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Notice of Appeal.

(Filed February 14, 1935.)

New Jersey Supreme Court

10

MONMOUTH COUNTY.

ROSIE SIEGEL and HENRY SIEGEL,
Plaintiffs,

vs.

PAROBASA REALTY CORPORATION, a
body corporate of the State
of New Jersey, and PAULINE
SAUNDERS,
Defendants.

Action at Law.
Notice of Appeal.

20

*To Bernard H. Weiser, Esq.,
Attorney of Plaintiffs:*

TAKE NOTICE that the defendant Pauline Saunders appeals from the whole of the judgment entered in this cause in the above entitled court to the Court of Errors and Appeals of New Jersey in the last resort in all causes.

30

Dated January 26, 1935.

HENRY K. GOLENBOCK,
Attorney of Defendant.

40

Grounds of Appeal.

(Filed March 1, 1935.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

ROSIE SIEGEL and HENRY SIEGEL,
Plaintiffs-Respondents,

vs.

PAROBASA REALTY CORPORATION, a
body corporate of the State
of New Jersey, and PAULINE
SAUNDERS,
Defendants-Appellants.

Action at Law.
Grounds of
Appeal.

20

*To Bernard H. Weiser, Esq.,
Attorney of Plaintiffs:*

Sir:

PLEASE TAKE NOTICE that the defendant Pauline Saunders appeals from the whole of the judgment entered in this cause to the New Jersey Court of Errors and Appeals, on the following grounds:

30

1. Because the Trial Court refused to non-suit the said plaintiffs.

2. Because the Trial Court refused to direct a verdict in favor of the defendant Pauline Saunders.

3. Because the Trial Court refused to charge the jury in accordance with the following requests to charge made on behalf of the defendant Pauline Saunders:

40

No. 3. That when a person rides as a guest in an automobile, that person assumes all

Grounds of Appeal.

risks ordinarily incident thereto; that the driver owes such guest merely the duty of not knowingly or wantonly adding to those perils which might ordinarily be expected.

No. 6. Before the jury can find for the plaintiffs Siegel, against the defendant Pauline Saunders, the jury must first find by the preponderance of the evidence and by positive and affirmative proof, and not by mere speculation or conjecture that Mrs. Pauline Saunders was guilty of gross, wanton or culpable negligence which was the direct and proximate cause of the accident.

10

No. 7. Gross negligence is substantially and appreciably higher magnitude than ordinary negligence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence. While it falls short of being such reckless disregard of probable consequences as is equivalent to a wilful or intentional wrong, yet it is a heedless and palpable violation of legal duty respecting the rights of others. The element of culpability or blame which characterizes all negligence is, in gross negligence, magnified to a high degree compared with that present in ordinary negligence.

20

30

No. 8. If you find from the evidence in the case that the plaintiffs asked the defendant Pauline Saunders to take them up North in her car, they were mere licensees, and you cannot bring in a verdict in favor of the plaintiffs unless you find that the injuries which they sustained were due to the wilful or intentional act on the part of the defendant Saunders. In other words, the only duty

40

Summons.

which the defendant Saunders owed to the plaintiffs was that to refrain or abstain from wilfully injuring the plaintiffs.

HENRY K. GOLENBOCK,
Attorney of Defendant Pauline Saunders.

10 Service of a copy of the within is hereby acknowledged this 21st day of February, 1935.

B. H. WEISER,
Attorney for Plaintiffs.

Summons.

(Filed June 20, 1933.)

20 *The State of New Jersey to Parobasa Realty Corporation, a body corporate of the*
[L. S.] *State of New Jersey, and Pauline Saunders:*

YOU ARE HEREBY SUMMONED to answer the annexed complaint of ROSIE SIEGEL and HENRY SIEGEL, in an action at law in the New Jersey Supreme Court.

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

WITNESS, THOMAS J. BROGAN, Esq., Chief Justice of the said Supreme Court, at Trenton, this 20th day of June, A.D., Nineteen Hundred and Thirty-three.

40

BERNARD H. WEISER,
Attorney.

FRED L. BLOODGOOD,
Clerk.

Complaint.

(Filed June 20, 1933.)

NEW JERSEY SUPREME COURT,

MONMOUTH COUNTY.

ROSIE SIEGEL and HENRY SIEGEL,
Plaintiffs,

vs.

PAROBASA REALTY CORPORATION, a
body corporate of the State
of New Jersey, and PAULINE
SAUNDERS,
Defendants.

Action at Law.
Complaint.

10

20

Plaintiffs, Rosie Siegel and Henry Siegel, residing in the Borough of Bradley Beach, in the County of Monmouth and State of New Jersey, say that—

FIRST COUNT.

1. On March 19, 1933, plaintiff, Rosie Siegel, was a passenger in an automobile owned by the defendant, Parobasa Realty Corporation, a body corporate, and driven by its agent or servant, the defendant, Pauline Saunders, which said automobile was being driven on a public thoroughfare from the City of Richmond to the City of Fredericksburg, State of Virginia, proceeding in the direction of Fredericksburg, at a point approximately two miles from Fredericksburg.

30

2. Said plaintiff, Rosie Siegel, was exercising no direction or control over the operation of said automobile.

40

Complaint.

10 3. It then and there became the duty of the defendant, Parobasa Realty Corporation, a body corporate, by its agent or servant, the defendant, Pauline Saunders, to so carefully and prudently drive and operate said automobile that the same should refrain from running off the highway and turning around and striking objects on the side of the highway.

20 4. Notwithstanding the premises and disregarding its duty in that behalf, the defendant, Parobasa Realty Corporation, by its agent or servant, the defendant, Pauline Saunders, so carelessly, negligently and unlawfully drove and operated said automobile, that the same ran off the highway, completely turned around and struck a wall or embankment, inflicting upon the plaintiff, Rosie Siegel, the injuries hereinafter set forth.

5. Defendant, Parobasa Realty Corporation, a body corporate, by its agent or servant, the defendant, Pauline Saunders, was negligent in the operation of said automobile in the following respects:

- 30 (a) Said automobile was driven at a high and excessive rate of speed.
- (b) Said automobile was not under proper control.
- (c) Said automobile was not equipped with proper brakes or stopping appliances, and the brakes with which said automobile was equipped were not properly applied.
- (d) No watch or lookout was maintained upon the highway.
- 40 (e) Said automobile was not operated upon the highway but was allowed to run off the same.

Complaint.

(f) Said automobile was driven in divers other careless and negligent manners.

6. As a direct and proximate result of the negligence of the defendant, Parobasa Realty Corporation, a body corporate, by its agent or servant, the defendant, Pauline Saunders, plaintiff, Rosie Siegel, suffered cuts, bruises and contusions in and about her body, legs, head and arms. She more particularly suffered a large hematoma of the scalp, three fractured ribs on the left side of the chest, pleurisy with effusion increasing and requiring aspiration (removal of one and one-half quarts of fluid), multiple bruises of the chest and internal injuries, all of which injuries will be permanent in their effects. She suffered great pain and nervous shock and will in the future suffer from pain and nervous shock. She has been unable to attend to her usual household duties and will in the future be unable so to do.

SECOND COUNT.

1. On March 19, 1933, plaintiff, Henry Siegel, was a passenger in an automobile owned by the defendant, Parobasa Realty Corporation, a body corporate, and driven by its agent or servant, the defendant, Pauline Saunders, which said automobile was being driven on a public thoroughfare from the City of Richmond to the City of Fredericksburg, State of Virginia, proceeding in the direction of Fredericksburg, at a point approximately two miles from Fredericksburg.

2. Said plaintiff, Henry Siegel, was exercising no direction or control over the operation of said automobile.

3. Plaintiff, Henry Siegel, repeats the allegations of Paragraph 3 of the First Count.

Complaint.

10 4. Notwithstanding the premises and disregarding its duty in that behalf, the defendant, Parobasa Realty Corporation, by its agent or servant, the defendant, Pauline Saunders, so carelessly, negligently and unlawfully drove and operated said automobile, that the same ran off the highway, completely turned around and struck a wall or embankment, inflicting upon the plaintiff, Henry Siegel, the injuries hereinafter set forth.

5. Plaintiff, Henry Siegel, repeats the allegations of Paragraph 5 of the First Count.

20 6. As a direct and proximate result of the negligence of the defendant, Parobasa Realty Corporation, a body corporate, by its agent or servant, the defendant, Pauline Saunders, plaintiff, Henry Siegel, suffered cuts, bruises and contusions in and about his body, legs, head and arms. He more particularly suffered severe internal and external injuries, all of which injuries will be permanent in their effects. He suffered great pain and nervous shock and will in the future suffer from pain and nervous shock. He has been forced to expend large sums of money in and about endeavoring to cure himself of his injuries and will in the future be forced so to do. He has been
30 unable to follow his usual occupation or means of livelihood and has been deprived of his earnings in that behalf.

40 Plaintiff, Henry Siegel, is the husband of plaintiff, Rosie Siegel. As a result of the injuries suffered and sustained by his wife, he has been forced to expend large sums of money in and about endeavoring to cure her of her injuries and will in the future be forced so to do. He has been deprived of her aid, services and society and of his right of consortium with her and will in the future be so deprived. He has been forced to expend

Complaint.

large sums of money for aid and services in and about the household and will in the future be forced so to do.

THIRD COUNT.

1. On March 19, 1933, plaintiff, Rosie Siegel, was a passenger in an automobile driven by the defendant, Pauline Saunders, which said automobile was being driven on a public thoroughfare from the City of Richmond to the City of Fredericksburg, State of Virginia, proceeding in the direction of Fredericksburg, at a point approximately two miles from Fredericksburg. 10

2. Said plaintiff, Rosie Siegel, was exercising no direction or control over the operation of said automobile. 20

3. It then and there became the duty of the defendant, Pauline Saunders, to so carefully and prudently drive and operate said automobile that the same should refrain from running off the highway and turning around and striking objects on the side of the highway.

4. Notwithstanding the premises and disregarding her duty in that behalf, the defendant, Pauline Saunders, so carelessly, negligently and unlawfully drove and operated said automobile, that the same ran off the highway, completely turned around and struck a wall or embankment, inflicting upon the plaintiff, Rosie Siegel, the injuries hereinafter set forth. 30

5. Defendant, Pauline Saunders, was negligent in the operation of said automobile in the following respects:

(a) Said automobile was driven at a high and excessive rate of speed. 40

Complaint.

(b) Said automobile was not under proper control.

10 (c) Said automobile was not equipped with proper brakes or stopping appliances, and the brakes with which said automobile was equipped were not properly applied.

(d) No watch or lookout was maintained upon the highway.

(e) Said automobile was not operated upon the highway but was allowed to run off the same.

(f) Said automobile was driven in divers other careless and negligent manners.

20 6. As a direct and proximate result of the negligence of the defendant, Pauline Saunders, plaintiff, Rosie Siegel, suffered cuts, bruises and contusions in and about her body, legs, head and arms. She more particularly suffered a large hematoma of the scalp, three fractured ribs on the left side of the chest, pleurisy with effusion increasing and requiring aspiration (removal of one and one-half quarts of fluid), multiple bruises of the chest and internal injuries, all of which
30 injuries will be permanent in their effects. She suffered great pain and nervous shock and will in the future suffer from pain and nervous shock. She has been unable to attend to her usual household duties and will in the future be unable so to do.

FOURTH COUNT.

40 1. On March 19, 1933, plaintiff, Henry Siegel, was a passenger in an automobile driven by the defendant, Pauline Saunders, which said automo-

Complaint.

bile was being driven on a public thoroughfare from the City of Richmond to the City of Fredericksburg, State of Virginia, proceeding in the direction of Fredericksburg, at a point approximately two miles from Fredericksburg.

2. Said plaintiff, Henry Siegel, was exercising no direction or control over the operation of said automobile. 10

3. Plaintiff, Henry Siegel, repeats the allegations of Paragraph 3 of the Third Count.

4. Notwithstanding the premises and disregarding her duty in that behalf, the defendant, Pauline Saunders, so carelessly, negligently and unlawfully drove and operated said automobile, that the same ran off the highway, completely turned around and struck a wall or embankment, inflicting upon the plaintiff, Henry Siegel, the injuries hereinafter set forth. 20

5. Plaintiff, Henry Siegel, repeats the allegations of Paragraph 5 of the Third Count.

6. As a direct and proximate result of the negligence of the defendant, Pauline Saunders, plaintiff, Henry Siegel, suffered cuts, bruises and contusions in and about his body, legs, head and arms. He more particularly suffered severe internal and external injuries, all of which injuries will be permanent in their effects. He suffered great pain and nervous shock and will in the future suffer from pain and nervous shock. He has been forced to expend large sums of money in and about endeavoring to cure himself of his injuries and will in the future be forced so to do. He has been unable to follow his usual occupation or means of livelihood and has been deprived of his earnings in that behalf. 30 40

Complaint.

10 Plaintiff, Henry Siegel, is the husband of plaintiff, Rosie Siegel. As a result of the injuries suffered and sustained by his wife, he has been forced to expend large sums of money in and about endeavoring to cure her of her injuries and will in the future be forced so to do. He has been deprived of her aid, services and society and of his right of consortium with her and will in the future be so deprived. He has been forced to expend large sums of money for aid and services in and about the household and will in the future be forced so to do.

Plaintiffs demand as damages on the First Count the sum of Fifty Thousand Dollars (\$50,000.00), together with the costs of this suit.

20 Plaintiffs demand as damages on the Second Count the sum of Fifty Thousand Dollars (\$50,000.00), together with the costs of this suit.

Plaintiffs demand as damages on the Third Count the sum of Fifty Thousand Dollars (\$50,000.00), together with the costs of this suit.

Plaintiffs demand as damages on the Fourth Count the sum of Fifty Thousand Dollars (\$50,000.00), together with the costs of this suit.

30 BERNARD H. WEISER,
Attorney of Plaintiffs.

Answer.

(Filed August 2, 1933.)

NEW JERSEY SUPREME COURT,
MONMOUTH COUNTY.ROSIE SIEGEL and HENRY SIEGEL,
Plaintiffs,*vs.*PAROBASA REALTY CORPORATION, a
body corporate of the State
of New Jersey, and PAULINE
SAUNDERS,
Defendants.Action at Law.
Answer.

10

20

The defendants answering the complaint of the
plaintiffs herein say:

First Count.

1. Denies the allegations contained in Para-
graphs 1, 2, 3, 4, 5 and 6.

Second Count.

1. Denies the allegations contained in Para-
graphs 1, 2, 3, 4, 5 and 6.

30

Third Count.

1. Denies the allegations contained in Para-
graphs 1, 2, 3, 4, 5 and 6.

Fourth Count.

1. Denies the allegations contained in Para-
graphs 1, 2, 4 and 6.

40

Answer.

2. Repeats the answers to the allegations contained in Paragraph 3 of the Third Count.

3. Repeats the answers to the allegations contained in Paragraph 5 of the Third Count.

10

First Separate and Distinct Defense to the First, Second, Third and Fourth Counts.

The alleged accident set forth in the plaintiffs' complaint was not caused through the negligence on the part of the defendants.

Second Separate and Distinct Defense to the First, Second, Third and Fourth Counts.

20

1. The alleged accident set forth in the plaintiffs' complaint was caused by the contributory negligence on the part of the plaintiffs in that:

(a) They failed to exercise reasonable care and caution for their own safety.

(b) They consented to ride in an automobile driven by a person incapable of managing an automobile.

30

(c) They knowingly and without objection rode in an automobile which was driven in a negligent, careless and imprudent manner and in an automobile which was not equipped with proper brakes or stopping appliances and by a person incapable of managing the same.

Third Separate and Distinct Defense to the First, Second, Third and Fourth Counts.

40

1. The defendant operating said automobile in which plaintiffs were passengers owed said plaintiffs no duty except to refrain from willfully injuring said plaintiffs or for gross negligence.

*Reply.**Fourth Separate and Distinct Defense to the First, Second, Third and Fourth Counts.*

1. The plaintiffs and defendant Pauline Saunders were engaged in a common purpose or joint enterprise and that the negligence of the said defendant if any is imputable to the plaintiffs herein. 10

HENRY K. GOLENBOCK,
Attorney for Defendants.

Reply.

(Filed August 3, 1933.)

NEW JERSEY SUPREME COURT, 20
MONMOUTH COUNTY.

ROSIE SIEGEL and HENRY SIEGEL,
Plaintiffs,

vs.

PAROBASA REALTY CORPORATION, a
body corporate of the State
of New Jersey, and PAULINE
SAUNDERS,
Defendants.

Action at Law.
Reply.

30

The plaintiffs replying to the defendants' Answer, say that:

First Count:

1. Plaintiffs join issue with the defendants on the Answer to the First Count of the Complaint. 40

*Reply.**Second Count:*

1. Plaintiffs join issue with the defendants on the Answer to the Second Count of the Complaint.

Third Count:

- 10 1. Plaintiffs join issue with the defendants on the Answer to the Third Count of the Complaint.

Fourth Count:

1. Plaintiffs join issue with the Answer of the defendants to Paragraphs 1, 2, 4 and 6 of the Fourth Count.

- 20 2. Plaintiffs join issue with the defendants on the Answer of Paragraph 3 of the Third Count, of plaintiffs' Complaint.

3. Plaintiffs join issue with the defendants on the Answer to Paragraph 5 of the Third Count.

As to the First Separate and Distinct Defense to the First, Second, Third and Fourth Counts.

1. Plaintiffs deny the allegations contained in the First Separate Defense of the Answer.

- 30 *As to the Second Separate and Distinct Defense to the First, Second, Third and Fourth Counts.*

- 40 1. Plaintiffs deny that they failed to exercise reasonable care and caution for their own safety, or that they exposed themselves to any risk of an accident and neglected to take proper precaution, or exercise care to guard and protect themselves, and deny that they were in any way guilty of contributory negligence or in any way by their acts contributed to the injuries which they sus-

Reply.

tained, as is alleged in the Second Separate Defense in the Answer.

As to the Third Separate and Distinct Defense to the First, Second, Third and Fourth Counts.

1. Plaintiffs deny the Third Separate Defense of the Answer, and join issue with the defendants thereon.

10

As to the Fourth Separate and Distinct Defense to the First, Second, Third and Fourth Counts.

1. Plaintiffs deny the allegation contained in the Fourth Separate Defense of the Answer.

BERNARD H. WEISER,
Attorney for Plaintiffs.

20

30

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Postea.

(Filed January 14, 1935.)

NEW JERSEY SUPREME COURT,

MONMOUTH COUNTY.

10

ROSIE SIEGEL and HENRY SIEGEL,
Plaintiffs,

vs.

PAROBASA REALTY CORPORATION, a
body corporate of the State
of New Jersey, and PAULINE
SAUNDERS,

20

Defendants.

Action at Law.

Postea.

This case was tried at the Monmouth Circuit before Hon. Rulif V. Lawrence, Judge, and a jury, on Tuesday, the 8th day of January, 1935, at Freehold, New Jersey.

30 The court directed a verdict of no cause of action in favor of the defendant, Parobasa Realty Corporation, a body corporate of the State of New Jersey, and against the plaintiffs, Rosie Siegel and Henry Siegel.

The jury rendered a general verdict against the defendant, Pauline Saunders, and for the plaintiff, Rosie Siegel, in the sum of One Thousand Dollars (\$1,000.00); and a general verdict against the defendant, Pauline Saunders, and for the plaintiff, Henry Siegel, in the sum of One Thousand and Five Hundred and Nine Dollars (\$1,509.00).

40

RULIF V. LAWRENCE,
Judge.

Judgment.

(Filed January 14, 1935.)

NEW JERSEY SUPREME COURT.

ROSIE SIEGEL and HENRY SIEGEL, Plaintiffs, <i>vs.</i> PAULINE SAUNDERS, Defendant.	Action at Law. On Postea. Bernard H. Weiser, Attorney.
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\$1000.00 R. S.
1509.00 H. S.

20

\$2509.00
68.34

\$2577.34

Judgment entered this fourteenth day of January A. D. nineteen hundred and thirty-five against the defendant and in favor of Rosie Siegel, plaintiff, for the sum of one thousand dollars damages, and in favor of Henry Siegel, plaintiff for the sum of one thousand five hundred and nine dollars damages and sixty-eight dollars and thirty-four cents costs. 30

THOMAS J. BROGAN,
Chief Justice.

40

Testimony.

NEW JERSEY SUPREME COURT,
MONMOUTH COUNTY.

10

ROSE SIEGEL and HENRY SIEGEL,
Plaintiffs,

vs.

PAROBASA REALTY CORPORATION, a
body corporate of the State
of New Jersey, and PAULINE
SAUNDERS.

Defendants.

Action at Law.

20

Freehold, N. J., January 8th, 1935.

Before:

Hon. R. V. LAWRENCE,
Judge.

Appearances:

For the Plaintiff—BERNARD H. WEISER, Esq.,
THEODORE D. PARSONS, Esq.

30

For the Defendant—HENRY K. GOLENBOCK,
Esq.

MRS. ROSE SIEGEL, one of the plaintiffs appearing in her own behalf, being duly sworn according to law, upon her oath testified as follows:

40

Mr. Parsons: To keep the record up to date I find certain items the doctor testified about marked for identification. I now of-

Mrs. Rose Siegel, Plaintiff—Direct.

fer in evidence exhibit P-17 for identification, an itemized bill having already gone in.

The Court: Is there any objection, Mr. Golenbock?

Mr. Golenbock: No.

Mr. Parsons: I also offer a bill of Dr. Steiner and Dr. Ransom marked for identification exhibit P-19, and exhibit P-20. I also offer P-18 for identification. 10

The Court: They may be marked in evidence.

(P-19 for identification marked Ex. P-19;
P-20 for identification marked Ex. P-20;
P-18 for identification marked Ex. P-18.)

Direct examination by Mr. Parsons: 20

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

Q. What is your husband's name? A. Henry Siegel.

Q. Where do you live? A. 405 Monmouth Avenue, Bradley Beach.

Q. Did you live there in 1932? A. Yes.

Q. In the winter of 1932 and 1933, did you go to Florida? A. Yes. 30

Q. And when did you go to Florida? A. We went to Florida on the 18th of January.

Q. The 18th of January, 1933? A. The 18th of January, 1933.

Q. What town in Florida did you go to? A. Miami Beach.

Q. Did your husband go with you? A. Yes.

Q. And how long did you stay there? A. About seven weeks.

Q. And at Miami did you meet either Mr. or Mrs. Saunders? A. We met them both. 40

Mrs. Rose Siegel, Plaintiff—Direct.

Q. And as a result of a conversation with Mr. or Mrs. Saunders, one or the other of them, did you come back with them from Florida? A. Yes.

Q. Will you tell us what day you left Florida?

A. We started out from Florida the 16th of March.

10 Q. In whose car? A. In Mrs. Saunders' car.

Q. Will you tell us who started on the trip with you? A. Mrs. Saunders, Mr. Saunders, a niece of Mrs. Saunders, Mrs. Kahn, and a little boy about nine years old, my husband, and myself.

Q. How far did you drive the first day? A. We drove the first day to Jacksonville.

Q. From Miami to Jacksonville you drove the first day. A. Yes.

20 Q. The second day to what town did you drive?
A. To Sumter.

Q. Do you know what state that is in? A. I heard them say it was South Carolina.

Q. The third day where did you go? A. On the third day we drove to Richmond, Virginia.

Q. Where did you stay in Richmond? A. We stayed at the Hotel Richmond.

Q. Do you know the name of the hotel? A. It was the Hotel Richmond, in Richmond, Virginia.

30 Q. The night you arrived at Richmond did any conversation take place between Mr. and Mrs. Saunders and yourself, or was any arrangement made between you what time you were going to start the next morning? A. Yes, sir.

Q. Will you tell us what that arrangement was? A. Before we went to retire Mrs. Saunders said, "We have to get up very early tomorrow; we want to reach Fredericksburg." So we got up six o'clock and at half past six we were all ready and downstairs.

40 Q. With whom did you go downstairs? A. With my husband.

Mrs. Rose Siegel, Plaintiff—Direct.

Q. Who did you find downstairs? A. Mrs. Saunders, Mrs. Kahn, and her little boy.

Q. What time was it when you arrived downstairs? A. Half past six.

Q. Was Mr. Saunders there? A. I didn't see him.

Q. And may I ask you then how long you waited for Mr. Saunders. When did he show up? A. We waited for him about thirty-five minutes till he came. 10

Q. From where did he come? A. He went with the bell boy for the car which was in a public garage.

Mr. Golenbock: I ask that be stricken out as an assumption.

The Court: It is harmless. He went somewhere. 20

Q. When he came back, or when you first saw Mr. Saunders that morning, where did you see him? A. By the hotel.

Q. Was there anyone there with him by the hotel? A. The bell boy was with him.

Q. Did you see the automobile at that time? A. It was thirty-five minutes after seven I saw Mr. Saunders by the hotel with the bell boy. 30

Q. Where was the automobile? A. By the hotel.

Q. Did you get in the car? A. About a couple of minutes later.

Q. Tell us, Mrs. Siegel, the positions you all sat in this automobile. Tell us where you sat. A. Mrs. Saunders was at the wheel, Mrs. Kahn was near Mrs. Saunders, in the front seat, Mr. Saunders was on the right hand side of the machine in the front, I was sitting in the left hand seat in the back and my husband was near me 40

Mrs. Rose Siegel, Plaintiff—Direct.

and the little boy was on the right hand side in the back.

Q. This was the fourth day of your trip home?
A. Yes.

10 Q. From the time you had left Miami up to this morning had you sat in the same positions in the car all the way? A. Most always.

Q. What kind of morning was it as you left Richmond? A. It was raining.

Q. Can you tell us or can you describe with reference to the rain whether this automobile—first let me ask you was this automobile what is known as a sedan or a touring car? A. It was a sedan.

Q. A closed car? A. Yes.

20 Q. Had it a windshield wiper? A. Yes.

Q. Was it working this morning, if you know?
A. It was.

Q. What kind of road was it? A. What kind?

Q. Was it gravel, or dirt, or concrete? A. It was a paved road.

Q. Without giving us the exact width, can you tell us about how wide it was? A. It was just for two cars.

Q. A two-car road? A. Yes.

30 Q. Can you tell us with reference to the road whether it was level or hilly? A. It was hilly.

Q. May I ask if there were any curves in the road? A. Yes, there were curves in the road.

Q. Directing your attention to the trip, you had been three days from Miami to Richmond? A. Yes.

40 Q. Can you tell us approximately what time in the morning you started riding on the previous three days? A. From Miami we started at eight o'clock in the morning.

Q. Do you know what time you left Jacksonville? A. Also that same time; about eight o'clock.

Mrs. Rose Siegel, Plaintiff—Direct.

Q. And then you went where? A. To Sumter.

Q. What time did you leave there? A. From Sumter we left eight o'clock.

Q. What time did you stop driving on these various days? A. The first day we stopped about half past five.

Q. Directing your attention generally to this morning in question as you were driving along the highway, can you drive an automobile yourself? A. I once drove an automobile years ago. 10

Q. Do you drive now? A. No.

Q. Directing your attention to this automobile in which you were driving on this morning, what can you say as to the speed with which the automobile was going? A. She was speeding.

Mr. Golenbock: I ask to have that struck out. 20

Mr. Parsons: I will consent to have it stricken.

Q. Can you describe with reference to the speed which the automobile had gone on the previous days; the first, second, and third day of your trip? Can you tell us whether it was going slower than those days, as fast as those days, or faster on this day in question? 30

Mr. Golenbock: Object; there has been no basis laid.

The Court: She may state how fast it was going at the time, but the comparison would not be competent. Even the Mercer County case, in which the trolley car six blocks back was going one hundred miles an hour, would not permit that question.

Mr. Parsons: This witness has testified as to the time spent on the road from which mere arithmetical computation would show 40

Mrs. Rose Siegel, Plaintiff—Direct.

the average speed, and I am asking this witness to compare the speed of the car on the day of the accident with the speed on the previous days of the trip.

10 The Court: Ask her directly how fast it was going at the time. I don't know that it makes a great deal of difference how many miles they covered in three days.

Q. Can you tell us how many miles an hour the car was being driven on that morning? A. I judge it was forty to forty-nine miles that morning.

Q. Going at about what speed? A. Going about forty to forty-nine miles an hour.

20 Q. Directing your attention to this morning as you drove along the highway, can you tell us what there was right there on either side of the highway? A. Yes.

Q. What was it? A. It was that soft gravel, that soft sand on the sides. They call it the shoulder.

Q. Gravel and sand on either side of the highway, and about how wide is that? A. I judge about four or four and a half feet.

30 Q. Can you indicate as you sit there in front of you about how wide the shoulder is just on the step where you are sitting? A. (Indicating with hands.) About so wide.

Q. And you indicate from the side of the bench to about where your feet are? A. Yes.

Q. And that is about the width of the shoulder on either side of this highway? A. Yes.

Q. When Mr. Saunders came up with the car did Mrs. Saunders say anything to him? A. Yes.

40 Q. What did she say? A. She was very much upset.

Mrs. Rose Siegel, Plaintiff—Direct.

Mr. Golenbock: I ask for that to be stricken out.

By the Court:

Q. The question is what did she say? A. She said to him, "Why were you so late? You know that we could have made some mileage. I told you we should start early. I suppose you were talking a lot, and why were you so late?" 10

By Mr. Parsons:

Q. You started for Fredericksburg? A. Yes.

Q. And en route did Mrs. Saunders say anything to Mr. Saunders? A. Well, she must have; she was upset that whole day.

Mr. Golenbock: Object and ask to have the answer stricken as a conclusion. 20

The Court: The lady does not understand what you mean by that. Mr. Parsons, reframe the question.

Q. May I ask you if after you got in the car and Mrs. Saunders was driving—she drove all the way, did she? A. Yes.

Q. And after you got in the car did Mrs. Saunders say anything to her husband? A. I could not hear what Mr. Saunders said, he talked so low. 30

Q. I asked you what Mrs. Saunders said. You say she was upset. Did she talk to Mr. Saunders? A. Yes, she was.

Q. What was she talking about? A. Always about coming late with the car.

Q. Directing your attention to just before the accident happened, as you were coming down the road, may I ask you whether this was a concrete road? A. It was a paved road. 40

Mrs. Rose Siegel, Plaintiff—Direct.

Q. Did you see any portion of the road as you traveled along the highway torn up? A. Yes.

Mr. Golenbock: Objected as leading.

The Court: Don't lead, go on.

