did you tell him then that she walked in front of your automobile? A. I did not—I told him that she walked into the car. 30

Q. Did you tell him that you struck her with your front bumper, about in the center, and knocked her down? A. I told him that she walked into the front—

The Court: Did you tell him that—that is the question.

The Witness: No, I did not. 40

Nicholas Baker—Cross.

Q. He just made that up? A. I don't know what he did.

Q. So far as you know, Mr. Baker, he just made that up? A. I don't know what he did.

Q. Did you tell him the street was wet? A. No, I did not.

10 Q. Did you tell him that you stopped in about eight or ten feet? A. No.

Q. Did you tell him you were going about twelve miles an hour at the time of the accident? A. I told him I was going about twelve miles an hour at the time of the accident, yes.

Q. And you also told him you did not blow any horn on coming to the crossing? A. That is right.

20 Q. So these things are correct, and everything else he said is incorrect? A. From what they are, yes.

Mr. Seymour: That is my case. I have no further testimony except medical.

Mr. Laird: I will put Dr. Brothers on then.

JAMES H. BROTHERS, sworn in behalf of plaintiff Helen Haines.

30 *Direct-examination by Mr. Laird:*

Q. Doctor, you are a practicing physician in the State of New Jersey? A. I am.

Q. And have been for how long? A. In New Jersey since 1919; in New York since 1914.

Q. And are you connected with any hospitals and institutions? A. St. Barnabas.

Q. Do you specialize in any particular branch? A. General and traumatic surgery.

40

James H. Brothers—Direct.

Q. Now, Doctor, at my request you have this afternoon made an examination of Mrs. Haines, have you not? A. I did.

Q. And you never saw the lady before, did you? A. No, sir.

Q. Never treated her at any time? A. No, sir.

Q. And your examination was made for the purpose of telling this Court and jury what her condition was, as you found it? A. Yes, sir. 10

Q. Now, will you please describe to the Court and jury what your examination consisted of and what you found? A. I found her blood pressure is 140 over 90, which is practically a normal pressure for her age. She has a slight tendency to swaying to the left and backward with her eyes closed, in a standing position. Her reflexes are slightly increased— 20

The Court: That is what you call a Romberg test?

The Witness: Yes. Her reflexes are slightly increased, and there is a tremor of the extended fingers when the hands are held in front of the body; slight tremor of the eyelids and tongue. Her facial expression is practically normal, with the exception that she has facial paralysis which antedated this accident, and still shows the symptoms from facial expression. Her special senses, such as memory, speech, coordination of thought and quick response, are normal. Her left foot is weak, in that there is a tear of the ligaments of the external lateral ligament of the left ankle. She is tender at the juncture between the astragalus and the calcaneus, the calcaneus be- 30 40

James H. Brothers—Direct.

10 ing the heel bone, and the astragalous being the bone that fits between the two bones of the foreleg. You can induct this foot, turn it in, about half again as much as the opposite, or right foot; and she complains that this foot is weak and turns inward very easily, even when walking on flat surfaces.

20 She is tender over the mid-dorsal region of her spine, and she has a spinal spasm in the muscles to the right of the spinal column, but motion of the back, however, is very good, without pain and without increasing the slight spasm which I found. Twisting motions, as well as forward and backward motions, are very good. There is no tenderness over the sacroiliac joints. Her hip motion is practically normal, without any locking, and knee motion is normal.

30 The motion of the arm is normal. She has a belt over the ramus pubic, that is this bone of the pelvis down here in the crotch, just below and inside the groin, which is in here (indicating)—a healed fracture in that region. The bone itself is irregular in fashion on inspection and feeling, and she complains of pain on pressure in this region, and she also complains of pain there in a sitting posture, pain in the same place in her back, where she was tender, when her back is up against a chair.

Q. Doctor, did you look at the X-rays that have been produced here? A. I did.

40 Mr. Laird: I suppose, Mr. Seymour, you object to the doctor's testifying as to those?

James H. Brothers—Direct.

Mr. Seymour: What is the use of objecting? He has testified as to what he found in the X-rays.

Mr. Laird: Well, then, I take it you have no objection?

Mr. Seymour: I have all the objection in the world, and I am going to ask the Court to strike it when you are through with this examination. 10

Q. Doctor, when bones are broken, what is the natural course of healing? A. They are healed by callus, which is replaced by bone later.

Q. And is this protuberance which you state you felt in the pelvis, or in that region, the result of callus there? A. In my opinion, yes.

Q. And is that the reason you say that in your judgment there has been a fracture of the bone in that part of the body? A. It is. 20

Q. Was there anything, Doctor, ascertainable by you, on observation, with relation to any bone injury in her back? A. There was not, excepting this spasm.

Q. Well, now, what, in reasonable probability, could cause the muscle spasm which you mentioned? A. There are many causes; many things that can cause it. It might be just an ordinary myositis, namely, an inflammation of the muscles themselves, with a consequent thickening, and it could be a bony injury underneath in the spine; but I have no way of telling that of the spine. I can't feel through an individual. I can feel through the pelvic bones, where I felt this callus, but I can't feel any irregularity in the spinal column. 30

Q. Would a broken dorsal vertebra, Doctor, produce the type of injury that you have described? 40

James H. Brothers—Direct.

Mr. Seymour: I object to that, first, as to leading; altogether too broad.

The Court: I will sustain the objection.

Q. Doctor, is a broken pelvic bone a painful injury? A. Painful while it is healing, yes.

10 Q. And to what, Doctor, do you attribute the injury which you found in the foot? A. The only thing I can attribute it to, without using X-rays, is the tear of the external lateral ligament, which is all I have said about it.

Q. In other words, you base your statement on — A. (Interposing) Physical examination only.

Q. On physical examination only? A. Yes.

20 Q. Doctor, assuming that a woman comes into collision with a taxicab—either by being struck by it or by walking into it—with the result that she is confined to a hospital from the day of the accident, in this case January 9, 1928, to February 25th of the month following; that she is confined to bed for the majority of the period between those to dates; that you find, on examination, the tenderness which you have described in her back, a fracture of the pelvic bone which you have described, and the condition of her ankle, which you have
30 described—can you tell us whether or not, judging from your experience in such matters, those injuries could have come as the result of an accident?

Mr. Seymour: That is objected to, if the Court please. The objection is, first, that it is not a proper hypothetical question unless he is going to include in there this: that the accident occurred January 9, 1928, and the examination which is the basis of the doctor's opinion was made on the 30th day
40 of April, 1930.

James H. Brothers—Direct.

The Court: I think that ought to be included.

Q. I will add to the question, Doctor, that you examined the patient on April 30, 1930. A. I can't answer that unless I include the fact that this woman said that that was the only accident that she had. 10

Q. But if it were a fact, Doctor, that this was the only accident which she had—

Mr. Seymour: That is objectionable. That is not in the case.

The Court: I understood that to be the plaintiff's testimony, substantially that. I am not quite sure about it. If you say it was not— 20

Mr. Seymour: All right. I will withdraw my objection and reserve it for cross-examination.

Mr. Laird: If there is any doubt about it, I will ask to withdraw the doctor from the stand.

The Court: Mr. Seymour has withdrawn his objection.

Q. Would you then say that these injuries which you found were the result of this accident? A. I can say that they could be and probably were the result of this accident. 30

Cross-examination by Mr. Seymour:

Q. That is, assuming that this accident occurred. A. Yes. If the woman didn't have an accident she wouldn't have an injury. 40

James H. Brothers—Cross.

