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Notice of Appeal.

(Filed July 19, 1930.)

Essex County Circuit Court 10

ETHEL GEE and JAMES GEE,
Plaintiffs,

vs.

SARAH MOSS and SIGMUND MOSS,
Defendants.

Action at Law.

Notice of Appeal.

20

*To Meyer M. Semel, Attorney of the Plaintiffs, or
to whom it may concern:*

Sir:

PLEASE TAKE NOTICE that the defendants in the
above entitled cause appeal to the Court of Errors
and Appeals of New Jersey, from the whole of
the Judgment entered in this cause.

30

Respectfully yours,

HUDSPETH & HARRIS,
Attorneys of Defendants.

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Grounds of Appeal.

(Filed August 18, 1930.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

ETHEL GEE and JAMES GEE,
Plaintiffs-Respondents,

vs.

SARAH MOSS and SIGMUND MOSS,
Defendants-Appellants.

Action at Law.

Grounds of
Appeal.

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The appellants state the following grounds of
appeal:

1. The trial court erroneously refused to non-suit the plaintiffs when thereunto moved, whereas said motion should have been granted on one or more of the following grounds:

(a) The plaintiffs have not made out a prima facie case.

(b) There is no evidence of negligence on the part of the defendants, and

30

(c) The plaintiffs are guilty of contributory negligence.

2. The trial court erroneously refused to direct a verdict in favor of the defendants when thereunto moved, whereas said motion should have been granted on one or more of the following grounds:

(a) No negligence has been proven on the part of the defendants, and

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(b) Plaintiffs are guilty of contributory negligence.

Grounds of Appeal.

3. The trial court erroneously refused to direct a verdict in favor of the defendant, Sarah Moss, when thereunto moved, whereas said motion should have been granted on the following ground:

(a) There is no evidence of the agency of the person driving the automobile owned by Mrs. Moss and there is no evidence that Mrs. Moss was the principal of the person driving the car at the time of the accident. 10

4. The trial court erroneously instructed the jury as follows:

“Of course, gentlemen, if, as she and her witnesses say, this trolley car had stopped, and if there was not room between it and the standing automobile, whether it was a truck or a pleasure car, for an automobile following to clear that trolley car at least eight feet, she had a right to presume, in view of this statute, that any automobile which was following that trolley car and intending to pass it would obey the statute and stop until all the passengers had alighted from the trolley car and all the passengers intending to board it had actually boarded it, and until both had reached a place of safety.” 20

5. The trial court abused its discretion in refusing to grant a new trial to the defendants. 30

6. The trial court abused its discretion in refusing to grant a new trial to the defendants, because the trial court had concluded that the verdict of the jury was so excessive as to shock the conscience of the court and yet, notwithstanding that conclusion, the trial court refused to grant a new trial.

7. The trial court abused its discretion in that the trial court properly concluded that the verdict 40

Grounds of Appeal.

was so excessive as to shock the conscience of the court, and that said verdict was clearly excessive and against the weight of the evidence, and yet, notwithstanding said adjudication by the trial court, the said court arbitrarily and illegally refused to grant the defendants a new trial.

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Dated: August 15, 1930.

HUDSPETH & HARRIS,
Attorneys of Defendants-Appellants.

(Served on plaintiffs' attorney on August 16, 1930.)

Complaint.

20

(Filed December 24, 1928.)

ESSEX COUNTY CIRCUIT COURT.

ETHEL GEE and JAMES GEE,
Plaintiffs,

vs.

SARAH MOSS and SIGMUND MOSS,
Defendants.

Action at Law.
Complaint.

30

The plaintiff, Ethel Gee, residing in the City of Newark, County of Essex and State of New Jersey, says that:

FIRST COUNT.

1. On or about the 20th day of November, 1928,
the plaintiff Ethel Gee, was lawfully upon the

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Complaint.

easterly sidewalk of Broadway at Montclair Avenue, public thoroughfares in the City of Newark, County of Essex and State of New Jersey.

2. On or about said date and place above mentioned, the plaintiff Ethel Gee, proceeded to cross Broadway to board a Public Service trolley-car which trolley-car was facing in a northerly direction; that the said plaintiff had a lawful right to cross Broadway at that point to board said trolley-car. 10

3. That at the time the plaintiff, Ethel Gee, was proceeding to cross Broadway to board said trolley-car, said trolley-car was motionless and prepared to receive passengers.

4. On or about the same date and place above mentioned, the defendant, Sigmund Moss was operating an automobile owned by the defendant, Sarah Moss, in and about the business of the defendant, Sarah Moss. 20

5. On or about the same date and place above mentioned, the defendant, Sarah Moss, was by her agent, servant or employee, Sigmund Moss, operating or driving said automobile in a northerly direction on Broadway at Montclair Avenue, above mentioned. 30

6. On or about said time and place, the defendant Sarah Moss, by her agent, servant or employee, was driving the said automobile in such a careless, reckless and negligent manner, as to result in the plaintiff, Ethel Gee, being struck by said automobile owned by defendant, Sarah Moss, and operated by her, by her agent, servant or employee, Sigmund Moss, just as she was about to board the said trolley-car. 40

Complaint.

7. The defendant, Sarah Moss, was negligent in this: that she by her agent, servant or employee, Sigmund Moss, drove the said automobile owned by her at an excessive rate of speed thereby losing proper control thereof; that she by her agent, servant or employee, Sigmund Moss, failed to give any warning of her approach to said plaintiff by blowing the horn or otherwise; that she by her agent, servant or employee, Sigmund Moss, drove said automobile without due regard to the rights of others using the same highway; that the brakes of her said automobile were not in proper condition for the safety of others; that she by her agent, servant or employee, Sigmund Moss, disregarded the ordinance of the City of Newark, which provides that every automobile shall stop at least eight feet in the rear of a standing trolley-car to permit passengers to get on or to get off.