10 Q. What was the condition of the road as you went along? A. (No answer.)

Q. As you approached the scene of the accident will you describe to us just what Mrs. Saunders was doing, just before the accident? A. Yes, while we were riding Mrs. Saunders, she was going so fast and I said "Please, Mrs. Saunders, don't drive so fast, because I am very nervous this morning on account of the weather," and she said, "I can drive my car" and it was just a few minutes she said to her husband, "It is only on account of you, I could make that mileage and be in Fredericksburg already and it's just on account of you we are late." She was very much upset, and while saying this to him the car went off the road.

20 Q. On which side of the road did it go? A. The right-hand side, the front wheels went on the soft sand, you know, and to bring the car back on the road she started to turn the wheel back and forth and the car turned entirely around and hit an embankment.

30 Q. What happened to you? A. I was thrown against the door and the door threw me back in the seat and I was hurt.

Q. Did you suffer any pain when that happened? A. Yes, in my side and chest.

Q. Where were you taken? A. I was taken to a hotel in Fredericksburg.

40 Q. When you arrived in the hotel were you up, or, tell us what you did? A. The man took me in and they took me upstairs and put me to bed.

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Q. What day of the week was this? A. That was on a Sunday morning.

Q. How long did you remain there in Fredericksburg? A. Three days.

Q. And during those three days were you up at all? A. No, sir.

Q. Were you in bed during the entire time? A. 10
Yes.

Q. Did you have a doctor there? A. Yes.

Q. What doctor did you have? A. Dr. Ware.

Q. How many times approximately did he come to see you during those three days? A. About seven times.

Q. At the end of three days what happened? A. The doctor ordered me to go home and get some X-rays because he could not do nothing for me there. 20

Q. How did you go home? A. I went home in an ambulance. He ordered me to go in an ambulance.

Q. From Fredericksburg to New Jersey were you sitting up in the ambulance or what? A. I was laying in the bed.

Q. When you arrived in New Jersey where did you go? A. I went to East Orange to my daughter, Mrs. Shindler.

Q. Arriving in East Orange were you up or in bed? A. In bed. 30

Q. How long did you remain at your daughter's home? A. Five days.

Q. Then where did you go? A. To the hospital.

Q. That is to the Beth Israel Hospital in Newark? A. Yes, to the Beth Israel Hospital.

Q. And Dr. Dressler treated you at your home? A. Yes.

Q. How long were you in the hospital? A. Five weeks. 40

Q. Then where were you taken? A. To my daughter's home in East Orange.

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Q. How long did you remain in your daughter's home? A. Twelve days.

Q. Then where did you go? A. They took me home to Bradley Beach.

10 Q. Before this accident with reference to your housework in the home at Bradley Beach, did you have any maid to do your housework? A. No.

Q. Who did your housework? A. I did.

Q. After the accident, when you returned from your daughter's home and from the hospital to your home at Bradley Beach, did you attempt to do the housework? A. No, sir, I could not.

Q. Who did you have to do it? A. I had some girls do it.

20 Q. What was the girl's name? A. Nellie was the first one.

Q. Can you tell us whether she was white or colored? A. She was colored.

Q. How long did she remain with you? A. She remained with me a month, four weeks.

Q. How much did you pay her? A. Seven dollars a week and board.

Q. And after Nellie did you have any other girl? A. Yes, Louise.

30 Q. Do you know her last name? A. No, we called her Louise.

Q. How much did you pay her? A. Six dollars a week and board.

Q. How long did you have her? A. She was about a month too.

Q. And after her whom did you have? A. Mrs. Pearce.

Q. And you paid her how much? A. Six dollars a week and board.

40 Q. When did you let the girl go? A. At the end of September of 1933.

Mrs. Rose Siegel, Plaintiff—Direct.

Q. And from that time on you had no maid employed steadily in the home? A. No, only part time, twice a week.

Q. How much does this girl that comes twice a week get? A. Two dollars a day.

Q. Are you still having her? A. Yes.

Q. And with reference to the heavy housework, the cleaning and washing and that kind of work, do you do that now? A. I don't do the hard work but the little work. 10

Q. What do you do yourself? A. I do my cooking and a little dishwashing and the easier work.

Q. Have you tried to do the hard work? A. I cannot, I try but I cannot.

Q. What happens when you try? A. I have pains around my side and my heart.

Q. When you returned home to your daughter's in East Orange before you came to your own home in Bradley Beach, did you have a nurse there? A. Yes. 20

Q. Do you remember her name? A. Mrs. Hunt.

Q. I show you a receipt of Mrs. Hunt and ask if that is a receipt for the nurse who attended you at the home and for the services she rendered? A. Yes, sir.

Mr. Parsons: I will offer this bill in evidence. 30

The Court: It may be marked.

(Nurse's bill marked in evidence Ex. P-26.)

Q. Directing your attention to your first trip from your daughter's home to the hospital, may I ask you how did you make that trip? A. In an ambulance.

Q. And then when you returned from the hospital back to your daughter's home how did you make that trip? A. Also in an ambulance. 40

Mrs. Rose Siegel, Plaintiff—Cross.

Q. Do you know the name of the ambulance? A. I think it was Smith.

Q. I show you two receipts covering these ambulance trips and ask if those are receipts for the expense of the two trips? A. Yes.

10 Mr. Parsons: I will offer them in evidence.

Mr. Golenbock: I object to it.

The Court: Did she pay those bills?

Q. Were these paid, Mrs. Siegel? A. Yes.

The Court: The question is whether they were the proximate result of the injury.

20 Mr. Golenbock: My point is that these ambulance bills, there is no proof as to whether they were reasonable or not.

The Court: They may be marked for identification.

(Receipts marked for identification P-27.)

Cross-examination by Mr. Golenbock:

Q. How long had you known Mrs. Saunders? A. I met her about six times in Miami.

30 Q. Did you know her before you met her in Miami? A. No.

Q. Didn't you know she was conducting a hotel at Bradley Beach? A. No, sir.

Q. You never saw her at Bradley Beach? A. Never.

Q. So that as you say the first time you ever saw Mrs. Saunders was at Miami? A. Yes, sir.

Q. You went down to Miami in January? A. Yes.

40 Q. Did you arrive January 18th, or start January 18th? A. We started out on January 18th.

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Q. How did you go down there? A. By automobile.

Q. Whose automobile? A. Mr. Schlanger.

Q. Is he related to you? A. No, sir.

Q. Is he a friend of yours? A. No, sir.

Q. Didn't you know him at all? A. Never.

Q. How did you come in contact with him? A. 10
I heard that he is taking passengers to Miami and he came over and we made arrangements with him.

Q. You paid him for taking you down? A. Yes.

Q. How many days did it take you to go down? A. About four days.

Q. When you say four days, isn't it a fact that you made it in three days? A. Three days and a half or something like that. 20

Q. The fact is that you were sleeping two nights on the road and the third night you were in Miami? A. No, it took three and a half days.

Q. When you got there did you rent an apartment? A. Yes.

Q. And your apartment was rented for what period of time? A. For two months.

Q. Did you have a written lease or not? A. We had, I imagine so, my husband did that.

Q. The fact is that you had a right to stay there as long as you wanted after having paid your rent. A. For two months. 30

Q. You could have stayed beyond the two months without paying additional rent, couldn't you? A. No, sir.

Q. You remember the date when you left Florida with Mrs. Saunders? A. It was the 19th of March.

Q. Are you sure of that? A. Excuse me, it was the 16th. 40

Mrs. Rose Siegel, Plaintiff—Cross.

Q. How long before the 16th of March did you talk to Mrs. Saunders about going back north with her? A. I didn't say to her; she told me.

Q. When was it she talked to you or you talked to her about going back with her? A. About three weeks before.

10 Q. How did the conversation come about? A. I met Mrs. Saunders on the beach one day and I was introduced to her and we got pretty friendly together.

Q. Who introduced you? A. A man by the name of Mr. Shuggerman.

Q. Then you became quite friendly? A. Yes.

Q. Under what circumstances did the question of going back with her take place? A. The next time we met Mrs. Saunders.

20 Q. You mean the second time you met her? A. Yes.

Q. What took place? A. She asked us how long we intend to stay and how we intend to go home and we told her we intend to go home by train and she said, "We expect to go home by the 16th of March, why not go back with us, we can take you right to Bradley Beach and you will have no trouble with changing."

30 Q. She didn't ask you for any money? A. No.

Q. Or any kind of expenses except you were to pay your own hotel expenses? A. Yes.

Q. Was it Mrs. Saunders or Mr. Saunders who spoke to you or you spoke to about going back to Bradley Beach with them? A. The second day I met Mrs. Saunders I told you what she said, she invited us to go home to Bradley Beach with them.

Q. The conversation was with Mrs. Saunders? A. With Mrs. Saunders.

40 Q. Was Mr. Saunders there? A. No.

Q. Was he there at any time when this conversation arose about going back with them? A. I

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didn't see Mr. Saunders and both times I talked to Mrs. Saunders.

Q. What do you mean both times? A. The first and the second time.

Q. Do you mean when you met her twice? A. No, I met her six times but it was the second time she asked us how we are going and we told her we were going home by train.

10

Q. But I understood you to say there were two times you talked with Mrs. Saunders about going back and neither time Mr. Saunders was present? A. He was not present.

Q. So he didn't know as far as you know of any conversation you had with Mrs. Saunders about going back? A. No.

Q. Didn't you tell Mr. or Mrs. Saunders or both that you still had time to stay in your apartment and that you were not certain whether you would go back with them or not? A. I didn't say that exactly.

20

Q. Tell us what you did say in reference to your apartment and not being able to go back with them? A. I said to Mrs. Saunders when she asked when we intend to go, we said it is immaterial to us, we paid our rent, but my husband's vacation was nearly over and we will go home because we have to be home within two months. She said they were going the 16th and although we had a few more days to stay she said, "What does it matter, a few days before," and I told her I would let her know, that we will decide on the next day, and I talked it over with my husband and I said, "We may go home with Mrs. Saunders, she offered us the trip, and she said we would have it nice and comfortable, let us try again by automobile," and we decided to take the invitation, and I called her next day on the

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Mrs. Rose Siegel, Plaintiff—Cross.

telephone and I told her "Mrs. Saunders, we decided we will make the trip with you."

Q. You at no time talked with Mr. Saunders about taking the trip? A. Never to Mr. Saunders.

Q. Do you recall where you met Mr. or Mrs. Saunders the morning you started from Miami Beach? A. They came to our apartment house.

Q. Your apartment house is on the beach, is that right? A. That is right.

Q. Not Miami City but Miami Beach? A. Miami Beach.

Q. Do you recall when you started? A. Eight o'clock in the morning.

Q. Why do you say it was eight o'clock in the morning? A. We looked at the watch, my husband looked at the watch and it was eight o'clock in the morning.

Q. Did you look at the watch at the same time? A. No, he looked at the watch and said, "Now, it is eight o'clock, we are starting out."

Q. And he did the same thing next morning? A. Yes.

Q. And he did the same thing the third morning? A. I don't remember that.

Q. Did he look at his watch and say what time it was on the third morning? A. I don't remember.

Q. Coming down to the morning of the accident, when you say you stayed at the Richmond Hotel in Richmond, did your husband look at the watch and tell the rest of you what time it was when you started the same as he did the other days? A. Yes, sir.

Q. What did he say the time was? A. He looked at his watch and said it was about five minutes after seven.

Q. Is that the time you started? A. No.

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Q. When did you start? A. It was ten minutes after seven we started.

Q. You were supposed to have gotten up early next morning according to your version of the situation. A. Yes.

Q. Why did Mrs. Saunders want to get to Fredericksburg early? A. The reason for that was Mrs. Saunders has a dear friend in Bradley Beach and her husband died, and she was very anxious to meet her that day because she wrote to her and said, "I am so anxious to see my friend." 10

Q. What did that have to do with reaching Fredericksburg early in the morning? A. She wanted to make mileage.

Q. Do you know the mileage between Richmond and Fredericksburg? A. It is about fifty-six miles. 20

Q. How did that make a difference as to her friend losing her husband? A. She wanted to make mileage.

Q. And you say it is approximately fifty-six miles between Richmond and Fredericksburg? A. Fifty-six.

Q. Do you know this friend of hers who lost her husband? A. I know her.

Q. Do you know when her husband had died? A. About a week before we went home.

Q. Did you receive the same information that her husband had died? A. Mrs. Saunders came over to our apartment and told us she was anxious to go home to see her friend. 30

Q. Didn't you have an appointment for Sunday night to have dinner at Bradley Beach? A. No, sir.

Q. And didn't you say to Mrs. Saunders you were anxious to get back to Bradley Beach and be there for Sunday night's dinner if possible. A. No. 40

Mrs. Rose Siegel, Plaintiff—Cross.

Q. You know as a matter of fact that Mrs. Saunders' hotel was closed then and could not be used or occupied? A. Yes.

10 Q. So that if Mrs. Saunders came to Bradley Beach that night she could not stay at her hotel anyway, could she? A. She went right to the hotel and opened it. She told me she has to open and start working.

Q. She could not stay at the hotel when everything was closed. A. She opened it. She told me whenever she gets back from Miami she stays with her friend Mrs. Levinson. They were very good friends. She cannot sleep in the hotel but she works to make it ready for the summer.

20 Q. So if she came to Bradley Beach that night she could not stay in the hotel anyway? A. I don't know. She stayed with her friend.

Q. You know Mr. and Mrs. Shuggerman who were in Miami? A. I know them by sight from Bradley Beach.

Q. You saw them in Miami? A. Yes.

Q. Didn't you first speak to Mr. and Mrs. Shuggerman and tell them you would like to go back by automobile? A. No, sir.

30 Q. And isn't that how Mrs. Saunders learned that you wanted to go back by automobile? A. I didn't tell Mr. Shuggerman anything of the kind.

Q. You say the second time you met Mrs. Saunders she invited you to go back home with her? A. Yes.

Q. And Mr. and Mrs. Shuggerman had nothing to do with it? A. No, except that Mr. Shuggerman introduced me to Mrs. Saunders.

Q. So you knew the Saunders through Shuggerman? A. Yes.

40 Q. Coming back to Richmond that morning when this car arrived in front of the hotel, you

Mrs. Rose Siegel, Plaintiff—Cross.

saw Mr. Saunders and the bell boy outside? A. Yes.

Q. And you got ready to leave? A. Yes, sir.

Q. Was Mr. Saunders around when your husband took his watch out again that morning? A. Yes.

Q. And you say when your husband took his watch out it was ten minutes to seven? A. It was five minutes after seven. 10

Q. Then you got into the car? A. Yes.

Q. And you sat on the right side of the rear seat? A. The left side of the rear seat.

Q. And your husband sat where? A. Near me.

Q. Where was this little lad? A. He was on the right hand side.

Q. What time did Mr. Saunders come back to the hotel with his car? A. He came back five minutes after seven. 20

Q. Was he in the hotel, did he come in, or did he stay out while you were coming out? A. He was not in the hotel. He was away.

Q. He was outside of the hotel and you went out and saw him in front with the car? A. He helped the bell boy from the hotel bringing out the valises.

Q. You remember distinctly it was ten minutes after seven when you left? A. Yes, sir. 30

Q. Did you talk this case over with anybody? A. Yes.

Q. With whom? A. With our family.

Q. Who else did you talk it over with? A. We talked to our lawyers about it.

Q. How many times have you talked as to the time you left the hotel in Richmond? A. We met two times.

Q. Who do you mean? A. We talked about it two times. 40

Mrs. Rose Siegel, Plaintiff—Cross.

Q. Was there a question discussed to show that the later you left the hotel and the faster it would appear this car was being driven, because the accident happened at a definite time? A. No, sir.

10 Q. You didn't tell us the exact time when the accident happened? A. No.

Q. Do you know it? A. I know it through Mr. Saunders.

Q. What time did the accident happen? A. The accident happened, as Mr. Saunders told us later, a quarter after eight.

Q. Mr. Saunders didn't tell you what time you left the hotel? A. We all knew.

20 Q. Didn't he tell you you left the hotel at six thirty-five that morning? A. No, sir.

Q. You came down in the lobby at seven o'clock, didn't you? A. No, half past six.

Q. You said the appointment was for six o'clock in the morning. A. That was the time to get up.

Q. Did you get up at six o'clock in the morning? A. We did.

Q. So the appointment was not made to start at six o'clock in the morning? A. The appointment was made we should start at half past six that morning.

30 Q. The appointment was, you said, to get up at six o'clock in the morning, you said nothing before about starting at six thirty, which way was that appointment made? A. To get up at six and get ready at six thirty downstairs.

Q. So there was only about half an hour difference in the starting from that you had agreed to the night before? A. Yes, about thirty-five minutes.

40 Q. Mrs. Saunders knew she was anxious to see her friend who had lost her husband the first day you started? A. Yes, all the time she knew it.

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Q. There was no particular hurry that day, was there? A. No hurry?

Q. You started at eight o'clock the first day? A. Eight o'clock.

Q. She also knew the second day of her anxiety to see her friend and you say she started on the second day at eight o'clock. A. At eight o'clock. 10

Q. And it was just the third day that she was so anxious to see her friend that she wanted to start at six-thirty in the morning? A. The nearer she came to her home she was anxious to be home already.

Q. When you went down in the automobile where did you stop the first night? A. The first night we stopped I cannot remember what it was. It was just a house where travelers stop.

Q. Where was this tourist house? A. I cannot recall, it was strange to me and I didn't take it in my mind. 20

Q. It was south of Richmond, beyond Richmond? A. I really don't remember.

Q. Can you tell us what hour of the morning you started out from the various towns you were in on your trip down? A. About eight o'clock, or perhaps before. It was so long ago.

Q. It is not so much longer than the time you went back. A. It is two months. 30

Q. Yet you cannot tell us what hours you started in the mornings on the trip down south? A. It is more than two years ago.

Q. You remember the exact time of your trip north. A. Yes, when we started, it was the 18th of January.

Q. You even remember the hour of the day, the hour of the morning when you started? A. Yes.

Q. Isn't it a fact that you started about the same time from your morning starting points go- 40

Mrs. Rose Siegel, Plaintiff—Cross.

ing south as you did when you were coming back north? A. Sometimes we started early, sometimes a little later.

Q. But approximately you told us it was about the same time. A. I cannot recall, it was so long ago.

10 Q. You made that trip in three and a half days?

A. Yes.

Q. You said that you judged the speed of the car you were riding in driven by Mrs. Saunders as between forty and forty-nine miles an hour?

A. Something like that.

Q. Why did you pick between forty and forty-nine? A. Because when this accident happened, after this I heard Mr. Saunders in the hotel say——

20

Mr. Golenbock: Object as not responsive.

The Court: It may be an admission against interest. I cannot tell.

Mr. Golenbock: Mr. Saunders was not driving.

Mr. Parsons: Mr. Golenbock has asked the witness, why did you pick a certain mileage.

30 By the Court:

Q. You heard Mr. Saunders say what? A. I heard Mr. Saunders say it was about seven miles before the accident happened.

The Court: That is not responsive.

40

Q. Why do you say it was forty-nine miles? A. Because Mr. Saunders told us the mileage; it was fifty-six miles from Richmond to Fredericksburg and that happened seven miles before Fredericksburg.

Mrs. Rose Siegel, Plaintiff—Cross.

Q. Your point is that you left Richmond at a certain hour and you calculated on the basis of the time you left Richmond and the time the accident happened? A. (No answer.)

The Court: It is a mathematical calculation.

10

Mr. Golenbock: It has always been between forty and fifty, your Honor please. That is not mathematical. I wondered about that extra mile.

By Mr. Golenbock:

Q. You didn't see the speedometer at all? A. No.

Q. And you were not observing as to the speed while you were traveling along this road except that you figured out that if you left Richmond at a certain hour and the accident happened at a certain time, you divided it as between forty and forty-nine miles? A. No, sir, I didn't know the mileage but Mr. Saunders told in the hotel that from Richmond, Virginia, he took care of the mileage. He had a traveling map with him and figured out the mileage and told in the hotel it is fifty-six miles from Richmond, Virginia, to Fredericksburg and this accident happened about seven miles before Fredericksburg and that is why I say it was seven miles before Fredericksburg.

20

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Q. Is that why you say Mrs. Saunders was traveling at the rate of forty to forty-nine miles an hour because you heard Mr. Saunders say that the distance between Richmond and Fredericksburg was fifty-six miles and the accident happened before you reached Fredericksburg, and you started out at a certain hour? A. Naturally you figure out it must have taken so long.

40

Mrs. Rose Siegel, Plaintiff—Cross.

Q. You did figure it out that way? A. Mr. Saunders figured it out.

Q. Mr. Saunders did not tell you the car was traveling forty to forty-nine miles an hour, did he? You figured it out yourself. A. I didn't stop to figure.

10 Q. Where did you get the idea that the car was being driven from forty to forty-nine miles an hour? A. Mr. Saunders told us it was fifty-six miles from Richmond to Fredericksburg. He was staying there and he told my husband the accident happened seven miles before Fredericksburg and naturally you could figure out that.

20 The Court: I get her idea. Fifty-six miles and the accident happened seven miles from Fredericksburg, subtract seven from fifty-six and you get forty-nine.

Mr. Golenbock: I want the witness to admit she figured it out by calculation.

The Court: She says Saunders told her the distance. So you deduct seven from fifty-six and you get forty-nine.

30 Q. While you were traveling between Richmond and Fredericksburg you didn't realize that you were going at the rate of forty to forty-nine miles an hour did you? A. Yes, sir.

Q. You say you figured it out after it all happened, realizing the distance, and you figured out you must have been traveling between forty and forty-nine miles an hour? A. I didn't figure, I was too sick, but I heard Mr. Saunders mention that.

40 Q. The first and second days you were on the road everything was peaceful and harmonious, was it not? A. Yes.

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Q. There were no quarrels by anybody? A. No.

Q. Everybody was happy and content? A. Yes.

Q. There was no objection as to the method of driving by Mrs. Saunders at all? A. No.

Q. Do you recall an occasion when Mr. Siegel wanted to buy Mr. and Mrs. Saunders breakfast? A. Yes. 10

Q. Did you remember Mr. Siegel saying he would at least like to buy a breakfast she was driving so nicely? A. I remember that. Can I say what I remember?

Q. Yes, tell us what you remember about that. A. Mr. Siegel never asks if he wants to treat anybody he goes to the cashier and pays for it. 20

The Court: I knew a man like that once but unfortunately he's dead.

Q. I ask whether it is not a fact that Mr. Siegel offered to buy this breakfast and he said he wanted at least to buy a breakfast because she was such a nice driver and the company was so nice? A. I never heard him say that.

Q. At any rate you and Mr. Siegel never had occasion to complain. A. No. 30

Q. Isn't it a fact that this accident happened right at the turn of the road? A. No, sir.

Q. Isn't it a fact that Mrs. Saunders in coming close to and arriving at the turn a car was going the opposite direction and she had to get off the road to allow this car to pass on this turn? A. No, sir.

Q. This car of yours that you were in came in contact with an embankment, didn't it? A. Yes.

Q. And had skidded before it struck the em- 40

Mrs. Rose Siegel, Plaintiff—Cross.

bankment, isn't that so? A. I don't know what it did.

Q. Didn't the car spin around? A. Yes, it went off the road right on the sand.

Q. Did it skid off the road? A. I don't know if it skidded, she went off the road with her two
10 wheels in the front on the dirt.

Q. You mean the two front wheels were off the dirt part of the road? A. Yes.

Q. When the car first left the concrete part of the road it went out about four feet on the shoulder and both wheels could not have been on the dirt shoulder, could they? A. She was not by the dirt shoulder she was in the middle of the road, there was plenty room, no car came down and she had plenty room to drive her car in the
20 center of the road, and while quarreling with her husband it came that the one wheel was more than the other one on the dirt, I could see when she turned that wheel.

Q. Which wheel did you see? A. The right hand wheel was on the center and the other wheel was about half ways in that dirt.

Q. And yet you say that the shoulder is only four feet wide. A. It was more than four feet.

Q. You indicated the distance from this wall
30 to where your feet were. A. I said approximately, I did not measure.

Q. You intended to give us that as nearly the correct distance as you could. A. I didn't measure it but to my mind it was four or four and a half feet, maybe more.

Q. And you say now maybe it was more because you realize that the two front wheels could not be on the dirt part of the road if it was only four feet. A. It was maybe more than four feet.
40

Q. Tell us again what did Mrs. Saunders say before she left the hotel to Mr. Saunders? A.

Mrs. Rose Siegel, Plaintiff—Cross.

She came to the car and said "Why are you so late with the car, you must have been talking there a lot and you know we wanted to reach Fredericksburg and have our breakfast there".

Q. That is all she said? A. She said more words.

Q. What else did she say? A. She hounded him all the time and she was very, very mad and excited. 10

Q. You all got in the car after she said that and started off? A. Yes.

Q. Was there any further conversation between you and Mrs. Saunders or Mr. Siegel and Mrs. Saunders? A. We spoke very little to her.

Q. As a matter of fact Mrs. Saunders made it a habit not to talk to anybody while she was driving her car. A. She talked to herself and to her husband, but not much to us. We don't like to talk to the driver of a car. 20

Q. How many times after she started the car did she again talk to her husband when you say she was so mad because you started a half hour late? A. It was about three times, to the time of the accident, she began over and over again to quarrel with him.

Q. What did she say the first time when she started to quarrel with him? A. She said why did you come so late, you must have been talking. 30

Q. What else did she say as you were driving along the road? A. About the same talk.

Q. You were seven and a half miles from Fredericksburg and she again started to talk, what did she say that time? A. After I told her, "Mrs. Saunders, please be careful, I am nervous myself, please slow down" and that made her a little upset and she said "Only on account of you we could have our breakfast at Fredericksburg, we could have been there and you were at fault". 40

Mrs. Rose Siegel, Plaintiff—Cross.

Q. What did she say when you asked her to slow down? A. She told me "I know how to drive my car".

10 Q. That was the first time you had occasion to tell her to drive slowly, and the first time you told her you were nervous and the first time she had any answer to make, that she knew how to drive. How long was that before the actual happening of the accident? A. About ten minutes before.

Q. And during this time nothing was said by anybody? A. Yes, Mrs. Saunders said enough.

Q. I thought you said the last time she talked to her husband was ten minutes before the accident? A. I said the conversation began about ten minutes before the accident and kept right on.

20

Mr. Parsons: I think Mr. Golenbock is mistaken about what the witness testified to.

Q. Will you please repeat the movements of the car for ten minutes and tell us how the accident happened. A. About ten minutes after or about that she started to quarrel with her husband and the car went off the road on the right hand side.

30 Q. Did the car go off the concrete part of the road? A. The first two wheels, one was in further and the other was about half way in.

Q. Then what happened? A. She tried to move the car back on the road and she turned her wheel, she was very much excited, and she forgot which way to turn and she worked the wheel with such force that the car turned completely around.

40 Q. How do you know she forgot which way to turn the wheels? A. She turned the wheel and then turned it back and turned it back and forth. We could see how she was turning, and the wheel

Mrs. Rose Siegel, Plaintiff—Cross.

turned around and the whole car turned around and hit the embankment and faced toward the east again.

Q. While she was turning the wheel was not the car skidding? A. Not at that time.

Q. When did it start to skid? A. I didn't say it skidded. It turned around. 10

Q. Wasn't the car skidding as it turned around? A. I would not call it skidding. I just saw how she turned it.

Q. You say that the concrete part of the roadway is only sufficient for two cars to pass? A. Yes, sir.

Q. How long or how far did the car go from the time Mrs. Saunders had turned the car off the concrete part onto the shoulder up to the time that it came to a stop, and I presume it came to a stop when it hit the embankment? A. Pardon me, will you repeat that please? 20

Q. When the car came in contact with the embankment it stopped, didn't it? A. Do you mean the motor?

Q. No, the car stopped in motion. A. When the car turned around it hit the embankment and the embankment hit the car back and the car came back and while the car was in the embankment in one side the other two wheels were like in the air. 30

Q. But after it hit the embankment the car stopped? A. It came back.

Q. And came to a standstill? A. Yes.

Q. It didn't upset? A. No.

Q. How far did the car travel from the time Mrs. Saunders turned the car or took the car off the concrete part of the road up to the time it came to a standstill? A. I didn't get it.

Q. How far did the car travel from the time Mrs. Saunders turned the car or took the car off 40

Henry Siegel, Plaintiff—Direct.

the concrete part of the road up to the time it came to a standstill? A. You mean how far in the road?

Q. Yes. A. She traveled always the middle part of the road, because there is no traffic, she has the road to herself.

10 Q. After the car got off the road and all of this happened, how far had the car traveled from that time until it came to a stop? A. Not far, just a couple of feet.

20 Mr. Parsons: Mr. Golenbock and I have stipulated we may read into the record the distances. From Miami to Jacksonville is three hundred and eighty-seven miles, from Jacksonville to Sumter is three hundred and eighty miles, from Sumter to Richmond is three hundred and seventy-six miles, from Richmond to Fredericksburg is fifty-six miles, from Fredericksburg to Washington fifty-four miles, from Washington to Bradley Beach two hundred and twenty-nine miles.

Mr. Golenbock: While I stipulated those distances, I do not see any relevancy.

30 The Court: It may or may not turn out to be relevant before the case is over.

HENRY SIEGEL, one of the plaintiffs appearing on his own behalf, being duly sworn according to law, upon his oath testified as follows:

Direct examination by Mr. Parsons:

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

Q. And your wife's name is what? A. Rose Siegel.

Henry Siegel, Plaintiff—Direct.

Q. How old are you? A. Sixty-seven.

Q. How old is your wife? A. Sixty-four.

Q. At the time of the accident she was how old?

A. It was two years ago. I was sixty-five and my wife was sixty-two.

Q. Directing your attention to January of 1933, you and your wife went to Florida. A. Yes, sir.

10

Q. And did you meet Mr. and Mrs. Saunders there? A. We met Mrs. Saunders first and then Mr. Saunders later.

Q. You were at what town? A. Miami Beach.

Q. As a result of a conversation with Mrs. Saunders will you tell us what means of conveyance you had to come home? A. We came home in Mrs. Saunders' car.

Q. Who was in the car? A. Mrs. Saunders and Mr. Saunders.

20

Q. Who else was in the car in the trip home? A. Mrs. Kahn, and the little boy, my wife and myself.

Q. Will you tell us where on the trip home the various people were sitting? A. Mrs. Saunders was on the left hand side, Mrs. Kahn was in the middle, and Mr. Saunders was on the right hand side.