Q. If she fell downstairs she could do the same thing, couldn't she? A. Oh, yes; a fall from a height would do the same thing.

Q. If a lady was hanging curtains sometime, and the chair slipped and she fell off the chair— A. (Interposing) Certainly.

10 Q. (Continuing) The same result might occur?
A. Absolutely.

Q. Isn't that true, Doctor? A. Yes.

Q. Now, isn't it a fact that before you examined this lady you examined these X-rays? A. No, that is just backwards: I saw the X-rays after I examined her; they were not in court.

20 Q. Wasn't it because of what you saw on the X-rays of the pelvic region that you come to the conclusion that it was a fracture of the pubic bone?
A. Absolutely not; and I can demonstrate to Dr. Russell what I am talking about.

30 Q. Well, Dr. Russell, unfortunately, doesn't happen to be the jury. The jury has to pass on that. Now, in this particular woman, did you also consider, in answering the hypothetical question that was put to you, that the lady had a paralysis that antedated this accident, that occurred before the accident? A. I absolutely included the fact that she had a facial paralysis which antedated the accident, and which I mentioned.

Q. Did you get from her any history of the paralysis that occurred? A. She had a facial paralysis when she was a student, and she was properly investigated and they could find no cause for it, and she had this facial paralysis, which is partially cleared up, involving no other part of the body.

40 Q. But that facial paralysis was of long standing, was it? A. Yes; it comes from when she was

James H. Brothers—Cross.

a student some years ago, and it is practically cleared up now. It takes a good man to see it and find it.

Q. Facial paralysis such as she has ordinarily has an effect on the memory, hasn't it? A. It has nothing to do with the memory.

Q. Nothing to do with the memory? A. No, sir. 10

Q. Then people that are paralyzed have just as good memories— A. (Interposing) Oh, no; you are talking about facial paralysis. I am not talking about a general paralytic stroke, but a simple facial paralysis, with no other involvement of the body whatsoever. The other thing is a different thing and comes from the central nervous system.

Q. You could find all that out in fifteen minutes? A. Yes. I tested her reflexes, I tested the ocular motion, I tested the hearing, I tested the memory, I tested the speech—I tested her reflexes. 20

Q. The first time you saw her was about ten or fifteen minutes before two today, was it not? A. That is right.

Mr. Laird: Dr. Seidler.

(No response.)

Mr. Laird: That is all I have, if the Court please.

Mr. Seymour: For the purpose of getting through, I am going to ask to have marked, in my case, the interrogatories. 30

(Document is received in evidence and marked Exhibit D-1.)

Mr. Laird: If the Court please, if the case must, of necessity, be carried until tomorrow, can your Honor not see your way clear to adjourn it now 40

James H. Brothers—Cross.

until tomorrow, so that I can produce this Dr. Nicola?

10 The Court: Well, then, that involves, I expect, the production on behalf of the defendant of his medical expert, Dr. Russell, perhaps, to hear the testimony of Dr. Seidler, and it means, if we do that, that the hour which is remaining tomorrow will not be sufficient to conclude the case. Now, I am willing to do that, but I just want to know something about the time.

Mr. Laird: I appreciate that I am asking the Court to discommode itself.

20 The Court: I have no disinclination to do that if we can complete the case in the usual time tomorrow. If we do not finish it tomorrow, it will mean, as I have suggested, that it go over until Monday.

Mr. Laird: I cannot ask this jury to come back next week, after the term has expired, but if by tomorrow I find I cannot conclude it, I will rest the case as it stands now, because this is this lady's day in court, and the matter is a serious one.

The Court: Evidently they made an effort to get Dr. Seidler here. It would appear so, from what you said, at least.

30 Mr. Laird: Dr. Seidler said he would be here at three o'clock. He was called up at one, when court adjourned, and he said he would be here at three. I am frank to say that his testimony is not as important as Dr. Nicola; and if I can produce Dr. Nicola, I will produce him and leave Dr. Seidler's testimony alone.

40 Mr. Seymour: I am much interested, your Honor, in what my friend says about this being this lady's day in court, but I also want to say it is the defendants' day in court.

James H. Brothers—Cross.

The Court: Yes, and I cannot give him leave to produce his medical testimony without giving you leave to produce your medical testimony.

Mr. Seymour: My friend told me this morning he would have his medical testimony in this morning, and I have my doctor here since this morning. We want to get through. 10

If Mr. Laird will go along with me, if he wants ten minutes to sum up, I will take five. If we can get through with the case and pass it to the jury today, I will prefer it.

The Court: I will not be able to do that.

Mr. Seymour: Well, then, shall we say that we will adjourn until tomorrow, at three o'clock, and there will be no further testimony taken except the summation and the charge? 20

The Court: I am willing to do that if Mr. Laird is, or sit later, but I am afraid now, that if we get into a whole lot of medical testimony, that the examination and cross-examination of the medical testimony alone will take the hour, although I can arrange tomorrow afternoon to sit later; although again I have an appointment in New York at four, I can call that off.

Mr. Seymour: Why can't we assume that this case was tried today? Why don't we assume that the case is submitted, on the case as it is? I can appreciate how my friend feels, but I am often caught that way myself so many times that I kind of get used to it. I would like to have the case finished. I do not want to bring my doctor back tomorrow if I can help it. 30

Mr. Laird: And I also appreciate the way Mr. Seymour feels about concluding the case today, if possible, and he does not want to come back an- 40

James H. Brothers—Cross.

other time, but, inasmuch as it is necessary to come back another time, I am going to ask the Court to indulge me to such an extent as it can.

10 The Court: Of course, I can and I believe that I will postpone the case until three o'clock tomorrow; and three o'clock, you understand, depends upon my ability to get back here at three o'clock—I cannot tell about that—and then I will sit later, if necessary, so that we can certainly conclude it tomorrow afternoon; so it won't be necessary for you to come here tomorrow until three o'clock. Be here promptly at three o'clock.

Mr. Seymour: Do I also understand, your Honor, that the case will be opened at three o'clock tomorrow for the taking of further testimony?

20 The Court: Until three o'clock tomorrow afternoon, with permission to both sides to produce their medical testimony at that time; and if Mr. Laird will then be unable to produce his medical testimony, or conclude not to do so, he is to give you timely notice so that your medical expert need not appear. You understand that, Mr. Laird?

Mr. Laird: Yes, sir; I do.

30 The Court: And there will be no other medical experts than Dr. Nicola or Dr. Seidler—one or the other of them—not both of them.

Mr. Laird: May I ask this, in order that there be no confusion? These X-rays, of course, were not taken actually by Dr. Seidler; they were taken by the technician in the hospital. Mr. Seymour, will, I assume, if Dr. Seidler identifies these X-rays, that they may be used without the production of the technician?

40 Mr. Seymour: No, sir. My information is that this woman did not get those injuries, and for that

James H. Brothers—Cross.

reason I cannot admit anything that is not correct.

Mr. Laird: Then I will have to ask the Court for leave to produce the technician, to identify the X-rays.

The Court: All right. The understanding is that there is to be one medical expert to be produced, and nothing more except the production of the technician to prove the X-rays. Then that is the understanding. 10

Mr. Laird: Yes, sir; correct.

The Court: And if it be concluded that you cannot produce your medical expert, as I say, you are to notify Mr. Seymour, so that he does not have his medical expert here, with nothing to answer.

Mr. Laird: Quite right. Your Honor appreciates I cannot guarantee his appearance, but if you

The Court: You can guarantee his appearance now if you subpoena him. 20

Mr. Laird: I am afraid he is in New York.

