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NOTICE OF APPEAL.

Filed February 20, 1929.

New Jersey Supreme Court

ANTHONY PASQUALE, JR., by
his next friend, Anthony
Pasquale, and ANTHONY
PASQUALE, individually,
Plaintiffs.

vs.

JOSEPH ARONSON,

Defendant.

*Action at
Law.*

*Notice of
Appeal.*

10

To William E. Perkel, attorney of plaintiffs.

20

SIR:

TAKE NOTICE, that the defendant, Joseph Aronson, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause.

Respectfully,

HARLEY, COX & WALBURG,
Attorneys of Defendant.

30

February 19, 1929.

Service of a copy of the within notice of appeal is hereby acknowledged this 19th day of February, 1929.

WILLIAM E. PERKEL,
Attorney of Plaintiffs.

40

GROUND OF APPEAL.

New Jersey Court of Errors and Appeals

10	ANTHONY PASQUALE, JR., by his next friend, Anthony Pasquale, and ANTHONY PASQUALE, individually, <div style="text-align: right;"><i>Plaintiffs.</i></div>	}	<i>Action at Law.</i>
	<i>vs.</i>		<i>Ground of Appeal.</i>
	JOSEPH ARONSON, <div style="text-align: right;"><i>Defendant.</i></div>		

20 To William Perkel, Esq., 591 Summit Avenue,
Jersey City, New Jersey.

SIR:

TAKE NOTICE that the defendant appeals to the New Jersey Court of Errors and Appeals from the judgment entered upon the verdict returned in the above-entitled matter on the following ground:

30 The trial judge erred in refusing to direct a verdict in favor of the defendant and against the plaintiff.

Respectfully,

HARLEY, COX & WALBURG,
Attorneys for Defendant.

Grounds of Appeal.

STATE OF NEW JERSEY,
COUNTY OF ESSEX.

IRVING MAJERSACK, of full age, being duly sworn upon his oath, does depose and say that:

He served the within notice upon the attorney for the plaintiffs by leaving a copy thereof with the person in charge of his office on March 5, 1929. 10

IRVING MAJERSACK.

Sworn and subscribed to before
me this 5th day of March, 1929.

HELEN R. COGAN,
Notary Public of New
Jersey. 20

30

40

SUMMONS.

The State of New Jersey to
 Joseph Aronson: YOU ARE SUM-
 (L. S.) MONED to answer the annexed com-
 plaint of Anthony Pasquale, Jr., who
 10 sues by Anthony Pasquale, his next
 friend, and Anthony Pasquale, individually, in an
 action at law in the New Jersey Supreme Court.
 And take notice that unless you file your answer
 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 plaintiff may
 proceed in the suit and judgment may be entered
 against you.

20 WITNESS, WILLIAM S. GUMMERE, Chief Justice
 of the New Jersey Supreme Court at Trenton,
 this 6th day of December, nineteen hundred and
 twenty-seven.

EDWARD J. KELLEHER,
 Clerk.

WILLIAM E. PERKEL,
 Attorney.

30

40

COMPLAINT.

Filed December 13, 1927.

NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT.

<p>ANTHONY PASQUALE, JR., who sues by Anthony Pasquale his next friend, and ANTHONY PASQUALE, individually, <i>Plaintiffs,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>JOSEPH ARONSON, <i>Defendant.</i></p>	}	<p><i>Action at Law. Complaint.</i></p>
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10

Plaintiffs, residing in the City of Hoboken, County of Hudson and State of New Jersey, say that:

FIRST COUNT BY ANTHONY PASQUALE, JR.

1. On or about September 20, 1926, the plaintiff, Anthony Pasquale, Jr., was lawfully sitting on the stoop in front of his home at No. 510 Jefferson street, Hoboken, N. J.

30

2. On or about the same date, the defendant was the owner of a certain automobile parked in front of No. 510 Jefferson street, Hoboken, N. J.

3. On or about the same date, the said automobile started and ran wild along the said Jefferson street, jumped the curb, struck and ran over the said plaintiff, Anthony Pasquale, Jr.

40

Complaint.

4. The negligence of the defendant consisted in the following:

(a) Failure to use that degree of care which a reasonable and prudent person would exercise under similar circumstances;

10 (b) In leaving the motor of said car running and without properly locking the same;

(c) Failure to take the proper precautions to prevent his car from starting off;

(d) In failing to leave someone in custody of the car while the motor was running;

(e) In parking his motor car in violation of the Motor Vehicle Laws of the State of New Jersey;

20 (f) In failing to have proper brakes on his said automobile.

5. The said plaintiff, Anthony Pasquale, Jr., was severely injured about the legs, ankles, chest and head, causing him to suffer divers vomiting spells, blood discharges, painful intestinal disorder and external injuries, and in the future will continue to undergo great physical pain and suffering.

30 Plaintiff, Anthony Pasquale, Jr., who sues by Anthony Pasquale, his next friend, demands as damages the sum of Twenty Thousand (\$20,000.) Dollars.

SECOND COUNT BY ANTHONY PASQUALE.

1. Plaintiff, Anthony Pasquale, reiterates and makes part hereof paragraphs 1, 2, 3, 4 and 5 of the First Count.

40 2. Because of the injuries sustained by the plaintiff, Anthony Pasquale, Jr., the plaintiff, Anthony Pasquale, who is the father of the

Complaint.

said Anthony Pasquale, Jr., was obliged to expend and in the future will continue to expend large sums of money for medical services, medicines etc., in order to cure the plaintiff of the injuries and ailments arising therefrom and sustained by him, as aforesaid.

Plaintiff, Anthony Pasquale, demands as damages the sum of Ten Thousand (\$10,000.) Dollars.

WILLIAM E. PERKEL,
Attorney for Plaintiffs.

10

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30

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ANSWER.

Filed December 12, 1927.

NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT.

10

ANTHONY PASQUALE, JR., who
sues by Anthony Pasquale his
next friend, and ANTHONY
PASQUALE, individually,
Plaintiffs,

vs.

JOSEPH ARONSON,

*Defendant.**Action at
Law.**Answer.*

20

Defendant, Joseph Aronson, by way of answer
to the plaintiff's complaint, says that:

FIRST COUNT.

1. He denies Paragraphs one to five inclu-
sive.

SECOND COUNT.

30 1. He denies Paragraphs one to five inclu-
sive of the First Count and makes them part of
this Count.

2. He denies Paragraph two.

FIRST SEPARATE DEFENSE TO FIRST
AND SECOND COUNTS.

The defendant was not negligent.

HARLEY, COX & WALBURG,
Attorneys of Defendant.

40

REPLY.

Filed December 14, 1927.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

<p>ANTHONY PASQUALE, JR., who sues by Anthony Pasquale his next friend, and ANTHONY PASQUALE, individually, <i>Plaintiffs,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>JOSEPH ARONSON, <i>Defendant.</i></p>	}	<p><i>Action at Law.</i></p> <p><i>Reply.</i></p>	<p>10</p> <p>20</p>
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Plaintiffs, Anthony Pasquale, Jr., who sues by Anthony Pasquale, his next friend, and Anthony Pasquale, individually, by way of reply to the defendant's answer, say that:

1. They deny each and every allegation contained in the answer of the defendant.

WILLIAM E. PERKEL,
Attorney for Plaintiffs.

30

40

POSTEA.

This case was tried before Judge Henry E. Ackerson, Jr., with a jury, at the Hudson Circuit, on February 7th, 1929.

10 The jury rendered a general verdict against the defendant in favor of the plaintiff Anthony Pasquale, Jr., for five hundred (\$500.00) dollars, and in favor of the plaintiff Anthony Pasquale for three hundred (\$300.00) dollars.

Whereupon it is adjudged that Anthony Pasquale, Jr., who sues by Anthony Pasquale, his next friend, plaintiff, do re-

20	\$500.00 A. P. Jr. 300.00 A. P. <hr style="width: 50px; margin-left: 0;"/> 800.00 73.92 <hr style="width: 50px; margin-left: 0;"/> \$873.92	cover of the said defendant Joseph Aronson, the sum of five hundred dollars damages, and that the plaintiff, Anthony Pasquale, individually, do recover of the said defendant, Joseph Aronson, the sum of three hundred dollars damages, together with their costs which have been taxed at the sum of seventy-three dollars and ninety-two cents, making in the whole the sum of eight hundred seventy-three dollars and ninety-two cents.
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Judgment signed and entered February 9, 1929.

WM. S. GUMMERE,
C. J.

TESTIMONY.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

<p>ANTHONY PASQUALE, <i>et al.</i>, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>JOSEPH ARONSON, <i>Defendant.</i></p>	}	10
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Before Hon. Henry E. Ackerson, Jr., Judge,
 and a jury.

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Jersey City, N. J., February 6, 1929.

Appearances:

William Perkel, Esq., for the plaintiff.

Richard Spitz, Esq., (by William Cox), for
 the defendant.

A jury was duly empanelled, found satisfac-
 tory, and sworn.

Opening by counsel.

30

Mr. Perkel: I presume that counsel will
 admit ownership of the vehicle?

Mr. Cox: Yes, we admit ownership of the
 car that was left parked, but we didn't see the
 accident, or know what happened.

The Court: All right, proceed.

40

Anthony Pasquale, Sr., direct.

ANTHONY PASQUALE, SR., sworn.

Direct examination by Mr. Perkel.

Q Your full name is Anthony Pasquale? A Yes.

10 Q Are you the father of Anthony Pasquale, Jr.? A Yes.

Q On or about the 21st day of November, 1927, were you admitted to institute suit on behalf of your son?

Mr. Cox: Isn't that all a part of the record in this case?

The Court: It is conceded he was appointed as his next friend.

20

Q Mr. Pasquale, on September 20, 1926, about five-fifteen in the afternoon, did anything happen to your son? A Yes, sir.

Q Will you explain and tell the Court and the jury what you know of that accident?

Mr. Cox: I object unless he was there and saw what happened.

30

Q Tell us what you saw? A Well, about five or five-fifteen, on September 20, 1926, I was coming home from work. The boy met me on the corner of Fifth and Jefferson street, a half a block away from my home. He grabbed me by the hand at 508 Jefferson street, and the boy asked me for a nickel. I gave him a nickel, and he says, "I am going to buy candy."

Mr. Cox: I object.

40

The Court: Not what was told to you.

Anthony Pasquale, Sr., direct.

The Witness: (Continuing.) So he went in and bought candy. I proceeded on upstairs into the house. I had to climb two flights up. I opened the kitchen door and I heard a commotion in the street. We had the screen doors on, it was summer time, and I ran into the front room and looked out the window. I saw an automobile on the sidewalk, and not knowing who was hit I ran back into the kitchen and downstairs. They had carried the boy into the baker shop, I didn't know what boy it was. I ran and saw him lying on a bakery table. I grabbed him right away and got in a passing automobile, and took him to Dr. Morano's office. I took him up there, and Dr. Grady said—

10

The Court: Not what any one said to you. 20

The Witness: (Continuing.) That was as far as I seen. After that he told me to take the boy to the hospital.

The Court: Did you take the boy to the hospital?

The Witness: No, I took him home.

Q You took the boy to Dr. Morano's, your family physician? A Yes. 30

Q Later on did Dr. Morano come? A Ten o'clock that evening I called him on the telephone. I couldn't get no other doctor on the telephone.

Q Did Dr. Morano come? A Yes.

Q Did he examine the boy in your presence? A Yes.

Q What was the injury sustained by the boy? A As far as I seen that night, he scared me, the boy was vomiting and there were signs of 40

Anthony Pasquale, Sr., direct.

blood. I said to the wife, "We had better not take any chances."

The Court: Not what you said.

The Witness: We agreed to call a doctor, that we shouldn't take any chance, and we got Dr. Morano.

10 Q What were the injuries he had, was his arm broken, or what?

Mr. Cox: I object to this question.

The Witness: His arm was bent over. The right foot and stomach was all black and blue.

20 Q When you ran downstairs was the automobile still on the sidewalk? A Yes.

Q Did you recognize the automobile, had you seen it before? A I never seen the car before that.

Q Was there any signs on it? A On the side of the car was "Joseph Aronson."

Q What was the position of the car on the sidewalk? A The position of the car was facing north and south.

30 Q Was the whole body of the car, the front and rear wheels on the sidewalk? A Everything right on the sidewalk.

Q Was any part of the car protruding—I withdraw that.

Q As far as you know, explain the physical condition of the house next door. A 510 has a high stoop. I should judge twelve steps up before you hit the first hallway. Alongside of that is the bakery runway for the baker shop to keep his car down there.

40

Anthony Pasquale, Sr., direct.

Q Did any part of the wheels rest over this driveway down to the garage? A The four wheels right on the driveway.

The Court: Whose garage was it?

The Witness: Borelli's the baker.

The Court: Did you see this automobile 10
before you went in the house?

The Witness: No, sir.

The Court: You don't know where it
came from?

The Witness: No, sir.

The Court: Or how it got up there?

The Witness: No, sir.

Q Mr. Pasquale, was this car, when you saw 20
it, parallel with the house, or at an angle? A
At an angle.