Q. In what seat were all those three? A. In the front seat.

30

Q. Tell us where the rest of you sat? A. Mrs. Siegel was in the left hand seat rear, I was in the middle, and the little boy was on the right hand side.

Q. Did you occupy those seats all the way up north? A. Yes.

Q. How many days were you on the road? A. Three days.

Q. Where did you stay at the end of the third day? A. Jacksonville.

40

Henry Siegel, Plaintiff—Direct.

Q. No, at the end of the third day where did you stay. Do you understand my question? A. No.

Q. You were on the road one day, two days, and at the end of the third day where did you stay? A. At Sumter.

10 Q. You were on the road three days and where did you stay the last night you were on the road? A. In Richmond.

Q. What hotel did you stay in? A. The Richmond Hotel.

Q. Do you remember about what time you got to Richmond that night? A. It was dark.

Q. Before you went to bed was any arrangement or agreement made between Mr. and Mrs. Saunders and your wife and yourself about what time you were going to leave the next morning? A. Yes, Mrs. Saunders said before we retired we would get up early in the morning because she wants to leave Richmond about six-thirty.

20 Q. Was there talk of how far you were going to go that day? A. She said "If we are lucky we will reach Bradley Beach."

Q. She said Bradley Beach? A. Yes.

30 Mr. Golenbock: Object if the answer is to be repeated the whole answer should be repeated.

The Court: I remember that fifty years ago I was told by a very good judge not to repeat.

Mr. Golenbock: May we have the answer repeated?

A. (Read by stenographer) She said, "If we are lucky we will reach Bradley Beach."

40 Q. The next morning, Mr. Siegel, what time were you in the lobby of the hotel? A. Six o'clock.

Henry Siegel, Plaintiff—Direct.

Q. What time did you get downstairs in the hotel?

Mr. Golenbock: Object, the preceding question was what time did you get into the lobby of the hotel.

The Court: You cannot control his examination entirely. He asked another question. 10

A. We got down in the lobby at six-thirty.

Q. Were you all packed at that time? A. Yes.

Q. Were you all dressed? A. Yes.

Q. Whom did you meet in the lobby of the hotel?

A. Mrs. Saunders, Mrs. Kahn, and the little boy; and my wife and myself.

Q. Was Mr. Saunders there when you went down there in the lobby of the hotel? A. No, sir. 20

Q. When did you first see Mr. Saunders? A. We looked outside and Mrs. Saunders was impatient and we went outside and saw Mr. Saunders come in with the car.

Q. Who was with him? A. A bell boy.

Q. Did Mr. Saunders drive any part of the trip north? A. No, sir, he doesn't drive a car.

Q. What time did the car reach the hotel? A. It was about ten minutes after seven.

Q. And did you get in the car? A. Yes, sir. 30

Q. What kind of morning was this? A. It was raining.

Q. Can you describe the road on which you left the hotel? A. It was wet.

Q. What kind of surface did the road have, was it gravel, or dirt, or concrete? A. Some had gravel and some was a dirt road.

Q. This morning, as you left Richmond, what kind of road did you ride on? A. On an earth road. 40

Henry Siegel, Plaintiff—Direct.

Q. What was the color of the road then? A. It was black.

Q. As you left Richmond and went out of Richmond can you describe the road, was it level or hilly? A. It was hilly.

10 Q. Was it straight or not? A. No, it was curved.

Q. Do you drive a car yourself? A. No.

Q. Directing your attention can you tell us how many miles an hour this Saunders' car was going this morning? A. About fifty miles an hour.

Q. On what do you base that judgment? Why do you say that? A. I could see through the window sitting in the car how fast the car moved.

20 Q. Directing your attention, may I ask you as you were traveling along this road was this car equipped with a windshield wiper? A. Yes.

Q. And was it working? A. Yes.

Q. Coming down to the time of the accident and the scene of the accident can you tell us whether this accident happened out in the country or in a town? A. It was on the road.

Q. Was it in any portion of a town or was it in open country? A. It was in open country.

30 Q. A little before the accident happened can you tell us what you remember, if you remember anything, as to anything said or done by either Mr. or Mrs. Saunders. A. They had a little words between.

Q. What do you mean? A. Mrs. Saunders started in to talk harsh to him.

Q. How soon after that did the accident happen? A. A few minutes later.

Q. And what did the car do after that? A. The car went off the road.

40 Q. Which side of the road? A. The right hand side.

Henry Siegel, Plaintiff—Direct.

Q. And when it went on the right hand side, what did it do? A. Mrs. Kahn—Mrs. Saunders took her hand from the wheel and pointed it—

Q. When the car went off on the side of the road what did the car do after it went off on the side of the road? A. Mrs. Saunders tried to bring back that car.

10

Q. What did the car do? A. When she tried to work with her hands that car left the right and the car turned completely around and hit the embankment.

Q. Which way after the car came to a standstill, in which direction was the car facing? A. The car faced the south.

Q. Back toward Richmond? A. Yes.

Q. And what happened to you when the car hit the embankment? A. I was thrown against a hard thing in the car; either the window or the top. I was hit in the head.

20

Q. What happened to the back window of your car? A. It was broke.

Q. What part of your car hit the embankment? A. The rear top and the right wheel, the embankment hit the car back so quick so the car came straight out.

Q. Where did you go after the accident? A. To Fredericksburg.

30

Q. And when you went to Fredericksburg what did you do there? A. They took me up in the room in the hotel.

Q. Was your wife in bed during that period of time? A. Yes.

Q. Did you have a doctor's care? A. Yes.

Q. What was his name? A. Dr. Ware.

Q. Did he treat both you and your wife? A. Yes.

Q. How long did you remain in the hotel? A. Three days.

40

Henry Siegle, Plaintiff—Direct.

Q. Do you know the name of the hotel where you stayed? A. Princess Anne Hotel.

Q. I show you a hotel bill and ask if you paid that? A. Yes, sir.

10 Mr. Parsons: I will offer this bill in evidence.

The Court: It may be marked.

(Bill marked in evidence Ex. P-28.)

Q. Did you pay Dr. Ware? A. Yes, sir.

Q. I show you a bill of Dr. Ware and ask if you paid that bill? A. Yes.

Mr. Parsons: I will offer this bill in evidence.

20 The Court: It may be marked.

(Bill marked in evidence Ex. P-29.)

Q. At the end of three days, Mr. Siegel, your wife was brought home, is that right? A. To my daughter's in East Orange.

Q. And how was she brought? A. In an ambulance.

Q. Have you paid for the ambulance? A. Yes.

30 Q. I show you a bill for the ambulance and ask if that is the bill for the ambulance and the amount you paid? A. Yes.

Mr. Parsons: I will offer this bill in evidence.

Mr. Golenbock: Object.

The Court: Mark it for identification.

(Bill marked for identification, Ident. 30.)

40 Q. While I am on the ambulance bill and the Smith and Smith bill Ex. P-27 for identification,

Henry Siegel, Plaintiff—Direct.

can you tell us the approximate distance from the Beth Israel Hospital to your daughter's home in East Orange? A. About five miles.

Q. Do you remember March 28th, 1933, when your wife was taken to the hospital? A. Yes.

Q. How many attendants were in the ambulance? A. There was two in the ambulance, and my son-in-law and my daughter. 10

Q. There were two attendants in the ambulance? A. Yes.

Q. Where is 160 Clinton Avenue with reference to where the Beth Israel Hospital is? A. The Beth Israel Hospital is not in Clinton Avenue.

Q. How far is 160 Clinton Avenue, Newark, from the Beth Israel Hospital? A. About a mile and a half. 20

Q. May I ask with reference to the kind of ambulance that was used from Fredericksburg to East Orange? Can you describe that ambulance? A. I was a little dizzy and my daughter, Mrs. Shindler, was there and Dr. Ware told Mrs. Shindler, "Mrs. Siegel has to go immediately home because she has fractured ribs and we got to take her immediately to the hospital."

Q. Will you describe the kind of ambulance that was used to take Mrs. Siegel from Fredericksburg to East Orange? A. We started about nine o'clock on Tuesday morning the 21st and reached East Orange at nine o'clock at night. 30

Q. Do you know what kind of ambulance it was? A. It was from Fredericksburg.

Q. What kind of ambulance was it? A. It was a regular ambulance with a stretcher or bed and room for two passengers alongside the bed.

Q. Where did you ride in the ambulance? A. Sitting on the back seat and my daughter on the front seat. 40

Henry Siegel, Plaintiff—Cross.

Q. Those seats were alongside the bed? A. Yes.

Q. Do you know the make or model of ambulance? A. I could not tell.

Q. Do you know whether it was a Buick or a Cadillac? A. I could not tell.

10 Q. Did you see the ambulance that came and brought your wife back and forth to Beth Israel Hospital? A. Yes.

Q. Will you compare that ambulance with the ambulance in which she rode from Fredericksburg north. Can you tell us whether it was the same kind of ambulance or not? A. It was a different ambulance in Newark and a more new model.

20 Q. How long approximately if you can tell us did it take them to bring your wife from the hospital home? A. About five miles. I don't know how long it would take.

Q. Did it take an hour? A. They ride slow; maybe it would.

Q. From Fredericksburg you left at nine o'clock in the morning? A. About nine o'clock.

Q. And got home at nine o'clock at night? A. Yes.

30 Q. So the ambulance had twelve hours on the road and then had to return back to Fredericksburg? A. Yes.

Cross-examination by Mr. Golenbock:

Q. Do you remember when you went down to Florida that year? A. Yes.

Q. When was that? A. 1933.

Q. What month and day of the month? A. The 18th.

40 Q. Of what month? A. January.

Q. How did you go down? A. By automobile.

Henry Siegel, Plaintiff—Cross.

Q. In whose automobile did you go? A. A party by the name of Mr. Schlengel.

Q. You paid him for taking you down? A. Yes.

Q. What time of day did you start out when you went down south? A. In the morning.

Q. When did you leave? A. Around ten o'clock.

Q. When did you put up for the night on the first day? A. We stopped in a road house. 10

Q. What town or city was that in? A. I dimly recall the town.

Q. Was it beyond Richmond or not? A. I cannot tell the town where we stopped.

Q. Was it beyond Richmond or not? A. I could not say, we stopped in Baltimore.

Q. You mean to say you didn't get to Washington that first day? A. We were in Washington.

Q. If you stopped in Baltimore you could not be in Washington on that first day. A. I cannot recollect whether Baltimore was before Washington or not. 20

The Court: Are you taking him down? I thought you were bringing him back.

Mr. Golenbock: My purpose is to compare the speed they were making going down with that coming back.

The Court: You may open the door for all sorts of things. 30

Q. How many days did it take you to go down south? A. Three and a half days.

Q. When you got to Florida did you rent an apartment? A. Yes.

Q. How long did you intend to stay there? A. Two months.

Q. Was the apartment taken for that specific time or could you have stayed on later if you wanted to? A. We took it for two months. 40

Henry Siegel, Plaintiff—Cross.

Q. Did you know Mr. and Mrs. Saunders before you met them in Miami? A. No.

Q. You never had seen them in Bradley Beach? A. No.

Q. Where do you live in Bradley Beach? A. 405 Monmouth Avenue.

10 Q. Where do you live in the winter? A. The same place.

Q. Do you know where Mrs. Saunders has a hotel? A. I know now.

Q. What street is it? A. Third Avenue.

Q. How long after you got to Florida did you first meet Mr. and Mrs. Saunders? A. We were about five weeks in Florida before we met Mr. and Mrs. Saunders.

20 Q. Who introduced you to Mr. and Mrs. Saunders? A. Mr. Shuggerman.

Q. Is he a friend of yours? A. No, I only know him from Bradley Beach.

Q. He is also a hotel man? A. I believe he is.

Q. How long after you had met Mr. and Mrs. Saunders was there any discussion about coming back with them? A. We met Mrs. Saunders on the beach.

Q. You say you were introduced to them by Mr. Shuggerman? A. Yes.

30 Q. How long after Mr. Shuggerman introduced you to Mrs. Saunders did you talk to Mr. and Mrs. Saunders about coming back with them? A. About two days.

Q. So that it was the second time you met them when you started to talk to them about coming back with them? A. Yes.

40 Q. Didn't you before you talked to Mr. and Mrs. Saunders about coming back talk to Mr. Shuggerman that you wanted a ride back home? A. I never saw Mr. Shuggerman more than once.

Henry Siegel, Plaintiff—Cross.

Q. That once didn't you speak to him about coming back by automobile before you talked to the Saunders? A. I never talked to Mr. Shuggerman about coming by automobile, we figured to go by train.

Q. You know as a matter of fact Mr. Shuggerman was there with an automobile? A. I didn't know he had an automobile. I did not question whether he has any automobile. 10

Q. Did you ever go out riding with Mr. Shuggerman in his automobile in Florida? A. Never.

Q. So when you met Mr. and Mrs. Saunders the second time you discussed coming back by automobile? A. Only Mrs. Saunders was the second time.

Q. When you met her the first time was Mr. Saunders there? A. No. 20

Q. When did you first meet Mr. Saunders? A. A couple of days he passed the house, he was standing alongside Mrs. Saunders and she said, "This is mine husband, Mr. Saunders."

Q. The first time you met Mrs. Saunders was where? A. On the beach.

Q. And the second time— A. Also on the beach.

Q. How many days after you were first introduced to her by Mr. Shuggerman? A. I don't get you. 30

Q. Didn't you hear me or didn't you understand me? A. I could hear you.

Q. How many days after you were first introduced to Mrs. Saunders did you meet Mr. Saunders? A. The third day.

Q. When you first met Mrs. Saunders how long afterward did you meet her the second time? A. We met her the second day at the beach. 40

Henry Siegel, Plaintiff—Cross.

Q. When was it you talked with Mrs. Saunders about coming back with her, the first time you met her or the second time? A. The second time.

10 Q. What was said and by whom? A. We got acquainted and got friendly, the women was talking and Mrs. Saunders said, "Mr. and Mrs. Siegel, when you go home how are you going home?" and we said, "We may go by train," and Mrs. Saunders said, "Why not go with us, we got a good car and a roomy car, we will take you home to Bradley." We know that Mrs. Saunders is in Bradley now because she told us and Mrs. Siegel said, "Mrs. Saunders, we will talk it over and let you know."

20 Q. Did you see her the following day at her home? A. No, that was the third day.

Q. And that was following the day when Mrs. Saunders asked you to go home with her? A. The second time we met Mrs. Saunders she asked us and Mrs. Siegle said she would let them know.

Q. And on the following day you met Mr. Saunders at the home? A. No, it was on the street in front of the house.

Q. In front of whose house? A. Mrs. Saunders passed the street where we lived.

30 Q. And that third time you met Mr. and Mrs. Saunders, did you tell them you would go back with them? A. I don't get you, counsellor.

Q. Do you mean you didn't hear me or you didn't understand the question?

The Court: Both. That is comprehensive.

Q. So you say that the third time you met Mrs. Saunders it was in front of the house and you told her you were ready to go back with them?

40 A. We told Mrs. Saunders we would let her know whether we would go home with her or not.

Henry Siegel, Plaintiff—Cross.

Q. The day you met Mr. Saunders, the following day, did you tell them you would go back with them? A. We talked to Mrs. Saunders. She was the boss of the car and everything. Mr. Saunders had nothing to say.

Q. Did you see Mr. and Mrs. Saunders go by in front of the house? A. Yes.

10

Q. Did you tell them then that you were going back with them? A. Mrs. Siegel called Mrs. Saunders on the phone and told her we were going back with them.

Q. This acceptance was by telephone? A. Yes.

Q. When was the telephone call made? A. The telephone was in our apartment.

Q. When was the call made? A. That was the third day.

Q. Was it before or after you saw Mr. Saunders in front of his house? A. Before.

20

Q. How long before? A. I don't know. It was during the day we called up Mrs. Saunders and told her we would go with her.

Q. When did you meet Mr. Saunders in front of his house, in the morning or afternoon? A. Towards evening.

Q. How long before you met Mr. and Mrs. Saunders in front of their house did you telephone to them? A. It was a couple of hours later.

30

Q. You had telephoned a couple of hours before you saw him? A. Yes.

Q. Didn't you have an appointment to meet him at the house that day? A. No, sir.

Q. How did you happen to go down to the house to see Mr. and Mrs. Saunders? A. We went down the avenue, we were taking a walk, and we met these people in front of their house.

Q. When you telephoned did you tell them you would be going up to their house later on? A. No.

40

Henry Siegel, Plaintiff—Cross.

Q. You are sure you did not? A. No, we were away. We could not say come to the house when we are not here.

Q. When you talked to them they were in their house? A. Mr. Saunders was outside leaning against the car.

10 Q. I mean when you telephoned? A. They were in the house.

Q. But two hours later when you ran into them they were in the street? A. (No answer.)

Q. You had no difficulty in hearing my last few questions, did you? A. No.

Q. When you went to bed the night before the accident at the Hotel Richmond in Richmond, Virginia, you say it was talked about starting early in the morning? A. Yes.

20 Q. Was any specific time set when you were to start? A. Yes, six thirty.

Q. You got up at six o'clock? A. Yes, we got up at six o'clock.

Q. And you were down in the lobby at what time? A. We were there prompt at six thirty.

Q. When you got there at six thirty Mr. Saunders was not there. A. What?

Q. You heard me, didn't you? A. No.

30 Q. When you got down in the lobby at six thirty, Mr. Saunders was not there? A. Mr. Saunders was not there.

Q. And you then went out in the street in front of the hotel and saw Mr. Saunders with the car in company of a bell boy? A. Not right away.

Q. How many minutes did you stay in the lobby before you went outside? A. About half an hour, practically half an hour.

40 Q. Do you know whether it was less or more? A. I looked at my watch because everybody was waiting for the car.

Henry Siegel, Plaintiff—Cross.

Q. You don't know whether it was half an hour or more than half an hour or less than half an hour that you were waiting? A. It was about half an hour.

Q. Everybody was waiting and anxious to get started I suppose? A. Everybody was waiting for the car.

10

Q. And for that reason you guess it was half an hour? A. No, I looked at my watch.

Q. When did you look at your watch? A. After we saw it was not coming I looked at my watch.

Q. When you did look at your watch what time was it? A. (No answer.)

Q. How many times did you look at your watch from the time you got up until you got into the car? A. Often.

20

Q. How many times? A. I could not say.

Q. The first time you looked at your watch what time was it? A. Before we started you mean?

Q. When you went down to the lobby what time was it when you looked at your watch? A. About seven o'clock.

Q. It was before seven, wasn't it? A. It was about seven.

Q. When you say about seven o'clock, you mean it was before seven o'clock? A. It was about seven o'clock.

30

The Court: You keep on saying that and he will hear you after a while. Stick to it if that is the right answer.

Q. You immediately got out and found the car in front of the door? A. We saw the car coming.

Q. You looked at the watch and saw it was about seven o'clock and you immediately went out a few minutes after that and there was the car in front of the hotel? A. It was about seven o'clock when he drove the car up.

40

Henry Siegel, Plaintiff—Cross.

Q. Then you started on the way? A. We had to put the luggage in.

Q. And after you put the luggage in then you started on your way? A. (No answer.)

Q. You started on your way to Fredericksburg? A. Yes.

10 Q. When was it Mrs. Saunders said, "If we are lucky we will be in Bradley Beach tonight"? A. On the way.

Q. How long before the accident did she say that? A. I cannot recall that, we were just started out and she said that.

Q. Did anybody ask her whether you were going to get to Bradley Beach that night or not? A. She said before, "We got to make mileage," and she said in the lobby, "The car is not here and we have to get started."

20 Q. In the car after you started you said she made the remark, "We will be lucky if we get in Bradley Beach tonight"? A. She said if everything goes smooth we will be home in Bradley tonight.

Q. Which did she say: "We will be lucky if we are in Bradley Beach tonight," or did she say, "If everything goes smooth we will be home in Bradley tonight"? A. That was in the lobby.

30 Q. You told us a minute ago that in the car she said, "If we are lucky we will be in Bradley Beach tonight." A. (No answer.)

By the Court:

Q. Did she say, "If we are lucky we will be in Bradley Beach tonight"? A. Yes.

Q. Where was she when she said that? A. In the lobby.

Q. That was in the morning before you started? A. Yes.

40 Q. And you and your wife were there? A. Yes.

Henry Siegel, Plaintiff—Cross.

Q. And Mr. Saunders was out after the car?

A. Yes.

(Recess to 1:10.)

Mr. Parsons: I understand that the objections to the ambulance charges by Mr. Golenbock are not because of the amount— 10

The Court: I understand the objection to go to the point that they were not properly proven nor proven to have been necessary.

Mr. Golenbock: Yes, sir.

The Court: They must be shown to have been necessary and reasonable in amount.

Mr. Parsons: We arranged with Mr. Freeman to come here and testify as to the reasonableness of them. I assume from the testimony of Dr. Dressler yesterday that this woman was seriously ill and in bed and needed hospital treatment. 20

The Court: With reference to bills of this character there are cases where they have been held not to have been the proximate result of the injury on the theory that the injured persons could have been treated at home. 30

Mr. Parsons: She was removed to the hospital for X-rays that could not have been taken at home.

The Court: What do these bills amount to?

Mr. Parsons: The ambulance from Fredericksburg was one hundred dollars, and the other one seventeen dollars.

The Court: You may mark them for identification and put in proof as to their reasonableness. 40

Henry Siegel, Plaintiff—Cross.

Mr. Golenbock: We objected to them but the conversation was off the record and I do not think Mr. Parsons should refer to it.

10 HENRY SIEGEL, recalled

Cross-examination by Mr. Golenbock (continued):

Q. Mr. Siegel, how long after you started toward Fredericksburg did the accident happen?
A. About eight fifteen.

Q. Why do you say eight fifteen? A. Mr. Saunders told us when we got back it was eight fifteen, and we know it was eight fifteen.

20 Q. Did Mr. Saunders tell you you started that day at six thirty-five instead of a little after seven? A. Mr. Saunders was not talking to us about that.

Q. When you got back to the hotel and your wife was in the hotel for several days you talked to him about this accident? A. Mrs. Saunders was in the same room and Mrs. Siegel was in bed sick and I did not want to talk anything in front of Mrs. Siegel.

30 Q. Didn't you go out and around the town while Mrs. Siegel was sick there? A. Yes, the doctor ordered me to get out in the air.

Q. While you were walking around didn't you discuss with Mr. Saunders the accident? A. No, sir.

Q. During the time you rode from Richmond to where this accident happened nothing unusual occurred until this accident happened. A. I didn't hear you.

40 Q. While you were riding from Richmond to the place where this accident happened there was

Henry Siegel, Plaintiff—Cross.

nothing unusual occurred until this accident happened was there? A. I don't know. I cannot recollect that.

Q. Don't you understand me? A. No.

Q. I say that nothing unusual happened from Richmond to where this accident happened? A. Yes, it was between Mr. Saunders and Mrs. Saunders. 10

Q. What was between Mr. Saunders and Mrs. Saunders? A. They had words.

Q. What were the words? A. Mrs. Saunders scolded her husband for being too late.

Q. When did the words take place? A. A few minutes before the accident happened.

Q. Would you say it was ten minutes before the accident happened? A. No, it was maybe two or three minutes. 20

Q. So those words were said for the first time after you had left Richmond, two or three minutes before the accident happened? A. It was many times said on the road.

Q. How many times? A. Two or three times.

Q. And during the two minutes time nothing was said by anybody, I mean the two minutes that elapsed from the time you say Mrs. Saunders had words with Mr. Saunders about starting late. A. They had words and Mrs. Saunders got very excited and took her hand off the wheel and said "You are the fault we are so late; if you would bring up the car in time, we would have breakfast at Fredericksburg." 30

Q. That was two minutes before the accident? A. Yes.

Q. But during the two minutes nothing was said by anybody? A. Yes, there were words between them.

Q. I thought you said a minute ago that two minutes before the accident happened Mrs. Saun- 40

Henry Siegel, Plaintiff—Cross.

ders had these words with Mr. Saunders. A. About two or three minutes.

Q. Were you looking ahead as you were sitting in the back seat? A. Yes.

Q. Was there a curve in the road where this accident happened? A. There was a curve in the road.

Q. And this was a sharp curve, wasn't it? A. I don't say it was exactly sharp but it was a curve.

Q. I am asking you whether it was a sharp curve or not? A. I don't think it was.

Q. Did you at the time you approached this curve observe another car coming in the opposite direction? A. There was no car coming.

Q. Was there any car that passed you immediately before this accident happened? A. I didn't see no car.

Q. Was there any car that reached you or came to the point of the accident shortly after the accident? A. Yes, there was a car came along and stopped.

Q. Did this accident happen while the curve was being made or before the curve? A. Before the curve.

Q. How far before the curve? A. When Mrs. Saunders was quarreling with her husband we were not looking for curves. She got angry and started bawling him out and hollered and got where that happened.

Q. I am now asking you whether this accident happened at a curve in the road? A. No, it was before the curve.

Q. How far from the curve? A. I could not tell.

Q. Was it right close to it? A. I don't know how many feet it was, but it was not on the curve, it was near the curve.

Gildea Freeman, for Plaintiff—Direct.

Q. You did not complain about the method in which Mrs. Saunders was driving the car. A. I do not interfere with anybody driving.

Q. You were sitting in the back and minding your own business? A. I was sitting in the rear.

Q. The only argument that occurred that morning was between Mr. and Mrs. Saunders? A. 10
Nobody was angry except Mrs. Saunders.

Q. And the only ones that spoke about how Mrs. Saunders was driving was Mr. Saunders or Mrs. Saunders? A. Mrs. Siegel remarked to Mrs. Saunders, "Please don't drive so fast because I am a little nervous."

Q. When was that said to Mrs. Saunders? A. When we were about a few miles on our way.

Q. How many miles from where you started? 20
A. I could not tell you.

By the Court:

Q. How long was it before the accident happened? A. Maybe ten minutes.

Q. And how long had you been on the road before Mrs. Siegel made that statement? A. We were a few miles, that is the best I can tell you.

30

GILDEA FREEMAN, a witness produced on behalf of the plaintiff, being duly sworn according to law, upon his oath testified as follows:

Direct examination by Mr. Parsons:

Q. Are you acquainted with the charges and the reasonable charges for ambulance service? A. I am.

Q. For how long a time have you been acquainted with that? A. For about ten years. 40

Gildea Freeman, for Plaintiff—Cross.

Q. May I ask you if the charge of ten dollars for an ambulance service for a distance of five miles taking a patient of East Orange to Beth Israel Hospital in Newark would be a reasonable charge?

10 Mr. Golenbock: May I cross-examine on his qualifications?

The Court: You may.

By Mr. Golenbock:

Q. What is your business? A. Funeral director.

Q. You don't own a hospital ambulance, do you? A. No, sir.

20 Q. You never let out any hospital ambulance? A. Yes sir.

Q. You have not any to rent out? A. No.

Q. You hire them from a hospital? A. No, but I managed a funeral home that had an ambulance.

Q. How long ago was that? A. For the last ten years at different times a month or two at a time.

Q. When was the last time you had any experience renting a hospital ambulance? A. A year ago.

30 Q. Whom did you rent it from? A. I was managing a funeral home in Manasquan during the proprietor's absence.

Q. How long did you manage it? A. About three weeks while he was on his vacation.

Q. What kind of ambulance did they have? A. A Studebaker, I believe.

Q. Was it a convertible ambulance? A. No.

40 Q. It was not a hospital ambulance? A. No, but it is a regular ambulance such as hospitals use.

Gildea Freeman, for Plaintiff—Re-direct.

The Court: I will allow it and you may have an exception.

By Mr. Parsons:

Q. What is the reasonable charge? A. Ten dollars is very reasonable.

10

Q. Directing your attention to long trips as from Fredericksburg to East Orange, over two hundred miles, will you tell me whether one hundred dollars is a reasonable charge for that trip?

Mr. Golenbock: Object as leading and suggestive.

By the Court:

Q. Are you familiar with trips of that length?

A. Yes, sir.

20

Q. Carrying patients to a hospital? A. Yes, sir.

Q. Are you familiar with the prices usually charged? A. Yes, sir.

The Court: I will allow him to answer.

Mr. Golenbock: Your Honor will allow me an exception?

The Court: You may have an exception.

30

A. I think one hundred dollars is very reasonable.

Mr. Parsons: I will offer these ambulance bills in evidence.

The Court: They may be marked in evidence.

(Ambulance bills marked in evidence Exhibit P-27 and Exhibit P-30.)

Mr. Parsons: Ownership of the car is admitted.

40

Mr. Golenbock: Yes.

Motion for Non-Suit.

Mr. Parsons: The plaintiff rests.

Mr. Golenbock: I understood there was to be an admission on the record that under the law of Virginia the duty of a host to a guest was that of committing no act which constituted gross negligence.

10

The Court: There are three cases here I am going to use and rely on. Two are cited by you in your brief and Mr. Parsons has handed me the Massachusetts case of *Harber v. Graham*, and I will regard those cases as controlling.

Mr. Golenbock: I have a motion.

The Court: I will hear you in chambers.
(Court and counsel retire to chambers.)

20

Mr. Golenbock: May it please your Honor I desire to move for a non-suit on behalf of the Parabosa Realty Company as a defendant in this suit on the ground that there is no evidence whatsoever in this suit on the part of this defendant.

I also desire to make a motion for a non-suit as to the defendant Pauline Saunders on the ground that from the evidence there is no proof whatever to indicate that this accident happened by reason or as a result of gross negligence on the part of the driver under the Virginia Rule.

30

The Court: The only thing you have in this case that may be a factor is the alleged discussion between Mrs. Saunders and her husband and the testimony tends to indicate that occurred just before this accident happened. There is perhaps a *prima facie* situation involved there which would require the Court to treat it as one of fact rather than law because if as one or the other of the plaintiffs said, in

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Motion for Non-Suit.

upbraiding her husband for not getting started soon enough, she took her hands off the wheel, that would be for the jury to say.

Mr. Golenbock: (Citation *Gale v. Wilbur* decided in September 1934 in Virginia.)

The Court: I think the rule is very well stated in the New Jersey case where they recite the Massachusetts Rule and of course the Virginia cases distinctly say that they do adopt the Massachusetts Rule. 10

Mr. Golenbock: I also want to point out to your Honor that the complaint does not allege gross negligence.

The Court: Doesn't it allege gross negligence?

Mr. Parsons: No, sir. One of the cases sets forth that the proof of it is sufficient. 20

The Court: What is the case?

Mr. Weiser: I took that up with Mr. Golenbock and he said all right that is understood.