At 3:45 P. M. an adjournment was taken until tomorrow, Thursday, May 1, 1930, at three o'clock P. M.

30

40

Robert D. Schimmelpfennig—Direct.

SECOND DAY.

Thursday, May 1, 1930, at 3:00 P.M.
Continued pursuant to adjournment.
Present, counsel as before stated.

ROBERT D. SCHIMMELPFENNIG, sworn in
10 behalf of plaintiffs.

Direct-examination by Mr. Laird:

Q. Doctor, you are a practicing physician in this state, are you? A. Yes.

Q. And are you connected with the Mountain-side Hospital? A. Yes, sir.

Mr. Seymour: We will admit the doctor's qualifications.

20 Q. In what capacity are you connected with them? A. Rontgenologist.

Q. Now, Doctor, I am showing you a number of X-ray films, and I will ask you if these were taken by you or under your supervision in the Mountain-side Hospital (handing films to witness). A. (Examining) They were; yes, sir.

Q. Can you identify them as being X-ray pictures of the plaintiff Helen Haines? A. Yes, sir.

30 Q. Will you be good enough to look at these and tell us what they disclose, as briefly as possible, please? A. These 1417 films of the nerves show a fracture complete, of the descending right ramus, the pubis.

Mr. Laird: May I have those marked?

(X-ray films referred to are received in evidence and marked, respectively, Exhibits P-5 and P-6.)

40 The Court: The ramus is the frontal por-

Robert D. Schimmelpfennig—Direct.

tion of the pelvic bone, Doctor?

The Witness: Yes, sir; the right side.

Q. Doctor, I show you an exhibit marked P-6, and ask you if you will tell us what that discloses.

A. This also shows—it is a film of the same region, including the entire pelvis and both hip joints and upper half of the femur; reveals a complete fracture of the right descending ramus. 10

Mr. Laird: I ask that this film be marked.

(X-ray film referred to is received in evidence and marked Exhibit P-7).

Q. I show you Exhibit P-7, Doctor, and ask you to tell us what that shows. A. This is a film of the left ankle, in the lateral direction; left.

Q. Indicating what? A. Of the left ankle, and it indicates a small chip fracture off of the dorsal aspect of the scaphoid bone, dorsal bone. 20

Mr. Laird: Mark this one, please.

(X-ray film referred to is received in evidence and marked Exhibit P-8.)

Q. I show you exhibit marked P-8, Doctor, and ask you to tell us what that discloses. A. This is a film of the cervical spine, in the anterior-posterior direction, and it reveals a small fracture of the tip of the left dorsal transverse process, first dorsal. 30

Q. And that is—the transverse process, Doctor, is a portion of the spinal column, is it not? A. Yes.

Mr. Laird: Mark this one, please.

(X-ray film referred to is received in evidence and marked Exhibit P-9). 40

Robert D. Schimmelpfennig—Cross.

Q. I show you P-9 and ask you what that reveals, Doctor. A. This is simply a lateral view of the same region of the cervical spine. It does not show any break of the spinal process.

Q. Now, Doctor, you also have some X-rays of the skull, have you not? A. Yes, sir.

10 Q. And those prove to be negative, do they not?
A. Yes, they prove to be negative.

Cross-examination by Mr. Seymour:

Q. Is there any date on these, Doctor, as to when they were taken? A. It is marked in white ink there (indicating); they are taken on the 9th or 10th day of January, 1928.

20 Q. This one is marked February 17th (indicating). Would that be the date? A. That was a later examination, yes, of the same patient.

Q. That is the first one. This is also marked February 17th, both of these, Exhibits P-5 and P-6, showing the fracture of the pubic bone, are dated February 17, 1928. Is that the time they were taken? A. Yes, sir.

30 Q. Now, let me direct your attention to that which is marked P-7, being the left ankle and foot. You say it shows a chip fracture. Can you tell by looking at this film as to whether or not there was a large chip or small chip? A. This one I just read?

Q. Yes. It is a very small one, is it not? A. Very small one, yes.

Q. Almost infinitesimal, is it not? A. I said a chip fracture of the wall of the scaphoid bone.

40 Q. Will you tell us what that fracture would be in size? Can you conform it to something that we might understand? A. It is a chip fracture.

Robert D. Schimmelpfennig—Cross.

Q. Well, would it be as large as the head of a pin? A. From the appearance of the fragment it looks to be about one-fourth of an inch in diameter off of the posterior aspect, at the articular margin of that scaphoid bone.

Q. It is not in the ankle, is it? A. No, it is just below the ankle joint. 10

Q. Well, this film here (indicating) shows there is nothing the matter with the ankle joint at all? A. No, nothing the matter with the ankle joint.

Q. No fracture of that ankle joint, is there? A. No fracture of that ankle joint.

Q. The only fracture is in that left foot, is it? A. The small chip fracture is of the tarsal region.

By the Court:

Q. The tarsal bones are those which are just beyond the ankle joint? A. Just below the ankle joint. 20

Q. And still beyond that come the metatarsal? A. It is not as far out as the metatarsal; between the ankle joint and the metatarsal bone.

Q. The fracture of the right ramus: at the time you took the X-ray, did that show an unhealed fracture at that time, at the time you took it? A. Yes, sir; it was an unhealed fracture. We took it on the day of the accident, and then we took it later in February. 30

Q. And what was its condition then? A. The fragments were in the same position and condition as at the previous examination.

Q. Well, by "the same condition" do you mean as to apposition? A. The same position.

Q. That is, you mean in good apposition, good position? A. The fragments were slightly over- 40

Robert D. Schimmelpfennig—Cross.

riding on the second examination.

Q. And they were in the same position when you took the second ones? A. Yes.

By Mr. Seymour:

10 Q. Now, referring to Exhibits P-8 and P-9, the exposures that you made of the back, or the spine, those are very small, aren't they? A. Cervical spine; yes, sir.

Q. Very small, aren't they, very small in size? A. Yes, sir; the tip of the left first dorsal transverse process.

Q. Just on the tip; very small. Both infinitesimal, aren't they, Doctor? A. Yes.

By the Court:

20 Q. In the beginning, at the head, you have first what spinal bones? A. The axis.

Q. Well, generally speaking, and then below that? A. The cervical.

Q. And how many cervical vertebrae? A. Seven.

Q. And this then is the eighth? A. This is the first dorsal.

30 Q. It would be the eighth bone down? A. The eighth bone done from the neck. It is divided into dorsals, yes; and from there on there is twelve dorsals, and this is the first dorsal.

By Mr. Seymour:

Q. Well, that first dorsal is above the center of the back, isn't it, Doctor? A. Above the center of the back?

Q. Above the center of the back, with reference to the spine? A. Yes, sir; the first dorsal.

40 Q. Would be above the center? A. What do you mean by the "center of the back"?

Robert D. Schimmelpfennig—Cross.

Q. Well, about the middle of the back.

The Court: Take between the neck and the sacrum. Is it above the middle?

The Witness: Well, from the head or the trunk—what does he mean?

Q. Where the axis starts. The axis is the beginning of the spine, is it not? A. I would say it is just above the middle, yes. It is the first dorsal; it has to be above the middle. 10

Q. And that is the part that was affected, according to these exposures, is that right? A. Yes, sir.

Q. Would you yourself put your finger on where the first dorsal is, on your body?

The Court: On his back? 20

Mr. Seymour: Yes.

The Court: Would you mind showing the jury?

The Witness: About here (indicating on the stenographer).