Q Did you expend any moneys trying to
effect a cure for your son? A I spent a lot
of money.

Q For medicine? A Medicine, doctors,
cures—

Q How much, have you any idea?

Mr. Cox: I object unless it is proven 30
that it is a reasonable charge.

The Court: We will receive it now sub-
ject to it being proven reasonable.

Q How much did you spend? A I believe
it cost me pretty near three hundred dollars.

Q For doctors and medicines? A Yes.

Q As the result of the injuries sustained by
the boy, did you lose any time from your work?
A Yes.

Anthony Pasquale, Sr., cross.

Q What is your work? A Chauffeur.

Q What kind of chauffeur? A Truck driver for the Eastern Transfer.

Q Eastern Transfer? A Yes, sir.

10 Q Do you know how many days work you lost as a result of this injury?

Mr. Cox: I object.

The Court: The objection will be sustained.

Q When you came down there was nobody in the automobile? A No, sir.

Cross examination by Mr. Cox.

20 Q You saw your boy, Pasquale, Jr., the time you came home before you went upstairs? A What is that?

Q Did you see the boy that was injured the time you came home before you went upstairs?

A I seen him on the corner, yes.

Q What corner was he on? A Fifth and Jefferson, the same side of the street I live on.

30 Q How far is that from where you live? A I should judge—the corner is 500, I live at 510.

Q Were you with anybody at the time? A No, sir; just with my boy.

Q Is he the one who asked you for a nickel? A Yes, sir.

Q It was your boy? A Yes.

40 Q Just tell us how this automobile was situated on the sidewalk when you got downstairs, what was its position? A The four wheels were on the driveway, facing north and south at a little bit of an angle. The radiator was at the

Anthony Pasquale, Sr., re-direct.

railing from the next house, and the tail of the truck was at the stoop.

Q How far was the left side of this car from the stoop? A Well, the left side of this car, I should judge, about a foot inside.

Q The buildings at 503 and 505 Jefferson street, did you know them at that time? A Yes, sir. 10

Q They are five-story brick buildings? A Yes, sir.

Q They were just being finished at that time? A No, sir.

Q How long had they been finished? A These buildings are up quite a while. Unless they were being renovated, they are up quite a while.

Q You didn't see any car standing in front of these buildings as you came in? A I didn't look for any. 20

Q What grade is your boy in in school? A I should judge 3-A or 3-B.

The Court: How old was he at that time?

The Witness: I think he was six.

The Court: This accident was September 20, 1926. 30

The Witness: He is about eight years old now, I think he is.

Q He was in 1-B at that time? A I don't know.

Re-direct examination by Mr. Perkel.

Q Previous to this accident had your son been in good health? A Yes, sir. 40

Anthony Pasquale, Sr., re-direct.

Q Since that time have you noticed any difference in his physical health? A Well, at times he vomits, he complains of his stomach at times. We have to keep him home from school.

10 Q Has your son lost any time from school? Yes, sir.

Q About how long? A He lost six months at the time of the accident, and now by coming up and down for the past week or so. He didn't get no examinations and he got left back also.

By Mr. Cox.

Q You mean by coming back and forth to Court? A Yes, sir.

20 *By Juror No. 11.*

Q You say Dr. Morano told you to take him to the hospital? A No, not Dr. Morano; Dr. Grady told me.

Q When did you take him to the hospital? A As soon as he was hurt.

By Mr. Cox.

30 Q Did you say you took him to the hospital or took him home? A I took him back home; I took the boy to Dr. Morano's office and Dr. Grady said to take him to the hospital. At the time my wife was sick, and I suggested I take him home.

The Court: You never took him to the hospital?

The Witness: No, sir.

Francesca Fusco, direct.

By Mr. Perkel.

Q Did you understand the question propounded by the juror? A I didn't understand right then.

Q You didn't take him to the hospital, he was only treated by your family physician, Dr. Morano? A Dr. Morano. 10

Recess until 10 o'clock A. M., February 7, 1929.

Jersey City N. J., February 7, 1929, 10 A. M., trial of the case resumed pursuant to adjournment.

FRANCESCA FUSCO, sworn, testified through an interpreter. 20

Direct examination by Mr. Perkel.

Q Where do you live? A 420 Madison street, Hoboken.

Q How long have you been in this country? A Ten years. It will be ten years the 15th of next April. 30

By Juror No. 11.

Q Did you attend school in this country? A No, sir.

Q What is your age, Mrs. Fusco? A Thirty-nine years old.

The Court: Why didn't you try to learn the English language?

The Witness: Because I haven't had occasion to study. 40

Francesca Fusco, direct.

By Mr. Perkel.

Q Mrs. Fusco, on September 20, 1926, where were you living? A No 508 Jefferson street, Hoboken.

10 Q Now, about five or five-fifteen in the afternoon of September 20th, were you sitting in front of your door? A Yes. I was seated in front of No. 505.

Q Did you see anything unusual? A Yes. I saw a car coming without anybody driving it.

Q Where was the car when you first saw the car? A I saw the car coming from 505 and then crossing the street over to 510.

20 The Court: Did you see this car before it started, also?

The Witness: No.

The Court: Where was it in the street when you first saw it?

The Witness: In front of the house number 505, and the car started to move over there.

The Court: Did you see it start to move from there?

30 The Witness: It had already started.

The Court: How near was it to the foot of the curb in front of 505 when you first saw it? How near to the curb in front of 505 was it when you first saw it moving?

The Witness: That I can't say.

The Court: Was it in the middle of the street, on one side or the other, when you first saw it?

40 The Witness: About the beginning of the street.

Francesca Fusco, direct.

Q When you say the beginning, what do you mean? A (Indicating.) It was coming, began from 505, and then through the street, then it crossed over to 510.

The Court: Was it near to the front of 505 when you first saw it? 10

The Witness: I saw the car in motion, when I saw it, but I didn't see the car at a stop.

The Court: Now, at that time did you see anybody around it or near it?

The Witness: No. Just an automobile without anybody in it.

The Court: Was there anybody on the street or on the sidewalk anywheres around that location? 20

The Witness: No. There wasn't anybody there.

Juror No. 11: Did the car make a noise as if the engine was running?

The Witness: No, that I don't remember.

By Mr. Perkel.

Q About how far away were you from the car when you first saw the car, about how many feet? A I was in front of 505. It was right across the street. 30

Q When you say across the street, do you mean on the same side of the street or on the other side? A I saw the car coming. I saw the automobile coming from the curb on the one side to the curb to the other side.

Q When you first saw the car it was alongside of the curb, is that it? 40

Francesca Fusco, direct.

Mr. Cox: I object to that as leading.

The Court: The objection will be over-ruled.

The Witness: Yes.

10 Q Then it proceeded from the curb in front of 505 and made a left turn across the street, is that right? A Yes.

Q Now, what happened after it mounted the curb on the other side? A This boy Pasquale was run over, and then I picked him up.

Q You ran over immediately and picked the child, Anthony, up, is that right? A Yes, sir.

Q Had any wheels passed over the boy? A Yes. The wheel went all over his body.

20 Q Do you remember whether it was the right front wheel or the front left wheel? A It was the front wheel and the back wheel also.

Q When you picked Anthony up what did you do with him? A They took the child away from me, and I was frightened so I went home.

30 Q Did you notice at any time, when this automobile was turning from in front of 505 toward 510, where the accident happened, if anybody was in the automobile? A No, sir; nobody.

The Court: Taking the direction in which you saw the automobile running, was that down hill, up hill, or on the level.

A I know that street to be a level street. The street is in good condition.

40 Q The street is in good condition, and it is neither down hill nor up hill, is that it? A It is an asphalted street, and it is in good condition.

Francesca Fusco, cross.

The Court: Does it run up hill or down hill there at that point?

The Witness: At that time it was all right, but now I don't know. It is two years since I moved away from that place. I don't know now.

10

Q And that is all you remember about this accident? A That's all.

Cross examination by Mr. Cox.

Q Mrs. Fusco, I understand you to say you were opposite number 505 Jefferson street? A Yes.

Q Directly opposite the place where Mrs. Delio lived once? A I don't know who Delio is. 20

Q Do you know what house you were in front of on Jefferson street at that time? A In front of 505.

Q Were you on the same side of the street as 505, or across the street from 505? A I was in front of 508.

Q And that is across the street from 505, is it not? A Yes.

Q And when you first saw this car in motion, isn't it true the car was nearer 510 than you were? A That I don't know. I know this car went across the street and in front of 505 Jefferson street. 30

Q And you don't recall whether the car was to your left as you looked at it or not? A It was coming towards my side, that is, at 510.

Q But was the car on Jefferson street as you looked straight at it to your left or not? A The automobile was coming from 505. 40

Francesca Fusco, cross.

Q Did the automobile have a top on it? A It was a working car and it was covered in front but not in back.

Q What you mean by covered in front, it had a regular top in front? A Yes.

10 Q And the back of this top that was over the front part of the car was a solid piece of curtain with small glass put in?

Mr. Perkel: I object to the question. He is trying to insert in the mouth of my witness the answer.

The Court: I overrule the objection.

The Witness: That I didn't take notice of. I didn't take notice to that.

20 Q You didn't notice that. Did you take notice to the side of the car, the left side of the car? A No.

Q Didn't you at any time before it got over in front of 510, take particular notice of the left side of the body of the car? A No.

Q Do you know whether the side of the top came down in an angle toward the windshield of the car? A That I don't remember.

30 Q You don't remember that. How long were you out on the street prior to the time you saw this car in motion? A I went out in front of that house at 4:15, and this happened a little after five.

Q So that you had been out about an hour at the time that accident happened? A Yes, sir.

Q Had you seen any children playing around that car just before you saw the car in motion? A No, sir.

40 Q Had you seen any children on the street in that neighborhood before this car started to cross the street? A No, sir.

Francesca Fusco, cross.

Q Where was Anthony Pasquale, the little boy, at the time you first saw him, before he was struck, if you saw him before he was struck? A He was on the sidewalk.

Q Where, on the sidewalk? A In front of 510.

Q What part of the sidewalk was he on? A 10
Right in front of the house.

Q In front of the steps or driveway, or what part? A Right on the sidewalk by the house.

Q Where was the car when you first saw Anthony on the sidewalk in front of the house? A In front of the house right on the sidewalk.

Q The car was on the sidewalk, too? A Yes, sir.

Q How far from Anthony? A The auto- 20
mobile got right close to the steps.

Q How far was the automobile from Anthony at the time you first saw Anthony? A Well, that I don't know; the boy was standing when the automobile ran him over.

Q As a matter of fact, the first time you really saw the boy was after the automobile had come to a stop, isn't that so? A The boy was run over when the automobile came to a stop.

Q Now, Madam, as a matter of fact, the first 30
time you saw Anthony was when the automobile had come to a stop, and after he had been what you call run over? A No, I had seen the boy before the accident and he was standing on the sidewalk.

Q Now, can you tell us when this car—when you first saw this car whether it was going smoothly or whether it was jerking along? A It was going fast, and the boy didn't have any chance to save himself. 40

Maria Delio, direct.

Mr. Cox: I ask that the latter part of the answer be stricken out.

The Court: Strike it out.

10 Q Answer the question. When you first saw the automobile in motion was it going smoothly or was it jerking along? A It was going fast.

Q Was it going smoothly or was it jerking at the time? A He was coming straight this way (indicating).

Q After you went up to where this automobile came to a stop and picked up Anthony, there were quite a few people there, were there not? A Yes. There were quite a few people.

20 Q And there were a lot of children there, weren't there? A They were all grown up people.

Q Were you there when Mr. Aronson came over? A I don't know who took the child away from my arms, because I was frightened.

Mr. Cox: That is all.

30 MARIA DELIO, sworn, testified through an interpreter.

Direct examination by Mr. Perkel.

Q Mrs. Delio, where do you live? A 116 Sherman avenue, Jersey City.

Q Where were you living on September 20, 1926? A At number 505 Jefferson street.

40 The Court: How long have you been in this country?

Maria Delio, direct.

A Sixteen years.

Q How old are you? A Thirty-six.

Q You came here to this country when you were twenty years of age? A Yes.

The Court: You can't understand the English language? 10

The Witness: Because I lived among the Italians all the time.

Q And you are married, Mrs. Delio? A Yes, sir.

Q Have you any children? A Four children.

Q They go to public school? A Yes, three children go to school.

Q Mrs. Delio, about five or five fifteen on the day of September 20th, were you sitting in front of 503 or 505 Jefferson street? 20

Mr. Cox: I object to that as leading.

The Court: Yes.

The Court: Where were you at that time?

The Witness: I was by my yard of the house in which I live at 505 Jefferson street.

Q And were you the janitress of that house at the time? A Yes. 30

Q When you say yard, do you mean the yard in front of the house? A Yes.

Q Now, did you at that time notice an automobile parked in front of your door? A Yes; it was between 503 and 505.

Q Was anybody in the car? A No.