Mr. Golenbock: No, Mr. Weiser, I did not.

Mr. Parsons: (Citation *Harber v. Graham* and 45 *Corpus Juris*.)

The Court: I incline to the view that the plaintiff has made out a prima facie case under the Virginia Rule with reference to gross negligence where the relation of passenger exists between the occupant and the owner or the driver of the automobile involved and that in the circumstances the motion for a direction should be denied, and an exception will be allowed. 30

Mr. Golenbock: As to both defendants?

The Court: Is there any question about the relation of these people to the defendant corporation? 40

Motion for Non-Suit.

Mr. Parsons: There is a presumption that exists and the testimony has been taken.

10

The Court: In answer to counsel's query as to whether the ruling on the motion relates to both defendants, the ruling is that it does because there is a presumption that the owner of the car, which in this case happens to be a corporation, allowed it to be on the highway in the custody and control of the driver, and that the relation of principal and agent would in the circumstances exist where it was being used in accordance with the presumed authority of the owner.

20

Mr. Golenbock: I pray for an exception.

The Court: You may have an exception.

(Court and counsel return to court room.)

Mr. Golenbock: I desire to read, if your Honor please, the testimony taken of the witnesses in Florida as part of the defendant's case.

The Court: Very well.

30

Mr. Golenbock: This, ladies and gentlemen of the jury, is the testimony of Pauline Saunders, duly sworn, who testified in Florida as follows:

(Mr. Golenbock reads to the jury the testimony of Pauline Saunders, direct and cross-examination.)

(Mr. Golenbock reads to the jury the testimony of Ray B. Saunders, direct and cross-examination.)

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Pauline Saunders, for Defendants—Direct.

PAULINE SAUNDERS having been duly sworn, testified as follows on behalf of the defendants:

Direct testimony by Mr. Henry K. Golenbock:

Q. Are you an official of the Parobasa Realty Corporation? A. Yes. 10

Q. What office do you hold? A. Secretary.

Q. Is that a New Jersey corporation? A. Yes.

Q. Do you recall how long this corporation has been in existence? A. About four years.

Q. Where is your permanent home? A. No. 300 3rd Avenue, Bradley Beach.

Q. So that you are a resident of the State of New Jersey? A. New Jersey.

Q. The Parobasa Realty Corporation—what business is the company in? A. Hotel business. 20

Q. Where do they conduct their hotel business? A. New Jersey.

Q. In 1932 where did this corporation have a hotel? A. Same place.

Q. Does the corporation do any business, or has it a hotel or other kind of business in the State of Florida? A. No.

Q. What time of the year is the hotel of this company at Bradley Beach closed? A. We usually close right after Labor Day. 30

Q. So that would happen in 1932? A. Yes.

Q. So that the only business which the corporation conducts is what is known as a "summer" hotel? A. Summer hotel.

Q. It is not active or engaged in any business during the winter time? A. No, sir.

Q. In 1932 did the corporation own an automobile? A. Yes.

Q. And what kind of an automobile was it? A. A Nash. 40

Pauline Saunders, for Defendants—Direct.

Q. Sedan? A. Sedan.

Q. In the winter of 1932; that is, sometime in December of 1932, did you travel to Florida in this particular car? A. Yes, sir.

Q. Who did the driving? A. I did.

10 Q. I am now speaking of the time when you went to Florida? A. Yes.

Q. Do you recall when you left for Florida? A. I can't remember the day of the month but it was in December.

Q. You remember it was December, but do not recall the day. A. No.

Q. Are you a licensed driver in the State of New Jersey? A. Yes, sir.

Q. Are you still a driver licensed by the State of New Jersey? A. Yes, sir.

20 Q. How long have you been driving an automobile? A. Since 1928.

Q. Previous to the time of this accident for how long had you been a licensed driver? A. About four years.

Q. Was this the first trip you made to Florida? A. No, sir.

Q. Had you been coming to Florida previous to this trip? A. Yes.

30 Q. On these previous occasions did you drive down or did you go by another method? A. We drove down all the time.

Q. And on these trips who would do the driving? A. I did, always.

Q. On this particular trip that you made in December, 1932, was that for your own convenience and pleasure? A. Yes.

40 Q. Will you please tell us what was the object of your trip to Florida on this particular occasion? A. We always come down every winter on account of sickness and trouble.

Pauline Saunders, for Defendants—Direct.

Q. After you arrived in December, 1932, you stayed in Florida until when? A. March 16, 1933.

Q. During your stay in Florida, did you continue to drive this particular automobile? A. Yes, sir.

Q. How long have you known Mr. and Mrs. Siegel, the plaintiffs in this action? A. We know them by sight up until the time we got more acquainted on the beach here. 10

Q. During your stay in Florida you became quite friendly? A. Yes.

Q. And were you returning to Bradley Beach in March of 1933 for the purpose of starting your hotel; the company's hotel again at Bradley Beach? A. Yes.

Q. You say you left Miami, March 16, 1933? Is that right? A. Yes. 20

Q. What time of the day or morning did you start out? A. About seven o'clock.

Q. How far did you travel on that particular day before you stopped for the night, and where was it? A. Jacksonville was the stop.

Q. And you stayed overnight in Jacksonville? A. Yes.

Q. And do you know the approximate distance of miles between Miami and Jacksonville? A. Three hundred and fifty something. 30

Q. Then you continued on North the next morning? A. Yes, sir.

Q. At what hour of the day did you drive? A. Well, we usually start out always between 6:30 and 7:00.

Q. When did you stop? A. Between 5:30 and 6:00.

Q. In other words you would drive only during daylight? A. That is all.

Q. Do you recall about where you stopped on the second night? A. No, I could not remember 40

Pauline Saunders, for Defendants—Direct.

but we didn't make no more mileage than the first day.

Q. Now do you recall where you stopped the third night? A. I can't remember.

Q. The night before the accident where did you stay? A. In Richmond.

10 Q. What time did you leave Richmond that morning? A. About 6:35.

Q. Was it daylight at that time? A. Yes.

Q. What time did this accident happen? A. About 8:15.

Q. Do you know where this accident happened? A. Three or four miles below Fredericksburg.

Q. What makes you believe it was three or four miles from Fredericksburg? A. We just happened to ask and they told us.

20 Q. After the accident it was about how many miles did you figure? A. I figured it was about 7½ miles.

Q. And you got the mileage that you say is about 7½ by what method? A. By mileage on the car.

Q. In other words, after the accident you drove the same car from the point of the accident to the hotel? A. To the hotel was 7½ miles.

30 Q. What hotel did you drive to? A. Princess Anne.

Q. At what place? A. Fredericksburg, Va.

Q. Particularly referring to the road between Richmond and Fredericksburg, will you tell us please the kind of a road that it was at that time? A. It was all broken up, under repair, and it was raining.

Q. At or near where the accident was, what kind of a roadway was it? A. Near a curve.

40 Q. No, I am talking now about the kind of a road it was at the time? A. Well, the road was paved.

Pauline Saunders, for Defendants—Direct.

Q. It was paved in what kind of pavement; was it concrete or asphalt? A. Asphalt, I think, could not remember for sure.

Q. At the point at or near where this accident happened, was the road complete and paved, in a paved condition? A. It was under construction—they were working on it. Of course, where we were driving it was paved. 10

Q. In other words, the center of the road was completely improved in hard surface pavement, is that right? A. Yes.

Q. In regards to the roadway, there were no obstructions in so far as road construction or road work was concerned, was there? A. No.

Q. I am talking about construction work as far as the paved part of the road is concerned. A. So hard to remember because in some of the places the road was broken up and in some places the cars had to wait for another car to pass. 20

Q. Are you talking now about the road between Richmond and Fredericksburg? A. Yes.

Q. And how many places would you say that occurred? I am referring to between Richmond and Fredericksburg? A. I do not remember.

Q. In this particular time of the morning, as you were driving between Richmond and Fredericksburg, was the traffic heavy or light? A. Light. 30

Q. Immediately prior to this accident, what occurred? Will you please tell in your own way, just what took place? A. Well, it was near a curve and it was very hard to see the cars ahead. A car was coming South, we were going North and I happened to see the car I quickly pulled to the right and I slipped into that soft shoulder and when I came back again, when I brought the back wheel back on the pavement that clay most 40

Pauline Saunders, for Defendants—Direct.

likely started in to skid and that is all I know, that we spun around and hit the embankment.

Q. Did the front or the rear part of your car hit the embankment? A. The rear.

10 Q. You say as you approached a turn—how close or near to the turn were you when this other car came from the opposite direction in the manner that you have already stated? A. About ten feet.

Q. In other words you had not yet started to make the turn? A. Just about.

Q. The other car which was coming in the opposite direction had completed the turn? A. Yes.

Q. Came into your view? A. Yes.

20 Q. What side of the roadway was he approaching you at the time when you first observed him? On what side of the road as he was coming toward you? A. He was on the left, we were going North.

Q. When you say on the left, was he coming on your side or the other side? A. He was coming towards me.

Q. On your side? A. On my side.

Q. Why did you turn right onto the shoulder particularly at the time that this other car was coming in the opposite direction? A. Well, it would have been much worse if I wouldn't have.

30 Q. What would have happened if you hadn't turned to the right onto the shoulder? A. It would have been a smashup.

Q. What did you mean when you said it would have been worse? A. Yes.

Q. Can you tell us please the width of the shoulder at that particular point? A. It's about I should judge, about four or five feet.

Q. What was beyond the shoulder and to your right? Do you understand my question? A. No.

40 Q. What was on the side of the road to your right beyond the shoulder? A. An embankment.

Pauline Saunders, for Defendants—Direct.

Q. Can you tell us the approximate height of the embankment? A. I couldn't say, that I don't know.

Q. Was it a depressed embankment or was it an embankment higher than the road? A. Higher, much higher.

Q. How far had your car traveled from the time that your car started to skid up to the time it stopped? Can you tell us that? Approximately? A. You mean the skidding part of it? 10

Q. Yes, the skidding part. A. I couldn't say, I don't know.

Q. Well, did it go far or a short distance? A. It was a short distance.

Q. After your car came to a standstill what part of the turn was your car in? A. You mean which way was the car standing? 20

Q. First tell us which way the car was standing? Which way was it facing? A. The way we went around and hit the embankment?

Q. Let me put it this way. Were you facing somewhat across the road—straight North, or straight South? A. Across the road like.

Q. Now did your car pass the turn or not after it came to a stop? A. No, we were just about in the middle of the curve.

Q. And when you say the middle of the curve, you also understand it is in the middle of the turn? A. Yes. 30

Q. Now will you please tell us, Mrs. Saunders, who was sitting in the front of the car with you? A. My niece, Mabel Kahn and my husband.

Q. Who else was in the car? A. Mrs. Siegel and Mr. Siegel and a little fellow of eight years old, my niece's boy was sitting in the back.

Q. The last three passengers were in the back seat? A. Yes. 40

Pauline Saunders, for Defendants—Direct.

Q. At the time that you were approaching the turn—as you saw the car having made the turn in the opposite direction in which you were driving—how fast were you going? Were you going fast or slow at that particular point? A. We were driving about twenty-five, not more.

10 Q. As you approached a turn did you or did you not slacken up? A. Slacken up.

Q. So when you approached the turn and this car came into your view, were you going less, or more than twenty-five miles? A. Less.

Q. Will you tell us the kind of weather you had at the time, or immediately prior to the time when this accident happened? A. It was raining.

Q. What was the condition of the roadway? A. Just wet.

20 Q. Do you know the distance between Richmond and Fredericksburg? A. About 55 miles.

Q. Did Mr. or Mrs. Siegel pay you for their trip that they were making with you up North? A. No, sir.

Q. Did they agree to pay you anything? A. No, sir.

Q. You didn't ask for any payment? A. No.

Q. Nor did you expect any payment? A. No.

30 Q. Was it an accommodation as far as they were concerned? A. Yes.

Q. Mrs. Saunders, will you please tell us how Mr. and Mrs. Siegel came to make this trip North with you? A. We were talking on the beach about going home and they felt they would like to go with us to see the surroundings and sights of Florida, etc. and we arranged a day of leaving and that is how it happened.

40 Q. Do you recall the language which they used, or substantially which they used when they said they would like to see the sights or the land, or

Pauline Saunders, for Defendants—Direct.

whatever they said and would like to go along with you? A. No, I don't.

Q. Is that the substance of what they said? A. Yes.

Q. And you agreed to let them go along with you? A. Yes.

Q. Now, after this accident, where was Mrs. Siegel taken? A. We took her into the hotel. 10

Q. In the car? A. Yes.

Q. Then when she was brought to Fredericksburg she stayed in a hotel? A. Yes.

Q. Did you stay with her? A. Yes.

Q. Was the doctor called? A. Yes.

Q. You don't recall the name of the doctor? A. Doctor Ware.

Q. Now, how long did you stay with Mrs. Siegel at the hotel? A. We left Tuesday morning—this happened Sunday morning—Sunday one day, and Monday. 20

Q. Did Mrs. Siegel and you have any conversation that same day, or the next day in regard to her going back with you? I mean continuing on with you up North? A. I understand the question but I don't know just how to answer it because we were talking. The family expected Mrs. Siegel up home Sunday sometime and as the accident happened we couldn't continue the journey and I asked Mr. Siegel if he should phone or send a telegram to his people that they shouldn't wait for them that Sunday and so he did. Two of her daughters and a son-in-law came down on Monday morning I believe they got down there and Mrs. Siegel wasn't—I don't know just how to say this—one of her daughters remained but she was to go home with me. She told them they should go on that she would go with me that maybe the next day or so she would be all right. One of 30 40

Pauline Saunders, for Defendants—Direct.

the daughters remained and they decided she was too sick to make the trip in an automobile and they hired an ambulance.

10 Q. What did you say to her? A. I told her, do you still have confidence driving with us? She said, "It wasn't your fault, it could happen to anybody." That was the end.

Q. So that when arrangements were made to take Mrs. Siegel up North in another conveyance, you left Fredericksburg and went up North? A. We left about the same time. I seen them go out first.

Q. This car that forced you off the road, did it stop or did it not? A. No.

20 Mr. Weiser: Once more I object to the statement of counsel using the phrase "forced off the road" since there is no evidence to that effect thus far.

Q. Were you able to get the number of the car or what kind of a car it was? A. No.

Q. Was your car equipped with windshield wiper? A. Yes.

Q. Was it in operation at the time? A. Yes.

30 Q. Now, previous to your leaving Florida, did you do anything to the car in connection with servicing it? A. Yes.

Q. Where was that done, do you recall? A. At the Nash Service.

Q. And how long before you left Florida, or Miami, was that done? A. Just a day or two.

Q. In what particular city was this Nash Service Station where you had the servicing done? A. In Miami.

40 Mr. Golenbock: That is all.

Pauline Saunders, for Defendants—Cross.

Cross-examination by Mr. Weiser:

Q. Mrs. Saunders, you left Bradley Beach in December of 1932 and came down here, is that right? A. Yes.

Q. For what purpose did you come down? A. For what purpose? Just to be down here. 10

Q. Can't you make your answer more complete than that? A. No, we had no particular reason for coming down that year than any other year.

Q. And what reasons did you have during any other year? A. The reason that I came here was on account of my condition.

Q. Don't you come down here for the purpose of renting a hotel usually? A. No, we had no particular reason for coming down, just on account of my sickness. 20

Q. Isn't it a fact that you came down here in the year 1932 trying to rent a hotel, but were unsuccessful? A. No.

Q. Didn't you tell Mrs. Siegel that you came down here intending to rent a hotel for the Parobasa Realty Corporation?

(The witness interrupts question.)

A. Never for a corporation.

Q. How about for yourself? A. For ourselves either. Mr. Saunders he used to get off and on a job in a hotel. 30

Q. How about the years previous during which you have been coming down here? A. Just the same.

Q. And you never tried to rent a place to go into business for yourself or the Parobasa Realty Corporation? A. Just for a living.

Q. Just for a living you came down for a vacation? A. That is all. 40

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Q. Does that include this year too? A. This year too.

Q. Just came down for your health this year, is that right? A. Yes.

10 Q. And you didn't try to rent any place down here this year? A. Well, it's very difficult for me to answer this because if you come down here on your own trip you might look around for something.

Q. So do you wish to change your answer now and say that you did look? A. Well, in case they offer good something for a buy or business proposition but I wouldn't do it for the corporation. I would do it for myself and that has nothing to do with the corporation.

20 Q. Answer the question more definitely if you can. A. I can't because in two years time a whole lot can happen, I may go out begging next day, I am sorry.

Q. Do you mean now that you might have looked for a place during these years? A. I didn't look for the corporation, I answered this before.

Q. Answer the last question. A. I can't answer.

30 Q. Well, you are not certain whether you did look, during the year 1932 for a place, are you? A. Only for a living.

Q. Answer the question "yes" or "no". Are you or are you not certain that you looked for a place? A. No.

40 Q. Then what did you mean when you said: "It's hard to answer, that you might have" or words to that effect? A. If they just give me a chance. In case somebody would come up and say, "Mrs. Saunders you are in this line of business, I have a wonderful opportunity for you to

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have'' yet I didn't have in mind to do so. My niece told me on the wire before there is a good thing—that doesn't mean I am going to look. It doesn't cost any more. We look but we never closed; never got anything in the nine years we come down here.

Q. Did you testify that you didn't look for anything this year? A. I did look. 10

Q. You did look? A. But not for the corporation.

Q. Why are you so anxious to make it clear that you did not look for the corporation? A. I just have no other reason to answer it any different. If we were able to get something to work out here this year I would because we had a very bad summer up North, that is the only reason.

Q. I haven't tried to make any distinction between the corporation and yourself personally, and yet you have time after time made that distinction. Why do you do that? A. I don't know what to answer. I have no answer. 20

Q. Did anyone tell you to make that differentiation? A. No.

Q. But it's true that this year you did look for a business place? A. Yes.

Q. Did you ask Mrs. Siegel to go home with you or did she ask you? A. Well, we were talking on the beach about the trip and other things, that it's nice and lovely around here and everything else and I asked her as much as she was anxious to go and was glad she could go. 30

Q. But you did invite her to go with you, did you not? A. The conversation was at the time we met on the beach she said she wished she could go with a nice party with an automobile, that she would enjoy it and that is how we came to understand we would be going together. 40

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Q. Why did you ask Mrs. Siegel to go?

Mr. Golenbock: I object to that as an assumption that Mrs. Saunders asked Mrs. Siegel. On the contrary, Mrs. Siegel asked Mrs. Saunders to be taken along.

10

Q. Why did you ask Mrs. Siegel to go with you, if you did?

Mr. Golenbock: I object.

A. I have no answer, I just said it, and that she was anxious to go.

Q. Didn't you want her company?

20

Mr. Golenbock: I object to counsel interrupting witness before she makes answer, whenever an answer is not acceptable to him. I submit the proper procedure is to permit witness to answer fully; then follow with another question.

A. Well, it's just the same thing. She was anxious to go and we were satisfied she is going with us, but I was not more anxious.

30

Q. Were you just as anxious to have her go as she was to go with you? A. Well, I wanted nice company, yes.

Q. So you left Miami on March 16th, 1933? Right? A. Yes.

Q. At about what time in the morning? A. About 7 o'clock.

Q. Might it have been earlier? A. It maybe was a few minutes earlier.

Q. Might it have been 6:30? A. I wouldn't say sure. It maybe was a couple of minutes before seven or after; I wasn't so correct on it.

40

Pauline Saunders, for Defendants—Cross.

Q. Was there any conversation at the time you left Miami, between yourself and Mr. and Mrs. Siegel. A. What conversation?

Q. In regard to the trip in general? A. No.

Q. And where did you go that night? A. Jacksonville.

Q. You reached Jacksonville at about what time that day? A. Well, it must have been around 6 o'clock. 10

Q. About 6 o'clock? A. Yes.

Q. You say you traveled approximately three hundred and fifty some miles that day. Is that right? A. Yes.

Q. How fast did you drive that day? A. Well, we drive steadily.

Q. Steadily; about how much? A. Well, on the highway, I drive between forty-five and fifty; in the cities you slow down. 20

Q. And that is your general speed? A. That is the general speed on the highway.

Q. For the whole trip, is that right? A. Yes, if the road is clear.

Q. Now what hotel did you stay at in Jacksonville? A. We didn't stop in a hotel; we stopped in a tourist house.

Q. And what time did you leave there next morning, if you recall? A. That was between 6:30 and 7. 30

Q. And how far did you get by night? A. That I can't remember where we stopped.

Q. Are you certain you stopped somewhere that night? A. I am sure we stopped that night.

Q. Don't you remember what city? A. No.

Q. Was it in a city? A. Well, it was a city or town; we never stopped on the road.

Q. Was it a tourist camp? A. No.

Q. Approximately what time did you leave there? A. About the same time. 40

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Q. You mean 6:30 to 7? A. Between 6:30 and 7.

Q. And where did you get that night? A. That is the third night, isn't it? The third night we were in Richmond, Va.

10 Q. What hotel did you stop at there? A. In the Richmond, I think.

Q. You slept there over night? A. Yes.

Q. The next morning what time did you leave? A. We left about six thirty, or thirty-five.

Q. In the morning? A. Yes.

Q. Where did you garage your car that night, if you know? A. The hotel garage.

Q. The hotel garage? A. Yes.

20 Q. Before you went to sleep did you make any arrangements as to what time you were to leave the hotel the next morning? A. You mean in Richmond?

Q. Yes. At what time had you planned on leaving? A. We planned on leaving early on account of reaching Bradley Beach that day.

Q. You wanted to make the beach that day? A. Not that I wanted to but Mrs. Siegel wanted to and we made an early start so we could be in Bradley Beach Sunday.

30 Q. Well, you wanted to reach Bradley Beach on Sunday too, didn't you? A. There was no reason for us to reach Bradley. She did have arrangements with her family and I told her I would see how we could make out and we made an early start; in fact every day we started about same time.

Q. Now, this particular morning, did you have breakfast at the hotel? A. No, we didn't.

40 Q. On previous stops you made on these trips didn't you usually have breakfast on the place where you slept? A. No, we had breakfast on the road.

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Q. But this particular morning you wanted to make an early start to reach Bradley Beach, is that right? A. Yes.

Q. And where had you intended to have breakfast? A. We were to have breakfast in Fredericksburg.

Q. Did you get your automobile on time in the morning? A. Yes. 10

Q. How did you get the automobile? A. We left a note downstairs what time we want it.

Q. And did you find it when you came down? A. Yes.

Q. You are certain of that? A. I am sure.

Q. Do you recall having sent Mr. Saunders for the automobile? A. I don't remember such.

Q. Might he have gone for the automobile? A. Who? 20

Q. Mr. Saunders? A. No, the porter brought the car.

Q. You are certain of that? A. I am sure of that.

Q. You sound doubtful. A. No, I am not sounding doubtful because if the car was parked from the hotel we always left a note what time we want to start.

Q. You say always. Well, how about in this particular instance? Isn't it a fact that you sent Mr. Saunders for the automobile because it was getting late? A. I don't think so. 30

Q. Isn't it a fact that Mr. Saunders took a bell-boy and brought the car back later than you expected on this particular morning? A. I don't remember such.

Q. Isn't it a fact that you got a late start this particular morning? A. No.

Q. Had you been having trouble with your automobile on the ride up? A. No more trouble than 40

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any other car; we had it greased and changed the oil.

Q. Had you been having trouble with the brakes? A. No.

Q. Hadn't you stopped at a service station just prior to the accident to have the car repaired?
10 A. No.

Q. Would you say then that your automobile was in perfect working order just prior to the accident? A. The car was in perfect running condition, yes.

Q. Now when you found in the morning that it was raining, did that change your plans not to reach Bradley Beach that day? A. I never plan ahead of time, if we could make the time. If we don't we just stopped wherever there is the near-
20 est place to stop.

Q. Didn't you say you had planned to reach Bradley Beach that day? A. Yes, we had planned to reach Bradley Beach that day.

Q. Then why do you say you never plan? A. Well, we plan. I had this particular plan for the sake of Mrs. Siegel being that she had her family in Bradley Beach, otherwise I never plan that we make this station or that station. Never that particular place was planned.

Q. How often had you driven up to Bradley Beach from Miami prior to this time that the accident happened? A. How many times?
30

Q. Yes. A. This is our eighth trip by car, and this is two years ago—that was six times.

Q. And how many days did you take each time on the prior trips that you made to go from Miami to Bradley Beach? A. We make it all the time in four and four and a half days.

Q. When you say all the time, do you mean up
40 until now? A. Up until now, yes.

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Q. Did it take you four or four and a half days to get to Miami on that particular trip from Bradley Beach? A. You mean when we were coming?

Q. Yes. Did it take you that long? A. Yes.

Q. Now getting back to the morning when you left Richmond was everything smooth in regard to getting off in time? A. What do you mean, smooth? 10

Q. Did you have any arguments with anyone? A. No.

Q. Didn't you have an argument with Mr. Saunders? A. No.

Q. Didn't you bawl him out for not getting the car in time? A. No.

Q. And isn't that the reason you didn't get breakfast in Fredericksburg? A. We never eat breakfast where we sleep. 20

Q. Do you have any reasons for that? A. No, just too early.

Q. Now, when you started, whom did you have in the front seat of your automobile? A. Mr. Saunders and my niece, Mrs. Kahn.

Q. And yourself? A. And myself.

Q. Whom did you have in the back seat? A. Mr. and Mrs. Siegel and my niece's boy eight years old.

Q. What kind of a car do you have? A. Nash Sedan. 30

Q. What year? A. '28.

Q. Did you have plenty of room with three grown people in the front seat? A. Yes. Plenty of room.

Q. Plenty of room with three grown people in the front seat? A. Yes.

Q. And how far did you drive before the accident occurred? A. How far we drive that morning? 40

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Q. Yes. About how many miles? A. Well, it must have been about 47 or 48 miles according to the mileage from Richmond to Fredericksburg.

Q. How far would you say it is from Richmond to Fredericksburg? A. It's 55 miles.

10 Q. How fast were you driving during that time? A. About 25 to 30.

Q. And you were driving about an hour and three-quarters when the accident occurred, is that right? A. 6:35 to 8:15—about, yes.

Q. Are there many curves and hills in that road? A. No hills.

Q. Well, how would you describe that road? A. It's not hilly, it's curved.

20 Q. Would you say it's very curved? A. Not from Richmond to Fredericksburg; more so from Washington into Baltimore.

Q. Do you mean to say that the road between Fredericksburg and Richmond, Virginia, is not very curved? A. Not as curved as from Washington.

Q. Never mind about the other. A. Well, it is curved, yes.

Q. Would you say there are long stretches of straight road there? A. Yes, there is pretty long stretches of road.

30 Q. Would you say there are many or few hills in the road? A. No hills.

Q. And no inclines? A. Not on that particular road where it happened.

40 Q. Mrs. Saunders, from approximately seven or eight miles out of Richmond, Virginia, until you reach Fredericksburg, isn't it a fact that that road is hilly and curved both? A. The town itself is more hilly than the road, I agree to that because I made that road too often. It has more curves but not hilly.

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Q. Can you say approximately how many curves there are to the mile? A. No, I can't.

Q. How fast did you travel around the curves?

A. Well, about fifteen or eighteen.

Q. Fifteen to eighteen miles around curves?

A. Yes.

Q. And on the straight road about twenty-five? 10

A. That morning, yes.

Q. Did you sound your horn before you reached that curve where the accident occurred? A. No.

Q. Did you give any warning, as you approached that curve? A. No.

Q. Did you apply your brake when you slowed up? A. On this particular curve?

Q. Yes, this particular curve I am referring to?

A. I hadn't reached the curve.

Q. How far were you? A. About ten feet. I 20
just slowed down.

Q. Did you or did you not apply your brake?

A. I can't remember.

Q. Do you remember exactly how fast you were going just prior to the time the accident occurred?

A. I couldn't go any faster than about twenty miles.

Q. How do you know you were going that fast?

A. Well, that's how I do when I come near a curve; I usually slow down. 30

Q. But in this particular case, did you look at your speedometer? A. No, I didn't.

Q. How long a curve did you say this was? A. I can't tell you that either.

Q. Yet you say you were ten feet away from it. What do you mean by that? A. Well, I must have been about ten feet away before I noticed the car shoot out; that is all I can remember.

Q. Now, tell me where that car was in regard to the curve when you first saw it? A. Well, that 40

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is very hard to explain to you. On the curve I was coming North and he was going South and the road was broken up on his side so he was coming towards us and that is where I got out of his way and pulled to the right.

10 Q. What happened when you pulled to the right? A. The back wheel went into the soft shoulder and when I came up to the pavement we went into a spin and skidded.

Q. You didn't go completely off the road then, did you, just prior to the accident? A. No.

Q. Where were you driving in regard to the shoulder, just prior to the accident? A. Where was I driving?

20 Q. Yes. In what part of the road? A. Naturally like you keep to your side.

Q. Were you on the extreme right? A. On the right, yes.

Q. Extreme right, or were you more to the center? A. No, I was to my right.

Q. And which wheel went off on the shoulder? A. The back.

Q. How far did you drive on the shoulder before you started to skid and spin? A. It only took a minute or second or so, I can't explain.

30 Q. In other words, you just pulled off and on again? A. I pulled off and we went into a skid and went into the embankment.

Q. Now, if you had not skidded, was there sufficient room for the automobile before striking you? A. I didn't skid before striking him. I skidded to get out of his way.

Q. Was there sufficient road for the automobile to pass? A. I just say I didn't skid until after he passed us.

40 Q. How long after he passed you did you skid? A. Just a second. He went on and we went into a skid and I came up on the paved road.

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Q. And how did you skid? A. I can't explain it.

Q. Did your car turn around? A. You mean turn over?

Q. No, turn around? A. Yes, it spun around.

Q. Where was it facing after the accident was over? A. Facing like across the road.

Q. Then the car had turned completely around and had been facing Miami, but completed and skidded further than that even, so it faced directly across the road? A. It skidded so that we were standing across like. 10

Q. Did it strike the embankment hard? A. Well, it struck it so hard that we stopped.

Q. Did it strike the embankment and you stopped going? A. Yes.

Q. Did it bounce back from the embankment? A. No. 20

Q. Wasn't the embankment slanted a bit. A. I can't answer; I don't know.

Q. What part of your car struck the embankment? A. The left side.

Q. And what part—the top or bottom? A. The top, the very top.

Q. You have fenders jutting out from the side of your car? A. It didn't touch the fenders.

Q. You have them on your automobile, haven't you? A. Of course I have. 30

Q. They are further out from the automobile than your top? A. Yes.

Q. Then isn't it a fact that your car leaned over on two wheels; struck the embankment and bounced back? A. I can't remember, because I would say a lie if I would. I can't remember when the accident happens.