Q. That is the first dorsal? A. Yes.

Q. And this is the first dorsal pictured in these exposures? A. Yes, it is in that area.

Q. But on a normal person that would be about how many inches below the neck here, the axis? A. It depends upon the length of the patient's neck; that varies. It would be further on a long-necked person and shorter on a short, fat, thick neck. 30

Q. But the first dorsal would not be in this part of the back, would it, where I am pointing now? A. No, that is the lumbar region where you have your hand. 40

Robert D. Schimmelpfennig—Cross.

Q. That is not the dorsal at all. Now, this exposure that you made here shows that the lumbar region is all right, doesn't it (indicating)? A. I have no films there showing the lumbar region.

Q. You did not go that far? A. No, sir.

10 Q. Well, there wasn't any complaint made about the lumbar region, was there? A. In looking over the records, I saw a report of a fracture of the first transverse process of the first lumbar, a transverse process of the lumbar; but I haven't those films.

Q. Well, you made all the films that were made on this case, didn't you, Doctor? A. Yes.

20 TOUFICK NICOLA sworn in behalf of plaintiffs.

Direct-examination by Mr. Laird:

Q. Doctor, you are a practicing physician of this state, are you? A. I am.

Q. And also of New York State? A. I am.

30 Q. And where is your office? A. I have two offices: one in New York, at 49 East 51st Street, and the second one at 56 Church Street, Montclair, New Jersey.

Q. And do you specialize in any particular branch of medicine or surgery, Doctor? A. I do.

Q. And what? A. Orthopedic surgery.

Q. And are you connected with any hospital or other institution? A. I am.

Q. What, please? A. New York Hospital for Ruptured and Crippel; New York Polyclinic Hospital, and Mountainside Hospital.

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Toufick Nicola—Direct.

Q. Did you have occasion, Doctor, to treat Helen Haines at any time? A. I did.

Q. Can you from memory, Doctor, give us the date when you first treated her? A. I cannot.

Q. Did you, in the course of your treatment, make use of the X-ray films or the reports on the same that have been testified to here by Dr. Schimmelpfennig? A. I did. 10

Q. Can you tell us, Doctor, whether or not a fracture of the pelvic bone, as described by the X-ray doctor, is considered serious or not? A. Sometimes.

Q. The pelvis, Doctor, is one of the main bones of the body, is it not, sometimes designated as the bridge of the body? A. Well, it is an important structure in the body.

Q. And can you recall at all approximately how long you treated Mrs. Haines? A. I cannot. 20

Q. Can you recall whether or not her injuries were of a painful nature? A. Yes, I can.

Q. What have you to say as to that? A. It was very painful.

Q. And by reason of what, Doctor? A. By reason of the first examination—that had to be deferred, because of pain; and the treatment was directed along the X-ray findings. 30

Q. And where were the chief complaints of pain, Doctor? A. Well, I am not quite sure.

Q. Well, I appreciate that you have had a number of cases since then, but at the same time I would like to ask you to give us your best recollection. A. Well, it has been a year and a half since I saw this patient, and I remember distinctly she had pain along the course of her back, beginning from the lower part of the neck right down to the end of the sacrum. 40

Toufick Nicola—Direct.

Q. And do you remember any difficulty with the foot and ankle, Doctor? A. I will truthfully admit that this was brought to my attention by the patient, that I overlooked the pain in the ankle, because the pain in the back was so severe, we directed our treatment toward that, and the ankle was overlooked until the patient directed my attention to it.

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Q. What was the course of treatment with reference to either the back or the pelvic injury, Doctor? A. Well, the patient was in what we call a fracture bed, with Balkan frames, wooden structures over the bed, so that the patient could handle herself in order to use the bed pan.

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Q. Now, Doctor, it has been testified to here that Mrs. Haines was confined to the hospital from January 9th to February 25th. Does that conform, in general, to your recollection? A. Well, that would only be a guess.

Q. Was she under your charge or care after her discharge from the hospital, Doctor? A. Yes, I saw her a number of times in the office, to check up on the progress.

Q. And do you recall whether or not you had occasion to refer her to any physician or dentist?

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A. No, I do not. I think I referred her to an eye man, but I am not sure of that.

Q. Do you know a Matthew Kearney? A. I do not.

Cross-examination by Mr. Seymour:

Q. When was it you last saw her, Doctor? A. I don't know; I don't remember.

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Q. Well, do you remember the result of the examination that you made at that time? A. In a

Toufick Nicola—Cross.

general way I could say that the patient was progressing.

Q. Well, don't you think that she has made a good recovery, so far as function is concerned? A. Well, I haven't seen her for a year and a half, but the last I saw her she was able to get around.

Q. Well, have you seen her here today? A. Yes, I saw her just now. 10

Q. Did you see her walking around? A. I did not.

Q. You did not? A. No, sir.

Mr. Seymour: (Addressing the plaintiff Helen Haines) Would you mind walking there for the doctor, please, Mrs. Haines?

Mr. Laird: I object to this.

The Court: I will sustain the objection. 20

Mr. Laird: Now, if the Court please, I may be a bit late in this offer, but there was some question raised yesterday about the payments of a number of these medical bills, and I have had Mrs. Haines, in the absence of Dr. Haines, today, produce all the checks that she can produce, bearing on this matter, which total a considerable sum, and if the Court will permit me, I should like to offer them in evidence. 30

The Court: Any objection?

Mr. Seymour: Why, of course.

The Court: I will sustain the objection, not because I think they are not relevant, but because over objection I would not do that, after what I said yesterday about those matters; there may be some defense to it, and I assume that Mr. Seymour is here unprepared to meet such a proposition; and it was 40

Toufick Nicola—Cross.

understood that only medical testimony would be received here today.

10 Mr. Laird: The question was raised yesterday and gone into, with reference, in particular, to the bills of the nurses in the hospital. Now, I have those checks here. Would it be improper for me to ask that they be admitted, when we have actually gone into that yesterday?

The Court: If objected to, yes. If there is no objection, I have no objection to your putting them in.

Mr. Seymour: Well, I object to them, sir. I thought we would have nothing but doctors today.

20 Mr. Laird: We rest.

Mr. Seymour: Haven't you got your other doctor?

The Court: No, the understanding was there was to be but one doctor and one technician.

Mr. Seymour: All right. Then I will rest.

Mr. Seymour sums up in behalf of defendants.
Mr. Laird sums up in behalf of plaintiffs.

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The Court charges the jury as follows:

CHARGE OF THE COURT.

DUNGAN, J.

40 Gentlemen, at the outset, I think I ought to say to you what I am requested by the defendants to say: that the mere happening of an accident to the plaintiff raises no presumption of negligence upon

Charge of the Court.

the part of the driver of the taxicab. Negligence is not presumed, ordinarily; in fact, there is always a presumption of want of negligence until negligence has been proven by the greater weight of the evidence in the case. So in this case no presumption of negligence arises from the mere happening of the accident. That is a matter of proof, and must be established by the greater weight of the evidence. 10

I am also requested by the defendants to say to you that the refusal of the Court to grant the motion for a non-suit does not indicate that the defendants were guilty of negligence; it simply indicates that it was the view of the Court at that time, and is still the view of the Court, that the case presented questions of fact which it is your duty to determine and which it would have been improper for the Court to decide as a matter of law. So, as may be indicated by what I said at the outset, the question in this case is whether or not the greater weight of the evidence in the case shows that this taxicab driver, Baker, was guilty of negligence in the operation of his taxicab, which resulted in his running down Mrs. Haines and injuring her as she complains in this case. 20

Negligence generally consists in the failure to act as a reasonably careful and prudent person ordinarily would act under the same or similar circumstances and conditions, which involves, in the case of an automobile driver, the duty to run at a reasonable rate of speed, and the duty to sound a warning when that is indicated by conditions existing at the time; that is, if a taxicab driver or an automobile driver, approaching a street intersection, sees a vehicle or a pedestrian crossing, or 30 40

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about to cross that street intersection, and apparently unaware of his approach, it would be his duty, of course, to sound a warning. That is what the horn is required and placed on an automobile for. It is his duty to make reasonably careful observation for vehicles or pedestrians crossing or
10 about to cross his line of traffic, and to take reasonable care to avoid colliding with them.