Q Did anything happen after that? A Well, I was going back and forth with my baby in front of my house. Then I saw a lot of children 40

Maria Delio, direct.

running back and forth. When I saw the car moving then I noticed the car went over across the street and directly to 510 Jefferson street.

Q Did you see the car start off, Mrs. Delio?

A I saw the car in the middle of the street.

10 Q In the middle of the street? A Yes.

Q When you saw the car in the middle of the street was there any one in the car? A No, nobody.

Q How long a time elapsed from the time you saw the car parked between 503 and 505 Jefferson street and the time when you saw the car running in the middle of the street?

Mr. Cox: I object to the question. He is just going forward.

20 The Court: Wait until we see what she says.

A I was only outside for about ten minutes when I saw the car in the middle of the street, of that street.

Mr. Cox: I object to the word running in the question.

30 The Court: The car had to be running to be moving.

Q Do you know what kind of car that was?

A It was a small car.

Q Was it a car that was used for pleasure or business? A It was a business car.

The Court: Now, can you tell whether or not the engine of the car, when you saw it in the middle of the street, was running or not?

40 The Witness: It was going at full speed.

Maria Delio, direct.

The Court: Was the engine running, if you know?

The Witness: Oh, that I don't know.

Q Did you hear a noise from the motor of the car?

10

Mr. Cox: I object. She just answered she didn't know whether it was running.

The Court: I overrule the objection.

Mr. Cox: Exception.

The Witness: No. I just saw the car moving, I didn't hear any noise.

Q Now, Mrs. Delio, do you know what the engine of a car is? A No, I don't know. I don't know anything about automobiles.

20

Q You don't know anything at all about an automobile? A No, I don't.

Q Now, did the car go over the sidewalk in front of 510? A Yes.

Q What happened after it mounted the sidewalk? A I ran into my home when I saw the car moving, and then right after that I heard a boy got hurt.

Mr. Cox: I object and ask that the latter part be stricken out.

30

The Court: What difference does that make?

Q When you saw the car you ran into your house, is that right? A Yes, I ran into my house.

Q And that is all you know, except from what you heard? A I heard that the boy got hurt, I didn't go to see him.

40

Maria Delio, cross.

Q Mrs. Delio, is it the custom of the Italian people in the summer and balmy evenings to sit outside of the premises with your children? A Yes.

10 The Court: Now, while this automobile was standing before you say you saw it running or moving in the street, did you hear any noise from the automobile while it stood still at the curb?

The Witness: No, I didn't hear any.

Q Now, when you first saw the car moving in the street, was there anybody along or around the sidewalk at the place or near the place where the car had been standing?

20 The Witness: No, I didn't see anybody.

Juror No. 11: Your children learn English in the public school?

The Witness: Yes.

Juror No. 11: Do they use the English language at home.

The Witness: Yes.

30 *Cross examination by Mr. Cox.*

Q Did I understand you to say you were walking up and down with a baby in your arms while you were out in front of your house? A Yes, in front of my house.

Q Walking back and forth on the sidewalk? A Yes, on the sidewalk.

40 Q I suppose you walked up near the car and back, did you not? A Yes, but the car was at the 503—between 503 and 505 Jefferson street.

Maria Delio, cross.

Q The car was there when you first came out, wasn't it? A Yes.

Q Did you see any children around that car at any time? A I didn't see anybody around that car.

Q Were there any children around the street near where you were at that time? A No. 10
Everything was rather quiet. I didn't see anybody.

Q Do you remember what day of the week this was? A It was on the 20th of September.

Q Do you remember what day of the week that was? A I don't know.

Q Mr. Aronson at that time was putting putty on the windows in the building of 505, was he not?

Mr. Perkel: I wish Mr. Cox would qualify that question with "if you know." 20

The Court: All right, if she knows.

The Witness: No, I heard he was putting some putty at 503.

Q And he used to come to you to get instructions, did he not, as to where to work? A No, not that day, because he wasn't working in the place in which I lived. 30

Q You saw him after the accident and had a conversation with him after the accident, didn't you? A No.

Q You never saw him after the accident at all? A No, he didn't come to my house any more because the owner of the house in which I lived at that time, he hired somebody else.

Q You are sure you didn't tell Mr. Aronson after the accident that some boy started that car by putting a penny in the switch? A No, I didn't see him since. 40

Michael A. Morano, direct.

Q Sure you haven't seen him since? A I am sure.

Mr. Cox: That's all.

Re-direct examination by Mr. Perkel.

10

Q Mr. Aronson doesn't speak Italian to your knowledge, does he? A No.

Q And you couldn't very well have had a conversation with him?

Mr. Cox: I object.

The Court: The objection will be sustained.

20

MICHAEL A. MORANO, sworn for the plaintiffs.

Direct examination by Mr. Perkel.

Q Your full name is what? A Michael A. Morano.

30 Q You are a graduate of a medical school, and licensed to practice in the State of New Jersey? A Yes, sir.

By the Court.

Q Are you licensed to practice in this state?

The Witness: Yes, sir.

40 Q Dr. Morano, are you the family physician for the Pasquale family, do you take care of the Pasquale family? A Yes.

Michael A. Morano, direct.

Q Are you their family physician? A Yes, sir.

Q Did you know Anthony Pasquale, Jr., the plaintiff in this action, before September 20, 1926? A Yes sir.

Q You had treated him before? A Yes, sir.

Q Did you know what his physical condition was before this, as his family physician? A He was a normal boy. 10

Q Healthy? A Healthy.

Q Now, on September 20, 1926, did you have occasion to treat this infant, Anthony? A Yes, sir.

Q Will you describe to the Court and jury the circumstances and what you treated Anthony for on that day? A On September 20, 1926, at ten o'clock in the evening I got a telephone ring from Mr. Anthony Pasquale, the father of the boy. 20

The Court: And you went over there, and what did you find?

The Witness: Here is what I found. I found the upper four incisor teeth missing, and the upper lip was swollen, and inside of it was a cut, and the right side of the face was scratched. 30

Mr. Cox: May I ask if the doctor is reading from notes made at the time?

The Witness: Made at the time.

(Continuing.) The right shoulder and the right side of the chest were contused, by that I mean black and blue. The signs were just coming out that night when I examined him. By examination of the chest on that side I heard the pleurical valves, by that I mean some of the ribs must have been 40

Michael A. Morano, direct.

10 hurt. In other words we call it traumatic pleuritis. Now, back there through the lumbar region, that means right at the end of the costal ribs, were signs here and there of black and blue. It was contused. The left elbow joint, there was a fracture of the left elbow joint. Below the abdomen was the imprint of a tire, and was marked on the upper part of what we call the epigastrium, and signs of black and blue appearing. The boy was vomiting, and in the vomit I found he had vomited food. I saw a kind of coffee ground mixed up inside with pieces of elotted blood here and there, but most of it was blood, and I tested it to make sure it wasn't from the lungs.

20 The Court: Did you find any blood in the vomit?

30 The Witness: Yes. Now the upper right of the left thigh was contused. Now, the right foot was swollen, with signs of black and blue appearing, and the skin was torn right off the anterior portion, the front part of it, and of course the boy was in a shocked condition. He had a punish look, his lips were pale. I took the blood pressure and it was below 100 mercurial, that is how we tested. He had a subnormal temperature. I took temperature by the rectum.

Q Is that all you found out that time? A Yes.

The Court: Did you treat him after?

The Witness: Yes, sir, right along.

40 The Court: When was the last time you treated him?

Michael A. Morano, direct.

The Witness: Last month I made an examination of him.

Q Did you find him all right then? A He is O. K. There is a condition we might explain. Since 1926 he has indigestion and he vomits all the time. I don't know whether he vomits every day, but I know he does vomit, and I have to go down to see him. 10

The Court: Do you attribute that to the injuries he received in this accident?

The Witness: I think they do. On the right foot you will notice the boy walks on the right foot, and he has the tendency of inverting the toes towards the middle line. If the little fellow stands up, he has a tendency of throwing that foot inside. There is a weakness in that arch. 20

The Court: Do you attribute that to the accident?

The Witness: Yes, I attribute that to the accident. I don't know whether an X-ray was taken. I didn't take any X-ray, I didn't think it was fractured. Of course in the left elbow joint there is a weakness in the carrying function. I tested that out on the boy. By that I mean in order to have a hundred per cent. carrying function in taking up a pail of coal and lifting it, we have a tendency of bringing the elbow joint against ourselves. In other words the forearm has a tendency of going outwards. You will notice on that boy he can't do it. 30

The Court: What percentage would you say this weakness in carrying function is?

The Witness: I can't say. 40

Michael A. Morano, direct.

The Court: Is there any permanent disability?

The Witness: Yes, sure.

Juror No. 11.

10 Q Are these the original notes you made at the time of the accident? A I got the notes home.

Q That is a copy of them? A Yes.

Q You said the boy was a normal boy before the accident? A Yes.

Q Was he overweight, underweight or normal weight? A Normal weight.

Q You testified the boy's blood pressure was below normal? A Yes.

20 Q How much below normal, how much was it? A About ninety milometers.

By Mr. Perkel.

Q He hasn't got the full action of his left arm? A Yes, except he can't extend it. I mean the full extent of the arm. He can fully flex it, but not fully extend it.

Q How many visits did you make, doctor? A Fifty-seven visits.

30 Q Since the time of this accident? A Yes, sir.

The Court: What is the reasonable charge for those services?

The Witness: Three dollars a visit.

The Court: Have you been paid?

The Witness: Never, no.

Juror No. 11: Did you make any X-rays at all on this boy?

40 The Witness: No, sir.

Michael A. Morano, cross.

Cross examination by Mr. Cox.

Q You did know, however, an X-ray had been taken, did you not? A No, I didn't.

Q You were never told an X-ray was taken of this boy? A No.

Q You didn't use a fluoroscope on this boy, did you, to see the condition of his stomach and intestines? A No. 10

Q This blood which you say you found in his vomit after the accident, you tested the contents and testified it came from the stomach? A Yes.

Q You also said he had a cut on the inside of the lip, and it might have been the blood from that? A I don't think so.

Q It might have been. A That is up to yourself. I didn't think so myself. That was in the vomitus and would not tell you it was a condition from the lip. I mean the amount of blood I found in the vomitus which they saved when I got there that night, and the boy vomited the next day and for two days after that. Of course the blood decreased in amount every day. 20

Q You can't tell but that all that blood didn't come from his lip? A I don't know.

Q What did you treat this boy for before the accident? A Minor colds, bronchitis. 30

Q Did you treat him for injuries to that arm before that accident? A No, sir.

Q Did you have occasion to take his blood pressure before the accident? A No, sir.

Q Then how do you know that the blood pressure after the accident wasn't the same as before the accident? A Well, you take the normal blood pressure for that child, you take at least 105 or 110. 40

Joseph Patrone, direct.

Q How do you know this child was normal as far as blood pressure is concerned? A No boy can have a blood pressure of 90 milometers and be normal.

Q How do you know he was normal as to his blood pressure? A I don't know that.

10 Q Why didn't you bring your original notes today, doctor? A I really didn't have to take them. I took a copy. I have been attending him so long I already knew his condition.

Q Is there any reason why you couldn't bring the original notes? A It is just a piece of paper and I copied them down.

The Court: In other words, you didn't have to use them to testify?

20 The Witness: No.

Q You copied those notes exactly from that piece of paper? A Yes.

Mr. Perkel: That is all.

JOSEPH PATRONE, sworn.

Direct examination by Mr. Perkel.

30 Q What is your full name? A Joseph Patrone.

Q What was your occupation, and where did you live on September 20, 1926? A 523 Jefferson street.

Q And your occupation? A Jitney driver.

Q In the City of Hoboken? A Yes, sir.

40 Q What were your shifts at that time, do you remember? What shift did you work? A Night.

Joseph Patrone, direct.

Q What hour did you start? A Six to six.

Q Six at night to six in the morning. On that evening in question, about 5:15, were you on Jefferson street, Hoboken? A I was going to work, yes, sir.

Q Did you see anything unusual? A I seen a car up on the sidewalk of 510 Jefferson street. I stopped there and asked what was the matter and they told me— 10

Q Don't tell us what you were told, just tell us what you saw. A I seen a car on the sidewalk of 510 Jefferson street.

Q Now what kind of car was it? A A Ford, half-ton truck, and the landlord of the house told me—

The Court: Please don't tell us what anybody told you, nor what you said but what you did. 20

The Witness: I saw a car up on the sidewalk.

Q Did you do anything when you saw the car up on the sidewalk? A Sure, the landlord of the house told me—

The Court: Did you do anything?

The Witness: No, sir. 30

Q Did you see Anthony Pasquale at any time? A No, sir.

Q When you came around he was not there, is that it? A Yes.

Q Did you attempt to push the car off the sidewalk? A I got the people to take it off.

Q Did you try to do that? A Yes, sir.

Q What did you do, crank it up, or what? A No, sir. I got in the car to take it off. I shoved 40

Joseph Patrone, direct.

the emergency brake down and there was a key down in the magneto.

Q When it was down, you mean released?

The Court: Off or on?

The Witness: Off.

10

Q In other words the brakes were off? A Yes.