Q. What happened immediately after the accident, as the car stopped? A. Mr. Saunders stepped out. 40

Pauline Saunders, for Defendants—Cross.

Q. Your car stopped? A. Yes, as we hit the pavement the car stopped. He looked in the back seat first to see how the couple is getting along. He stepped out of the car and went to the back and the back window was broke and looked to see if anyone was hurt by the glass and saw a few
10 pieces of glass on top of the seat. He picked that off. My niece stepped out of the car and she flagged another car. They stopped and looked to see if we could get out of there. I started her and got her out on the road and we came into Fredericksburg.

Q. Did either Mr. or Mrs. Siegel get out of the automobile? A. No.

Q. Do you know how the back glass broke? A. It must have broke from the shake.

20 Q. It didn't hurt the back of the car, did it? A. I don't know.

Q. Wasn't it the side of the car that was hurt? A. The corner of the car hit the embankment, but how the glass broke I cannot explain.

Q. Might it have been Mr. Siegel's head that broke it? A. No.

Q. Why do you say that? A. He would have had his head cut.

30 Q. Is that the only reason you have for saying that? A. Yes, if I did that I would cut his head or something.

Q. Were Mr. and Mrs. Siegel injured at that time? A. Yes, they were complaining. Mr. Siegel must have been hurt. Mr. Siegel thought he hit the roof of the car. He complained that his head hurts, but nobody was cut up, but I can't explain it any different just the way it happened.

Q. You mean they weren't bleeding? A. Nobody.

40 Q. When you say they were complaining, what do you mean? A. Well, they said that Mrs. Sie-

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gel's side hurt and when we came into town we got a doctor for her right away at the hotel.

Q. Did she appear seriously injured? A. At that time she didn't.

Q. What do you mean by that time? Do you know whether or not she was? A. At that time she didn't seem to be very bad.

10

Q. How long did you stay with her? A. Until Tuesday.

Q. How many days is that? A. From Sunday morning until Tuesday morning; that is two days.

Q. And during that time was Mrs. Siegel confined to her bed or to the room? A. Yes.

Q. Where; to the bed? A. To the bed.

Q. Did she complain very much? A. No.

Q. But yet you say she stayed in bed for those two days? A. Yes.

20

Q. Did you help nurse her? A. I did.

Q. Did she seem to be in serious pain during the time you nursed her? A. No; not when I nursed her.

Q. Did you have any conversations with her at that time in regard to the condition of your automobile? A. I did tell her I am sorry it happened and so would anybody else do that.

Q. Why did you tell her you were sorry it happened? A. Well, I would say that to anybody.

30

Q. Weren't you worried about her injury? A. I might be worried, yes. It happened with us and it was natural.

Q. As a matter of fact, you knew she was very seriously injured, didn't you? A. No, I didn't.

Q. Didn't you know she had broken ribs? A. No.

Q. Now, when did you have this conversation with her in regard to her going back with you?

A. What, from Miami?

40

Pauline Saunders, for Defendants—Cross.

Q. No, from Fredericksburg after she was injured. A. I had that conversation with her the time when her daughters came down. She wanted her to return and one of them said, "No, she wouldn't; she is going to stay with her," and she says, "Don't be foolish." But I can't say exactly
10 how in words. "I think I will be all right to go home with Mrs. Saunders."

Q. Were you present at that conversation? A. Yes.

Q. And did that daughter go home? A. No.

Q. What did you say to that? A. I did say I am surprised that she wants to go home with us after she was shook up and had this accident and the reason was—it wasn't your fault, why not?

20 Q. Were those her exact words? A. Well, these were her words.

Q. What did you answer? A. I can't remember.

Q. Why is it you can remember her exact words in that regard and you can't remember anyone else's, even your own? Isn't it a fact that someone asked you to use those exact words? A. That she told me to say that? No.

30 Q. You say you were surprised that she was going to ride with you again? A. Yes.

Q. Then you did feel at fault in the accident? A. Why should I feel at fault in the accident?

Q. Well, if so clearly it wasn't your fault, why did you feel surprised she should feel it wasn't your fault? A. Because she was in our car. I was surprised she would go further.

Q. You mean knowing the way you drive you were surprised she would go with you? A. No.

40 Q. Did your niece go home with you? A. No, she didn't drive with us from there because I

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wanted her to stay with Mrs. Siegel and she phoned her husband whether she should stay with Mrs. Siegel or go home and he said she should go home.

Q. Then your niece did not drive home with you? A. No.

Q. When did you start for home? A. On Tuesday from Fredericksburg. 10

Q. Tuesday morning? A. Yes.

Q. How long did it take you to get home—in days? A. It takes two days or three days. We stayed below Philadelphia on account of the house wasn't open so I thought we would have to stop in a hotel anyway so we stayed on the road and got in the following morning.

Q. Do you remember the name of the hotel you stopped at in Philadelphia? A. No, we were below Philadelphia in a tourist house. 20

Q. Then you got home in two days from Fredericksburg? A. Not in two days. We left Fredericksburg at ten or maybe after and I arrived around 4:00 o'clock. It was still raining, it was raining for about five days that time so I thought in Bradley we will have to stop in a hotel anyway so we might as well stay here.

Q. Who runs your hotel in Bradley Beach? A. I do. 30

Q. Who owns it? A. My sisters and a niece.

Q. Is the property in the name of the Parobasa Realty Corporation? A. Yes, in the corporation.

Q. But you run it exclusively? A. Yes.

Q. Who are the other members of your corporation? A. We are only three members—my sister, my niece and I.

Q. How many shares of stock do you hold? A. I don't remember. 40

Q. Will you answer that question?

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Mr. Golenbock: I object on the grounds the witness has already answered.

Q. Please answer the question. A. I can't answer, I don't know any different.

10 Q. You are the Secretary of the corporation?
A. Yes.

Q. And there are only three stockholders, aren't there? A. My sister is Treasurer, I am Secretary.

20 Q. But you hold stock in the corporation? A. Only my sister and niece. I didn't understand you but I don't hold any stock. I can't remember really sure if I have a share, if it is, it's one share in that corporation, but I am not sure of that, but the shareholders are my sister, she is the President. My sister is Mary N. Kay. Her daughter is Vice-President, I am Secretary.

Q. How many shares of stock does Mary N. Kay have? A. I can't remember what she has.

Q. Do you remember how many shares of stock the other shareholders have? A. I can't remember now.

Q. Does this corporation own anything outside of the hotel at Bradley Beach? A. No.

30 Q. How about the automobile? A. The automobile belongs to the corporation.

Q. Now you say the automobile also belongs to the corporation. Anything else? Not another thing? A. No, not another thing.

Q. Who has both of these things in their entire control? A. I have.

Q. And you use both of them as you see fit, is that not true? A. Yes.

40 Q. Do you use the automobile for corporate purposes only? A. I don't understand that word.

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Q. Do you only use the automobile when you have to do something for the corporation? A. No, I am allowed to use it for my own purpose and because I run the business.

Q. As a matter of fact you really own the automobile, don't you? A. I own it so far that I have the control over it and drive it.

10

Q. Do your sisters, the other stockholders, know that you use it for your own purposes? A. Yes.

Q. Do they permit it willingly? A. Yes.

Q. Do they authorize you to use it for what purposes you see fit? A. Yes.

Q. Your niece is a member of the corporation? A. Yes.

Q. The one that was driving with you in the automobile? A. No.

20

Q. Did your sisters know you were going down to Miami in the automobile? A. Yes.

Q. And know you were coming back? A. Yes.

Q. Did you ever bring any of your other friends with you? A. Well, most of the time we mostly had the family with us but this time they remained here in business and I went home earlier.

Q. But from time to time you gave your friends a ride home, didn't you? A. Never had any yet, only this time.

30

Q. Then what did you mean when you said most of the time? A. The relations—my sister—my nieces.

Q. People who are not members of the corporation? A. Some are, and some are not members.

Q. You paid for the automobile yourself, did you not? A. No, the corporation pays for it.

Q. Who pays the expenses of running it? A. That all goes out of the same expense.

Q. The corporation? A. Yes.

40

Pauline Saunders, for Defendants—Cross.

Q. When you make a trip down here, the expenses is paid out of the corporate funds, is that right? A. Yes.

10 Q. When you travel back the expenses are necessarily paid by the corporation? A. If we make enough here we pay our own and if not, the corporation.

Q. In other words, the corporation is a family affair, is that right? A. Yes.

Q. Who paid for the damages to the automobile? A. Out of the corporation.

Q. And who signs corporate checks? A. I do.

Q. Do the other members of the corporation know about the accident? A. Yes.

Q. Did they object to your using the automobile for coming up from Florida? A. No.

20 Q. Did they say it was all right? A. Yes.

Q. Did they know Mr. and Mrs. Siegel rode back with you? A. Yes.

Q. After the accident did they say it was all right?

Mr. Golenbock: I object to that as it is immaterial as to what they said after the accident occurred.

30 Q. Did they say it was all right to bring Mr. and Mrs. Siegel up? A. All they said was it was too bad we had the trouble.

Q. Mrs. Saunders, the other automobile that you say you tried to avoid never touched your automobile, did it? A. No.

Q. Did he do anything to avoid hitting you? A. I couldn't say, I don't know.

Q. Did he pull to the right? A. I don't know, all I know was that I pulled to the right to get out of his way.

40

Pauline Saunders, for Defendants—Cross.

Q. Are there any signs, or were there at that time any signs indicating that you were approaching a curve? A. No there was no signs there.

Q. Was it a very sharp curve? A. Yes.

Q. And you say it was raining? A. Yes.

Q. Was it light enough for you to see? A. Yes.

Q. Were your windows up or down? A. I can't remember that. Well, my window is open all the time on my side but the other windows, I don't know. 10

Q. Was there much traffic there? A. No.

Q. Couldn't you hear the other car approaching? A. No.

Q. Do you know how far it is from Fredericksburg to Bradley Beach? A. I don't know sure.

Q. Roughly? A. From Richmond to Fredericksburg, three and some odd miles, I don't remember. 20

Q. No, not from Fredericksburg. How far is it from Richmond to Bradley Beach? A. Three hundred and some odd miles, or maybe ten to twenty, I don't know.

Q. And you were driving at what speed did you say? A. At that time about twenty-five or thirty.

Q. And all the way did you drive that way until the accident occurred? A. No. 30

Q. How fast? A. Well, on the open road, on the highway, I was driving between forty-five and fifty.

Q. On the day the accident occurred? A. No, on this day twenty-five or thirty miles.

Q. Did you expect to make Bradley Beach on that same day? A. I didn't expect anything, I was just driving.

Q. Isn't it a fact that you were arguing with Mr. Saunders while you were driving? A. No. 40

Pauline Saunders, for Defendants—Cross.

Q. Didn't you turn to argue with him just when the accident occurred? A. No. I don't remember arguing at any time, please.

Q. You were at that time a nervous woman, weren't you? A. When I drive my car I mind my own business.

10 Q. Didn't Mrs. Siegel from Fredericksburg to Richmond ask you to please drive slower? A. Never, they were so pleased they didn't know what to do with me.

Q. Didn't you, when they asked you to drive slower, say, "Never mind I have driven this so often I know my business"? A. I don't remember making such a statement.

20 Q. When did the other car which you say stopped come along in relation to the time of the accident, was it long after the accident happened? A. What other car?

Q. The one you say your niece hailed. A. No, just a few minutes.

Q. A few minutes, and you were just standing there waiting for the other car? A. I can't just remember.

30 Q. Then it might have happened along just at the time of the accident? A. I can't remember what happened then. You want to know if this car that my niece flagged came along just at the accident.

Q. That is right. A. I can't remember, all I know was she stepped out of the car and flagged this car, it must have been a moment or two afterward.

Q. Are you certain this wasn't the car you tried to avoid? A. No, that wasn't the same car that stopped.

40 Q. Did they help any of you—the people in the car that stopped? A. No, they just came and see

Pauline Saunders, for Defendants—Cross.

we were all right. They offered to drive the car in. It was two fellows but I thought I was all right and I took the car in myself.

Q. Did one of the fellows say anything about taking Mrs. Siegel to a hospital? A. No.

Q. What did he say? A. He came over and looked at us and he said well, are you all right or how do you feel. Do you need any help? Everybody seemed to be all right but Mrs. Siegel complained. 10

Q. How did she complain? A. She just hollered "my side hurts me." He said you better take her in to Fredericksburg and see a doctor before you go any further.

Q. How about Mr. Siegel, was he injured? A. He claimed he hit the roof of the car.

Q. He said that at the time of the accident? A. No, when we got to the hotel. 20

Q. What was his condition, did he seem perfectly healthy at the time of the accident or was he in distress or injured? A. He was shook up or frightened or whatever you call it.

Q. What did you have done to your automobile just before you left Fredericksburg? A. Before I left Fredericksburg I could not remember, but I had it looked over. We never start on a trip before we have it looked over and change the oil and have it tightened up. 30

Q. Didn't you give him strict instructions to fix the brakes? A. Well, its always taken care of.

Q. But did you or didn't you? A. Yes.

Q. Had you been having trouble with your brakes all along the trip? A. No.

Q. Didn't you have trouble with your car pulling to the right all along the trip? A. No.

Q. Didn't you have trouble with the gearing? A. No. 40

Pauline Saunders, for Defendants—Cross.

Q. Did you make any statement to Mrs. Siegel after the accident, explaining what caused the accident? A. No.

Q. Do you still insist, Mrs. Saunders, that you had no argument with Mr. Saunders on that day?

A. I am sure I didn't. I never argue in the car.

10 Q. How far could you see on that day—meaning the day of the accident—how far could you see ahead of you? A. I can't tell you just how far I could see distance.

Q. Quite a distance? A. Yes.

Q. The rain didn't make it too dark for you to see? A. No.

Q. You said before that the car was coming down on the left, on direct examination. Meaning the other automobile which caused you to swerve?

20 A. Yes.

Q. On whose left did you mean? A. On my left. He was coming South, I was going North.

Q. How wide would you say the road is at that point or was at the time of the accident? A. Right there I can't tell you how wide it was because the roads were quite narrow at that time.

Q. Wide enough for two cars to pass? A. Wide enough if it wouldn't have been broken up on his side.

30 Q. Was he driving fast or slow? A. Fast.

Q. How fast would you say? A. I can't say.

Q. Did you report the accident when you reached Fredericksburg? A. Yes.

Q. Did you make any attempt to locate the man whom you say caused you to swerve this way? A. No, I couldn't try to locate him.

Q. What did you do, if anything, when your car started to spin? A. What did I do? I tried to control it.

40

Pauline Saunders, for Defendants—Cross.

Q. What did you do when you tried to control it? A. Well, it takes so little time I can't tell you what I done and how I done it.

Q. Did you turn the wheel fast? A. I tried to bring it up on the pavement. It didn't spin on the shoulder, it spinned on the pavement. I was trying to straighten her out.

10

Q. How many wheel brakes do you have on your automobile, Mrs. Saunders? A. Four.

Q. Let me add to that question. Within how many feet could you stop your automobile in the condition which it was on the day of this accident, driving at the rate of eighteen or twenty miles an hour? A. I can't answer. I don't know.

Q. You don't know? A. Not that I don't know I could stop at three or four feet but I can't answer you on this trick question. If you would give me a chance.

20

Q. There is no trick. I just want to know how quickly you can stop? A. I could stop on a second.

Q. When you saw this man approaching you did you try to stop your car to let him go by? A. I slowed down and pulled away from him.

Q. But you did not apply your brakes to let him go by? A. I did.

Q. You did apply your brakes? A. Yes.

30

Q. You use your brakes? A. It just comes natural to put your foot on the brakes in a second, when you drive a car.

Q. Still you had ten feet in which to stop? A. I didn't have to stop because this car went by and we hadn't been in an accident then. We kept going and only when our back wheel came up to the pavement, that is where we got into a skid.

Q. Then you weren't skidding, really, until you got back on the paved road, is that right? A.

40

Pauline Saunders, for Defendants—Re-direct.

Well, most of my car was on the paved road all the time. This car passed us by and then we went into a skid.

10 Q. Then there was no reason for you wanting to stop? A. This was the first skid for us, it only took a second and I can't even explain how it happened.

Q. But nevertheless, your answer is that the car had passed you before you went into your skid? A. Of course. If I would have skidded around when he was in my way I would have knocked him down or he would have knocked me down, one of the two.

Re-direct examination by Mr. Golenbock:

20 Q. Mrs. Saunders, if you hadn't made the turn right at the time which you did, would it have been a head-on collision or not? A. Yes.

Q. You did say, did you not, that it is a 1928 car? Isn't it a fact it is a '29 car? A. (No answer.)

30 Q. When you said that you had exclusive conduct of the hotel were there any other members of the corporation who assisted you? A. Well, all we have doing is during week-ends and that is when we have it a little hard, but it's all up to me.

Q. You are really the controlling factor of the corporation and most of the business is week-end business? A. Yes.

Q. Do the other members of the corporation participate in the activities of the hotel whenever they come down to the hotel? A. Yes.

40 Q. Was there any occasion for an argument between you and Mr. and Mrs. Siegel? A. I don't know of anything.

Pauline Saunders, for Defendants—Re-cross.

Q. You mean if it had happened you would have remembered? A. Yes.

Q. Was Mrs. Siegel, as far as you know, awake at the time of the accident? A. I can't remember.

Q. Do you recall when it was that Mr. Siegel had offered to pay your breakfast on this trip, and the conversation that was had at the time which particularly referred to the trip and the manner in which you were driving the car? A. About the breakfast they offered to pay? I don't remember if he paid but offered to pay. He said, "don't I owe you that much, you are such a lovely driver." 10

Q. Did you have any trouble with your brakes at any time while you were in Miami between December, 1932, and March, 1933? A. No. 20

Q. When Mr. Siegel came to the hotel after the accident, was he in bed or up. A. No, he was around.

Q. He didn't go to bed? A. I myself made him lay down. I said, "go and rest your head."

Q. I understand, but was he up and about generally? A. He was up and then laid down.

Q. Mrs. Siegel was steadily in bed? A. Yes.

Mr. Golenbock: That is all.

30

Re-cross-examination by Mr. Weiser:

Q. Why did you tell Mr. Siegel to lay down and rest his head? A. I just told him he should lay down, like anyone would.

Q. Why his head? Was it particularly injured? Do you mean he was struck on the head? A. I can't answer this at all because I don't know. I just mean he should lay down.

Q. When did he say you were a wonderful driver, was that before or after the accident? A. Before. 40

Pauline Saunders, for Defendants—Re-direct.

Ray B. Saunders, for Defendants—Direct.

Q. In 1932-33 you had full control of your hotel and automobile, did you not? A. Same as now.

Q. Your other members of the corporation never drive the automobile, do they? A. No.

10 *Re-direct examination by Mr. Golenbock:*

Q. Did you have to do anything to the brakes or make any repairs to the brakes after the accident happened? A. No, we didn't have to do anything with the brakes. All I had to do was fix a window and straighten the dent in the back and the steering wheel, after the accident. That is all.

20 RAY B. SAUNDERS, having been duly sworn, testified as follows, as witness for Defendant:

Direct examination by Mr. Golenbock:

Q. Your full name? A. Ray B. Saunders.

Q. You are the husband of Pauline Saunders?

A. Yes.

Q. And you don't drive a car, do you? A. No.

30 Q. I presume you have been riding in a car for many years? A. Yes, sir. I worked in an automobile plant many years before that; for Hudson, Ford and Maxwell.

Q. In what department? A. Tool making and inspection.

Q. So that you know about the mechanism? A. I know about a car and what they are supposed to do.

Q. Coming down in December, 1932, did you drive down with your wife to Florida? A. Yes.

40 Q. You had been coming to Florida for some years previous to that? A. Exactly.

Ray B. Saunders, for Defendants—Direct.

Q. On each one of these occasions you would ride with your wife? A. Yes.

Q. Your wife would do all the driving? A. Yes.

Q. Between December, 1932 and March, 1933 you spent the time in Miami Beach? A. Yes.

Q. During that time this particular car that was in the accident was used by your wife? A. Yes, sir. 10

Q. You are familiar and have knowledge of the condition of the car during that period of time? A. Yes, sir.

Q. Was there anything wrong with it during that time? A. Not materially.

Q. What do you mean by "not materially." A. Nothing worthy of having it taken into the shop to fix. 20

Q. Do you recall whether the brakes were in good condition at the time? A. At that time they were.

Q. Can you tell us what year the car was? A. Model 470—1929—purchased October, 1928.

Q. Do you know of your own knowledge whether this car was serviced before you started North in March, 1933? A. Yes.

Q. By whom? A. The Brigman-Nash Service Co. was the name of it at that time, at 11th Avenue and Flagler Street. 30

Q. Miami? A. Yes.

Q. Do you recall the day when you left Miami? A. In what way?

Q. I mean in March, 1933, what day you left to go back North? A. No, I don't know the day. We were in Richmond on the third day so that would it make it Thursday we left here.

Q. You recall it as the 16th of March, 1933? A. Yes. 40

Ray B. Saunders, for Defendants—Direct.

Q. Can you tell us what, in your opinion, was the time you left Miami? A. It was around 7:00 o'clock.

Q. Do you recall where you put up that night? A. We went to Jacksonville.

Q. Can you tell us the second night where you were? A. We went to Sumter.

10 Q. Do you know the approximate distance between Jacksonville and Sumter? A. No, I don't know that I do. I guess about 325.

Q. Then the next night—the third night, you stayed where? A. In Richmond.

Q. Do you know what time you left Richmond? A. At 6:35.

Q. Why do you have a recollection of it as being 6:35? A. I look at my clock every morning when we start out and usually have it marked down and also the amount of gas and how much we pay for it.

20 Q. Now as you started, what was the weather? A. Very disagreeable; raining.

Q. Where were you sitting on this particular trip between Richmond and Fredericksburg? A. The front seat, on the right-hand side.

Q. In the middle of that seat was? A. Mrs. Kahn.

30 Q. So that Mr. and Mrs. Siegel were in the back seat? A. Yes, sir.

Q. On the road between Richmond and Fredericksburg, what kind of a road was it? A. The construction was hard-surfaced, but I wouldn't say whether it was macadam, asphalt or concrete.

Q. You mean parts of it were concrete; part of it asphalt and part of it macadam? A. Yes.

Q. But all of it was hard-surfaced? A. Yes, sir; but it was quite badly broken up in spots all along.

40

Ray B. Saunders, for Defendants—Direct.

Q. But not in a general way? A. No.

Q. Generally all right, except in spots? A. Yes.

Q. Generally speaking, what was the width of the road? A. Why there was room for two cars, that's about all.

Q. What is the shoulders made of, or what does it consist of? A. The shoulders were yellow clay. 10

Q. Is that soft or hard? A. It's very hard when dry and when it's wet it only soaks through the top layer of it and makes it very slippery. You have a soft coating on top and underneath it's hard.

Q. Coming to the point where this accident happened. What is the topography of the road there? A. It's a mountainous region and numerous curves; some of them quite sharp. 20

Q. When you say mountainous region, you mean high hills? A. Why, yes, there are high hills, but the roads are so cut you would hardly notice it unless you looked to one side.

Q. You mean they are cut through? A. Yes.

Q. Coming to this particular point can you tell us the kind of curve that existed there? A. I couldn't tell you the length of the curve but I would say that that curve was about a seventy degree curve. 30

Q. The entire length of the curve, would you say it was a short one or a gradual curve? A. It was a short curve.

Q. Short and sharp? A. Yes.

Q. Did you observe any car coming in the opposite direction before you reached that curve? A. I should say we were just entering on the curve when I saw this car approaching and me being on the right-hand side, I saw it before Mrs. Saunders. 40

Ray B. Saunders, for Defendants—Direct.

Q. How far away from you was this other car? A. Probably fifty feet.

Q. Was the car making the curve as you saw it? A. Yes.

10 Q. On what side of the road was that car? A. He was bearing over to his left side on account of his speed and I suppose the wet pavement, to keep from turning over.

Q. Did you observe what Mrs. Saunders was doing at the time; what movement your car was making? A. Well, naturally the car slowed up perceptibly and she swerved off the pavement to avoid the collision.

20 Q. Was the swerving of your car to the right necessary because of the other car being in the position that it was? A. Yes, sir; otherwise it would have been more serious.

Q. In what respect? A. Every way considered.

Q. What do you mean? A. It probably would have ended fatally to some.

30 Q. Now, as the car in which you were riding had made a right turn to the shoulder, would you please, from that point, tell us what happened to the car coming from the opposite direction and your car? A. This car was coming at a very fast speed and it only took probably a second for this car to pass us. In the meantime we had pulled to the right, onto the shoulder to avoid the collision and in that time he had passed and Mrs. Saunders attempted to pull onto the pavement and the car went into a spin.

Q. Did any part of your car come in contact with any object? A. At the end of the skid it rested with the left rear end against the embankment on the side of the road.

40 Q. What happened to your car? A. The rear window was broken out and there was quite a dent in the left rear top panel of the car.

Ray B. Saunders, for Defendants—Direct.

Q. Did you get out of the car? A. Yes, sir.

Q. How far had your car proceeded from the time it started to skid until it stopped? A. Not very far, probably ten or fifteen feet.

Q. What part of the curve was the car in at the time? A. We were hardly into the center of the curve.

10

Q. Did you get out? A. Yes.

Q. Did Mrs. Kahn get out? A. Yes.

Q. Were you able to observe as you got out, or as the other car passed, the number or identification mark of the other car? A. No, sir.

Q. Did another car come from the direction in which you were coming, and stop? A. Yes, sir.

Q. Is that the car that Mrs. Kahn hailed? A. I don't know. In probably one or two minutes there was three cars there.

20

Q. At any rate, the cars that were at the scene was not the car that passed you previously at this turn? A. No, sir.

Q. Were they going in the same direction you were going? A. One was going to Fredericksburg, and two were going to Richmond.

Q. When it stopped, your car was on the hard-surfaced road? A. The front wheels were.

Q. Your car was able to proceed on its own power? A. Yes, sir.

30

Q. You proceeded to the next town? A. Yes.

Q. When you got to Fredericksburg, did you see Mr. Siegel about? A. Yes, sir. When we got to Fredericksburg he and I had taken Mrs. Siegel into the hotel. It was still raining and the porter at the hotel held an umbrella for us.

Q. You stayed at the hotel until what time? A. Until Tuesday morning.

Q. And this was Sunday morning? A. Yes.

Q. During Sunday and Monday where was Mr. Siegel? A. He and I were in the hotel and about.

40

Ray B. Saunders, for Defendants—Direct.

Q. When you say about, do you mean the street?

A. Yes.

Q. Were you present at a conversation in which Mrs. Siegel indicated her willingness to proceed to Bradley Beach with Mrs. Saunders? A. No.

10 Q. How long have you known Mr. and Mrs. Siegel? A. Well, I have never known them so well; that is, to call them real friends, but, of course, it's a small town we live in and we live there too and most everyone knows everyone else. They are very highly respected people there. I was very glad to meet them.

Q. When you say small town, do you refer to Bradley Beach? A. Yes.

Q. Did you meet them again in Florida? A. Yes.

20 Q. Became quite friendly? A. Yes.

Q. Do you recall a conversation that was had between Mr. Siegel or Mrs. Siegel, or both, and Mrs. Saunders regards going back North? A. Yes, sir.

Q. When and where was it? A. I have a friend who is here from Bradley Beach, a Mr. Shugerman of 113 5th Avenue, Bradley Beach. Mr. Shugerman knew Mr. Siegel better than we did at that time.

30 Q. As a result of the conversation you people had with Shugerman was there any conversation that was then held between the Siegels and yourself? A. Mr. and Mrs. Shugerman brought the Siegels to the Beach and said that they wanted to drive home, but didn't like his car and as we were going home at that time, would we take them.

Q. Was Mr. and Mrs. Siegel present at that time? A. Yes.

40 Q. Who did the talking? A. Mr. Siegel did most of the talking.

Ray B. Saunders, for Defendants—Direct.

Q. What was the general conversation? A. On the beach we spoke about going home and they wanted to see the car and wanted to know what day we were leaving. It seemed they could not leave at that time because they had their rent paid for two weeks longer and didn't want to go earlier, but in order to go back with us and as they liked the looks of the car, they would be willing to forfeit their two weeks rent and leave on this certain day with us, if we would take them. 10

Q. Did they ask you to take them? A. Yes. We told them who was going in the car with us—the niece and nephew—they are both quite small and slight, but we told them who would be in the car. They figured they would have plenty of room and we could ride comfortably.

Q. So you told them you would take them? A. Yes. 20

Q. You told them after they had told you they would forfeit two weeks payment on a house? A. Yes.

Q. Did you or Mrs. Saunders ask them for any payment for taking them up? A. No.

Q. Was there any question of payment? A. No.

Q. Was there any offer of payment? A. Not to my knowledge. 30

Q. Was there any request for payment? A. No.

Q. Were you present at a time when Mr. Siegel offered to pay a breakfast for you and Mrs. Siegel? A. Yes, I was.

Q. Will you tell us about that and under what circumstances and what was said? A. We had breakfast at the City Hotel at Dunn and on the way out Mr. Siegel walked out ahead of me. I stepped up to pay my check for my wife and I 40

Ray B. Saunders, for Defendants—Cross.

10 and the lady said it was paid. Mr. Siegel also said it was paid. When we got out Mrs. Saunders said she didn't like that at all, that she would pay for her own and that on a trip of this kind everyone pays for their own. He said, "Can't I pay this as an appreciation for the good time and nice trip we are having," or words to that effect.

Q. In reference to this, was this prior to the accident? A. It was the day we went into Richmond.

Q. Can you tell me the distance between Sumter and Richmond? A. I think about 325 or 330.

Q. There was no argument or any remark of criticism made by either Mr. or Mrs. Siegel during this trip? A. None whatever.

20

Cross-examination by Mr. Weiser:

Q. When was it you had breakfast in Dunn?
A. On Saturday morning.

Q. About what time Saturday? A. The time I couldn't say. We usually get on the road and drive for a couple of miles or more until we stop for breakfast and then we just take a sandwich or something for lunch, and at night had a regular meal.

30

Q. Didn't you keep an account of the time that you did that? A. Yes, but I destroyed those slips when I got home. It was just for my own convenience.