At that time there was in force in this state a statute which is to this effect: "In places where the houses are on an average less than one hundred feet apart"—and, according to the undisputed proofs in the case, this was such a location, one of the witnesses saying that the houses were fifteen or more feet apart—"pedestrians shall have the
20 right of way over vehicles at any street crossing." Now, that does not mean that pedestrians may not cross at other places than street crossings, but it does mean that pedestrians do not have the right of way over vehicles at other places than street crossings; and the importance of that in this case may be indicated by the dispute as to where this collision happened.

Mrs. Haines herself says, as you recall, that she was crossing over Grove Street, which was a street
30 upon which the taxicab was being operated, in the extension of the northerly side of Claremont Avenue from the west to the east side of Grove Street, Grove Street running north and south. She does not say that it happened on the crosswalk, because she does not know anything, she says, after she started to cross; but the driver himself testified that it happened 45 or 50 feet north of the crosswalk. So if it happened 45 or 50 feet north of the
40 crosswalk, then Mrs. Haines had not the right of

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way, if that is where she was crossing. On the other hand, if she was crossing on the crosswalk, she had the right of way over the taxicab, and had the right to assume that the taxicab would yield her that right of way. However, her story is that she did not see the taxicab at all.

She said that she had come from the Lackawanna station, traveling on the westerly side of Grove Street until she came to Claremont Avenue; she crossed over to the northerly side of Claremont Avenue, and then, at the northwest corner, hesitated before crossing over to the easterly side of Grove Street, to go to her home on Oxford Street, which is to the north of Claremont Avenue. She was going to proceed from there, as I understood it, on the easterly side of Grove Street, because there was no sidewalk on the westerly side of Grove Street. She says that at this northwest corner she hesitated and waited until two cars passed, going in a southerly direction on Grove Street, and then started to cross Grove Street, from the west to the east side, in a line of where the sidewalk on Claremont Avenue ends, straight across. Then, she says, she has no memory of seeing the taxicab, started to cross, and had no recollection of anything else until the next day, when she was in the hospital.

Mr. Seery, who is a police lieutenant of the Town of Montclair, says that Baker, the driver, came to police headquarters and made a statement at that time, in which he said that he was driving north on Grove Street, and that he slowed down on coming to the crossing at Claremont Avenue. The driver says that he stopped, you will recall, differing from this, and denies that he said he merely

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Charge of the Court.

10 slowed down. Mr. Seery says that the driver said that he saw this woman stepping from the curb, at the northwest corner, walking in an easterly direction on Claremont Avenue; that when she got to the center, she hesitated, and then started again and walked in front of his automobile; that he struck her with his front bumper, about in the center, and knocked her down.

20 Now, Baker's testimony differs somewhat from that. His story is that when he came to Claremont Avenue he made a complete stop, and looked up Claremont Avenue. He put his automobile in first gear and started, and saw a lady on the northwest corner, and as he started she stepped off and started to cross the intersection, from west to east. Although he said, in his statement, according to
30 Mr. Seery, that she came out to the center of the street and stopped, he says here that he did not see the lady again until she was 40 or 50 feet below the intersection, from which I understand him to mean north of the intersection; that then she stepped directly in front of the cab, and walked in between the left front headlight and the radiator; that he put on his brake and almost stopped, and just pushed her to one side; and he says that the
30 contact was about five or six feet from the right curb. He says that the width of Grove Street is 45 or 50 feet, and that of Claremont Avenue is 35 to 40 feet.

40 The plaintiff herself does not testify to where this occurred, any more than I have called to your attention: that she said she was proceeding straight across; but the testimony of Mr. Baker himself, as given by Mr. Seery in his statement, and his own testimony here in court, differs, and when testimony differs, as this does, you have a right to take in-

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to consideration the probabilities, and here is a probability which occurs to me—you have a right to take into consideration all the others, but here is one that occurs to me: if Grove Street was 45 feet across, and this accident happened 45 feet north of Grove Street, as he says, then Mrs. Haines must have gone what would have been the distance across this right angle of 40 feet to the east, and 45 feet to the north while he was traveling from the south side of Claremont Avenue to 45 feet beyond, which would be 85 feet. I have not made up what the hypotenuse of that triangle would be, but you may do that when you go to the jury room. He says he was traveling up to the north crosswalk from the time he started, and that when he reached the north crosswalk he was traveling about seven miles an hour, and when he struck this lady he was traveling ten or twelve.

Now, is it probable that she would have traveled that distance across the street, and to the north of that crosswalk, while he was traveling the distance from the south side of Claremont Avenue to 45 feet or 50 feet beyond Claremont Avenue? That is a matter which you may take into consideration in determining whether this collision took place where he says it did. If it did, then Mrs. Haines had not the right of way, but if she was on the crosswalk she had the right of way.

Now, from all the evidence in the case, it will be for you to determine whether or not she was struck by the negligent operation by Mr. Baker of the taxicab while he was driving. If she was, then not only Mr. Baker, the driver of the taxicab, but Mr. Baker's employer, which was the Montclair Brown and White Cab Company, are responsible to Mrs. Haines, and to her husband also, provided no

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contributory negligence upon her part has been shown in this case—because she had some duty to perform as well as the driver of the taxicab. It was her duty to take reasonable care for her own safety.

10 She does not remember just what she did, and here again there is a presumption of due care unless the contrary is proved. Before you should find that she, by any negligence upon her part, contributed to this collision, it must be shown, by the greater weight of the evidence, that there was such negligence upon her part. Now, what she says about it is that she has no memory of seeing a taxicab, or of seeing any lights upon a taxicab. She says that she saw no cars crossing to the north. She says, upon cross-examination, that she believes
20 she looked to her right, which was the direction from which this taxicab was coming, but she frankly admits that she does not remember. It was her duty to do that. Has it been proven by the evidence that she failed to do it, if the accident happened where it is insisted, upon the part of the plaintiff, that it did, namely, upon the crosswalk?

Of course, gentlemen, if it happened as the defendant Baker says it did, if she went from that
30 northwest corner, after he first observed her, to a point 45 or 50 feet north of the north crosswalk of Claremont Avenue, and walked or ran in front of this taxicab, and that is the way the taxicab hit her—walked in front of it, I should have said, when the taxicab was so close that, by the exercise of reasonable care, the taxicab driver could not stop it in time to avoid the accident, then that was due apparently to a failure upon her part to observe the taxicab, and to take such care for her
40 own safety as she ought to have taken, in which

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event she would undoubtedly be guilty of contributory negligence, which would prevent her from recovering in this case.