Q On a Ford car when the brake is down, is it in gear? A Yes, it is in gear.

Q It is in high speed? A High speed, yes.

Q There are only two speeds? A Low speed and high speed.

Q When the emergency is released, it is not on? A Yes.

20 Q And you noticed a key in the magneto?

The Court: Where was the key?

The Witness: In the lock on the magneto, to turn the magneto.

Q What does that mean, what condition does that refer to? A That is what I found in there.

Q Does it have to be in there for the car to run? A Well, if you start the car it has to be there.

30

Q Did you remedy that condition and take it out? A I got in the car, lifted up the emergency brake, and started it, and took it off the sidewalk near the curb.

Q Was the motor running? A No, sir, but it was before.

Q Did you shut it off? A I drove it off.

Q You cranked it up? A I cranked it up.

Q Turned it over? A I turned it over.

40 Q And drove it off the sidewalk? A I drove it off the sidewalk.

Joseph Patrone, cross.

Q Did you leave it there? A I left it there.

Q Were you requested to drive it away? A
No, sir.

Q What did you do, go on your way? A
The owner of the truck came down.

Q Who is that? A I don't know his name.

Q The owner of the truck? A Yes, he came
down and we told him what happened. He was
so nervous he shot away with the truck. I don't
know who the owner is. 10

Q Did you notice any distinguishing marks
on the truck, any name?

Mr. Cox: We have admitted ownership.

Q That is all you know? A That is all I
know. 20

Cross examination by Mr. Cox.

Q Mr. Patrone, at the time you got there,
there was quite a number of people already
around this car, were there not? A What was
that?

The Court: There was quite a crowd
there?

The Witness: Yes. 30

Q Do you know whether Mr. Aronson was
there at that time or not? A What is that?

Q Do you know whether Mr. Aronson was
there at that time or not? A No, sir.

Q You don't know? A No, sir.

Q You don't know how that key got in the
lock? A No, sir.

Q When you say you cranked the car, you
mean you stepped on the starter, is that right?
A Yes, sir. 40

Joseph Patrone, cross.

Q And there was quite a crowd, quite a bit of excitement when you got there? A Yes, sir.

By Mr. Perkel.

10 Q Mr. Patrone, you mean you cranked it with a handle? A I lifted it with the crank handle.

Q You didn't step on the starter? A No.

Q That is what counsel asked you. A I didn't hear him right.

Q You turned the handle of the crank? A Yes, sir.

Q That is how you turned it over? A The crank handle.

By Juror No. 12.

20 Q Was there a battery in the car, a starter? A I couldn't tell you, I did not look.

Q You cranked it, and the engine was dead before that? A I lifted up the emergency brake and shut it off.

30 The Court: Now taking the direction in which that car was headed at the time you found it on the sidewalk, can you tell us whether that street is on a grade one way or the other?

A It looks level to me.

By Mr. Cox.

Q You couldn't tell us whether or not there isn't a slight rise toward the center of the street, whether it isn't slightly crowned in the middle? A I couldn't tell you.

40 Q You don't know whether the street isn't slightly upgrade in the middle there from 505

Anthony Pasquale, Jr., direct.

to 510, it is just like level to you? A Like level to me, yes.

ANTHONY PASQUALE, JR., sworn.

10

Direct examination by Mr. Perkel.

Q Anthony, do you remember about two years ago, on September 20, 1926, you met your daddy when he was coming home from work? A Yes, sir.

Mr. Cox: I don't think that should be so leading.

Q Will you tell us, Anthony, where you met your daddy, what you did when you met your daddy? A I met him on Fifth street, I asked him for a cent, and he give me a nickel. Then I went in to buy candy, and I came out and met my brother. 20

Q You asked your father for a penny and he gave you a nickel, and you bought candy, did you eat that candy? A Yes.

Q Where was the candy store, down the block? A Next door. My brother wanted some. I wanted to give him some, and I fell down. 30

Q What happened, did anything knock you down? A A car hit me.

Q Did it go on top of you, Anthony, the wheel or anything? A Yes.

Q Somebody picked you up? A Yes.

The Court: Did you have any hurts?

The Witness: Yes.

40

Anthony Pasquale, Jr., cross.

The Court: Did it hurt you?

The Witness: Yes.

Q How long did you feel that hurt, how long did it last? A I don't know.

10 Q Can you move your arm now all the way?
A No.

Q Is your foot all right now, the left foot?
A It is my right foot.

Q Do you know whether you wear a larger sized shoe? A Yes, sir.

Q Suppose you take your coat off and show these gentlemen your arm here? A (Witness demonstrates.)

20 Q You can't move it all the way up here? A No.

Q Does that hurt you? A Yes.

Q And that is a larger shoe that you wear? (Indicating.) A Yes, thirteen and a half.

Q What do you wear there (indicating), a different size? A Yes, a different size.

Q You know Dr. Morano, your doctor, don't you? A Yes.

Mr. Perkel: That is all.

30 *Cross examination by Mr. Cox.*

Q Anthony, before you button up your sleeve, would you mind stepping down again? A (The witness demonstrates.) If I stretch it out it hurts.

Juror No. 11: Can you put your hand up this way, over your head?

40 The Witness: (Witness complies.)

Anthony Pasquale, Jr., re-direct.

Q What had you been doing before your father came home? A Playing.

Q Who were you playing with? A My little cousin.

Q Were there any other children playing with you and your little cousin? A No, sir.

Q No other children around there before you got this candy? A No, sir. 10

Q Anywhere around there that you know of? A Me and my cousin was playing tag.

Q Was anybody else playing tag with you? A No, sir.

Q How about your little brother, where was he? A He was playing, he was in the park.

Juror No. 11.

Q Did you see the car coming before it hit you? A No. 20

Q You didn't hear it? A No.

Juror No. 11: Do you know whether the engine was running, did you hear any noise?

The Witness: No.

Juror No. 11: And until it hit you, you didn't know what was going to hit you?

The Witness: No. 30

Re-direct examination by Mr. Perkel.

Q Do you remember what class you were in school at that time? A Yes, sir.

Q At that time? A 1-B.

Q What was your teacher's name? A Miss Klines.

Q What class are you in now? A 3-A.

Q And you were promoted? A I wasn't there. 40

Alice Pasquale, direct.

Q Were you promoted that time in January, after the accident? A Yes, sir.

Q But you were left back subsequently, because of illness, or because you didn't go to school?

10 Mr. Cox: I object.

Mr. Perkel: No further questions.

ALICE PASQUALE, sworn.

Direct examination by Mr. Perkel.

Q Mrs. Pasquale, you are the mother of Anthony? A Yes, sir.

20 Q How many children have you? A Six.

Q How old is your oldest child? A Fourteen.

Q And the youngest? A Two years.

Q Speak up so everybody can hear you. On September 20, 1926, before that, your son Anthony, was he in good health? A Yes, sir.

Q And nothing the matter with him? A No, sir.

30 Q On that day in question did anything happen?

The Court: Did anything happen to him?

The Witness: No, I didn't see anything; I was upstairs.

Q What was the first thing you saw or knew of? A My husband had just come home from work. He opened the door, and we heard a crash. He ran inside and looked out the window.

40

Alice Pasquale, direct.

I was ill at the time, and he said to my sister, "Don't let her go to the window."

Q What next occurred, did you go downstairs? A He ran downstairs. I ran down after him. I saw a woman with a child hollering, "Whose child?" It was too crowded to go down the stoop so I went down the back way. 10

Q What did you see? A I saw my child.

Q Did you pick him up? A No, sir.

Q Somebody else did? A Yes, sir.

Q They took him to the doctor, and that is all you know? A That is all I know.

Q Do you know if your son Anthony lost any time in school as the result of this accident? A Yes, he did.

Q Was he promoted? A No, sir. 20

Q How much time did he lose because of this accident? A He lost six months the first year.

The Court: You mean he didn't go to school?

The Witness: No, sir, he didn't go to school.

The Court: Was he in bed as a result of this accident?

The Witness: Yes, he was. 30

The Court: How long?

The Witness: He was in bed without getting out. He didn't even get out of bed. I had to give him everything in bed three weeks.

Q How long was he in bed? A At least three weeks he couldn't get up.

Q You called your family physician, Dr. Morano, to see the child? A Yes. 40

Alice Pasquale, cross.

Q You heard your husband testify yesterday that the doctor's bills would amount to over three hundred dollars? A When my husband took him home from Dr. Romano I was very nervous, so I called in another doctor. He sent his assistant but he told me he couldn't touch the child.

10

Q Did he do anything, did he treat him? A He wouldn't treat the child because he said I had already taken him to a doctor.

Q You had other doctors besides Dr. Morano? A Yes.

Mr. Perkel: That is all.

Cross examination by Mr. Cox.

20

Q He was in school two and one-third days in October, 1926? A Yes.

Q And he was in school sixteen and one-half days in November, 1926? A That I couldn't say.

Q And he was only absent a day and a half in November? A That I couldn't say.

Q Would you say that was about the time he was in school? A What is that?

30

Q Would you say that was about the time he was in school? A I couldn't really remember.

Q You would not say whether that was right or not. And in September wasn't he in school sixteen and one-half days, and absent one and one-half day? A I don't recall that.

Q And in January wasn't he in school seventeen days and absent only four? A I don't remember that.

40

Dr. Joseph Adler, direct.

Re-direct examination by Mr. Perkel.

Q You don't know, you don't keep any records of those dates he was home from school? A No.

The Court: What makes you say he was home six months? 10

A He was home six months.

Q Explain to the Judge what you mean by "home six months." A I mean that he wasn't there for examinations, he was left back. That left him six months back in school.

The Court: You don't mean he was absent from school six months? 20

The Witness: No.

Q And as the result of not being able to be present at examinations, and because of absences he didn't make up the six months?

Mr. Cox: I object.

The Court: I sustain the objection.

30

DEFENDANT'S CASE.

DR. JOSEPH ADLER, sworn for the defendant.

Direct examination by Mr. Cox.

Q Dr. Adler, you are a practicing physician in the State of New Jersey? A Yes.

40

Dr. Joseph Adler, direct.

Mr. Perkel: I admit the doctor's qualifications.

Q Did you examine Anthony Pasquale, Jr.?

A I did.

Q How many times did you examine him? A
10 Twice.

Q What was the date of your first examination? A October 28, 1926, and the second examination was yesterday.

Q Will you tell us what you found to be the matter with the boy on October 28, 1926? A I found that he had sustained a fracture of the left elbow, involving the humerus, that is, the bone running from the shoulder to the elbow. That fracture at the time of the examination was united in good condition, there was a little deformity. The bone was slightly enlarged as a result of callous formation. There was an impairment of extension, that is extending the arm forward. There was no impairment of flexion. I also found he had sustained two abrasions on the right ankle, over the instep. Those abrasions were healed, there were discolorations there, two of them, each the size of a silver dollar. There was no impairment of function of the ankle joint. There was still some swelling about the instep. I found no condition that would permit a diagnosis of his having sustained an injury to his chest or stomach. I was informed that he had been vomiting. There was no indication of those conditions at the time of the examination.

20
30

Q Did you make an examination yesterday, and what did you find? A Yesterday's examination showed that the swelling of the ankle had disappeared, there was no loss or disability about

40

Dr. Joseph Adler, cross.

the ankle; it shows that the restriction of extension in the elbow had improved. It is a great deal less than it was at the time of the first examination.

Q What do you estimate that restriction to be at the present time, of extension? A There is a disability of approximately five per cent. of extension, that is, there is a limitation of movement of approximately five per cent. If both arms are extended, not one, both, then the comparison can be made. If you bring him up I will show you how the examination can be made, and that there is little impairment of extension.

10

(Doctor demonstrates with plaintiff Anthony Pasquale, Jr.)

Q At the time of making the first examination did you get any history from the parents? A I did.

20

Q Did they give you the time of day this accident happened? A They did.

Q What time did they say it happened? A September 20, 1926, about 4:30 P. M.

Cross examination by Mr. Perkel.

30

Q Your first examination was made one month and eight days after the accident? A Yes. The accident was the 20th and my examination was made the 28th. His parents were present, both of them.

Q At that time, one month, later, you found his left elbow was fractured? A That's right.

Q And there was a deformity there? A There was.

40

Dr. Joseph Adler, cross.

Q And that impairment of extension that you just showed to the jury? A That impairment at that time was greater than at this time.

Q You also found abrasions over a month later? A I found discolorations to indicate two abrasions has been sustained over the instep.
10 The discoloration showed that they had been there.

Q The abrasions weren't there? A The abrasions had healed.

The Court: An abrasion is a scratch.

The Witness: The scraping of the tissue where the skin was scraped.

Q There were no signs on his chest at all?
20 A None whatever. His chest was absolutely normal at the time of the examination. The stomach was normal at that time.

Q Did you take the blood pressure? A No, I didn't. The boy appeared to be of normal average for a boy of six years of age.

Q You didn't take the blood pressure? A No, I didn't.