Q. Did you destroy the ones as to the time in which you left in the morning? A. Yes.

Q. Then you destroyed all your slips when you got home from this trip? A. Yes.

40 Q. On each of these trips you had time marked when you left the hotel; where you stopped en route, and the time you spent for lunches? A. Not the time, but the amount spent for lunches.

Ray B. Saunders, for Defendants—Cross.

Q. Didn't you mark down time out? A. No.

Q. Didn't you mark the time when you reached hotels, the time of leaving or arriving? A. Yes.

Q. Do you remember to the minute when you left and when you arrived? A. No.

Q. Do you remember within five minutes? A. No, I don't. I never considered it so important. 10

Q. What time would you say you left Richmond on the morning of the accident? A. We left about 6:35.

Q. Your niece is a grown woman, isn't she? A. Yes.

Q. How old is her boy? A. Seven or eight, at that time.

Q. You say that curve is a very sharp one? A. Yes.

Q. So that you can't see around it? A. No, sir. 20

Q. You were sitting on the right and the curve was on your right? A. The curve was on both sides.

Q. Well, the projection or embankment, was that on your right? A. Yes.

Q. So that you couldn't see around it, could you? A. No.

Q. When you were at a point approximately ten feet from the center of this curve, or embankment, how far could you see up the road, if you know? A. If I was in the center of the curve I could see on both sides. 30

Q. No, I mean from where your car was just prior to this accident. At a point ten feet from the curve itself, how far up the road could you see from where you were sitting on the right? A. I would say that car was probably fifty or sixty feet away.

Q. Would you say you could see fifty or sixty feet? A. I could see further than that on the straight-of-way. 40

Ray B. Saunders, for Defendants—Cross.

Q. Around the curve could you? A. No.

Q. What I am getting at is how far up that road could you look just ten feet from the point of this embankment? A. About fifty or sixty feet.

Q. So you saw this automobile coming towards you about fifty or sixty feet? A. Yes.

10 Q. How far did your automobile travel before that automobile came abreast of you, causing you to swerve? A. I couldn't say.

Q. A very short distance? Would you say you were ten feet from the point of the curve when he was fifty or sixty feet away from that part of the curve? A. Yes.

Q. Would you say he was driving recklessly? A. Well, he was driving fast.

20 Q. Very fast? A. Well, when you're driving in a car and meeting another you can't judge the speed.

Q. Can you tell approximately? A. No, sir, that is too technical for me.

Q. But you did see him approaching for fifty or sixty feet, did you not? A. Yes.

Q. During that time was he coming directly toward you or was he on his side of the road? A. He was swinging over to our side of the road.

30 Q. Did you do anything to warn Mrs. Saunders? A. He was driving so fast that she saw him before I could open my mouth.

Q. Why do you say you could see it before she could? A. Sitting where I was I could see better.

Q. Why do you say you saw the automobile before Mrs. Saunders did? A. Because me on the right-hand side on a left-hand curve, could see it sooner.

Q. But it was a right-hand curve, was it not? A. It was a left-hand curve.

40 Q. Do you mean that in order to make this curve Mrs. Saunders had to pull her wheel to the left? A. No. She pulled it to the right.

Ray B. Saunders, for Defendants—Cross.

Q. I don't mean to avoid the automobile, I mean in order to make that curve had she proceeded in her direction, would she have turned toward the left in order to get around the embankment? A. Yes. You must understand there is an embankment on both sides of the road. The curve was to the left and the embankment on the left obstructing her view. 10

Q. You struck the embankment on the right, did you not? A. Yes.

Q. Was there a windshield wiper on your side? A. No, sir.

Q. Just on the driver's side? A. Yes.

Q. You were on the right? A. Yes.

Q. The windshield was wet, wasn't it? A. Yes.

Q. You don't know anything about driving an automobile do you? A. Well, I know all about driving but I haven't had the practice or experience. 20

Q. Have you ever had a license? A. No.

Q. You are not a member of the Parobasa Realty Corporation? A. No.

Q. Do you know whether this automobile was serviced after you left Miami? A. Yes.

Q. Where was it serviced. A. I don't know. Between a couple of small towns and I couldn't even give you approximately what those towns are. I burnt a coil out and got a hitch from another car passing by. We went into another town, about three miles; went into the store and explained what I wanted and we went on. 30

Q. Did you ever drive into a garage to have it repaired? A. No.

Q. Did your wife on this trip? A. I don't recall.

Q. Might it have been? A. Possibly.

Q. Do you recall having trouble with your brakes? A. No. 40

Ray B. Saunders, for Defendants—Cross.

Q. Might the car have had trouble with the brakes? A. No. If there was any trouble with the brakes, steering wheel, or the like, those are three things I would have taken care of right away.

10 Q. You can't say whether the car was taken into a garage for repairs? A. I don't recall.

Q. Did you have any trouble with the front wheels during the trip—either you or your wife? A. Yes, the right front wheel was out of line a little. We had this fixed after we got into Bradley but I laid that on to the skid.

Q. You are not a garage mechanic, are you? A. No.

Q. You don't make repairs on automobiles? A. No.

20 Q. You don't give estimates? A. No.

Q. You don't pretend to be an expert on automobiles at all, do you? A. No.

Q. Was the car stricken in front at all during this accident? Show any marks of injury? A. No.

Q. Did the front hit the embankment, or anything? A. No.

30 Q. Immediately after the accident did you notice whether Mr. or Mrs. Siegel, or either of them was injured? A. Yes, I jumped out right away when the car hit hard. I opened the back door and Mr. and Mrs. Siegel were both complaining and she seemed to be worse. He said his head hurt, that he felt dizzy, so I took him by the hand and he got out of the car and stood there in the rain a couple of minutes and got back in the car himself.

40 Q. How did he seem when he stood there? In possession of his faculties? A. I didn't stay there as I went to see about the baggage and pick up the glass which had broken.

Ray B. Saunders, for Defendants—Cross.

Q. When you said they were complaining, did you mean that they groaned or moaned? A. They moaned, yes.

Q. Directing your attention to the morning that you left Richmond, Va., do you remember going to help the bell boy or some other boy there fetch the car? A. No, sir, I didn't go but I sent the bellboy. 10

Q. The car was a little late in getting around? A. Yes.

Q. Didn't your wife blame you for that? A. No, sir. That was the car's fault because they had other cars in front of it and couldn't get to it.

Q. How late was it in getting around? A. As I recall we talked it over the night before in Richmond, and Mr. and Mrs. Siegel wanted to reach Bradley and some of her relatives—daughter or sister or someone—was going to have dinner for them at 8:00 o'clock and we decided to leave early so we could take our time as we could not speed anyway on account of the bad condition of the road. It was to no advantage to us to get there, only for Mr. and Mrs. Siegel. Our house is without water, lights, or heat and we would have had to go to a hotel. 20

Q. You and Mrs. Saunders did have words about the car being late, did you not? A. Well, everybody was a little impatient and had some remark to make about it because we were all standing in the vestibule of the hotel. 30

Q. Mrs. Saunders particularly had remarks to make, did she not? A. As to who made the most remarks or what they were I can't recall.

Q. Mrs. Saunders was very much upset about it, was she not? A. No, I wouldn't say she was very much upset. 40

Ray B. Saunders, for Defendants—Cross.

Q. Did she argue with you about it? A. No, sir, she couldn't argue with me because it wasn't my fault.

10 Q. Did you go out to see if the bellboy had brought the car? A. We sent one over and just at that instant the garageman brought it. It was useless for me to go because I couldn't drive.

Q. Did you step out of the room to see if it was taken care of? A. Yes.

Q. During the course of the drive, did this excitement, or whatever it was, increase? A. No, there was nothing said about it after we got started that I recall. I tied the baggage on as quickly as I could and one of the porters was helping me.

20 Q. What time did you expect to start that morning? A. About 6:00 o'clock.

Q. The car didn't come around until 6:35? A. It took that long to get the baggage on.

Q. Is that why you didn't have breakfast? A. No, sir, we don't have breakfast that early and down in the South here many don't open until late.

Q. Did you intend to stop for breakfast at Fredericksburg? A. Yes.

30 Q. Did Mrs. Saunders threaten you with not having any breakfast at Fredericksburg because you allowed the car to be late? A. No.

Q. I don't mean you, but anyone in the car? A. No.

Q. Might she have done that? A. No, if she had said that I would have known it because I have got to have my coffee.

40 Q. What time in the morning do you usually have your coffee? A. Well, I am ready for it as soon as I awake but on the road this way I usually go a couple of hours or three hours.

Ray B. Saunders, for Defendants—Cross.

Q. But you miss it until you get it? A. Oh, yes.

Q. You made no attempt to warn Mrs. Saunders of this approaching car when you saw it?

A. I didn't have time.

Q. How could you tell when she saw it? A. I couldn't tell it, I don't know when she saw it.

10

Q. Didn't you say you saw it before she did?

A. Naturally.

Q. You mean that you are just judging that you could have seen it before she did but you don't know when she did see it or if she saw it at all?

A. To that I can't swear.

Q. Did you see what kind of a car was approaching? A. No, I didn't. It was a small coupe. Whether a Ford or Chevrolet, I don't know.

20

Q. The car that came along afterwards, was that hailed or did it stop of its own volition? A. The first one was hailed.

Q. Who hailed it? A. Mrs. Kahn.

Q. Did you have plenty of leg room in front of the car? A. Yes, that was why I was sitting on the outside because I could raise up against the side of the door and rest that way.

Q. You had to raise yourself up in the seat all the time to make it comfortable? A. At times, because I wanted to make it easier for Mrs. Saunders and Mrs. Kahn.

30

Q. At the time this accident occurred, were you raised up? A. I don't recall.

Q. You might have been? A. Possibly.

Q. Did you notice how fast the car was going as you left Richmond and on the road to Fredericksburg? A. Yes, sir. That is one reason I am in the front seat to watch the speedometer and road marks.

40

Ray B. Saunders, for Defendants—Cross.

Q. You mean you would be in the back seat if you didn't do that? A. The driver, on a long trip like that, there are many things they wouldn't observe and many times they wouldn't observe the instrument board and I watch that and also the marker on the road.

10 Q. How fast would you say the car was going prior to the accident? A. About twenty-five.

Q. Were there any traffic signs? A. Between Fredericksburg and Richmond there were no signs.

Q. No warning curve sign? A. Not on that one, no.

20 Q. How fast was the automobile driving just prior to the accident? A. I don't know just how much she slowed down. At this time she was only driving twenty-five on a straightway and even without putting her foot on the brakes, to take her foot off the gas she would slow down perceptibly.

Q. Can you tell me whether she did use her brake? A. I don't know.

Q. Do you know whether she blew her horn or not? A. She did not.

Q. Do you know if her window was down or up? A. She always drives with an open window.

30 Q. Even in the rain? A. Yes.

Q. It was approximately an hour and three-quarters from Richmond to where you traveled? A. Yes.

Q. You did about how many miles? A. I should say around fifty.

Q. Fifty? Possibly more? A. Very little more, because it's only fifty-five miles into Fredericksburg from Richmond.

40 Q. Did you ever make more—in this instance between Richmond and the place where the ac-

Ray B. Saunders, for Defendants—Cross.

cident occurred—more than twenty-five miles? A. Possibly.

Q. How much? A. Not over thirty-five miles.

Q. To drive fifty miles in an hour and three-quarters would make your speed average about thirty-five miles, would it not? A. No, I don't think it would be that much.

10

Q. Are there a number of curves on that road? A. Yes.

Q. Quite hilly? A. Yes, sir.

Q. So that around curves your wife slowed up each time? A. Yes.

Q. To about what speed? A. That I don't know.

Q. Since she never reached more than thirty miles an hour she must have gone very slow? A. Yes.

20

Q. So her general average was cut down considerably, is that true? A. Yes.

Q. Therefore, whenever there was a bit of straight-of-way she must have made up for it? A. Quite likely.

Q. Do you wish to change your answer now, taking that into consideration, telling just how fast this car did go on this trip? A. When I answered before that she probably went thirty miles on the straight-of-way I didn't watch the speedometer to make a test of it.

30

Q. You said your purpose in sitting there was to watch the speedometer, was that so? A. Yes.

Q. Wouldn't you be some inclined to take a look at the speedometer as she reached the higher speeds. A. Well, yes.

Q. So the highest speed you saw her drive was thirty miles an hour? A. About thirty miles an hour, yes.

40

Ray B. Saunders, for Defendants—Re-direct.

Re-direct examination by Mr. Golenbock:

Q. Mr. Saunders, you have a definite recollection of the ignition trouble, have you not? A. Yes.

Q. If you had any other trouble where you had to service the car, wouldn't you have a recollection of it? A. Yes, sir. It isn't probable we would stop that I wouldn't recall.

Q. So to the best of your recollection, the only trouble you had was this ignition trouble. When was this with reference to the accident? A. Day before.

Q. What time? A. About nine or ten in the morning.

Q. You drove on after the ignition was fixed, all that day and the next morning? A. Yes.

Q. There was no reason for Mrs. Saunders to be upset about the car being late? No particular hurry as far as she was concerned? A. No.

Q. Did Mr. or Mrs. Siegel at any time ask to be taken to a railroad station and for them to go home by train? A. No.

Q. Was there at any time a request that they be let out and not ride in the car? A. No, they seemed perfectly satisfied.

Q. Did Mr. Siegel at any time after you arrived in Fredericksburg, either on a Sunday or Monday, complain to you about the method in which Mrs. Saunders had driven the car? A. No, he commended.

Q. In what way? Did he praise her? A. Yes.

Q. What did he say? A. He thought she drove very nicely. They had had a car in their family where the car was smashed up and he had been told it was impossible to control a car that had skidded.

Ray B. Saunders, for Defendants—Re-cross.

Re-cross-examination by Mr. Weiser:

Q. Mr. Saunders, who met Mr. or Mrs. Siegel first, you or your wife? A. I think we were together.

Q. Are you certain? A. Not sure.

Q. Who first told you that Mr. and Mrs. Siegel were to go back North with you? A. Mr. Shugerman. 10

Q. Then did you discuss it with your wife? A. Why yes, we spoke of it.

Q. Hadn't your wife spoken to Mr. and Mrs. Siegel about that and then taken it up with you? A. No, I don't think so.

Q. You are not certain? A. No, I wouldn't swear to that.

Q. As a matter of fact, didn't you meet Mr. and Mrs. Siegel for the first time the day you were starting the trip North? A. No. 20

Q. You met them before? A. They were over to our apartment once, we met them on the beach once, and Mrs. Saunders was over to their apartment once before we left on the trip.

Q. It is possible that Mrs. Saunders met and spoke to Mr. and Mrs. Siegel about this trip before you did? A. The arrangements for going back with us I had nothing to do with. Mrs. Saunders and Mr. and Mrs. Siegel did that themselves. 30

Q. In order to make that more certain I will ask you now—who made the arrangements with Mr. and Mrs. Siegel in regard to taking the trip—you or Mrs. Saunders? A. As I explained, in the beginning of the trip I met them when Mr. and Mrs. Shugerman brought them to the beach and all incidentals that might have been made relative to the trip was made by Mrs. Saunders. 40

Ray B. Saunders, for Defendants—Re-direct.

10 Q. Isn't it a fact that your wife comes to Miami on business and not only for her health? A. Well, that seems like a joke to me, I'll tell you why. I have been coming down here, as Mrs. Saunders stated, for nine seasons and every season when she comes down she is looking around and is registered in every real estate office in town. Nothing suits her; some are too cheap and some too expensive. Just a habit with her to look around for these places.

Q. But she does it quite seriously? A. If she was serious she would take on these propositions, which she does not do.

Q. Doesn't she spend a lot of time? A. That is why I remarked about it as a hobby.

20 Q. What is your employment? A. My employment is a waiter.

Q. How about in Bradley Beach, do you help your wife there? A. Yes.

Q. Do you work for your wife or the Parobasa Realty Corporation? A. I worked with my wife.

Q. In what way? A. She works very hard during the season; she has an eighteen or twenty hour business and I assist her in any way I can.

30 Q. Running the hotel owned by the Parobasa Realty Corporation? A. Yes.

Re-direct examination by Mr. Golenbock:

40 Q. Mr. Saunders, what did Mr. Shugerman say to you with reference to Mr. and Mrs. Siegel wanting to go back with you? A. Mr. Shugerman said he had spoken to them and they had decided to go back by car on account of being able to see more of the country going through by car than they would see by train or boat but wouldn't go in his car and they asked him if he knew anyone.

Ray B. Saunders, for Defendants—Re-direct.

Q. Did he ask you if you would take them? A. I told them yes.

Q. After that conversation you had with Mr. Shugerman did you then see Mr. and Mrs. Siegel or did they see you? A. They saw us.

Q. Were you present when they talked to Mrs. Saunders? A. At the first meeting I don't know, but was present when they talked about it. 10

Q. What did they say? A. They remarked about being paid up in their hotel for a certain period and did not know if they would care to leave earlier. Mrs. Saunders said it was necessary we leave early to get the house opened up and straightened up for Easter.

Q. What was said by them with reference to taking them in your car? What did they say to you? A. They expressed a desire to ride home. 20

Q. What did they say? What is substantially the language they used? A. I don't recall.

Q. Substantially what was said? A. They went over and looked at our car.

Q. What was said substantially? A. They said they would be pleased to go back with us; they wanted to look at the car and would let us know later whether they would be able to go and wanted to give up the apartment.

Q. After they spoke to you the first time and told you they wanted to see the car, did they say they wanted to go? A. Not to me, they did to Mrs. Saunders. 30

Q. Were you there? A. No.

Q. That is when they decided to give up the apartment, you weren't there? A. No.

Q. At the first meeting when they looked at the car and decided whether they wanted to give up their apartment, did you tell them you would take them if they decided to go? A. Yes. 40

*Ray B. Saunders, for Defendants—
Re-cross—Re-direct.*

Re-cross-examination by Mr. Weiser:

10 Q. Did you ask them to go with you? Did you invite them? A. Why I couldn't say it was an invite because the way it started and finally culminated on account of their having made up their mind to drive through in dealing with Mr. and Mrs. Shugerman and this other car was the only drawback at that time and when our car looked better they wanted to go.

Q. Did they ask you to take them or did you ask them or did Mrs. Saunders ask? A. I think they asked us.

Q. You think? Don't you know? A. I can't bring out the exact words.

20 Q. The fact is you weren't so friendly with them but Mrs. Siegel asked them, is that so? A. No, I would say they asked.

Q. But you are not certain? A. No.

Re-direct examination by Mr. Golenbock:

30 Q. You are certain, however, that Mr. and Mrs. Siegel told you they wanted to drive home but wouldn't go with them because it was too small? You also say that after Mr. and Mrs. Siegel had looked at the car and given up the apartment that they wanted to go home with you? A. Yes.

Re-cross-examination by Mr. Weiser:

40 Q. Did they say that in response to your asking them to go? A. They told that to Mrs. Saunders. I was working and Mrs. Saunders went over to get their answer, at their apartment. The next morning she told me that the arrangements were made.

*Ray B. Saunders, for Defendants—
Re-direct—Re-cross.*

Re-direct examination by Mr. Golenbock:

Q. Mrs. Saunders, did you ask Mr. or Mrs. Siegel to go with you or did they ask you to go along? A. We were talking about the trip and they were saying they would like to go with us. 10

Re-cross-examination by Mr. Weiser:

Q. Did you ask them first before they said they would like to go with you? A. We were talking about coming and going and she said she would like to go with us but the conversation was more about the trip between me and Mrs. Siegel, the men folks had nothing to do with it.

Q. What did you say when she said she would like to go with you? A. I said it was perfectly all right if she wanted to go, we would have a nice trip. In fact we went out a few nights to the dog track when we lived here. 20

Q. Was that the first conversation you had with her? A. No, it was probably the fifth or sixth.

Q. I mean the first about the trip? A. Yes.

Q. Well, did they say that in regard to your asking them to go? A. I didn't ask them.

Q. Was it said right there? A. No, what happened, they couldn't decide because they had paid rent; they paid \$100.00 and couldn't decide. 30

Q. What arrangements did you make to find out if they would go? A. They did decide to let rent go.

Q. Isn't it a fact that you urged them to go with you and that is why they wanted time to think it over? A. No.

Q. You are absolutely certain? A. Absolutely certain. 40

*Mrs. Stella Shindel, in Rebuttal, for
Plaintiff—Direct.*

Q. Do you remember testifying on your direct examination or cross-examination by me that you weren't certain who asked who first, and that it was a general conversation? A. I just can't remember everything that you cross-examined here,
10 I am not used to having a question asked fifty times.

Q. Are you certain? A. I am certain that I did not call them, that they called me.

Q. Were you certain that you didn't ask them? A. I just explained to you that I am not used to it. I can't answer on every question you ask me.

Q. Was Mr. Saunders present at the time you made arrangements with Mr. and Mrs. Siegel? A. No.

20

Mr. Weiser: That is all.

Mr. Golenbock: The defense rests.

The Court: Have you any rebuttal, Mr. Parsons?

MRS. STELLA SHINDEL, a witness produced in rebuttal by the plaintiff, being duly sworn according to law, upon her oath testified as follows:

30

Direct examination by Mr. Parsons:

Q. Mrs. Shindel, you are a daughter of Mr. and Mrs. Siegel, the plaintiffs in this case? A. I am.

Q. Where do you live? A. East Orange.

Q. Directing your attention to a time shortly after this accident happened as a result of information you received did you go to Fredericksburg? A. I did.

40

Q. Did you find your father and mother there? A. I did.

*Mrs. Stella Shindel, in Rebuttal, for
Plaintiff—Direct.*

Q. And when you arrived there, there has been testimony that upon your arrival or shortly after there was talk about your mother and father going home with Mrs. Saunders. When you got there where was your mother? A. In bed in the hotel. 10

Q. During the period of time you were there was your mother out of bed at all? A. No, sir.

Q. Were you in attendance upon your mother? A. Yes, sir.

Q. At any time in your presence did any conversation take place between Mrs. Saunders and your mother about your mother riding home with Mrs. Saunders in the Nash sedan? A. No, sir.

Q. How did your mother get home? A. In an ambulance. 20

Q. Did your mother at any time say in your presence to Mrs. Saunders or words to this effect, "I want to go home with you, Mrs. Saunders. I am able to go home with you. You are such a wonderful driver."

Mr. Golenbock: Object; that is not the testimony. Mrs. Siegel said she would be able to go home in a few days and would go back with Mrs. Saunders.

Mr. Parsons: I will read it out of the testimony. 30

The Court: Adopt it and put it in either form.

Q. Did you hear what Mr. Golenbock said when he phrased his objection? A. (No answer.)

By the Court:

Q. Did your mother say in your hearing in the presence of Mrs. Saunders at any time at Freder- 40

*Mrs. Stella Shindel, in Rebuttal, for
Plaintiff—Cross.*

icksburg, "I will be all right in a couple of days, then I will go home with Mrs. Saunders. She is such a wonderful driver"? A. No, sir.

By Mr. Parsons:

- 10 Q. On page 14, may I ask this question: Did your mother in your presence and Mrs. Saunders' presence, hold any such conversation, "One of her daughters remained, but she was to go home with me. She told me they should go on, but she would go with me. Maybe the next day or so, she would be all right. One of the daughters remained and they decided she was too sick to make the trip. She told them to go on, but she would go on with me the next day or so she would be all right." Did your mother make any such statement? A. No, sir.
- 20

Cross-examination by Mr. Golenbock:

Q. When did you get there? A. I believe it was Tuesday, but it might have been Monday.

Q. Your mother left Fredericksburg on Tuesday? A. No, I got there Monday.

Q. You observed did you not that Mrs. Saunders was taking care of your mother? A. When I got there Mrs. Saunders was in the room.

30

Q. Wasn't she taking care of your mother? A. I didn't know what was the matter with mother.

Q. Wasn't Mrs. Saunders with your mother all the time? A. No. When I got there she had just got in from her room, and I asked what was the matter and she said mother was hurt and the doctor had been there several times, and then she went back to her room.

Q. Wasn't she with your mother when you got there? A. No.

40

Motion for a Direction of Verdict.

Q. How about afterwards; wasn't she with your mother constantly? A. No, sir. She came in occasionally from her room.

Q. Do you know of any reason why Mrs. Saunders stayed in the hotel until your mother was taken in this ambulance other than for the sake of staying with your mother? A. No, I do not. 10

Mr. Golenbock: I have a motion, your Honor.

The Court: I will hear you in chambers.

(Court and counsel retire to chambers.)

Mr. Golenbock: May it please your Honor, I desire to move for a direction of verdict, in the first instance particularly as to the defendant Parobasa Realty Company. There is no testimony up to this point that this corporation had any control over this car at the time or that it was then on the business of the corporation. While, as your Honor stated, ownership raises a presumption that presumption has been overcome by the definite positive testimony and there is now no point upon which any question can be raised. 20

30

The Court: By stipulation of counsel, it appearing that juror number eleven has an engagement which will require her leaving the county on Wednesday morning, by consent of counsel she is excused from further service upon the present panel with the understanding and agreement that the case may proceed to final determination with eleven jurors. 40

Motion for a Direction of Verdict.

10

The Court: Upon what theory do you say that the Realty Company can be held in this case? Bear in mind that there is already a decision in the Supreme Court in which it was held that a corporation was not liable where it appeared that an automobile had been involved in an accident when it was not being used in any business of the corporation.

Mr. Parsons: May I state that I do feel, as I stated upon the motion for non-suit and with the cross-examination of Mrs. Saunders that there was sufficient here I believe for it to go to the jury.

20

(Citation *Dunbarton vs. Castle Ice Cream Company.*)

The Court: It thereby became a part of the entire contract of employment and at the time of the accident he was returning to the office, as I recall. There the Court spelled out of the relationship a part of the business of the corporation. Here, however, you have a case of invitees, and that changes the situation. You will recall the case of the mail truck.

30

(Citation *Zaroba vs. Maguire.*)

I am inclined to grant the motion as regards the Realty Corporation. I am strongly inclined to direct a verdict as to the corporation unless you can show me something in the morning to change my opinion. I will reserve final disposition of the question and give you an opportunity to look it up.

40

Mr. Golenbock: I also move for a direction of verdict as to the defendant Pauline

Motion for a Direction of Verdict.

Saunders on the same ground as stated in the motion for non-suit and on the further ground that it now appears from the entire case there is no evidence of any negligence such as would be termed gross negligence under the Virginia Rule.

The Court: You have the testimony of Mr. and Mrs. Siegel which attempts to contradict that of Mr. and Mrs. Saunders and I assume that on a motion of this character we have got to accept all of the testimony given as true, including that of the plaintiffs. That being so I am inclined to the opinion that the case is in the same situation as at the time the motion for non-suit was made and has become a jury question. It may well be on the rule that the question of gross negligence would be a very pertinent matter of inquiry.

Your motions as to directions in favor of Mr. and Mrs. Saunders on the ground that the evidence does not disclose gross negligence will be denied.

Mr. Golenbock: I pray for an exception.

The Court: You may have an exception. On the question of the relation of the parties whether they were invitees or licensees likewise raises an issue of fact for the determination of the jury.

(Recess to 10 A. M., January 9, 1935.)

January 9, 1935.

Mr. Golenbock: I ask your Honor to direct a verdict as to the Parobasa Realty Company.

Charge of the Court.

The Court: Mr. Parsons, have you anything to say as to that?

Mr. Parsons: No, sir.

10 The Court: I grant the motion as to the Parobasa Realty Company. The case may proceed as against the defendant Mrs. Pauline Saunders.

Charge of the Court.

LAWRENCE, J.:

20 Ladies and gentlemen of the jury, the jury have heard the remarks of counsel in criticism of the summation of counsel for the plaintiff. You will be guided, of course, by the evidence and the evidence alone. With reference to the pleadings lawyers are careful to include everything which may have any possible bearing, even though it may not be provable, upon the issues arising during the progress of the trial under the evidence. It does not necessarily mean because they put in their pleadings certain allegations or assertions that they are going to be proven or not. After all, at the trial, the trial judge invariably limits
30 the issue to what is material in order that a proper verdict may be rendered. So that these remarks of counsel and the fact that the testimony which was taken of Mr. and Mrs. Saunders in the south, since they were unable to be produced, and the absence of some other witness which has been referred to, you heard the explanation of counsel and you also heard the testimony read to you yesterday, and your recollection must always prevail
40 as to what it was, just as in the case of the witnesses produced during the progress of the trial

Charge of the Court.

and submitted to examination and cross-examination. In other words, bear in mind that these gentlemen who represent the respective parties are endeavoring to protect their clients. Necessarily they are employed for that purpose, and their duty is professionally to speak for their clients, because the latter, not being trained perhaps, cannot do it as well. There are exceptions, however, but we are not here concerned with that. 10

Now, members of the jury, you will give this case impartial and fair consideration. I have no reason to suppose that you will not. You will bear in mind that the mere fact that Mr. and Mrs. Siegel were injured in an automobile accident, if that were the only evidence in the case and particularly this case, in view of what I call the cardinal rule which is applicable—I say if that were the only evidence, merely that they were hurt in an accident, you could not award compensation for their injuries. They have undertaken in this case to show to you, and their duty was of course since they carried the burden of proof in that regard, to show to you by the greater weight of the credible evidence, not only that they were hurt but that their injuries were due to the negligent manner in which Mrs. Saunders drove the automobile at the time. Therefore when you take the case up for consideration in the jury room that will be your first question. Have the plaintiffs shown liability on the part of Mrs. Saunders? 20 30

I say her individually for this reason. The owner of the car was a corporation called the Parobasa Realty Corporation, and while it appeared that Mrs. Saunders and her husband and perhaps members of the family controlled the corporation, nevertheless there was no evidence produced during the progress of the trial which as 40

Charge of the Court.

10 a matter of law would justify the holding of the
defendant corporation because it is quite evident
it was not being used at the time of this accident
for any corporate purposes so that the driver
would be regarded as the agent of the corporation
and the latter be required to respond for the negli-
gent operation of it. Therefore I have eliminated
the corporation and you will return a verdict of
no cause of action as to it. The case comes to you
therefore as to whether Mrs. Saunders is to be
held.