This is a matter which you have a right to take into consideration, and if her contributory negligence is shown, she cannot recover, even though you decide that the driver of the taxicab was negligent; but if her negligence has not been established by the greater weight of the evidence, and the greater weight of the evidence shows that Baker was negligent in the operation of his taxicab, as the result of which the taxicab ran into Mrs. Haines, she is entitled to your verdict, and so is her husband. 10

If she is entitled to your verdict, she is entitled to compensation for the injuries which were sustained by her, for her consequent pain and suffering and disability, and, if she is not yet cured, for such pain and suffering and disability as she is undergoing at this time. 20

According to Dr. Schimmelfennig, she had three fractures: she had a fracture of the pelvic bone, she had a fracture of the transverse process of the first cervical vertebra, and she had a fracture of the ankle joint. She says that she suffered pain, that she was in the hospital for some time, with nurses; that she was incapacitated at home for a considerable time, and that she still suffers pain and disability as the result of these injuries. for which she is entitled to be compensated by your verdict, if she is entitled to your verdict at all. 30

In addition to that, she said that a fur coat—do you claim for that, Mr. Laird?

Mr. Laird: I will omit it.

The Court: She says that, although this fur coat was worth about \$300, she does not claim for 40

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the fur coat, but only for the damage to it, which she says was only \$50, and it is admitted that that should be omitted from your consideration.

10 Now, if she is entitled to your verdict, so is her husband. The husband is entitled to the conjugal society and services of his wife, as he had been accustomed to enjoy her society and services prior to an injury of this kind; and whatever you believe will compensate him for that loss of society and services of his wife you should award him. In addition to that, he society and services prior to an injury of this kind; and whatever you believe will compensate him for that loss of society and services of his wife you should award him. In addition to that, he
20 would be entitled to be compensated for the reasonable expenses of attempts to cure his wife, or to alleviate her from her pain and suffering, or to supply help in the household to take the place of the services which had previously been rendered by the wife.

It is very frankly admitted in this case that the doctors' services, which, apparently, when this suit was started, it was thought were proper elements of damages, should not be included, because,
30 by the courtesies extended by one doctor to another doctors do not make charges, one to the other. There are other elements of damage which frankly have been withdrawn from your consideration in this case; but there are certain elements of damage which you may take into consideration—certain expenses which the doctor has been obliged to pay, and one of these is the hospital bill, \$645.25. There were nurses. She had a day and night nurse for three weeks, and then, for the remaining
40 time she was in the hospital, she had a single

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nurse; and their services, at \$49 a week, total \$485. Then, when she was brought home, she had a practical nurse at home, from February 25th to August 1st—23 weeks—at \$25 a week, and a charge was made, if it be a reasonable one it is for you to say—of \$10 a week for her board, making \$35 a week. If that is not a reasonable charge, you may scale that down. Of course, this was an extra person in the family, and whatever you believe, from the evidence in the case, to be a reasonable charge for that item, you may include in your verdict in favor of the husband, in addition to the \$25 a week. If you think that \$10 is reasonable, as charged by the doctor, that item amounts, for 23 weeks, to \$805. 10

Then there was a physio-therapist, a woman. Checks have been produced showing that she was paid \$103. I have not totaled these items to know just what the amount is. In addition to that, as I understood the testimony of Mrs. Haines, they had had extra help in the house. Before this time, she said, in addition to sending out the laundry, or having a laundress come in, they had a woman who came in and did the heavy housework, in addition to what Mrs. Haines formerly did, for a day and a half a week. Since that time, since the practical nurse left, I understood, and down to the present time, they have had a woman come in for two days a week, and pay her \$4 a day, which would be \$2 a week more than they formerly paid—that is an element of damage which you may take into consideration in determining how much the doctor is entitled to, if you decide he is entitled to your verdict. And he is entitled to your verdict, as I have already stated, provided his wife is entitled to your verdict. 20
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10 If Mrs. Haines is not entitled to your verdict, then the doctor is not entitled to your verdict; and if you decide that they are entitled to your verdict, you should indicate by your verdict how much you find in favor of Mrs. Haines, and how much you find in favor of Dr. Haines. Do not bring in a single verdict; bring in a verdict in favor of each of them for the amount of damage you find each to be entitled to.

20 However, if you find contributory negligence to have been proven, or a failure to prove negligence on the part of Mr. Baker, then your verdict should be in favor of the defendants. However, if your verdict be against the defendants, you will not apportion the amount between the driver of the taxicab and the owner of the taxicab, but you should render your verdict against both of them, the law taking care of the apportionment of that between them.

I have here a request to charge on behalf of the plaintiffs: "Even if the plaintiff were crossing at a point other than the crosswalk, she would have a lawful right to do so, and her rights and that of the taxicab would be equal upon the streets." I charge you that.

30 (The jury retires)

The Court: Are there any points that I have not covered, or any exceptions to the charge?

Mr. Laird: No, your Honor.

Mr. Seymour: No, sir.

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New Jersey Court of Errors and Appeals

HELEN HAINES and THOMAS
HAINES,
Plaintiffs-Respondents,

vs.

NICHOLAS BAKER and MONTCLAIR
BROWN & WHITE CAB Co., a
corporation,
Defendants-Appellants.

Action at Law.

On Appeal
from Supreme
Court, Essex
Circuit.

BRIEF OF PLAINTIFFS-RESPONDENTS.

Statement of Facts.

The plaintiff, Helen Haines, was a pedestrian who was attempting to cross Grove Street, a public highway in the Town of Montclair on the evening of January 9, 1928 at about six o'clock in the evening. Plaintiff started to cross at the crosswalk and had gotten within approximately eight feet of the opposite curb when she was struck by the front of a taxi cab owned and operated by the defendants, being hurled to the ground to the right of the taxi sustaining injuries which included a complete fracture of the frontal portion of the pelvic bone on the right side, a chip fracture of the dorsal bone, tearing of the ligaments of the left ankle, fracture of the transverse process of the first dorsal vertebrae and fracture of the transverse of the first lumbar vertebrae which injuries resulted in the patient's confinement to the Moun-

tainside Hospital from January 9, 1928 to February 25, 1928.

Argument.

The defendants-appellants set up one ground of appeal divided into seven sections which the respondents will discuss in the order in which they are given and discussed in defendants-appellants' brief.

a. That the verdict is contrary to the weight of the evidence.

This is not a proper ground of appeal and it requires no citation of authority that the appellate court on appeal reviews only questions of law and is not concerned with the weight of the evidence. Accordingly, it would seem unnecessary to discuss this point.

b. That there was no proof of negligence as against the defendants.

The remarks under "a" supra, are likewise applicable to this ground of appeal and in that no error of law is pointed out respondent will not discuss this ground.

c. That there was no proof of violation of any duty that defendants owed to the plaintiffs.

Our remarks under "a" and "b" are likewise applicable to this ground and accordingly it will not be argued.

d. That the verdict rendered in favor of the plaintiffs was the result of mistake, passion, or prejudice on the part of the jury.

Questions regarding the conduct of the jury can only be considered on a Rule to Show Cause. Accordingly, this ground will not be discussed by the respondents.

e. That the verdict is contrary to and inconsistent with the charge of the Court, the issue raised by the pleadings and the evidence adduced in support of the allegations or issue.

This ground points out no error in law and accordingly we find nothing to discuss on an appeal.

f. That the Court erred in refusing defendant's motion for a non-suit at the close of plaintiffs' case.

The plaintiff, Helen Haines, at the time of the happening of this accident was proceeding from the Lackawanna Railroad Station in the Town of Montclair to her home and it was necessary for her on this trip to cross Grove Street which she proceeded to cross at the intersection of that street with Claremont Avenue, another public highway in the Town of Montclair. The plaintiff testified that she stood on the northwest corner for an interval of time during which two cars passed her going in a southerly direction. She then stepped off the curb at the crosswalk to cross Grove Street and in her own words "I started straight across" (State of Case, page 15, line 31). Plain-

tiff also stated that at the time she believed she looked to her right, which was the direction from which the taxicab was coming, but was unable to state positively (State of the Case, page 28, line 23) and that she had no recollection of further happenings until she regained consciousness in the Mountainside Hospital at about twelve o'clock at night (State of the Case, page 16, line 1).