Q You don't know what the blood pressure was? A His heart and bowels were normal,
30 the heart normal, the heart sounds were normal for a boy of the age of six. I took no blood pressure, there was no necessity for taking it. If there was any abnormality I would have taken it.

Q It was possible for those abrasions and scratches to heal between the time of the accident and the time you made the examination? A Which abrasions?

Q The ones you described? A They had
40 healed. They were there and they had healed.

Dr. Joseph Adler, cross.

Q Suppose there had been abrasions or scratches on his chest, would it have been possible to heal within a month? A If there had been abrasions there would be some discoloration to show on the skin. Where the skin is normal in color there is nothing abnormal about it, and there would be no way of diagnosing an abrasion, you couldn't say there was even a skin injury, because a scratch will leave its mark for weeks afterwards. 10

Q Did you examine the leg? A I examined the foot.

Q The foot? A Yes.

Q Will you describe what you found one month and eight days later? A I found the boy had sustained two abrasions, and that there was a swelling about the instep. 20

Q That is all? A That was all that there was there.

The Court: But the action is all right?

The Witness: There was no disability.

The Court: There was no disability about the foot then?

The Witness: The complaint was made that the boy had sustained abrasions and contusions to the ankle. Those injuries were given by the parents, the parents gave the history and also the injuries that had been sustained, and I examined the boy for the injuries as given me by the parents. 30

Q After your examination yesterday, doctor, you are of the opinion that there is just five per cent. failure of action? A This child I am giving the benefit of the doubt, because the boy straightened his arm up in the other room in 40

Dr. Joseph Adler, cross.

the presence of his parents and the other doctor a great deal better than he did here. I didn't want to pull the arm out and cause him any pain, I wanted him to do just what he did in the other room.

10 Q Do you think rainy weather might have some effect on a condition of that sort?

Mr. Cox: I object to that.

The Court: This is cross examination and he has a right to test the doctor.

Mr. Cox: I will take an exception, please?

The Court: Yes.

A I have heard it said that they have pain, and then again I have had my patients I have treated
20 for pains say that they do not have it.

The Court: You don't know?

The Witness: I don't know.

Q You made the examination at the request of the defendant? A I did.

Juror No. 11: You said he suffered a certain loss of motion and extension of five
30 per cent. Could that have been corrected by massaging?

The Witness: That could be corrected at this time by use and massaging of the elbow.

Juror No. 11: In other words, it can be cured?

The Witness: It can be straightened right out. There is a lot less than five per cent. if the boy extends his elbow as he did yesterday.

40 (Doctor demonstrated.)

Anthony Pasquale, Sr.—George Freund, direct.

His elbow extended that way as compared with my right. His left elbow had very little disability.

Q Could the boy's foot be corrected somewhat by massaging? A There is no disability of the boy's foot at this time, the boy has no disability. 10

Juror No. 11: Are those your original notes?

The Witness: Yes, taken at the time.

ANTHONY PASQUALE, Sr., recalled.

Direct examination by Mr. Cox. 20

Q Mr. Pasquale, is there any change in Jefferson street, the paving of it, between the day of the accident, September 20, 1926, and July 25, 1927? A Not to my knowledge.

Mr. Cox: That is all.

GEORGE FREUND, sworn. 30

Direct examination by Mr. Cox.

Q What is your business? A I am a surveyor.

Q How long have you been a surveyor? A Ten years.

Q And during the course of your experience as a surveyor had you any necessity for mak- 40

George Freund, direct.

ing maps of streets and street locations? A I have.

The Court: Did you make this map that is here on the table?

The Witness: I did.

10

Q What date did you make that map? A July 25, 1928.

Q Will you step down and explain the map that is on the blackboard?

Mr. Perkel: I interpose an objection at this time on the ground that there is no proof that the street was in the same condition on September 28, 1926.

20

The Court: Except what your own witness has said. I overrule the objection.

Q I notice that that is marked Jefferson street. Can you tell us the number of the houses along that street, where you made this map?

A The numbers on the east side are 503 to 513 inclusive. On the westerly side 502 to 514.

30

Q And on the numbers that are on this map indicate the number of the lots? A They indicate the number of the houses.

Q Right next to 503 and 505, and between 503 and 505, and number 511 there is a black space, what does that indicate? A That indicates the pavement line.

Q Now, can you give us the width of Jefferson street at that point? A Thirty-two feet and six inches.

The Court: What is the scale?

40

The Witness: One inch in ten feet.

George Freund, direct.

Q Did you make this map so you could tell whether or not there was any grade on Jefferson street? A I have taken the elevation showing the respective pikes at different points.

Q Just how did you arrive at the elevation?

A I assumed the curb to be an elevation of ten. The prolongation of the north side of number 505. 10

Q Do you mean the top of the curb or the bottom of the curb? A The top of the curb in an elevation of ten feet.

Juror No. 11: Ten inches?

The Witness: Ten feet, that is the height.

Q As you go from 510, or rather as you go towards 511 Jefferson street from 505, is there, or is there not any grade? A The grade is upward from 505 to 511. 20

Q What is the elevation of the center part of the street in front of 505? A The elevation is 10.11, showing a rise from the pavement at the curb to the center of the street.

Q And is that center of Jefferson street in front of 505 higher than the top of the curb? A Yes.

Q Eleven inches? A Yes, eleven hundredths of a foot higher than the top of the curb. 30

Q And in front of 511 what is the elevation in the center of the street? A The center of the street is 10.52.

Q What is the difference in inches between the center of the street in front of 505 and 511? A Five inches difference.

Q What is the difference in height between the pavement at the curb at 505 and the pavement in the center of the street in front of 505? A Six inches. 40

George Freund, cross.

Q Could you tell me how far it is in a diagonal line, measuring in the shortest distance from 505, from the center of the two buildings 503 and 505, to the driveway that you indicate on the map at 510? A You mean the distance from the curb opposite the center of the building?

Q Yes, sir. A The distance from the curb opposite the center of the buildings 503 and 505 to the center of the driveway in front of 510 is 87 feet.

Q Do you recall what the pavement of Jefferson street is at that point? A I believe it is an asphalt pavement.

Cross examination by Mr. Perkel.

Q You said you assumed that the curb had an elevation of ten inches? A Ten feet.

Q What do you mean you assume? A You assume some data and get other elevations from the point. You get the respective differences in height.

Q Isn't there any way of measuring other than that? A It is assumed data. You have got to assume something to start with to get the relative distance of a point pertaining to that data.

Q Did you measure the corner of the street, the end of the block? A Seven hundred feet beyond where I stopped.

Q Where was the last point you stopped? A Fifty feet north of 514.

Q What was the elevation? A 10.37.

Q Now, explain what is the difference in feet or inches between the beginning of the block here and fifty feet beyond 514? A There is 10.4 from the point fifty feet north of 514 to the

George Freund, cross.

north line of Fifth street at the center line of Jefferson.

Q What is the difference, if you know, from here to there (indicating)? A 250 feet.

Q So that 250 feet contains a gradual rise of about ten inches?

10

The Witness: No, that isn't there. There is a summit in the street opposite number 510.

Q Opposite 510 it reaches the highest point?

A There is a straight grade north of Fifth street for 150 feet, the north side of 510.

Q From 510 to fifty feet beyond 514 there is ten inches rise, is that right? A Yes.

Q From 510 you said from here (indicating) to fifty feet beyond 514 there is a rise of ten inches? A (Indicating). There is a drop from this point to that. 20

Q It is an uneven street? A There is a summit opposite the north side of 510.

Q Is there a gradual rise there from here to there (indicating)? A There is a rise of 12 inches from this point to here (indicating the point marked X).

Q From this point to this point, it drops again (indicating)? A It drops two inches in one hundred feet. 30

Q So that this point is still higher than this? A Exactly.

Q Between this point 503 and 505, to about the point where you indicate below, what is the rise there, if there is any rise? A Approximately six inches.

Q How far away are these poles, about (indicating)? A Eight and a half feet, (indicat- 40

Joseph Aronson, direct.

ing two poles on the south side of Jefferson street, one in front of 503 and the other in front of 505).

Q From here to this pole there is a rise of six inches (indicating)? A That is correct.

10 Q What is the rise indicated from the center of the street to the curb stone in front of 500?
A I haven't got it there, I have it to there (indicating). There is five inches difference. The crown of the street is higher than the pavement at the curb.

Q You made an examination at the request of the defendant? A For Mr. Cox.

20 JOSEPH ARONSON, the defendant, sworn.

Direct examination by Mr. Cox.

Q Mr. Aronson, you are being sued in this case, are you not? A What?

Q You are being sued in this case, you are the defendant here? A Yes.

Q On September 20, 1926, did you own an automobile? A Yes.

30 Q Did you own an automobile on September 20th? A Yes.

Q What kind of automobile was it? A Ford.

Q What kind of Ford was it? A A Ford that I kept for my work with a little box in the back to keep glass inside.

The Court: A T model truck?

40 A Yes.

Joseph Aronson, direct.

Q Was it a runabout or truck? A A runabout and a box on the back.

Q What was your business? A Glazer.

Q On that day did you have occasion to go to 503 or 505 to do some work? A I had an order from Mr. Tony Masco, who owns two houses 503 and 505.

10

Q What did he want you to do? A Put glass in the windows. Putty the windows.

Q Did you go there that day with your automobile? A I came there at ten o'clock in the morning. I was working ahead on the two front apartments. They are five-story buildings, four families on each floor. On 505 I made two floors in the front. I made in the front two floors.

The Court: You worked there all day?

20

A I worked all day.

Q What time did you quit? A After three something around there.

The Court: Then what did you do?

The Witness: I parked the car when I started work. After when I was working in the front the kids run up on the car and blow the horn, and then I chased them. After I went to work in the back for the other two tenants what was in the back I couldn't see nothing. After I was done I came down to go home, and I didn't find my car at the curb. I saw the car is on the other side and there is a crowd of people. I run to the people to get the car, and men come out with sticks and want to kill me, and some of the kids say I just came out of the house and they took me away and put me in the car and told me to go away.

30

40

Joseph Aronson, direct.

Q When you stopped your car, whereabouts did you park the car? A By the sidewalk.

Q What did you do when you brought your car to a stop? A What?

Q What did you do when you brought your car to a stop?

10

The Court: What did you do when you stopped the car?

The Witness: I took out my key and went to work.

The Court: Did you take the key with you?

The Witness: I did.

The Court: No key in the car at that time?

20

The Witness: It was still when I was working, the car was by the curb.

The Court: I know that. When you took the key out of the car that locks it?

The Witness: Yes, it locks it.

The Court: And nobody can start the engine then after you have taken the key out?

30

The Witness: They could start it. Even after when I came there the people was laughing at me.

Q Do you know whether your motor was stopped or running when you went upstairs? A Stopped.

Q After the accident you say you went across the street where these people were standing around your car? A Yes.

40 Q Did you have your key with you at that time? A With me, with me, yes.

Joseph Aronson, direct.

Q What happened to your key when you went across the street where the people were, did you do anything with it? A The car was standing there still.

The Court: What did you do with the key? 10

The Witness: I had it in my hand.

The Court: Did you keep it there?

The Witness: In my hand.

The Court: Have you got it yet?

The Witness: No, I haven't got it yet.

The Court: What did you do with your key after you got across the street and saw the people there?

The Witness: They put me on the car and started the car, and I went away. 20

The Court: Nobody had the key until you got in and started the car?

The Witness: Yes.

The Court: Nobody else started it?

The Witness: Nobody else.

Q What I want to know is whether you kept the key in your possession until you got in the car, or was it taken away from you? A I had it. 30

Q And after this accident did you try to start your car without your key, yes or no. That is what I want to know. A Yes.

Q And you started it without a key? A I could, yes, they told me now—

Q How could you start your car without a key? A Put a penny in the hole of key and turn the whole like the key and it started up. 40

Joseph Aronson, direct.

Q Did you notice any pennies in the car after that? A I didn't notice.

The Court: You are sure that you just took a penny, you couldn't start it unless you had a penny?

10

The Witness: Yes.

Q Now you say you put a penny, does the penny go all the way in in the slot, or part of the way? A There is a hole where the key goes in, you put a penny in, after that goes in, turn the key.

20

Q What happened to the car from the time you put it there in the morning until you went out to go home in the afternoon? A What say?

The Court: Between the time you put your car there until the time you found it was on the sidewalk, at any time did you go to the car and see it?

30

The Witness: When I was in the front of the house on the third floor and was watching through the windows, I was putting sash in the windows. The kids came in and they blew the horn. The car was still. I hollered to them and chased them away. After I went in the back rooms and fixed them windows then I didn't see nothing. I couldn't do nothing.

By the Court.

Q After you saw the children and they blew the horn, what time was that? A What do you mean time?

40

Joseph Aronson, direct.

Q When you saw the children blow the horn?

A In the morning when I stopped there.

Q Right away? A Right then.

Q Now, did you go down to see if any attention was required about that car after the children blew the horn and were playing around there, did you go out again? A I came down to take my tools and glass, and so forth. 10

Q When you did that had the children down there blown the horn before you took the tools out? A Yes, before, and after too.