20 It so happened that the accident occurred in
Virginia and they have down there what is called
the gross negligence rule, which also prevails in
Massachusetts, and in a case where it appears
that a passenger in a car is injured through the
negligent driving of it the evidence must disclose
that the driver was grossly negligent, and it must
be established of course under the fair prepon-
derance of the proof that as a result of such
negligence the passenger or passengers were in-
jured. In New Jersey we still adhere to the old
Common Law Rule which requires the driver of
an automobile to be ordinarily and reasonably
careful and prudent in the operation to the end
that no one shall be hurt through such failure of
30 due care. With reference to passengers in cars,
however, in some of the states, as I have said,
a different rule is involved; in other words if
someone invites you to ride in his or her car in
Virginia and an accident occurs and you are in-
jured while you bear the relation of passenger to
the car, you must show that the driver was grossly
negligent, not ordinarily and reasonably so, under
the rule which prevails in this state, and there-
fore the rather difficult problem is required to
40 be determined by the jury as to what is gross
negligence as shown by the evidence in the case.

Charge of the Court.

In this case suppose it appeared to you that Mrs. Saunders was disclosed under the fair preponderance of the proof to have been guilty of ordinary negligence, a failure to observe ordinary and reasonable care with the result that the car left the highway and went upon the dirt snoulder and then gyrated, as the evidence would tend to indicate, thus injuring Mr. and Mrs. Siegel, you could not award a verdict in this case if it was only the failure on the part of Mrs. Saunders to exercise reasonable and due care. The evidence has got to show what is termed gross negligence and I am leading up to the definition that has been approved by the Court of Appeals in this state. It may be well for you to know what these plaintiffs claim, as to the evidence of gross negligence on the part of Mr. and Mrs. Saunders. I gather from the request to charge here that the allegation is that at the time the plaintiffs were passengers in the car, and I will come to that presently too, and that the defendant operated the automobile with knowledge that an attempt had been made to adjust and repair the brakes and accelerator and the steering apparatus of the automobile, and that such repairs had not been made efficiently so that the operation of the brakes, accelerator, and steering apparatus was defective, and the defendant with such knowledge operated the automobile at a high rate of speed on a rainy day, on a hilly, winding road, and therefore it becomes a question for you to determine whether the defendant in so operating the car under such conditions was grossly negligent.

Then again the allegation appears to be that the defendant operated the automobile at a high rate of speed and had previously been warned by one of the occupants, namely Mrs. Siegel, that

Charge of the Court.

the rate of speed was too high and had been requested to lower the rate of speed and notwithstanding such request Mrs. Saunders continued to operate the automobile at a high rate of speed, and then if you find under the evidence that the road was a two car road, winding and hilly, and wet with rain, slippery at the time, therefore under such evidence you are asked to determine whether or not the defendant was grossly negligent.

Now as to the occurrence itself, the plaintiffs have undertaken to show you here that Mr. and Mrs. Saunders had entered into some rather heated discussion as to the delay in leaving the place where they had spent the night before the day of the accident, and that that discussion was continuing practically up to the time that the accident occurred, and that it was not a car or other traffic which suddenly appeared at the curve of the highway at or about the place where the accident occurred, but it was because Mrs. Saunders suddenly, during the discussion that was going on or just before, raised one hand from the wheel and thereby lost control of the vehicle, which left the paved portion, went upon the dirt shoulder, and caused the injuries alleged to Mr. and Mrs. Siegel. Now that is the plaintiffs' version of this case, and therefore you must know what the law of Virginia is with reference to defining gross negligence, because if this were a case of ordinary negligence, as in New Jersey, there could be no recovery in this case. That is the law. I do not feel that I can say to you however that the evidence must show that Mrs. Saunders intended to hurt the Siegels through some willful disregard of her duty to them as passengers. That is not the law as I understand it. Willful and wanton

Charge of the Court.

negligence, of course, means an intent to do somebody harm, so far as the Civil Courts are concerned, and there is no evidence here that Mrs. Saunders had any intent to injure the Siegels, but they say she was grossly negligent and that was the cause of the injury. What is gross negligence as defined by the Courts of Virginia or adopted therein? 10

In the Appellate Courts of Virginia in this class of cases the State has definitely adopted the minority or Massachusetts Rule, which is not that the host owes to his guest the duty to observe slight care, but that is he is liable only in the event that the plaintiff's case establishes gross negligence, and therefore it was said that in considering the question negligence conveys the idea of heedlessness, inattention, inadvertence and in some cases willfulness and wantonness, conveying the purpose or design to injure, actual or constructive. The terms are used to signify therefore a higher degree of negligence than ordinary negligence. In order that one may be held to be guilty of gross negligence it must be shown that he was conscious of his conduct, conscious of the danger, and conscious that injury would result from his conduct and that with reckless indifference to consequences he consciously committed some act or omitted some known duty which produced the injuries that resulted. There is no charge of wanton and willful injury on the part of Mrs. Saunders, there is a charge of gross negligence. We will see what the Court says that means. 20 30

The accident having taken place in Virginia this case is governed by the rule there observed and it is stated that that rule denies the invitee redress against the invitor for injuries resulting 40

Charge of the Court.

from the latter's negligence unless such negligence amounts to gross negligence. The Appellate Court then continues "gross negligence is substantially and appreciably higher in magnitude than ordinary negligence. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting a legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care." I am reading this technically because I am obliged to. I don't know whether you understand it or not, I hope you do. "It is an act or omission respecting a legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence or the absence of slight diligence, or a want of even scant care. It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is heedless and palpable violation of legal duty respecting the rights of others. The element of culpability, which characterizes all negligence is in gross negligence magnified to a higher degree as compared with that present in ordinary negligence. Gross negligence is manifestly a smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence, but it is something less than the willful, wanton and reckless conduct which renders a defendant who has injured another liable to the latter even though guilty of contributory negligence, it falls short of being such reckless disregard of probable consequences as is equivalent to a willful and intentional wrong. Ordinary and gross negligence differ in degree of inattention, while both differ in kind from willful and intentional conduct which

Charge of the Court.

is or ought to be known to have a tendency to injure." That is the Virginia Rule as interpreted by the Appellate Court of that State and incidentally reproduced in this decision of our own Court of Appeals in a similar case. So that unless you find under the fair preponderance of the proof in this case that Mrs. Saunders was guilty of gross negligence at the time of this accident with the proximate result that the plaintiffs were injured, you cannot award a verdict. If you do find under the fair preponderance of the proof that she was guilty of gross negligence with the result that the plaintiffs were injured then they may recover unless you find that they were not passengers in the car.

There is another question that must be discussed with you. One of the defenses is that as a matter of fact the Siegels invited themselves into the Saunders' car to go north from Florida, that the Saunders, neither Mrs. Saunders nor her husband really invited the Siegels to ride in the car in question, and therefore the Siegels became mere licensees in the Saunders' car so to speak and were such at the time of the accident. Now if they invited themselves and it is so established under the greater weight of the credible evidence I have no hesitation in saying to you there can be no recovery, because there is no evidence in the case of any willful wrong done by Mrs. Saunders with the intention of hurting them, so you will have to determine what the case shows in that regard. Were they passengers or were they mere licensees in the car at the time? A licensee is one who is permitted to come upon your property or into your automobile for some purpose of his or her own, for example, in circumstances which indicate there is no relation between you of master and

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Charge of the Court.

10 servant, employer and employee, or principal and agent, and therefore if a person invites himself into an automobile and he is injured and it appears that he was injured through the negligence of the driver, he cannot recover unless such negligence appears to have been the result of wanton and willful conduct and intent to harm him on the part of the driver of the vehicle, and that is the case. If you find that the Siegels were mere licensees, they invited themselves into the automobile in question, there can be no recovery.

20 They however say that they were invited by Mrs. Saunders, and that she asked them to go along with her because she enjoyed their company. They had met socially down in Florida somewhere, one of those places where people go in winter when they are not taking their vacations in summer, and there they met, and I take it that you could fairly conclude it was purely a social contact. The Siegels declared, as you will recall the testimony, that there was a casual remark one day about their returning north, and that they had intended to go north by train, but that Mrs. Saunders suggested that she and her husband were going by automobile and they would be very glad to have the Siegels go with them.

30 If you spell out of the evidence under the fair preponderance of the proof that what really happened was that Mrs. Saunders or her husband invited the Siegels to ride with them on the trip north, either expressly or impliedly, if the conversation that occurred between the parties was such as to lead a reasonable mind to infer that what Mrs. Saunders or her husband were doing was to invite the Siegels to ride with them, then the latter became passengers in the car and in that event, if you find that Mrs. Saunders was guilty

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Charge of the Court.

of gross negligence within the definition of law as I have read it to you, the Siegels can recover.

There has been no suggestion that either Mr. or Mrs. Siegel did anything to contribute to their own injuries. That question frequently arises in automobile accident cases but here if there is any evidence in the case that the Siegels did anything to contribute to their own injuries in the negligent sense I am not aware of it. The question is not withdrawn from your consideration, because you are judges of the fact and your recollection must prevail; therefore if you find in this case, members of the jury, that what happened was that Mrs. Saunders having been irritated or upset by some controversy with her husband which had been pursued while on the trip and immediately preceding the accident either lifted her hand from the steering wheel or was guilty of conduct which has been proven to your satisfaction under the fair preponderance of the proof that comes within the legal rule of gross negligence, then I say to you there can be a recovery and if that be the state of the case as disclosed to you and found under the facts and the fair preponderance of the proof you may award to Mrs. Siegel a sum which will properly and adequately compensate her for the injuries she received, you ascertaining the nature of them, the extent of them, the pain and suffering that in all reasonable probability accompanied them, the length of time she was incapacitated by such injuries, whether any phase of the injury or injuries received still persists, either of a permanent nature or within some reasonably probable time in the future, having so ascertained you will award such sum as in your sound judgment and discretion will compensate her therefor.

Charge of the Court.

10 With reference to Mr. Siegel, if you find the
plaintiffs entitled to recover under the rules of
law I have given you, based upon the evidence of
which you are judges of the facts, bearing in mind
the rule of preponderance of proof, the burden
being upon the plaintiffs to prove the gross neg-
ligence they charge against Mrs. Saunders, in
that event you would be justified in awarding to
Mr. Siegel; first, his wife's hospital and medical
expenses, plus the reasonable cost of the X-rays
which have been put in evidence during the prog-
ress of the trial, if you find such expenses to have
been necessarily incurred in attempts to cure
Mrs. Siegel of her injuries and to be reasonable
in amount. Mr. Siegel is also in this case. He
20 alleges he also was injured. If you find the plain-
tiff entitled to recover under the law and the rules
of evidence I have given you, he also is entitled
to be compensated for the medical expenses and
hospital bills incurred in attempts to cure his in-
juries, if found reasonable and if he became
legally responsible and has incurred them in be-
half of his wife as well as his own, if there is
evidence which indicates the amount thereof and
upon your finding that they were necessarily in-
curred in attempt to cure him of his injuries and
30 to have been reasonable in amount, he is entitled
to a sum in compensation for the injuries received
by him you taking into consideration their nature
and extent, the pain and suffering which in all rea-
sonable probability accompanied them, the length
of time he was incapacitated and if he has lost
his hearing to any degree as the direct and prox-
imate result of the injury received in the acci-
dent, then that would be an item for consideration
with reference to ascertaining the amount to be
40 awarded.

Charge of the Court.

There is some conflict in the testimony as to what injuries the plaintiffs did receive, as for example whether Mr. Siegel's hearing was affected and you will recall that counsel for the defendant rather steadily talked to him in a conversational way while he was on the witness stand at a distance of ten or twelve feet or more, you will remember the incident, and how he called your attention to the fact in summation that Mr. Siegel could apparently hear as a normal person would, to which counsel for the plaintiff replied that was not necessarily the fact, which again means that lawyers do not agree and you would not expect them to in representing such adverse interests.

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Bear in mind that the accident happened in Virginia where the rule of gross negligence applies. It must have been present if the plaintiffs are to recover under the greater weight of the credible evidence or the preponderance of the legal proof. If it has not been proven and it was a case of ordinary negligence there can be no recovery, if it has been proven, bearing in mind the definition I have given you, and if you find the plaintiffs are not to be held for contributory negligence, and there has been no testimony about it that I recall, they may; and if it does appear that Mrs. Siegel protested against driving so fast just before the accident happened according to her story, you will take all those matters into consideration.

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At any rate take the case and endeavor to do justice between the parties.

I was requested to charge the jury in behalf of the defendant Mrs. Saunders that the Court instructs the jury that when a person rides as a guest in an automobile the driver owes merely the duty of not knowingly or wantonly acting in

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Charge of the Court.

a way which will injure him. I decline to charge this as requested because of the impression in the request that the driver merely owes the duty of not knowingly or wantonly and so forth. I have intimated to you the definition of gross negligence and that eliminates the question of
10 wanton and willful negligence as applicable to the issues in this case, because this is a case of gross negligence. There is no suggestion that Mrs. Saunders willfully and wantonly injured either of the plaintiffs. It has been suggested to me, moreover, that the testimony was that when Mrs. Siegel spoke to Mrs. Saunders about the speed of the car that she herself may have been guilty of contributory negligence if she
20 stayed in the car and if Mrs. Saunders proceeded at such speed, but that becomes a question of fact for you. I also was requested to charge in behalf of the defendant that in order to find for the plaintiff you must first find by the fair preponderance of the proof and not by mere speculation or a guess, that the plaintiff was guilty of gross, wanton, or culpable negligence which was the direct and proximate cause of the plaintiffs' injuries. I charge you that by eliminating wanton or culpable negligence and saying
30 it must appear that she was guilty of gross negligence within the definition I have given you.

If either lawyer here, Mr. Parsons or Mr. Golenbock, has misstated the evidence you will disregard such statements, you will not be influenced by them, in the last analysis your own recollection must prevail as to what the testimony was.

Of course, if Mrs. Saunders did not raise her hand as claimed by the Siegels, and there is no such testimony, and there is a misstatement in
40 that regard, you will disregard that too, but you

Defendant's Requests to Charge.

remember what the testimony was. Never mind these lawyers, depend upon your own recollection. If they have said anything cogent and enlightening give it the consideration it deserves. Remember they are paid to speak as they do and give them credit for putting their clients' best foot forward. As far as their merit in argument is concerned give them fair and impartial consideration and when you have done that and decided the case in accordance with the evidence and the rules of law I have given you, you will have nothing to worry about after that. 10

Mr. Golenbock: I pray an exception to Your Honor's refusal to charge my requests.

The Court: That is all right. 20

Defendant's Requests to Charge.

1. The law of the State of Virginia applies in this case. The law of that State is that the host only owes to his guest the duty to observe "slight" care, that is, he is liable only in the event the plaintiff guest establishes "gross negligence." 30

2. Whether the plaintiffs were invited by the defendant Pauline Saunders to ride in the automobile or the plaintiffs asked to be taken, they were passengers in the automobile for their own accommodation.

3. The Court instructs the jury that when a person rides as a guest in an automobile, that person assumes all risks ordinarily incident thereto; that 40

Defendant's Requests to Charge.

the driver owes such guest, merely the duty of not knowingly or wantonly adding to those perils which might ordinarily be expected.

10 4. You are further instructed that Mrs. Pauline Saunders is presumed to be free from any negligence whatever, and the mere happening of the accident raises no presumption of negligence on her part.

20 5. The defendant Pauline Saunders not being benefited in a money sense or in a pecuniary way, the defendant Pauline Saunders is only liable for the injuries sustained by the plaintiffs, if she was guilty of gross negligence in the operation of the automobile at the time of the accident.

20 6. Before the jury can find for the plaintiffs Siegel, against the defendant Pauline Saunders, you must first find that by the preponderance of the evidence and by positive and affirmative proof, and not by mere speculation or conjecture that Mrs. Pauline Saunders was guilty of gross wanton or culpable negligence which was the direct and proximate cause of the accident.

30 7. Gross negligence is substantially and appreciably higher magnitude than ordinary negligence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence. While it falls short of being such reckless disregard of probable consequences as is equivalent to a willful or intentional wrong, yet it is a heedless and palpable violation of legal duty respecting the rights of
40 others. The element of culpability or blame

Defendant's Requests to Charge.

which characterizes all negligence is, in gross negligence, magnified to a high degree as compared with that present in ordinary negligence.

8. If you find from the evidence in the case that the plaintiffs asked the defendant Pauline Saunders to take them up North in her car, they were mere licensees, and you cannot bring in a verdict in favor of the plaintiffs unless you find that the injuries which they sustained were due to the willful or intentional act on the part of the defendant Saunders. In other words, the only duty which the defendant Saunders owed to the plaintiff was that to refrain or abstain from willfully injuring the plaintiffs.

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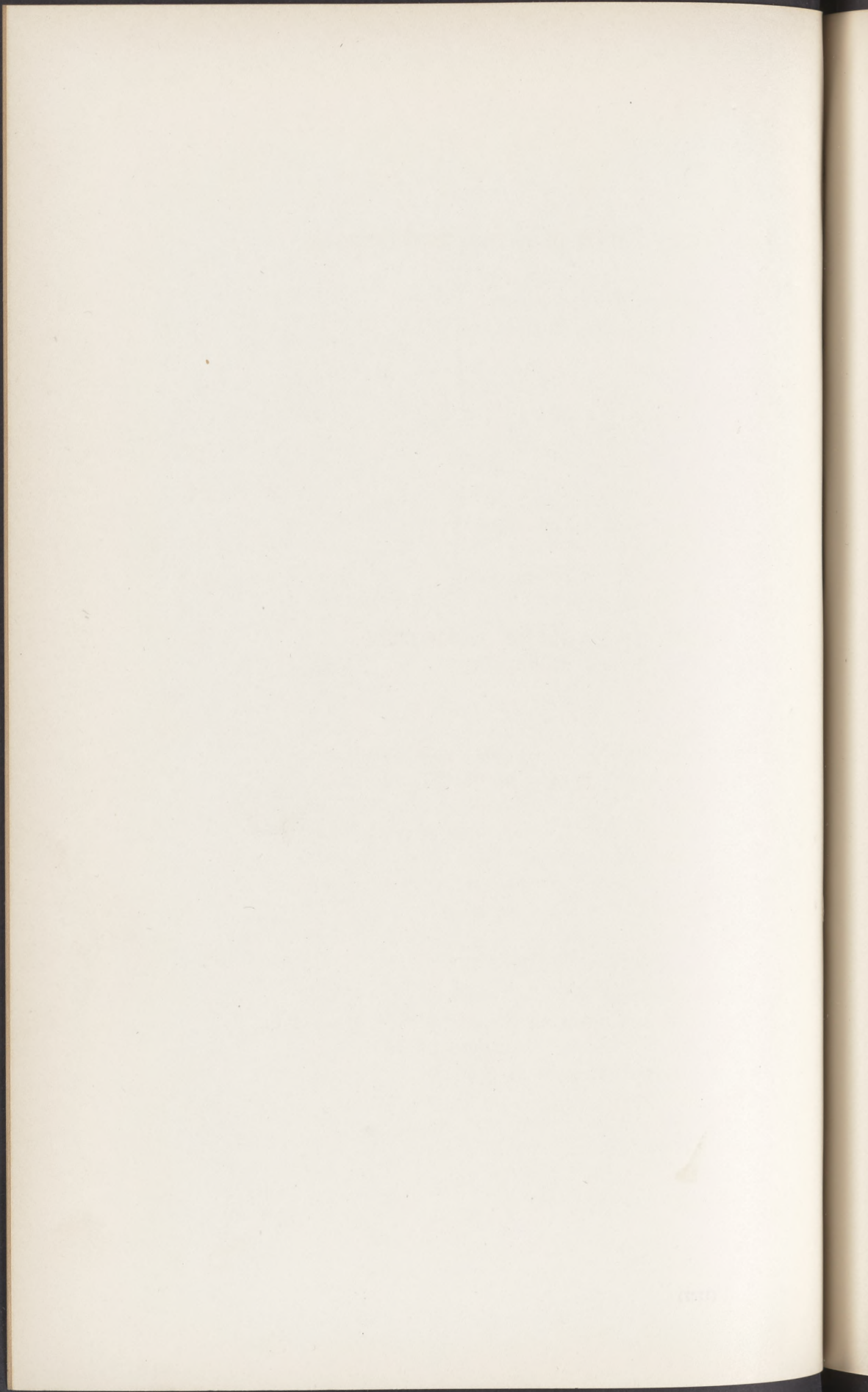
BIOGRAPHICAL MEMOIRS OF

JAMES H. HARRIS, D.D., LL.D.,
 DEAN OF THE UNIVERSITY OF CHICAGO,
 1875-1900.

It was not until the year 1875 that the
 University of Chicago was founded. At that
 time it was a small institution, with only
 a few students and a few professors. It was
 in the year 1875 that James H. Harris, D.D.,
 LL.D., was appointed Dean of the University.
 He was a man of great ability and
 high character. He was a man of great
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New Jersey Court of Errors and Appeals

ROSIE SIEGEL and HENRY SIEGEL,
Plaintiffs-Respondents,

vs.

PAULINE SAUNDERS,
Defendant-Appellant,

and

PAROBASA REALTY CORPORATION,
a body corporate of the State
of New Jersey,
Defendant.

*On Appeal
from
Supreme
Court,
Monmouth
Circuit.*

BRIEF OF PAULINE SAUNDERS, Defendant-Appellant.

Statement.

This is an appeal from judgments entered in favor of the above named plaintiffs and against the defendant, Pauline Saunders, in the New Jersey Supreme Court, Monmouth Circuit, based on the refusal of the trial court to non-suit the plaintiffs; to direct a verdict for said defendant and to charge the jury as requested.

Facts.

On March 16, 1933, the plaintiffs, as the guests of the defendant, Pauline Saunders, left Miami, Florida, in the latter's automobile, for their home in Bradley Beach, in this State. On the morning of March 19th, the party left Richmond, Virginia, and while still in that State, the accident, which is the basis of these suits, occurred. The defendant contended that the plaintiffs had not proved that she was guilty of gross negli-

gence (the rule applicable in Virginia) and therefore both the motion to non-suit and to direct a verdict should have been granted.

That testimony most favorable to the plaintiffs is herein set out.

Rose Siegel testified on direct:

Q And as a result of a conversation with Mr. or Mrs. Saunders, one or the other of them, did you come back with them from Florida?

A Yes. (p. 22, ll. 1-3).

Q The night you arrived at Richmond did any conversation take place between Mr. & Mrs. Saunders and yourself, or was any arrangement made between you what time you were going to start the next morning?

A Yes, sir.

Q Will you tell us what that arrangement was?

A Before we went to retire Mrs. Saunders said, "We have to get up very early tomorrow; we want to reach Fredericksburg." So we got up six o'clock and at half past six we were all ready and downstairs. (p. 22, ll. 29-39.)

Q Did you see the automobile at that time?

A It was thirty-five minutes after seven I saw Mr. Saunders by the hotel with the bell boy.

Q Where was the automobile?

A By the hotel.

Q Did you get in the car?

A About a couple of minutes later. (p. 23, ll. 27-33.)

Q What kind of a morning was it as you left Richmond?

A It was raining. (p. 24, ll. 11-12.)

Q Can you tell us how many miles an hour the car was being driven on that morning?

A I judge it was forty to forty-nine miles that morning. (p. 26, ll. 12-14.)

Q When Mr. Saunders came up with the car did Mrs. Saunders say anything to him?

A Yes.

Q What did she say?

A She was very much upset. (p. 26, ll. 37-40.)

By the Court:

Q The question is what did she say?

A She said to him, "Why were you so late? You know that we could have made some mileage. I told you we should start early. I suppose you were talking a lot, and why were you so late?"

Q You started for Fredericksburg?

A Yes. (p. 27, ll. 9-15.)

Q I asked you what Mrs. Saunders said. You say she was upset. Did she talk to Mr. Saunders?

A Yes, she was.

Q What was she talking about?

A Always about coming late with the car. (p. 27, ll. 33-37.)

Q As you approached the scene of the accident will you describe to us just what Mrs. Saunders was doing, just before the accident?

A Yes, while we were riding Mrs. Saunders, she was going so fast and I said "Please, Mrs. Saunders, don't drive so fast, because I am very nervous this morning on account of the weather," and she said "I can drive my car" and it was just a few minutes she said to her husband, "It is only on account of you, I could make that mileage and be in Fredericksburg already and it's just on account of you we are late". *She was very much upset, and while saying this to him the car went off the road.* (Italics ours.) (p. 28, ll. 11-24.)

Q What happened to you?

A I was thrown against the door and the door threw me back in the seat and I was hurt. (p. 28, ll. 31-33.)

Cross examination of Rose Siegel.

Q Is that why you say Mrs. Saunders was traveling at the rate of forty to forty-nine miles an hour because you heard Mr. Saunders say that the distance between Richmond and Fredericksburg was fifty-six miles and the accident happened before you reached Fredericksburg, and you started at a certain hour?

A Naturally you figure out it must have taken so long. (p. 43, ll. 34-41.)

The Court: I get her idea. Fifty-six miles and the accident happened seven miles from Fredericksburg, subtract seven from fifty-six and you get forty-nine. (p. 44, ll. 18-21.)

The plaintiff, Henry Siegel, related on his direct examination that while he and his wife (the other plaintiff) were in Florida in January, 1933, they met the defendant and as a result of a conversation had with her they started for home in her auto. That on the evening of the third day of the trip they arrived in Richmond, Virginia, where, before all the parties retired, an arrangement was made whereby the party was to leave at six-thirty the following morning (p. 50-52).

To digress for the moment in our recital of the facts, we might indicate to the Court at this point, that it was the purpose of the testimony of the plaintiffs to show that the defendant, Pauline Saunders, and her husband had engaged in a discussion or altercation (after they left Richmond) because the latter failed to have the auto prepared for the party's departure at 6:30 A. M., the hour agreed upon the previous evening, and as a result of such discussion the de-

fendent lost control of the auto and thereby caused the accident.

The pertinent favorable testimony of the plaintiff, Henry Siegel, is (direct):

Q What time did the car reach the hotel?

A It was about ten minutes after seven.

Q And did you get in the car?

A Yes, sir.

Q What kind of a morning was this?

A It was raining. (p. 53, ll. 28-32.)

Q Do you drive a car yourself?

A No.

Q Directing your attention can you tell us how many miles an hour this Saunders' car was going *this morning*. (Italics ours.)

A About fifty miles an hour.

Q On what do you base that judgment? Why do you say that?

A I could see through the window sitting in the car how fast the car moved. (p. 54, ll. 11-17.)

Q A little before the accident happened can you tell us what you remember, if you remember anything, as to anything said or done by either Mr. or Mrs. Saunders.

A They had a little words between.

Q What do you mean?

A Mrs. Saunders started in to talk harsh to him.

Q How soon after that did the accident happen?

A A few minutes later.

Q And what did the car do after that?

A The car went off the road.

Q Which side of the road?

A The right hand side.

Q And when it went on the right hand side what did it do?

A Mrs. Kahn—Mrs. Saunders took her hand from the wheel and pointed it—(p. 54, l. 28 to p. 55, l. 3.)

Cross examination of the witness:

Q I say that nothing unusual happened from Richmond to where this accident happened?

A Yes, it was between Mr. Saunders and Mrs. Saunders.

Q What was between Mr. Saunders and Mrs. Saunders.

A They had words.

Q What were the words?

A Mrs. Saunders scolded her husband for being too late.

Q When did the words take place?

A A few minutes before the accident happened.

Q Would you say it was ten minutes before the accident happened.

A No, it was maybe two or three minutes.

Q So those words were said for the first time after you had left Richmond, two or three minutes before the accident happened?

A It was many times said on the road.

Q How many times.

A Two or three times.

Q And during the two minutes time nothing was said by anybody, I mean the two minutes that elapsed from the time you say Mrs. Saunders had words with Mr. Saunders about starting late.

A They had words and Mrs. Saunders took her hand off the wheel and said "You are the fault we are so late; if you would bring up the car in time, we would have breakfast at Fredericksburg."

Q *That was two minutes before the accident?*

A Yes. (Italics ours.)

Q But during the two minutes nothing was said by anybody.

A Yes, there were words between them.

Q I thought you said a minute ago that two minutes before the accident happened Mrs. Saunders had these words with Mr. Saunders.

A *About two or three minutes.* (Italics ours.)

After the plaintiffs' case was rested, the defendant's counsel moved for a non-suit on the ground that the defendant was not guilty of gross negligence. The Court in denying this motion said: (p. 74.)

"The only thing you have in this case that may be a factor is the alleged discussion between Mrs. Saunders and her husband and the testimony tends to indicate that occurred just before this accident happened. There is perhaps a prima facie situation involved there which would require the Court to treat it as one of fact rather than law because if as one or the other of the plaintiffs said, in upbraiding her husband for not getting started soon enough, she took her hands off the wheel, that would be for the jury to say."
(Italics ours.)

The defendant, Pauline Saunders, testified that the party (i. e. Rose Siegel, Henry Siegel, herself, her husband, Mrs. Kahn and her son) left Miami, March 16, 1933, for Bradley Beach (p. 79.) That the night before the accident they stopped in Richmond and left the next morning at 6:35 A. M. and that the accident happened about 7½ miles south of Fredericksburg (p. 80.) That the accident occurred by reason of the fact that another auto forced her off the hard surface of the road onto the shoulder and that the car skidded into an embankment (pp. 82-83.) She further testified that she was driving not more than 25 miles per hour as she approached the curve where the accident occurred; that it was raining at the time and that the pavement was wet (p. 84.) She further testified on cross examination that her auto was ready at the appointed time; that the party did not start late; that she did not have any trouble with her car; that she had no arguments with her husband and

that the road from Fredericksburg to Washington, D. C., is curved (pp. 93-96).

The witness, Ray B. Saunders, husband of the defendant, testified that he had worked in an automobile plant for many years, for Hudson, Ford and Maxwell (p. 114); that the auto in question was mechanically in good condition, (p. 115.) and in other details corroborated his wife's testimony.

This witness further testified his wife did not argue with him that morning about getting their auto on time and that it was useless for him to go to get the car because he could not drive (p. 128, ll. 1-7). That he doesn't drive a car was corroborated by the plaintiff Henry Siegel (p. 53, ll. 26-27.)

At the close of the case the defendant's counsel moved for a directed verdict on the same grounds as urged in the motion for a non-suit and the Court in denying it said in part: (p. 143)

"That being so I am inclined to the opinion that the case is in the same situation as at the time the motion for non-suit was made and has become a jury question."

POINT 1.

The trial court erred in refusing to grant the motions for a non-suit and for a directed verdict.

The accident having taken place in Virginia the case must be governed by the law of that State. *Harber v. Graham*, 105 N. J. L. 213. Such being the fact, the plaintiffs could only recover from the defendant upon their proof that the latter was guilty of gross or wanton and wilful negligence. *Boggs v. Plybon*, 157 Va. 30, 160 S. E. 77; *Collins v. Robinson*, 160 Va. 520, 169 S. E. 609.