It is, of course, a common experience for one involved in an accident resulting in unconsciousness to lose their memory of events immediately preceding the accident itself.

The witness, Paul Robbins, called on behalf of the plaintiff testified that he was walking in a northerly direction along the westerly side of Grove Street at approximately ten or fifteen paces past Claremont Avenue (State of the Case, page 45, line 26). At that time he heard the sound of an automobile approaching him from the rear and he glanced over his right shoulder in the direction of the sound and at the same time heard a thud and saw something fall (State of the Case, page 50, line 22). The witness then turned and ran across the street diagonally to a point on the opposite side of the street to a point somewhat nearer to Claremont Avenue and found plaintiff lying in the road on the right side of the taxicab (State of the Case, page 54, line 36) about five feet away from the easterly curb of Grove Street (State of the Case, page 54, line 38).

From the testimony of both of these witnesses the jury were entitled to believe that the plaintiff was crossing at a crosswalk, first by reason of the direct testimony of the plaintiff herself that she started at the crosswalk and went straight across and, secondly, from the testimony of Robbins that he was ten or fifteen paces from the corner and

that the accident happened somewhere behind him. From this testimony the jury could also infer that the plaintiff had walked almost entirely across Grove Street and was within a few feet of the opposite curb when struck by the taxicab.

Next there was produced for the plaintiffs a witness, Hugh Seery, a police lieutenant, connected with the Montclair Police Department, who testified that on the evening of the accident the defendant, Nicholas Baker, appeared at police headquarters and made a statement which the lieutenant took down in a book used for that purpose and that Nicholas Baker had stated to him the following:

“A. (Reading): ‘On January 9, 1928, statement of auto accident of Nicholas Baker, of 293 Heywood Street, Orange, New Jersey; driver’s license 565617; car license O-2969T, New Jersey. I was driving north on Grove Street about 7:10 P. M. I slowed down on coming to the crossing at Claremont Avenue. I saw a woman stepping from the curb on the northwest corner of Claremont Avenue, walking in an easterly direction on Claremont Avenue. When she got to the center of Grove Street, she hesitated, and then started again and walked in front of my automobile. I struck her with my front bumper, about in the center, and knocked her down. I stopped as quick as possible. The street was wet. I stopped in about eight or ten feet. I was going about twelve miles per hour at the time of the accident. I got out and put the woman in my taxicab, and took her to the Mountainside Hospital. The woman’s name; Mrs. Thomas Haines of 30 Oxford Street, Montclair, I did not blow my horn on coming to the crossing as I slowed down.’” (State of the Case, page 59, lines 2-13; page 59, lines 35-40; page 60, lines 1-14.)

As a reading of this statement will readily indicate, the driver of this taxicab after the accident stated that he was proceeding along Grove Street when he saw the plaintiff crossing Grove Street (to quote the witness "walking in an easterly direction on Claremont Avenue" which by inference can be taken to mean on the crosswalk.) He noticed her hesitate when she reached the center of Grove Street and then continue on, that he blew no horn to warn her of his approach but continued on and ran her down as she was walking (not running) and that he struck her with the middle of his front bumper.

Nothing can be clearer, we think, than that this testimony presented a clear jury question both on the question of negligence and of contributory negligence and as the appellate courts of this state have often said, questions of negligence and contributory negligence are practically always for the jury. *Olenick vs. Standard Oil*, New Jersey Advance Reports, Vol. VIII, No. 40, page 744.

Regardless, however, of whether or not the failure of the trial court to non-suit on the defendants' motion was or was not error, the error if any was undoubtedly cured on the defendants' own case and this through the testimony of Nicholas Baker who was operating the defendant's taxicab. Mr. Baker testified that as he came along Grove Street he started to cross Claremont Avenue but noticed the plaintiff standing on the northwest corner and saw her step off the curb and start to walk along the intersection (State of the Case, page 105, line 24).

After having seen the plaintiff in this position and knowing that the path of his automobile and the path of the plaintiff were converging, he made no further observation of the plaintiff although she was at that time crossing on the crosswalk, that

he blew no horn as a signal of his approach and that he never saw her again until he ran her down at a point some forty-five or fifty feet past the intersection (State of the Case, page 106, line 3). This testimony would suffice to cure any possible error on the question of non-suit. The defendant Baker's story in many essentials speaks so clearly of negligence that nothing further would seem to be required to convict him of it, while other portions of his testimony having to do with the alleged contributory negligence of the plaintiff are so highly improbable as to be absurd. That this improbability was apparent to the court, and we assume to the jury, is indicated by the following quotation from the charge of Judge Dungan which we quote verbatim as follows (State of the Case, page 142, lines 34 to 41, page 143, lines 1 to 30):

“The plaintiff herself does not testify to where this occurred, any more than I have called to your attention; that she said she was proceeding straight across; but the testimony of Mr. Baker himself, as given by Mr. Seery in his statement, and his own testimony here in court, differs, and when testimony differs, as this does, you have a right to take into consideration the probabilities, and here is a probability which occurs to me—you have a right to take into consideration all the others, but here is one that occurs to me: if Grove Street was 45 feet across, and this accident happened 45 feet north of Grove Street, as he says, then Mrs. Haines must have gone what would have been the distance across this right angle of 40 feet to the east, and 45 feet to the north while he was traveling from the south side of Claremont Avenue to 45 feet beyond, which would be 85 feet. I have not made up what the hypotenuse of that triangle would be, but you may do that when you go to the jury

room. He says he was traveling up to the north crosswalk from the time he started, and that when he reached the north crosswalk he was traveling about seven miles an hour, and when he struck this lady he was traveling ten or twelve.

“Now, is it probable that she would have traveled that distance across the street, and to the north of that crosswalk, while he was traveling the distance from the south side of Claremont Avenue to 45 feet or 50 feet beyond Claremont Avenue? That is a matter which you make take into consideration in determining whether this collision took place where he says it did.”

g. That the damages awarded are grossly excessive and resulted from mistake, bias, passion, prejudice or partiality on the part of the jury.

While this ground of appeal is improper in that it points out no legal error in the conduct of the trial which can be corrected on appeal, we are nevertheless, glad to avail ourselves of the opportunity of briefly pointing out what the actual injuries were as indicating, if indication be required, the complete lack of merit in this appeal. As before stated, the plaintiff received injuries consisting of a complete fracture of the frontal portion of the pelvic bone on the right side, a chip fracture of the dorsal bone, tearing of the ligaments of the left ankle, fracture of the traverse process of the first dorsal vertebrae and fracture of the transverse process of the first lumbar vertebrae which injuries resulted in the patient's confinement to the Mountainside Hospital from January 9, 1928 to February 25, 1928 during the majority of which time she lay in a fracture bed suffering intense

pain; that she has been left permanently injured and that her condition was such as to require the attention of a nurse for approximately five months after her return from the hospital. With these injuries she received at the hands of the jury \$3,000.

The plaintiff, Thomas Haines, proved at the trial bills totaling \$2,320.25. He received at the hands of the jury a verdict of \$2,500 so that the jury assessed as a loss for the society and companionship of his wife the extravagant sum of \$180.