Q After that time did you see any children or hear any horn? A All the time when I was working in front one goes away and another comes there.

Q Did you go down at any time to see if the car was all right after you had seen these children there do something? A I did come down, yes. 20

Q Did you look at the car? A I did, yes.

Q Was it all right? A It was all right.

Q Was it locked? A It was locked up, the car was still.

Q When was the last time before you quit that you heard the horn blown or saw children around the car, when was the last time? A The last time I didn't here at all; I was in the front first and then I was in the back. 30

Q When was the last time you did hear? A When I was working in the front.

Q When was that? A The forenoon.

Q Did you go down after that last time to see your car? A I came down to go home.

Q After this last time in the morning just before noon when you heard the horn blown, the last time you saw the children, did you go down and see the children after that? Yes or no. A Yes. 40

Joseph Aronson, direct.

Q When? A When I went to work in the other rooms I went down to get glass and sash and tools.

Q After that you didn't hear anything else? A No.

10 Q All the time in the afternoon you didn't hear or see anybody? A I was working in the back.

By Mr. Cox.

Q Did your car have a starter on at that time? A Yes.

Q Did it work on that day? A It was working.

20 The Court: Would it work while it was locked?

The Witness: Not if it is locked, if it is open.

Q Would the starter turn over without your turning the switch on the engine, do you know that? A What?

30 The Court: Will the starter work when you have got it locked up and got the key in your pocket?

The Witness: No, it wouldn't work. You turn the key.

Q You have got to turn the key in order to use the starter? A To use the starter, certainly.

Q And did you ever step on the starter without first unlocking the car? A No.

40 Q Do you know where that lever on the left-hand side of your car was when you got out of your car?

Joseph Aronson, cross.

The Court: Were the brakes on, did you put on the brakes?

The Witness: The brakes were closed up when I came.

The Court: I want to know when you locked the car if you pulled the lever and applied the brakes? 10

The Witness: Certainly I did.

Cross examination by Mr. Perkel.

Q You say your car is a runabout? A A runabout with a box in the back.

Q Did you buy the car for pleasure purposes and put a box on yourself? A I bought the car for my work.

Q It was all constructed as a working car? 20
A I bought the car for the work.

Q Do you know whether or not that car was called a half-ton truck? A Yes, sir.

Q That is a half ton, isn't it? A It wasn't a half-ton, it was a smaller one.

Q Now, you say you got an order and came to do work about ten o'clock? A Yes.

Q How many windows did you patch in the front? A In the front in each apartment three windows, three and three is six. 30

Q Six. A Six I made in the back, four floors I made.

Q That is twelve windows? A Six in the front and six in the back.

Q What did you have to do, putty them, insert sash cord, and some glass, too? A Yes.

Q When you came to work at ten o'clock that day, you brought all those materials in the car, all the glass, all the sash cord, and putty, etc.?
A Yes. 40

Joseph Aronson, cross.

Q Did you have lunch, did you have dinner?

A Dinner? If I came at ten o'clock to work I didn't eat.

The Court: Did you do anything that noon?

10 The Witness: No, I didn't, I tried to finish up the job and go home.

Q You have got a Claxon horn, the kind you push down and makes a big noise, is it just a button? A A button.

Q Can that horn sound with the motor off?

A Yes.

Q That horn can sound with the motor off?

A Yes.

20 Q Isn't that horn connected with the motor?

A To the motor.

Q Then it can't sound if the motor is off?

A Certainly.

Q You mean to say it blows without the switch being thrown on? A Yes.

Q And it is a regular Ford car? A A regular Ford, yes.

Q That is the way you bought it, you didn't install that, you didn't buy a horn separately?

30 A Yes.

Juror No. 4: What year Ford is that?

The Witness: 1921.

Q And this horn blew while you were up fixing the front windows? A Yes.

Q You heard it blow a few times and the motor was off? A Yes.

40 Q Now, when you came down about three o'clock you say it was on the sidewalk? A I came down, it was a high stoop there—

Joseph Aronson, cross.

Q Never mind that—when you came down was the automobile on the sidewalk in front of 510 or 511, or was it in the gutter? A It was on the other side.

Q Was it on the sidewalk? A It was on the sidewalk with the back wheels—

Q The front was on the sidewalk and the back was where? A The front was on the sidewalk and the back wheel was turned a little on the sidewalk. 10

Q The front was in the street?

The Court: Do you know what a curb is?

The Witness: Yes.

The Court: Was the front in the street and away from the curb?

The Witness: The front was in the street and the back wheels to the sidewalk. 20

Q In other words the car was facing as though the car was going to go right off the sidewalk into the street? A Yes.

Q You don't know how it got there, who turned it around? A I came there and many people came out with sticks and wanted to hit me. Some people say it isn't my fault, I just came down from the house working.

Q Didn't it strike you peculiar that the automobile should be in such a position after you had left it parked? A No. 30

Q And when you came down you started away? A I started, surely. They put me up on the car and they took me away from the people. They would kill me there. As soon as I got in the car I went away.

The Court: You are sure about this. You had those keys in your pocket and 40

Joseph Aronson, cross.

kept them there until you got in the car after the accident and started the car up yourself, you are sure?

The Witness: I am sure.

10 Q How did you start at this particular time, you testified you started the car? A I started the car.

Q You put the key in? A I put the key in myself.

Q You carried it in your hand? A I carried it in my hand.

Q Do you know what kind of key it was, was it a modern Yale lock or a regular Ford key? A A Yale lock.

20 Q Did you put that on yourself, or did it come with the car? A It came with the car.

Q A Yale lock on a 1921 Ford?

The Court: Have you got the key?

The Witness: No. I haven't got the key, I haven't got the car even.

Q You put the key in, stepped on the starter, did you pull the brake, or was the brake already on? A What you say?

30 Q Did you pull the brake up? A Of course, if you start the car you got to pull the brake up.

Q You stepped on the starter and started away, the starter worked? A Yes.

Q And you drove off the sidewalk and started away? A They put it in the middle of the street, there was many people.

40 Q Who do you mean? A There was many people, some of them started to hit me. Some of them they say it wasn't my fault. They put the car in the middle of the street, put me on the car and drove away.

Joseph Aronson, re-direct.

Q You didn't ask anybody about what had occurred? A No.

Q You were excited? A I was excited, because I was scared. I was excited and went away.

Q Do you think a nickel was put in this? A If you want to listen to my story. After I came back in Hoboken to do my job they laughed at me. 10

Q Never mind that. You say a penny could do it? A I did after trying.

Q Did you know that at that time? A After I tried myself.

Q Did you try it? A I tried it, it did open.

Q A Yale lock? A It did open.

Q You are sure about the horn blowing? A Yes. 20

The Court: How about a quarter, did you try a quarter?

The Witness: No, a penny.

The Court: And not a dime?

The Witness: Not a dime.

Juror No. 4: The horn would blow without the switch turned on? 30

The Witness: From the beginning they fixed me up, so I can blow the horn right away. When I bought it I got it so I could blow the horn when I want.

Re-direct examination by Mr. Cox.

Q Did you have any extra locks put on the dash of the car besides the one that was there when you bought the car? A I never used that. 40

Joseph Aronson, re-cross.

Q Was the lock that you speak about on the car when you got it, or did you put another thereon? A I didn't.

Q You don't know whether it was a Yale lock or what it was? A No.

10 Q Do you know when they took—did you see them take your car off the sidewalk, yes or no?

A When I—

Q Did you see them run your car off the sidewalk? A On the other side.

The Court: Did you see anybody beside yourself back or move that car off the sidewalk before you got in it?

The Witness: Before I got in it? There was standing a whole lot of people.

20

Q Did they do anything to it, did they change it or move it? A I will tell you something else. They took and pushed the car on the street.

The Court: Then the people did move the car?

The Witness: The people did move it.

30 Q Did they move it by running the motor or not? A I could not tell you how it was.

Q Was there any key in the lock of that car when they put you in it to drive away? A No key in it, I had it in my hand.

Re-cross examination by Mr. Perkel.

40 Q When you came running down, and ran across the street, the front wheels of the car were over the curb facing into the gutter and the back wheels were on the sidewalk? A

Simmons L. Aronson, direct.

No, it was to the street. The front wheels facing to the street.

The Court: Out towards the center of the street?

The Witness: Certainly, and the back wheels were facing the sidewalk. 10

Q At that time, and after that, somebody pushed it off in your presence? A Yes.

Q While you were there somebody pushed it off? A Yes.

By Mr. Cox.

Q Do you know the difference between a driveway and a street? A I don't know what you mean. 20

The Court: Do you know the difference between the driveway and a street?

The Witness: Drive on the right side.

Mr. Cox: That's all.

SIMMONS L. ARONSON, sworn.

30

Direct examination by Mr. Cox.

Q Mr. Aronson, you are the son of Mr. Aronson, who was just on the stand? A Yes, sir.

Q Where do you live? A I live at 378 Palisade avenue, Jersey City.

Q With your father? A With my father.

Q What is your business? A Business, bookkeeping. 40

Simmons L. Aronson, direct.

Q Are you familiar with this automobile of your father's that we are speaking of? A I was.

Q Can you tell the Court and jury just exactly what kind of car that was? A Well, it was a little runabout with a collapsible shed.

10 Q A Ford collapsible shed? A A Ford collapsible shed with a box in the back, half-ton; you could carry a half-ton load.

Q Do you know whether your car had a starter on it or not? A It had a starter on it.

Q Did you ever drive your car? A Yes, sir.

Q Can you tell us whether or not it would be possible to make the starter go without turning the switch on it? A The motor would turn without you stepping on the starter.

20 Q Without turning the switch on? A Without turning the switch on.

Q Can you tell us whether or not the horn would blow without making the motor run? A Yes.

Q Or would it not blow? A After a few years we had the car a mechanic fixed it up so it would blow.

Q It would blow without the motor going? A Yes.

30 Q And after the accident did you try to start the motor without any key? A Yes.

Q Were you able to start it without a key? A I was.

Q How? A At one time with a nail file, and at another time with my finger nail.

Q What kind of lock was on that car? A A Ford lock.

Q Was there any lock put on other than that which was on the car? A Only the one on the wheel.

40

Simmons L. Aronson, cross.

Q What do you do with your finger nail or nail file when you start the car? A Turn the—I don't know what you call it—the inner leaf, turn it left.

Q There is a slot in it? A A slot where the key fits in.

10

Cross examination by Mr. Perkel.

Q This is a half-ton truck? A That's right.

Q You say a few years after you bought the car you had a mechanic install something on the car so the horn would blow without the motor being on? A Our horn would blow without the motor being run.

Q How long are your finger nails? A Now, pretty long.

20

Q And how far did you push it in? A Just to be able to turn it, that's all, sufficient to start the motor.

Q Did you ever try to start it before the accident with your finger nail or nail file? A I don't recall when I started. I don't know if it was after or before. I know it was possible to do it.

Q You knew all the time? A I don't know whether it was before the accident or after; I couldn't tell you the time I did it.

30

Q You distinctly remember sometime after the accident trying it? A I would not say after or before.

Q With your finger? A I never tried with my finger, no.

Q Did you confine your efforts to a finger-nail and nail file? A I remember those distinctly.

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Motion for Direction of a Verdict.

Q You weren't with your father on the day in question? A I don't know anything about it at all.

Juror No. 1: What kind of key was that you used to start the car?

10 The Witness: Ford key. I think it was number 64.

Q Isn't that the type of key with two prongs like a leaf? A No, it was something like a Yale key.

Mr. Cox: The defendant rests.

20 Mr. Cox: I move for a direction of a verdict on the ground that the plaintiff has not shown any negligence on the part of the defendant which was the proximate cause of this accident.

The Court: The motion will be denied.

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CHARGE.

The Court: Gentlemen of the Jury: On September 20, 1926, an automobile belonging to Joseph Aronson ran into and collided with a boy by the name of Anthony Pasquale, Jr., while this boy was presumably somewhere either on the sidewalk or on the stoop, or in the general vicinity of the stoop, in front of 510 Jefferson street in the City of Hoboken, and as a result of that contact this suit has been brought by Anthony Pasquale, Jr., through his father as his next friend, and also by his father Anthony Pasquale individually against Joseph Aronson to recover for the damages which it is claimed the boy sustained, and for the damages which it is claimed his father was put to because of this accident.

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Now, gentlemen, this defendant was in no sense an insurer of the safety of this plaintiff, although the boy may have been on the sidewalk in front of the premises to which I have referred. This defendant could only be held responsible in the event his negligence was the proximate cause of this accident, and that must be proven to your satisfaction by a fair preponderance of the evidence in this case.

Now, of course, when we say a fair preponderance of the evidence, that does not necessarily mean the greater number of witnesses on one side or the other, but it does mean the greater weight of the evidence. The reference, you see, is to the quality rather than to the quantity of the proof. And so, of course, the first thing that you will necessarily investigate is whether or not this defendant was negligent.

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Now, negligence presupposes the violation or failure to perform some duty which one person

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Charge to Jury.

owes to another. Now, here, apparently by common consent, you have a situation where an automobile is left by its owner along this street, and is subsequently found to have gone across the street and run to the sidewalk and into a boy.