We insisted on the motions in question, that the plaintiffs had not proven any negligence of that degree and we submit, a close inspection of the testimony will reveal the correctness of our contention.

The trial court refused to grant our motions giving as its reason that a *prima facie* case had been established because the testimony, assuming it to be true, tended to show that the defendant "in upbraiding her husband for not getting started soon enough, she took her hands off the wheel", thus making it a jury question.

If the testimony tended to show that the defendant removed her hands from the wheel and that act was the proximate cause of the accident, our contention, we grant, would be without foundation because there is no doubt in our own minds that a jury question would be created thereby. That the evidence did not tend to show that is self evident.

The plaintiff Rose Siegel merely testified that the defendant did, on several occasions, after leaving Richmond scold her husband for being late with the car, and said nothing about the defendant removing her hand from the wheel.

The other plaintiff Henry Siegel did testify:

A Mrs. Saunders took her hand from the wheel and pointed it— (p. 55, ll. 2-3.)

If for example an individual removes her hand from the steering wheel of an auto she is driving on one day—and an accident happens on the following day or week later, would anyone, including judge or jury, be justified in inferring that the removal of the hand on the day before was the proximate cause of the accident? Of course not. Although the time element in our supposi-

tious case is a bit extreme, that is the very situation herein.

When was the hand removed by the defendant? This query is answered by this testimony.

A They had words and Mrs. Saunders got very excited and took her hand off the wheel and said "You are the fault we are so late * * *"

Q That was two minutes before the accident?

A Yes. (p. 69, ll. 30-36.)

If we accept as true the testimony of Mrs. Siegel that the defendant was driving her car at a speed of 49 miles per hour or the testimony of her husband that the car was being driven 50 miles an hour we have this result.

An auto traveling 49 or 50 miles per hour will traverse between 8,600 and 8,800 feet in two minutes. If the defendant removed her hand, for a moment, at a point 8,600 feet (or more than a mile and a half) from the place where the accident happened, how can one by the widest stretch of the imagination, say or infer that that was the proximate cause of the mishap. Assuming that the defendant did remove her hand, for a moment, from the wheel, and assuming that the evidence adduced in behalf of the defense, that the auto was being driven at a speed of 25 miles per hour, is true, the result is that such act (from which the Court permitted the jury to infer gross negligence) took place 4,400 feet or five-sixths of a mile from the point where the accident occurred.

If, as we supposed above, the hand was removed a day or a week before the accident no one would contend that it was the proximate result thereof. The fact that it was taken from the wheel between five-sixths of a mile and a mile

and a half from the point where the accident occurred must, by the same logic, lead to the same result.

We submit therefor that if the trial court submitted the case to the jury upon the mistaken assumption that the evidence tended to show that the removal of the hand from the steering wheel, was the proximate cause of the accident, it committed judicial error in refusing to grant the motions for a non-suit and a directed verdict, by virtue whereof this cause should be reversed.

That the requisite degree of negligence was not proven in the case at bar will readily appear after examining the authorities of those states wherein the gross negligence rule applies.

In the case of *Boggs v. Plybon*, 157 Va. 30, 160 S. E. 77, a guest passenger, who sustained injuries, instituted suit against the host driver. The auto in which they were riding while rounding a curve ran off the paved portion of the road onto the shoulder and struck a telephone pole. The defendant's demurrer to the evidence was sustained and action of the trial court in this respect was affirmed by the Supreme Court of Appeals. In discussing the liability of such host to his guest the Court said: (160 S. E. 77, at 79.)

"To hold that a guest who for his own pleasure, was driving with his host, may recover from him for injuries suffered where there is no culpable negligence, shocks one's sense of justice. The driver is often not an expert and makes no implied representations beyond these, namely, that *he will not knowingly or wantonly add to those perils which may ordinarily be expected* and that there are no known defects in that car which makes its operation particularly hazardous." (Italics ours.)

In the case of *Burke v. Cook*, 141 N. E. (Mass.) 585, a suit by a guest passenger against the driver resulted in a verdict for the former. Exceptions brought by the defendant were sustained and judgment was ordered entered for the defendant. In this case the auto was going fast when there was a thump from the right rear wheel and thereupon the auto went up in the air and turned over. The evidence indicated that just before the accident the car seemed to be steering to the right and that the defendant in turning his wheel quickly to the left caused the car to turn over. The Court in holding there was no gross negligence on the part of the defendant said: (p. 587)

“In the opinion of a majority of the Court the speed of the car upon a roadway substantially free from traffic without intersecting streets and without obstruction of vision; the passing of another vehicle in the manner described, the act of turning the wheel quickly to the left, and the turning over and sliding of the car as hereinbefore stated, whether considered separately or in conjunction, do not tend to prove such ‘indifference to present legal duty and utter forgetfulness of legal obligations so far as other persons may be affected’ as to constitute ‘a heedless and palpable violation of legal duty’ to the plaintiff or ‘a manifestly smaller amount of watchfulness and circumspection’ than the circumstances required.”

It is evident from this excerpt that the violation of legal duty owing by the defendant to the plaintiff must be palpable to entitle the latter to recover. The facts in the case at bar, assuming the testimony of the plaintiffs to be true, is not, manifestly, such palpable violation.

In the case of *Shriear v. Feigelson*, 143 N. E. (Mass.) 307, a verdict was directed for the de-

fendant by the trial court and its action affirmed. The facts of that case were: The defendant was tired and grouchy and was found sleeping in the car. Once the defendant stopped near a street light and rubbed his eyes, declaring they were burning and that he was tired. The night was moonlit, clear and dry, the road was straight, there were no other automobiles in sight, the defendant's car was equipped with headlights which cast a good light before them, and the car while traveling along at fifteen to twenty miles an hour suddenly left the road and crashed into a telephone pole. There was nothing in the testimony or facts to justify a finding of gross negligence, the Court held.

In the case of *Craig v. McAtee*, 295 Pac. (Wash.) 147, a judgment entered for the plaintiff on the following facts, was reversed. The accident occurred as a result of the defendant driver taking her right hand off the wheel and feeling in her lap for her handbag and not finding it there, she took her eyes off the road to look for it and found that it had slipped off her lap. Defendant put her hand on the bag and the crash occurred immediately thereafter. The court held that the temporary removal by the driver of a car of one of his hands from the steering wheel, under the circumstances disclosed by the record, is not of itself gross negligence. These authorities indicate, beyond any question, that the Courts of those States where the gross negligence rule exists, closely examine the evidence not for the purpose of being satisfied that there was testimony from which the jury might infer that there was the required degree of carelessness, but for the purpose of satisfying itself that the driver exercised "slight care" under the circumstances.

If the testimony (most favorable to the plaintiffs) shows that the defendant removed her hand for a moment, when she was more than a mile and a half from the accident, that, we submit, neither spells gross-negligence nor the absence of slight diligence. Such being the fact, the court as a matter of law was obliged to grant the motion for a non-suit or a directed verdict.

POINT 2.

The trial court erred in refusing to charge as requested.

The trial court refused to charge request No. 3 (p. 157) which is:

"The Court instructs the jury that when a person rides as a guest in an automobile, that person assumes all risks ordinarily incident thereto; that the driver owes such guest, merely the duty of not knowingly or wantonly adding to those perils which might ordinarily be expected."

This request is based on the law propounded by the Court in the case of *Boggs v. Plybon*, 160 S. E. (Va.) 77, wherein it said: (p. 79)

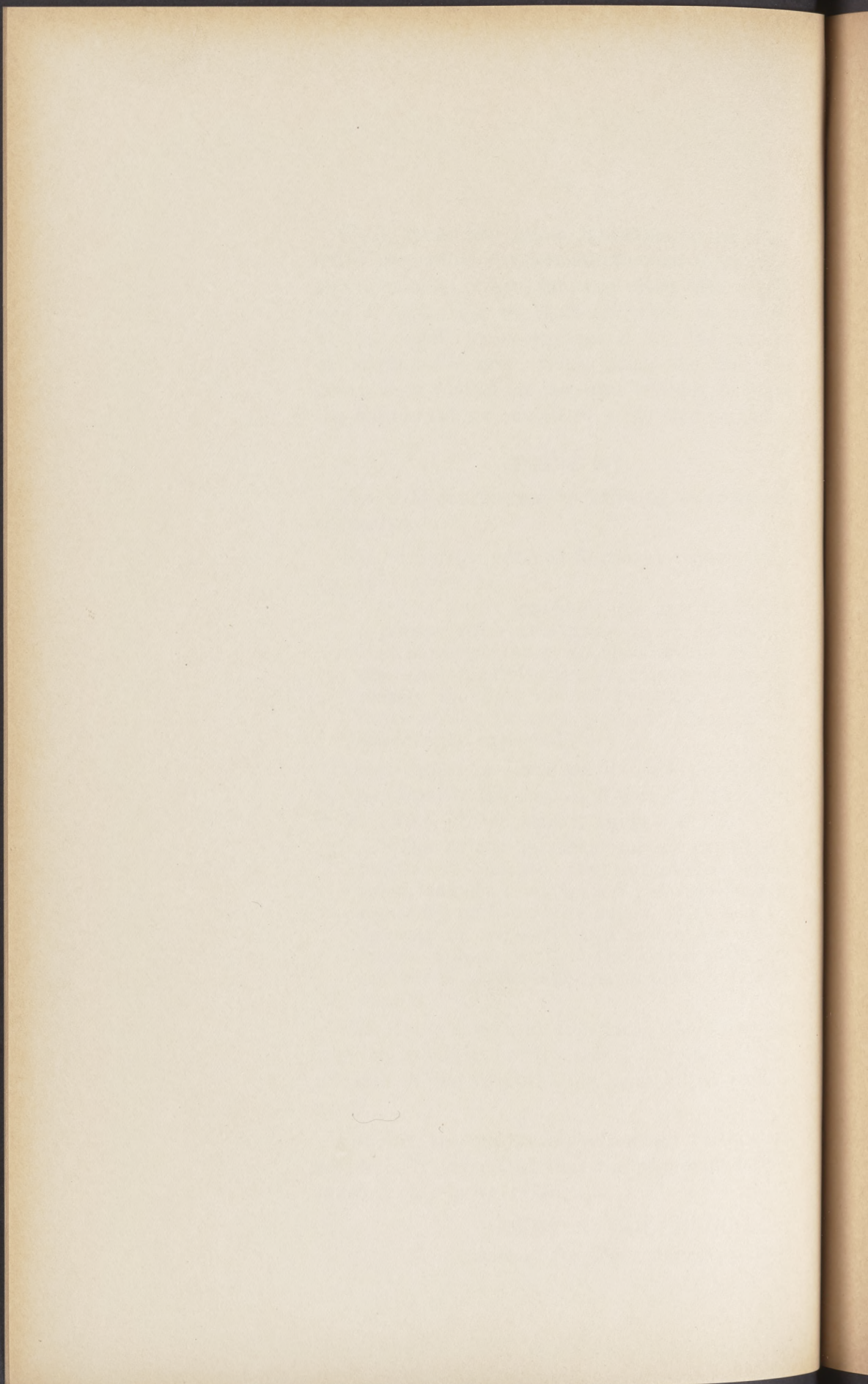
"The driver is often not an expert and makes no implied representations beyond these, namely, that *he will not knowingly or wantonly add to those perils which may ordinarily be expected* and that there are no known defects in that car which makes its operation particularly hazardous." (Italics ours.)

The Court's refusal to charge the foregoing request, which correctly sets forth the law applicable to the instant case, constituted judicial error.

For the reasons hereinbefore set forth, it is respectfully submitted that the judgment in this cause should be reversed.

HENRY K. GOLENBOCK,
Attorney for Defendant-Appellant.





New Jersey Court of Errors and Appeals

ROSIE SIEGEL and HENRY SIE-
GEL,

Plaintiffs-Respondents,

vs.

PAULINE SAUNDERS,

Defendant-Appellant,

and

PAROBASA REALTY CORPORATION,
a body corporate of the State
of New Jersey,

Defendant.

On Appeal
from
Supreme
Court
Monmouth
Circuit.

BRIEF OF PLAINTIFFS-RESPONDENTS.

INTRODUCTION.

This is an appeal by the defendant from judgment against her in favor of the plaintiffs which were rendered at the Monmouth Circuit of the New Jersey Supreme Court on January 8th, 1935, in the amount of \$1,000.00 in favor of Rosie Siegel, and \$1,509.00 in favor of Henry Siegel.

Mr. and Mrs. Siegel had been staying, during the winter of 1933, at Miami, Florida. Through an introduction, they met the defendant, Mrs. Saunders, who invited them to accompany her north in an automobile. This they did. They reached Richmond, Virginia, safely. Plans were made to make the trip from Richmond, Virginia, to Bradley Beach, the following day. It was

necessary to arise early in the morning and arrangements were made to leave at six-thirty. All the passengers were in the lobby of the hotel ready to leave at six-thirty and the defendant's husband went to the garage to bring the car. Some difficulty arose in removing the car from the garage, as a result of which the start was not made until ten minutes past seven, a delay of forty minutes. Mrs. Saunders was very upset over the delay and enroute from Richmond, blamed her husband for the loss of time. The road was a winding, hilly road and the day was rainy, making the road slippery. Mrs. Saunders drove very rapidly, evidently endeavoring to make up for this loss of time. A short time before the accident, she was requested by Mrs. Siegel not to drive so fast. Then immediately before the accident, Mrs. Saunders again berated her husband. She took her hand off the wheel and shook it at her husband, charging him with responsibility of the lateness. While her hand was off the wheel and she was looking at her husband, talking to him, the automobile left the road and went on to the soft dirt shoulder. Mrs. Saunders endeavored to right the car and in so doing the car skidded and ended up against an embankment, inflicting injuries upon the plaintiffs.

Since the accident happened in Virginia, the liability of the defendant is governed by the law of that state which holds that a driver is not liable to invitees in his automobile unless the driver is guilty of gross negligence. The Trial Court submitted the question of gross negligence to the jury who found in favor of the plaintiffs. The defendant now appeals upon the ground that the Trial Court committed error in so doing.

REVIEW OF THE EVIDENCE.

This review of the testimony will cover only those parts relevant to the negligence of the defendant in the operation of the automobile.

Mrs. Rose Siegel testified that on the morning of the accident the car was being driven forty to forty-nine miles an hour (p. 26, l. 14). Mrs. Saunders was very much upset at the start and said to her husband:

“ ‘Why were you so late? You know that we could have made some mileage. I told you we should start early. I suppose you were talking a lot, and why were you so late?’ ” (p. 27, ll. 9-13.)

After Mrs. Saunders had started on the journey, she still harped upon the lateness of the car (p. 27, l. 37). Just before the accident Mrs. Siegel spoke to Mrs. Saunders and said:

“ ‘Please, Mrs. Saunders, don’t drive so fast, because I am very nervous this morning on account of the weather,’ and she said, ‘I can drive my car,’ and it was just a few minutes she said to her husband, ‘It is only on account of you, I could make that mileage and be in Fredericksburg already and it’s just on account of you we are late.’ She was very much upset, and while saying this to him the car went off the road.” (p. 28, ll. 12-25.)

On cross-examination Mrs. Siegel stated that the departure from Richmond took place at ten minutes past seven the morning of the accident (p. 37, l. 8). Mrs. Saunders was in a hurry to reach Bradley Beach because of the death of a friend (p. 37, l. 14). The accident happened at quarter after eight (p. 40, l. 14). On cross-ex-

amination she reiterated the story about how Mrs. Saunders quarrelled with her husband.

“Q. How many times after she started the car did she again talk to her husband when you say she was so mad because you started a half hour late? A. It was about three times, to the time of the accident, she began over and over again to quarrel with him.” (p. 47, ll. 23-28.)

She again reiterated on cross-examination her words of caution to Mrs. Saunders:

“After I told her, ‘Mrs. Saunders, please be careful, I am nervous myself, please slow down,’ and that made her a little upset and she said, ‘Only on account of you we could have our breakfast at Fredericksburg, we could have been there and you were at fault’ ” (p. 47, ll. 35-41).

The car went off the road when she started to quarrel with her husband:

“Q. Will you please repeat the movements of the car for ten minutes and tell us how the accident happened? A. About ten minutes after, or about that, she started to quarrel with her husband and the car went off the road on the right-hand side.” (p. 48, ll. 25-29.)

Henry Siegel testified that all had planned to leave Richmond at six-thirty the morning of the accident (p. 52, l. 23). Mr. Saunders, however, did not bring the car until ten minutes past seven (p. 53, l. 29). Mrs. Saunders was driving the car about fifty miles an hour (p. 54, l. 14). The road was hilly and curved (p. 54, ll. 1-10). Mrs. Saunders had words with her husband and then the accident happened (p. 54, ll. 30-40). Mrs. Saunders took her hand from the wheel and pointed it (p. 55, l. 8).

On cross-examination Mr. Siegel testified:

“Q. What were the words? A. Mrs. Saunders scolded her husband for being too late (p. 69, ll. 14-16).

Q. And during the two minutes' time, nothing was said by anybody, I mean the two minutes that elapsed from the time you say Mrs. Saunders had words with Mr. Saunders about starting late? A. They had words and Mrs. Saunders got very excited and took her hand off the wheel and said, 'You are the fault we are so late; if you would bring up the car in time, we would have breakfast in Fredericksburg'” (p. 69, ll. 25-35).

Mr. Siegel further said:

“Q. Did this accident happen while the curve was being made or before the curve? A. Before the curve.

Q. How far before the curve? A. When Mrs. Saunders was quarreling with her husband we were not looking for curves. She got angry and started bawling him out and hollered and got where that happened” (p. 70, ll. 25-32).

Pauline Saunders, the defendant, claimed that the accident happened because she turned to the right to avoid an oncoming car, went off the highway and skidded in attempting to come back onto the highway (p. 82). On cross-examination she stated that she drove between forty-five and fifty miles an hour (p. 91, l. 20).

Ray Saunders, the defendant's husband, likewise testified that the car turned to the right to avoid an oncoming car, and when Mrs. Saunders attempted to pull the car onto the pavement, the car skidded (p. 118). While Mrs. Saunders denied that they were late in starting and that there

had been any words, Mr. Saunders said that the car was late in getting around (p. 127).

“Q. You and Mrs. Saunders did have words about the car being late, did you not? A. Well, everybody was a little impatient and had some remark to make about it because we were all standing in the vestibule of the hotel.

Q. Mrs. Saunders, particularly, had remarks to make, did she not? A. As to who made the most remarks or what they were, I can't recall.

Q. Mrs. Saunders was very much upset about it, was she not? A. No, I wouldn't say she was very much upset” (p. 127, ll. 21-40).

This is the pertinent evidence relating to the occurrence of the accident. From this evidence facts were shown which warranted a finding that Mrs. Saunders, the driver of the automobile in which the plaintiffs were riding, became upset because she had been delayed in her start home for forty minutes. The road was hilly, winding and slippery. Before the accident, Mrs. Saunders had been cautioned by Mrs. Siegel and had been requested to moderate her speed because of the condition of the highway. Shortly before the accident Mrs. Saunders, after being cautioned by Mrs. Siegel, turned upon her husband, charging him with being the cause of the delay. She was upset and angry and removed her hand from the steering wheel in the course of her tirade. Then the accident happened.

The sole question of law in this case involves the propriety upon such evidence of a submission to the jury of the question of the existence of gross negligence on the part of the defendant.

ARGUMENT.

I.

THE GROSS NEGLIGENCE OF THE DEFENDANT WAS A QUESTION OF FACT AND WAS THEREFORE PROPERLY SUBMITTED TO THE JURY FOR THEIR DETERMINATION.

The entire argument of the appellant in this case is directed to her construction of the testimony. Appellant admits in her brief:

“If the testimony tended to show that the defendant removed her hands from the wheel and that act was the proximate cause of the accident, our contention, we grant, would be without foundation because there is no doubt in our own minds that a jury question would be created thereby.”

Mr. Siegel, as has been pointed out in the review of the testimony, said that at the time of the accident Mrs. Saunders took her hand from the wheel and pointed it (p. 55, l. 8). On cross-examination he reiterated this:

“When Mrs. Saunders was quarreling with her husband, we were not looking for curves. She got angry and started bawling him out and hollered and got where that happened” (p. 70, l. 30).

Mrs. Siegel corroborates her husband. She said that Mrs. Saunders said:

“‘It is only on account of you. I could make that mileage and be in Fredericksburg already and it is just on account of you we are late.’ She was very much upset and while saying this to him, the car went off the road” (p. 28, ll. 20-25).

The question was asked her:

“Will you please repeat the movements of the car for ten minutes and tell us how the accident happened? A. About ten minutes after, or about that, she started to quarrel with her husband and the car went off the road on the right-hand side” (p. 48, ll. 26-30).

At the close of the plaintiffs' case the only evidence concerning the circumstances of the accident bore directly upon the actions of Mrs. Saunders at the wheel. While driving this car at a high rate of speed, upon a hilly, slippery and winding road, she found time to turn to her husband, quarrel with him, take her hand off the wheel and point. During this very instant, the accident happened.

At the close of the case, as opposed to this evidence, was the denial of the defendant and her husband with their explanation that the accident was caused by an oncoming car crowding their car off the road. The testimony of Mr. and Mrs. Saunders was taken by deposition. Two other passengers in the automobile were not produced. On various important points glaring inconsistencies and contradictions appear in the testimony of the defendant and her husband. No variance appears in the testimony of Mr. and Mrs. Siegel.

Of course, this case is not upon a rule nor does this review deal with the weight of the evidence. The sole proposition to be determined in this review is: Was there a question of fact to submit to the jury as to the existence of gross negligence on the part of the defendant? The defendant herself, in her brief, admits that if there were any evidence of a quarrel and the removal of her

hand from the wheel, that the question was properly submitted to the jury. This evidence has been pointed out.

It is conceded that Virginia has adopted the Massachusetts rule holding an invitee may recover from the operator of the automobile in which he is riding only in the case of gross negligence.

In *Boggs v. Plybon*, 160 S. E. 677, the Supreme Court of Virginia bases this rule directly upon the theory of the Massachusetts case of *Massaletti v. Fitzroy*, 228 Mass. 487. This Court has heretofore discussed the Massachusetts rule. In *Harber v. Graham*, 105 N. J. L. 213, a sister was riding with her brother:

“* * * His gross negligence is alleged to have consisted in coasting his car at the rate of forty miles per hour with the clutch thrown out and without applying the brakes, down a long, steep grade which had a double curve in it in plain sight at least one thousand feet ahead, which, when he got too near, he saw he was unable to take,
* * * This was after the sister, only five minutes beforehand, warned the brother of the danger of driving the New England hills that way, when she had been informed by him that he was master of the car and that she did not have anything to worry about.”

The Trial Court nonsuited. This Court reversed the nonsuit and discussed at length the Massachusetts doctrine which is the foundation of the Virginia rule holding that gross negligence was a question for the determination of the jury.

In *Terlizzi v. Marsh*, 154 N. E. 754, the Massachusetts Supreme Court said:

“Manifestly, the determination of the plaintiff’s care and of the defendant’s gross negligence were for the jury. The judge was right in refusing to direct a verdict for the defendant.”

In *Massaletti v. Fitzroy*, 118 N. E. 168, a most thorough discussion of the liability of a defendant in a gratuitous undertaking is presented:

“* * * justice requires that to make out liability in case of a gratuitous undertaking the plaintiff ought to prove a materially greater degree of negligence than he has to prove where the defendant is to be paid for doing the same thing. It is a distinction which seventy-five years’ practice in this Commonwealth has shown is not too indefinite a one to be drawn by the judge and acted upon by the jury.”

In all those states which have adopted the gross negligence rule, this question has uniformly been held one for the determination of the jury. A few of the cases where juries have found gross negligence on the part of the defendant, which findings have been upheld by the appellate courts, follow:

California—*Malone v. Clemow*, 295 Pac. 70. Defendant ran his car into a parked and lighted truck on a lighted city street.

Vermont—*Sorrell v. White*, 153 Atl. 359. Defendant, though warned by passengers to slow on approaching a dangerous curve, did not do so.

Connecticut—*Meyer v. Hart*, 147 Atl. 678. Defendant drove his car down a steep city street in the rain at thirty-five miles an hour after a guest had requested driver to slow up.

Minnesota—*Brandsoy v. Bromeland*, 177 Minn. 298. Driver crossed railroad crossing without noticing warning signs.

Iowa—*Cerny v. Secor*, 234 N. W. 193. Defendant jumped curbing at curve, due to speed of car.

Washington—*Celinsky v. Howe*, 163 Wash. 277. Defendant traveled sixty miles an hour close to a sharp curve which had a yellow warning sign.

Illinois—*Runyan v. Bland*, 264 Ill. App. 265. Defendant drove his car, over guest's objection, at sixty miles an hour and looked at his wrist watch.

The courts of all jurisdictions which are controlled by the gross negligence rule, uniformly hold that the determination of the existence of gross negligence under the facts in each separate case, is within the province of the jury. This doctrine is in accordance with the general rule of law that the issue of negligence is to be determined by the jury. There can be no sound reason why, in a similar manner, the degree of negligence should not be determined by the jury. The defendant has selected certain isolated statements of the plaintiffs who, in the manner of the ordinary lay witness, use the word "minute" to indicate an interval. Defendant entirely overlooks the testimony of both of the plaintiffs that the accident happened concurrently with the argument and tirade of the defendant during which she had removed her hand from the steering wheel. It was the duty of the jury to pass upon this question for assuredly gross negligence exists where a driver of an automobile on a slippery, hilly and winding road, at a high rate of speed, after being cautioned by a passenger, indulges in an argument with another passenger

and removes her hand from the steering wheel while approaching a curve. The court rightfully submitted this question of gross negligence to the jury.

The question submitted to the jury by the Trial Court was the manner of the operation of the car:

“Then again the allegation appears to be that the defendant operated the automobile at a high rate of speed and had previously been warned by one of the occupants, namely Mrs. Siegel, that the rate of speed was too high and had been requested to lower the rate of speed and notwithstanding such request, Mrs. Saunders continued to operate the automobile at a high rate of speed, and then if you find under the evidence that the road was a two-car road, winding and hilly, and wet with rain, slippery at the time, therefore, under such evidence you are asked to determine whether or not the defendant was grossly negligent.

“Now as to the occurrence itself, the plaintiffs have undertaken to show you here * * * it was because Mrs. Saunders suddenly, during the discussion that was going on or just before, raised one hand from the wheel and thereby lost control of the vehicle, which left the paved portion, went upon the dirt shoulder, and caused the injuries alleged to Mr. and Mrs. Siegel” (p. 147, l. 37; p. 148, l. 30).

These questions were submitted to the jury. The Trial Court then defined, with excerpts from the Massachusetts opinion, the degree of negligence that must be found before the defendant could be held:

“* * * In order that one may be held to be guilty of gross negligence, it must

be shown that he was conscious of his conduct, conscious of the danger, and conscious that injury would result from his conduct and that with reckless indifference to consequences, he consciously committed some act or omitted some known duty which produced the injuries that resulted" (p. 149, ll. 25-32).

The Court also read from the Virginia case:

" * * * gross negligence is substantially and appreciably higher in magnitude than ordinary negligence. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting a legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. * * * It is an act or omission respecting a legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence or the absence of slight diligence, or a want of even scant care. It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is heedless and palpable violation of legal duty respecting the rights of others. The element of culpability, which characterizes all negligence is in gross negligence magnified to a higher degree as compared with that present in ordinary negligence. Gross negligence is manifestly a smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence, but it is something less than the willful, wanton and reckless conduct which renders a defendant who has injured another liable to the latter even though guilty of contributory negligence, it falls short of being such reckless disregard of probable consequences as is equivalent

to a willful and intentional wrong. Ordinary and gross negligence differ in degree of inattention, while both differ in kind from willful and intentional conduct which is or ought to be known to have a tendency to injure' ” (p. 150, l. 6; p. 151, l. 5).

This charge of the Trial Court incorporated verbatim the laws laid down from the Supreme Court of Virginia, where the accident took place. The charge clearly and fully explained to the jury the degree of negligence which must be proven to hold the defendant liable. The jury was instructed to examine the evidence as to speed, the condition of the highway, the character of the road at the scene of the accident and the conduct of the driver of the automobile. Under the evidence the case was rightfully submitted to the jury under a proper charge.

II.

THE COURT CORRECTLY CHARGED THE JURY.

Defendant further excepts to the Court's failure to charge the third request. This third request reads as follows:

“3. The Court instructs the jury that when a person rides as a guest in an automobile, that person assumes all risks ordinarily incident thereto; that the driver owes such guest, merely the duty of not knowingly or wantonly adding to those perils which might ordinarily be expected.”

The Court itself explained its refusal to charge this request:

“I was requested to charge the jury in behalf of the defendant, Mrs. Saunders, that the Court instructs the jury that when

a person rides as a guest in an automobile, the driver owes merely the duty of not knowingly or wantonly acting in a way which will injure him. I decline to charge this as requested because of the impression in the request that the driver merely owes the duty of not knowingly or wantonly, and so forth. I have intimated to you the definition of gross negligence and that eliminates the question of wanton and willful negligence as applicable to the issues in this case, because this is a case of gross negligence."

This explanation fully covers the argument of the appellant. The request injected into the case an element which did not exist, namely, wanton injury. As the Trial Court said, there was no suggestion that the injury received by the plaintiffs was willfully or wantonly inflicted by the driver. This question had nothing to do with the case. The sole question involved in the case is the existence of gross negligence. There was no evidence in the case involving wanton or willful injury. The Trial Court correctly pointed this out in its charge as the reason for not charging the third instruction. This instruction, if charged, would have introduced before the jury an entirely extraneous element.

A careful reading of the charge reveals a clear, cogent and forceful exposition of the pertinent law and a close analysis of the decisive facts.

III.

CONCLUSION.

The case at bar presents for review the judicial propriety of submitting the question of the existence of gross negligence on the part of the defendant to the jury. The prevailing rule in all jurisdictions requires the submission of the determination of this question to the jury. This Court is not concerned with the weight of the evidence upon this review. It is solely concerned with the propriety of the Trial Court's action.

It is submitted that the learned Trial Court correctly charged the jury and properly submitted the factual questions to the jury.

Respectfully submitted,

THEODORE D. PARSONS,
Of Counsel.

BERNARD H. WEISER,
Attorney for Plaintiffs-Respondents.