With further reference to the merits of the defense in this case we desire to point out to the Court that although the driver of this taxicab had reported to the police on the night of the accident that he had run the plaintiff down and that he had struck her with the middle of the front bumper of his car and although he was present in court at the trial prepared to testify and did testify that the plaintiff was struck by his taxicab, nevertheless, the following colloquy between court and counsel took place (State of the Case, page 50, lines 33-40, page 51, lines 1-2):

“Mr. Laird: I am going to object to this question unless Mr. Seymour will state that he denies the taxicab struck this lady; of course, it has no materiality otherwise.

The Court: That is denied, is it, Mr. Seymour?

Mr. Seymour: It is denied, sir, that the taxicab hit the woman.”

We also call to the Court's attention that the defendants in declining to permit the use of X-rays produced by the historian of the Mountain-side Hospital without the same being identified by

the technician who actually took the same made the following statement to the court and jury (State of the Case, page 126, line 39) :

“Mr. Seymour: No, sir. My information is that this woman did not get those injuries, and for that reason I cannot admit anything that is not correct.”

After having made this statement counsel failed to call any doctor to refute the testimony of the plaintiff herself or of the plaintiff's medical experts. This as it seems to us is a fitting commentary upon the merits of defendants' contentions.

For the foregoing reasons, it is respectfully submitted that the judgment of the trial court be affirmed.

HEINE & LAIRD,
Attorneys of Plaintiffs-Respondents.

JOHN A. LAIRD,
Of Counsel.

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New Jersey Court of Errors and Appeals

HELEN HAINES and THOMAS
HAINES,
Plaintiffs-Respondents,

vs.

NICHOLAS BAKER and MONT-
CLAIR BROWN AND WHITE CAB
Co., a Corporation,
Defendants-Appellants.

Action at Law.

BRIEF OF DEFENDANTS.

The Montclair Brown and White Cab Co., owned and operated a taxicab business and had in its employ one Nicholas Baker as a driver.

On the day in question, the defendant, Monclair Brown and White Cab Co. by its employee Nicholas Baker, was driving in a generally northerly direction on Grove Street in the Town of Monclair. It was approximately six o'clock in the evening, a foggy dark night. Defendant reached Claremont Avenue and stopped his machine because of the traffic signal at that intersection. He shifted gears and had passed the intersection when suddenly his machine struck something. He stopped his car and upon getting out found that it was the Plaintiff herein.

Questions Involved.

A. That the verdict is contrary to the weight of the evidence. The unimpeaced testimony is that the accident occurred by reason of the negligence of the plaintiff in that she failed to make proper

observation as to northbound traffic (Case, page 15, line 3 et seq.); that she did not observe any lights of approaching traffic (Case, page 15, line 35 et seq.) and that it was a foggy night (Case, page 25, line 2 et seq.) and it was a dark night (Case, page 27, line 10) and that she did not observe the defendants cab (Case, page 27, line 25 et seq.) and that she did not know of any cars going north (Case, page 27, line 3; page 28, line 10) and Plaintiff refused to state definitely that she had looked toward the south, the direction from which the defendant was coming; but stated in fact that "don't know whether I looked either way or not" (Case, page 28, line 28 et seq.). On the other hand the testimony clearly showed that the defendant when reaching the intersection of Claremont Avenue stopped his car (Case, page 96, line 28) and shifted gears; that the car of the defendant was being driven in a careful, prudent manner (Case, page 96, line 28); that he was driving not more than ten to twelve miles per hour (Case, page 96, line 39) and that he was forty or fifty feet past the intersection when he struck the Plaintiff (Case, page 97, line 13 et seq.).

The Jury, disregarding the force of this and similar evidence gave to the testimony of the Plaintiff a force to which, under the law and facts it was not entitled to, and failed to give the testimony of the defendant, Montclair Brown and White Cab Co. the proper force.

B and C. That there was no proof of negligence as against the defendants; or that the defendant violated any duty owed to the Plaintiffs.

The evidence clearly shows that the defendant stopped his car when reaching the intersection of Grove Street and Claremont Avenue (Case, page

96, line 28 et seq.) that he was driving in a careful, prudent, manner (Case, page 96, line 28, 39 et seq.). The proof adduced showed that the defendant, had the right of way in that when Plaintiff was struck, she was in the roadway, forty or fifty feet past the intersection. (Case, page 97, line 13 et seq.). "Negligence is a fact which must be shown. It will not be presumed." *McCombe vs. P. S. Railway Co.*, 95 N. J. L. 187. "There is always a presumption against negligence" 64 N. J. L. 596. Negligence cannot be inferred from the mere happening of an accident itself. *Kingsley vs. D. L. & W. R. R.*, 81 N. J. L. 536. To measure negligence in the present case the standard of an extraordinary prudent person cannot be used as the criterion or yardstick, but rather *were* the acts of the Defendant, Montclair Brown & White Cab Co.'s driver, those of a reasonably prudent person.

D. That the verdict rendered in favor of the Plaintiffs was the result of mistake, passion or prejudice on the part of the Jury.

It is clear from a reading of the testimony adduced that the Jury was swayed in their reasoning to lose sight of the fine legal distinction existing in the case especially in relation to the liability in respect to the Defendant, and to allow themselves to be actuated by motives of bias, passion and prejudice.

E. The verdict is contrary to and inconsistent with the charge of the Court, the issue raised by the pleadings and the evidence produced in support of the issue. The Court in its charge on page 144 says "Before you should find that she, by any negligence upon her part, contributed to this collision it must be shown, by the greater weight of the evidence, that there was such negligence upon

her part. Now, what she says about it is that she has no memory of seeing a taxicab, or of seeing any lights upon a taxicab. She says that she saw no cars crossing to the north. She says, upon cross-examination, that she believes she looked to her right, which was the direction from which this taxicab was coming, but *she frankly admits that she does not remember. It was her duty to do that.*" Yet the Jury apparently ignored the specific instructions in the charge of the Court and returned a verdict contrary thereto.

F. That the Court erred in refusing Defendants motion for a non-suit at the close of the Plaintiffs' case. Nowhere in the testimony does it appear that the accident upon which this case is predicated, was due to the defendants' failure to exercise due care. On the contrary, it was shown that the Defendant was driving in a careful, prudent manner (Case, page 96, lines 28, 39).

In the case of Hummer vs. Lehigh Valley Railroad Co., 75 N. J. L. 703, the Court says in part at page 706: "Where the evidence is equally consistent with either view, with the existence or non-existence of negligence, it is not competent to the Judge to leave the matter to the Jury. The party who affirms negligence had altogether failed to establish it. That is a rule which ought never to be lost sight of". Cotton vs. Wood, 8 C. B. (N.S.) 568 (At page 572)

Under the rules laid down in the cases cited here and the unimpeached testimony on behalf of the Defendants the Court erred in refusing Defendants' motion for direction of a verdict at the close of the defendants' case.

G. That the damages awarded are grossly excessive and resulted from mistake, bias, passion, prejudice or partiality on the part of the Jury.

The Plaintiff complained of severe headaches and dizziness on lying down, but admitted that they didn't interfere with her sleeping (Case, page 22, lines 6, 8 et seq.) and again she says, "I look pretty well—but I haven't the resistance" (Case, page 22, line 23 et seq.).

It is respectfully urged that this testimony of the injuries does not warrant a verdict as granted by the Jury and such verdict bespeaks bias, prejudice or partiality on the part of the Jury, in favor of the Plaintiff and against the Defendants, all of which is contrary to law and justice.

For the foregoing reasons, it is respectfully submitted that the Judgment of the Trial Court be reversed.

GEORGE F. SEYMOUR, JR.,
Attorney for Defendants-Appellants.