10 Now, fortunately, our Supreme Court has had a case similar to this before, and has laid down the rule of care required from an automobile owner under such circumstances, and I can do no better than to read from that case wherein the Court says:

20 "Now, the general rule is that a person who leaves an automobile in a public street unattended is under a duty to exercise such care in doing so as a person of ordinary prudence would use under the circumstances. Failure to exercise such care, whereby the machine, without any interfering wilful act of another, but by force of gravity, or some other cause reasonably to be anticipated or guarded against, gets under way and inflicts injury, renders such person liable therefor in an action for damages." If that neglect is the proximate cause of the injury, and the other person claiming to have been injured is free from contributory negligence,

30 with which you will have no concern in this case because the defendant has not raised that defence that this child was guilty of contributory negligence, and probably rightfully so, too, because the child at that time was under seven years of age, and the law presumes a child under seven years of age is not guilty of contributory negligence, and I imagine for that reason that has not been raised as a defence in this case.

40 So that under the rule I have given you you are to say from this testimony that has been

Charge to Jury.

presented whether or not Mr. Aronson with regard to his conduct respecting his car which he left in the street in front of 505 Jefferson street to go to his work in that house, exercised reasonable care. Now, if he didn't he was negligent, but if he did he wasn't negligent, and if he wasn't negligent he should have a verdict against the plaintiff, a verdict of no cause of action. If he was negligent, then you must determine whether or not such negligence was the proximate cause of this accident, and by proximate cause we mean that cause which naturally and probably led up to and might have been expected to bring about this thing that happened. You see, it is the moving, efficient cause of an accident without which the accident would not have happened. You see, a person may be negligent in some respects, but unless that negligence is the proximate cause of bringing about the thing that is complained of you cannot say that there is any liability—it would not be fair. So, if it should turn out that in some respects this defendant was negligent, but his negligence was not the proximate cause of this accident, then again the defendant should have a verdict against the plaintiff, a verdict of no cause of action.

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But if this defendant was negligent, if his negligence was the proximate cause of this accident, then, of course, plaintiffs here are entitled to a verdict, and if they are entitled to a verdict then this boy Anthony Pasquale, Jr., is entitled to be compensated for the injuries he personally sustained as the natural and proximate result of this accident; the duty resting upon him of proving his damages to your satisfaction again by a fair preponderance of the evidence.

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Charge to Jury.

Now, that would include compensation for pain and suffering if you find he did experience any pain and suffering, for so long a time as he did experience it. That would also include any incapacity to which he was subjected as a result of this accident. Now, the mother tells
10 you that he was in bed for some length of time. That is incapacity, and if it resulted from this accident this child is entitled to be compensated for that. If you find that there were bones broken he is entitled to be compensated for that. I think the doctors said— I don't understand that the defendant's doctor disputes it—that this child's elbow was fractured and he would be entitled to be compensated for that. Now, there
20 is some testimony he vomited blood and that his thigh was contused, and his right foot was swollen and the skin torn off the front part of the foot or ankle, and that the boy was in shock. If those things are true then he would be entitled to be compensated for them. He is entitled also to be compensated for any permanent loss of function, if you find that there was any such loss in this case. The doctors both seem to agree that there was some loss of function.

30 Dr. Adler says that there was restriction of extension presumably, I suppose, due to this fracture of the elbow bone in the arm, or at the elbow, and that it was about five per cent.

The doctor for the plaintiff has told you, while he doesn't express it in percentage, that there is a permanent loss of function in that joint.

40 Now, the boy is entitled to be compensated for that. He is to be compensated, gentlemen, but not rewarded. Now, if he lost time at school as

Charge to Jury.

the result of this accident to him, he is entitled to be compensated for that.

With respect to the father, if you find a verdict here, he is entitled to be compensated for the reasonable medical expenses incurred by him in an effort to cure his son of his injuries.

Now, you have heard what the doctor has said. He made a certain number of visits, I think at three dollars a visit. He is entitled to be compensated for that if it was a fair recompense for the services that he rendered. But you will recall what the whole subject of the testimony upon the doctor's bills was. But there can be no recovery except if that has been proven to your satisfaction as not only reasonable and necessary, but reasonable in amount.

Now, there was a motion made by the attorney for the defendant for a direction of verdict in favor of the defendant here, which was denied by the Court, but you are not to take from that denial, gentlemen, that the Court believed the verdict should be in favor of the plaintiff, nor from anything else that has been done in this case that there should be a verdict, so far as the Court's opinion is concerned, for the plaintiff.

That is not part of the Court's function to tell you how your verdict should be. That is peculiarly your function, and in deciding this motion for a direction of the verdict the Court was merely deciding that in this case there was conflicting evidence of facts which it was your peculiar duty to determine, and therefore I am giving you this case in order that you may determine what the facts are, and after having determined the real facts in the case you will

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Charge to Jury.

apply the rules of law to the facts as you find them, exactly as I have given those rules of law to you.

You may retire, gentlemen.

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New Jersey Court of Errors and Appeals

ANTHONY PASQUALE, JR., who
sues by Anthony Pasquale,
his next friend, and ANTHONY
PASQUALE, individually,
Plaintiffs-Appellees,

vs.

JOSEPH ARONSON,
Defendant-Appellant.

*On Appeal
from New
Jersey Su-
preme Court.*

BRIEF OF DEFENDANT-APPELLANT.

This is an appeal from a judgment entered in the New Jersey Supreme Court on a verdict returned in the Hudson County Circuit in favor of the plaintiffs.

Statement of Facts.

On September 20, 1926 the defendant, Joseph Aronson, a glazier, drove his Ford car, in the forenoon, to Jefferson street, Hoboken, New Jersey, and parked it at his right curb about opposite the center of the building known as No. 503-505, shutting off the motor, setting the hand brake, and taking the key with him.

During the forenoon he was working on windows in the front of the house, replacing broken panes of glass and puttying around other panes which had become loose. The work in the front of the house occupied the entire forenoon.

While working in the front of the building, he noticed on several occasions that boys were playing on his car, blowing the horn and jumping on the running-board. Each time he saw this,

he chased the boys away. At no time, however, was his engine started; and when he made trips to his car for material while it was standing there he always found the engine shut off and the brakes set.

The defendant worked during noontime, not taking off any time for lunch, and during the afternoon worked on the back part of the house from which place he could not see his car. He heard no sounds during the afternoon.

While the car was standing there just before it started and caused the accident, Mrs. Delio was walking back and forth along the sidewalk in front of No. 503-505, but she did not hear the sound of the motor running. She first saw it in motion when it was out toward the center of the street with no one at the wheel and no one in the car. It was also seen here by Mrs. Fusco.

When the defendant came downstairs that afternoon, to his surprise, he found his car up on the sidewalk in front of No. 510 Jefferson street and a large crowd of people around it.

No. 510 Jefferson street is diagonally across the street from No. 503-505 and about eighty-seven feet from the place where the defendant had parked his car. From the place where the car stood to the place where it stopped in front of No. 510 Jefferson street is upgrade. The street, which is thirty-two feet six inches wide, is so paved that its pavement at the center is six inches higher than that at the curb. There is also a rise of forty-one hundredths of a foot from the center of the street in front of No. 503-505 to the center of the street in front of the north side of No. 510. The defendant's car to get to the scene of the accident had to climb both grades.

The defendant, upon arriving at his car as it stood on the sidewalk, learned that the infant plaintiff had been injured while he was on the sidewalk in front of No. 510. He had been removed when the defendant arrived there.

The defendant was threatened with bodily harm by members of the crowd, so someone backed his car off of the sidewalk and he was placed in it and he drove away.

After the accident he heard rumors about the cause of the accident as a result of which he inserted a cent into the slot of the switch of his car, and found that by so doing he could start his motor. He did not know this at the time of the accident. His son also found that the motor could be started by inserting a nail file or his thumb nail.

POINT I.

The Trial Judge erred in refusing to direct a verdict for the defendant and against the plaintiff.

The gravamen of the plaintiffs' complaint is that the defendant was guilty of negligence which was the proximate cause of the injuries to the infant plaintiff and the subsequent damage to his father. The acts of negligence alleged by the plaintiffs in their complaint are as follows:

- (a) Failure to use that degree of care which a reasonable and prudent person would exercise under similar circumstances;
- (b) In leaving the motor of said car running and without properly locking the same;
- (c) Failure to take the proper precautions to prevent his car from starting off;
- (d) In failing to leave someone in custody of the car while the motor was running;

(e) In parking his motor car in violation of the Motor Vehicle Laws of the State of New Jersey;

(f) In failing to have proper brakes on his said automobile.

The burden, in this case, was upon the plaintiff to prove by the greater weight of the evidence that the defendant was guilty of one or more of the acts of negligence alleged and that such negligence was the proximate cause of the injuries received by the infant plaintiff, for negligence is never presumed from the mere fact that an accident occurred. *McCombe v. P. S. Ry. Co.*, 95 N. J. L. 187.

The plaintiffs not only failed to sustain the burden of proof, but failed to prove any negligence upon the part of the defendant. The record is barren of any evidence which would tend to show that the defendant in any way failed to act as a reasonably prudent person would under the circumstances. This being so, the trial judge should have directed a verdict for the defendant. *Bodine v. Goerke Company*, 102 N. J. L. 642.

The law applicable to the case under consideration is well stated by the New Jersey Supreme Court in the recent decision of *Spanko v. Spitalinck*, 101 N. J. L. 5. The Court says:

“The general rule is that a person who leaves an automobile in a public street unattended is under a duty to exercise such care in doing so as a person of ordinary prudence would exercise in the circumstances. Failure to exercise such care, whereby the machine, without interfering willful act of another, but by the force of gravity, or some other cause reasonably to be anticipated or guarded against, gets under way, and inflicts injury, renders such person liable therefor in an action for damages.”

This rule of law has been adopted in many other states. See *American Railway Express Co. v. Terry*, 126 Md. 254; *Oberg v. Berg*, 90 Wash. 435; *Maloney v. Poutty Market*, 233 N. Y. 426, 135 N. E. 838.

Bearing in mind the law applicable to the present case and the various acts of negligence alleged, we now turn to an analysis of the testimony. The analysis, we feel, will bear out the defendant-appellants' contention that the record is barren of testimony which would indicate negligence upon his part which was the proximate cause of the accident.

The allegations of negligence fall generally under two classes and will be so considered for convenience sake.

(a) The car was parked at the curb with the motor left running.

The best answer to this allegation is that there is no evidence to this effect in the case. On the other hand there is the definite evidence of Mrs. Delio and the defendant to the contrary. On page 30, line 9, the court asked Mrs. Delio the following question:

"Now, while this automobile was standing before you say you saw it running or moving in the street, did you hear any noise from the automobile while it stood still at the curb?"

She answered:

"No, I didn't hear any."

She was also asked on cross examination, p. 30, l. 38:

"I suppose you walked up near the car and back, did you not?"

She answered:

"Yes, but the car was at the 503—between 503 and 505 Jefferson St."

This, and the balance of her testimony, is to the effect that although she had been walking back and forth on the sidewalk near the defendant's car, she at no time heard the motor running.

In addition to this testimony we have the positive testimony of the defendant that he shut the motor off when he parked his car at the curb, p. 62, l. 10 *et seq.* to l. 40. Furthermore Mr. Aronson testified that during the morning while he was working in the front of the house he saw children playing around his car and that they blew the horn. After he had chased the children away, he went down and found his car not running; the motor stopped (p. 65, ll. 19-40; p. 66, ll. 1-10).

As we pointed out above, not only is there no evidence that the motor was left running, but there is definite evidence that it was not. This being so the plaintiff did not have any right to have the allegations of this class considered by the jury.

(b) The defendant failed to take proper precautions to prevent his car from starting off.

This is a very general allegation in that it does not specify in what particulars the defendant failed to take proper precautions to prevent his car from starting off. The only suggestion is that the defendant did not properly set his brakes.

But there is no evidence to support the suggestion that the defendant did not properly set his brakes when he parked his car at the curb. The only evidence offered by the plaintiff was to the effect that the car which had been standing at the curb was suddenly seen going fast

across the street with no one in it (p. 20, ll. 13-30; p. 27, ll. 34-40; p. 28, ll. 1-12).

On the other hand, there was definite evidence given by the defendant that the brakes of his car were set (p. 67, ll. 1-12).

Furthermore, it appears from the evidence in the case that the grade of the street from the place where the defendant parked his car to the scene of the accident is up. Upon this point Mr. Freund, a surveyor, was called, who testified that the grade of Jefferson street, Hoboken, is upgrade from Fifth street north to the northerly side of house No. 510 Jefferson, where the crest of the grade is located (p. 59, ll. 8-18). And from No. 503-505, which is north of Fifth street, but south of No. 510 and No. 511. the grade is up until the northerly side of No. 510 is reached (p. 57, ll. 19-21). Not only is there an upgrade between these two points, but from the curb to the center of the street the pavement slopes up and it is higher in the center of the street than the top of the curb (p. 57, ll. 25-30).

Inasmuch as the accident occurred in front of premises No. 510, the automobile of the defendant to reach the scene of the accident from the place where it was parked would have had to travel up-hill all of the way. It is only fair to assume, therefore, that if the defendant had failed to properly apply his brakes, the result would have been that the car would have run back toward Fifth street rather than ahead toward No. 510 Jefferson street. Any negligence in setting his brake could, therefore, not have been a proximate cause of this accident.

Going back for a moment to the case of *Spanko v. Spitalinck*, 101 L. 5, it will be noted that this case was considered by the Court as a close one, and that the decision was finally based upon three

factors: (a) that there was some evidence that the defendant had left the motor running, (b) that it had been parked on a downgrade and had proceeded down the grade after starting, and (c) there was no evidence of anyone meddling with the car.

As we have pointed out, there is no evidence of the first two factors in the case under consideration. There is, on the contrary, definite evidence that children had been playing around and on the defendant's car (pp. 64 and 65) and there is further evidence from which it might reasonably be inferred that the defendant's car was set in motion by children.

It is obvious from the evidence in this case that some force was applied to the defendant's car to propel it from the place where it was parked to the place where the accident happened. The witness, Mrs. Delio, was in the best position to know the cause of the car moving. It is, therefore, interesting to note the answer of Mrs. Delio in which she describes the starting of the car (p. 27, l. 34):

“Q Now, did you at that time notice an automobile parked in front of your door? A Yes, it was between No. 503 and 505.

Q Was anybody in the car? A No.

Q Did anything happen after that? A Well, I was going back and forth with my baby in front of my house. Then I saw a lot of children running back and forth. When I saw the car moving, then I noticed the car went across the street and directly to No. 510 Jefferson street.

Q Did you see the car start off, Mrs. Delio? A I saw the car in the middle of the street.”

From her answers it would appear that the children had some connection with the starting of the car, for we gather from her testimony that

she desired it understood that she saw the children running and the next instant noticed the car in motion.

There is ample evidence in the file that children had been tampering with the car. The defendant had seen them during the morning and had chased them away on various occasions (p. 61, ll. 23-35; p. 64, ll. 25-40; p. 65, ll. 1-40).

It further appears from the evidence that after the accident the defendant heard from several people in the neighborhood a version of the accident as a result of which he attempted to start his car with a penny and found that it could be started with the use of this coin (p. 63, ll. 30-40; p. 64, ll. 1-17). His son, who also drove the car involved in this accident, stated that he tested the car after the accident and found that a nail file inserted in the lock would turn on the ignition. His finger nail would also turn the switch on so that the motor could be started (p. 74, ll. 30-40; p. 75, ll. 1-10, ll. 20-40).

We, therefore, contend on behalf of the defendant that not only was there a lack of evidence of negligence upon the part of the defendant in this case, but also there was definite evidence that the car was started by the interference of a third party or of third parties for which the defendant was not responsible. There was a failure to show by any evidence that the car started by reason of any cause reasonably to be anticipated by the defendant in the exercise of due care.

For the above reasons the appellant respectfully urges that a verdict should have been directed for the defendant by the trial court.

HARLEY, COX & WALBURG,
Attorneys for Defendant.

WILLIAM H. D. COX,
Of Counsel.

New Jersey Court of Errors and Appeals

ANTHONY PASQUALE, Jr., by his
next friend, ANTHONY PAS-
QUALE, and ANTHONY PAS-
QUALE, individually,
Plaintiffs-Respondents,

vs.

JOSEPH ARONSON,
Defendant-Appellant.

ACTION AT
LAW.
ON APPEAL
FROM
SUPREME
COURT.

BRIEF FOR PLAINTIFFS-RESPONDENTS.

Facts.

On September 20th, 1926, the plaintiff, Anthony Pasquale, Junior, was standing on the sidewalk in front of the stoop of his home, 510 Jefferson Street, Hoboken, New Jersey; the defendant, Joseph Aronson, had parked his Ford automobile on the opposite side of the street in front of 505 Jefferson Street, Hoboken, New Jersey, while he replaced certain window panes of the said house, No. 505 Jefferson Street.

Mrs. Francesca Fusco was seated in front of the house No. 505 Jefferson Street, Hoboken, New Jersey, and she saw the Ford car parked alongside of the curb of 505 Jefferson Street, with no one in it or around it. Suddenly, Mrs. Francesca Fusco saw the car start to move from 505 Jefferson Street, and swerve over and across to 510 Jefferson Street.

The automobile mounted the sidewalk and ran over the plaintiff, Anthony Pasquale, Jr. Mrs. Fusco ran over immediately and picked up the child, Anthony Pasquale, Jr., after the front and back wheels had passed over him.

Mrs. Maria Delio, janitress of 505 Jefferson Street, Hoboken, was seated in front of the yard of the house in which she lived at 505 Jefferson Street, when the car owned by the defendant suddenly started and moved across the street over the sidewalk directly in front of 510 Jefferson Street.

When Mrs. Delio came out in front of her yard about ten minutes before the plaintiff was injured, she noticed the car parked in front of her door and that no one was around the car.

Joseph Patrone, a jitney driver, while on his way to work about 5:15 saw a Ford half-ton truck on the sidewalk in front of 510 Jefferson Street. In order to assist in getting it off the sidewalk, he got into the car and noticed that the emergency brake was released and that there was a key in the magneto. Mr. Patrone pulled up the emergency brake, cranked the car and drove it off the sidewalk, leaving it there until the owner of the truck, the defendant, Mr. Aronson, came down from 505 Jefferson Street, where he had been engaged in putting some windows.

The trial was had before the Hon. Henry E. Ackerson, Jr., and at the conclusion of the case, the jury awarded judgment in favor of the plaintiffs and against the defendant.

In this appeal defendant relies on only one specification of error. It is as stated by the defendant: The Trial Court erred in refusing to direct the verdict for the defendant and against the plaintiff.

POINT I.

The defendant is not properly before the Court of Errors and Appeals.

The only ground of appeal on which the defendant relies is that the Trial Court erred in refusing to direct the verdict in favor of the defendant and against the plaintiff.

A motion was made by counsel for defendant for the direction of a verdict (p. 76, l. 18) which motion was denied by the Court (p. 76, l. 24). Counsel failed to take an exception to the ruling and the record at that point is barren of any exception. The law applicable to this point has been very definitely stated in a number of decisions in our State to the effect that the Court will not consider alleged judicial errors occurred during a trial or in charge to jury to which no exception was taken. See *Borough of Deal v. Sieling*, 102 N. J. L., p. 585; *Kimmel v. Kavanaugh*, 101 N. J. L., p. 164. Justice Judge Katzenbach, delivering the opinion of the Court, said:

“An exception to some ruling of the Trial Court involving the question sought to be argued on appeal is necessary in order to entitle the appellant to present the question to the reviewing tribunal for consideration.”

An examination of the record in the present case discloses no exception taken at the trial which permits the argument of the question now raised. No motion was made by the defendant for a non-suit but a motion was made for a direction of the verdict which the Court denied. No exception was taken to the Trial Judge's charge to the jury. The only point on which the defendant relies for his appeal to this Court is not subject to review.

No ruling relating to the reception and rejection of evidence will be reviewed unless the record discloses that the objections to such ruling was duly made or such ruling otherwise challenged at the time of the ruling.

"I desire to note an exception" is an appropriate exception to advise the Trial Judge that his ruling is to be the subject of review. *Kargman v. Carlo*, 85 N. J. L., p. 635; *Leiferant v. Progressive Agency*, 98 N. J. L., 527. The above has been ofttime quoted and stated as being the settled and well accepted ruling.

In the *Kargman v. Carlo* case, *supra*, Mr. Justice Trenchard, speaking for this Court, gave the following as an appropriate expression to advise the Trial Judge that his ruling is to be made the subject of review. "I desire to note an exception." That case has been cited many times by this Court with approval. *Webster v. Freeholders of Hudson County*, 86 N. J. L., p. 258; *Lams v. Fish*, 86 N. J. L., p. 321; *Cappolli v. Grande*, 88 N. J. L., p. 324; *Daly v. Ewald*, 88 N. J. L., p. 707; *Clark v. Hudson*, N. J. L. 89, p. 709; *Doren v. City of Asbury Park*, 91 N. J. L., p. 653.

The same point is discussed and considered by this Court in the case of *Corderoy v. American Railway Express Company*, 140 Atl. Rep., p. 416, and in a *per curiam* opinion this Court held that inasmuch as the grounds for reversal were not based on exceptions taken at the Trial they were not properly before the reviewing tribunal.

POINT II.

The Trial Court did not err in refusing to direct the verdict for the defendant and against the plaintiff.

There is conflicting testimony in this case as to several pertinent facts.

Joseph Patrone, a witness for plaintiffs, was asked by the Court (p. 40, l. 21), "Where was the key?", and the witness answered, "In the lock on the magneto, to turn the magneto". The defendant, Joseph Aronson, was questioned as follows (p. 62, l. 10):

"The Court: What did you do when you stopped the car?

The Witness: I took out my key and went to work.

The Court: Did you take the key with you?

The Witness: I did.

The Court: No key in the car at that time?

The Witness: It was still when I was working, the car was by the curb."

Joseph Patrone further stated in answer to a question (p. 40, l. 31):

"I got in the car, lifted up the emergency brake, and started it, and took it off the sidewalk near the curb."

Joseph Aronson, questioned by the Court (p. 63, l. 20), stated):

"They put me on the car and started the car, and I went away.

The Court: Nobody had the key until you got in and started the car?

The Witness: Yes.

The Court: Nobody else started it?

The Witness: Nobody else.

Q. What I want to know is whether you kept the key in your possession until you got

in the car, or was it taken away from you?
A. I had it."

Mrs. Fusco stated in answer to question by the Court as to whether anybody was around the location where the automobile was parked. The answer was (p. 21, l. 21), "No, there wasn't anybody there". She was questioned further on cross-examination (p. 24, l. 35):

"Q. Had you seen any children playing around that car just before you saw the car in motion? A. No, sir.

Q. Had you seen any children on the street in that neighborhood before this car started to cross the street? A. No, sir.

Mrs. Maria Delio was asked the same questions on cross-examination (p. 30, l. 16):

"Q. Now, when you first saw the car moving in the street, was there anybody along or around the sidewalk at the place or near the place where the car had been standing? A. No, I didn't see anybody."

Mrs. Delio was further questioned (p. 31, l. 3):

"Q. Did you see any children around that car at any time? A. I didn't see anybody around that car.

Q. Were there any children around the street near where you were at that time? A. No. Everything was rather quiet. I didn't see anybody."

Mr. Aronson, the defendant, in answer to a question of the Court, states (p. 64, l. 30), "The kids came in and they blew the horn. The car was still. I hollered to them and chased them away. After I went in the back rooms and fixed them windows then I didn't see nothing. I couldn't do nothing."

In the case of *New York & Greenwood Lake Co. v. New Jersey Electric Railroad Company*, 60 N. J. L., p. 52, the Court held that questions in dispute of matters of fact are properly submitted to the jury.

In the instant case there is no evidence that any one meddled with or touched the automobile after the defendant left it parked along the curb at 505 Jefferson Street. Moreover, from the testimony given by Mrs. Delio and Mrs. Fusco, it might well be inferred that the engine was running at the time the car started and crossed the street mounting the sidewalk and struck the plaintiff. Almost immediately thereafter there was the testimony of Joseph Patrone (p. 40, l. 11) that the brake was off, and that (at l. 22) when he got in the car to drive it off the sidewalk, the key was in the lock on the magneto.

In view of this testimony it becomes the question for the jury as reasonable men to discredit the testimony of the defendant in whole or in part as to any safety measures undertaken by him when he parked the car and is a proper question for the jury to consider whether because of failure of the defendant to take reasonable care when he left the car parked that the accident occurred.

In the case of *Spanko v. Spitalnick*, 101 N. J. L., p. 5, the Supreme Court, in a case similar to this, has held that where defendant left his automobile unattended standing on a street at a point where there was considerable down grade, and shortly thereafter the car started down the street unattended, gained considerable momentum, and ran into the plaintiff, and the evidence was conflicting whether the automobile was so left with the engine running, the question of the defendant's negligence was for the jury, it not appearing that the automobile was started by a meddler.

When a Trial Judge is requested to non-suit or direct a verdict in the trial of an action for negligence his duty is to determine whether facts have been established from which negligence may be reasonably inferred and if the real facts are in substantial dispute the case cannot be taken from the jury. *Newark Passenger Railroad Co. v. Block*, 55 N. J. L., p. 605.

We therefore contend on behalf of the plaintiffs that inasmuch as there were several disputed questions of fact, the Trial Judge's refusal to grant a motion for the direction of a verdict was very proper.

We respectfully submit, therefore, that the defendant is not properly before the Court of Errors and Appeals because of his failure to interpose an exception and that the Trial Court did not err in refusing to direct the verdict for the defendant against the plaintiff because there were disputed questions of fact presented, and pray that the judgment of the Supreme Court be affirmed.

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