8. As a result of said collision, the plaintiff, Ethel Gee, was hurled violently to the ground, thereby sustaining severe and permanent injuries, to wit: laceration and swelling under left side of chin, contusions over left clavicle, contusions and ecchymosis of left thigh, contusions of left scapula, contusions of left wrist, loss of two upper teeth on right side of plate, severe internal injuries, all of which caused her and still cause her great pain and suffering and will for a long period of time in the future.

9. As a result of said injuries, the plaintiff, Ethel Gee, suffered great pain and shock to her nervous system and mental anguish.

10. As a result of said injuries, the plaintiff, Ethel Gee, was confined to her bed and home for a long period of time and was totally disabled from performing her household duties.

Complaint.

11. As a result of said injuries, the plaintiff, Ethel Gee, was totally disabled for a long period of time from working thereby suffering a loss of wages.

WHEREFORE, plaintiff, Ethel Gee, claims damages of the defendant, Sarah Moss, in the sum of Twenty-five Thousand Dollars (\$25,000.00) together with costs of suit to be taxed on this the first count.

10

SECOND COUNT.

1. Paragraphs 1, 2, 3 and 4 of the first count are herewith repeated and made part of this the second count.

2. On or about the 20th day of November, 1928, the defendant, Sigmund Moss, was operating or driving said automobile, in such a reckless, careless and negligent manner in a northerly direction on Broadway at Montclair Avenue, public thoroughfares in the City of Newark, County of Essex and State of New Jersey, that he caused the said automobile to run into and collide with the plaintiff, Ethel Gee, just as she was about to board said trolley-car.

20

3. The defendant, Sigmund Moss, was negligent in this: that he drove the said automobile at an excessive rate of speed thereby losing proper control thereof; that he failed to give any warning of his approach to the said plaintiff by blowing the horn or otherwise; that he drove the said automobile without due regard to the rights of others using the same highway; that the brakes of said automobile were not in proper condition for the safety of others; that he disregarded the ordinance of the City of Newark, which provides that

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Complaint.

every automobile shall stop at least eight feet in the rear of a standing trolley-car to permit passengers to get on or to get off.

4. Paragraphs 8, 9, 10 and 11 are herewith repeated and made part of this the second count.

- 10 WHEREFORE, plaintiff, Ethel Gee, claims damages of the defendant, Sigmund Moss, in the sum of Twenty-five Thousand Dollars (\$25,000.00) together with costs of suit to be taxed on this the second count.

THIRD COUNT.

Plaintiff, James Gee, residing in the City of Newark, County of Essex and State of New Jersey, says that:

20

1. That he is the husband of Ethel Gee.

2. That all the paragraphs of the first count are herewith repeated and made a part of this the third count.

3. That all the paragraphs of the second count are herewith repeated and made a part of this the third count.

30

4. As a result of the aforementioned injuries sustained by the plaintiff, Ethel Gee, the plaintiff, James Gee, suffered the loss of her society, consortium and services of his wife, and has been put to great loss and expense for medical, surgical and nursing services for her care and treatment and will in the future have to expend money for said services for some time to come; that the said plaintiff, James Gee, has been put to great expense in procuring domestic help in performing household duties, which the said Ethel Gee, his

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wife, had been incapacitated from doing by reason of the aforementioned injuries.

Complaint.

WHEREFORE, plaintiff, James Gee, claims damages against the defendants, Sarah Moss and Sigmund Moss, in the sum of Five Thousand Dollars (\$5,000.00) together with all costs of suit on this the third count.

SAMUEL LEVIN,
Attorney for Plaintiffs. 10

Answer.

(Filed February 20, 1929.)

Defendants residing in the Township of Nutley, County of Bergen and State of New Jersey, in answer to the plaintiffs' complaint, say that:

ANSWER TO FIRST COUNT. 20

1. They deny each and every allegation contained in the first count of the plaintiffs' complaint.

ANSWER TO SECOND COUNT.

1. They deny each and every allegation contained in the second count of the plaintiffs' complaint.

ANSWER TO THIRD COUNT.

1. They have no knowledge or information sufficient to form a belief of the matters and things set forth in the paragraph 1 of the third count and therefore deny same leaving the plaintiffs to their proof thereof. 30

2. They deny paragraphs 2, 3 and 4.

SEPARATE DEFENSES TO ALL COUNTS.

1. The alleged injury and damage complained of by the plaintiffs was caused entirely through 40

Answer.

their own negligence, in that they did not exercise that degree of care which ordinary, reasonable and prudent persons would and should exercise under the circumstances of the case, which negligence was the proximate cause of the injury and damage complained of.

10

2. The alleged injury and damage complained of by the plaintiffs was caused through their negligence in that they did not exercise that degree of care which ordinary, reasonable and prudent persons would and should exercise under the circumstances of the case which negligence contributed to and was the proximate cause of the injury and damage complained of.

20

HUDSPETH & HARRIS,
Attorneys of Defendants.

Reply.

(Filed February 27, 1929.)

Plaintiffs, by way of reply to the Answer filed in the above entitled cause, say that:

1. They join issue on the allegations set forth in paragraph one of the answer to the first count.
- 30 2. They join issue on the allegations set forth in paragraph one of the answer to the second count.
3. They join issue on the allegations set forth in paragraphs one and two of the answer to the third count.
4. They deny all the allegations set forth in paragraphs one and two of the separate defenses to all counts.
- 40

SAMUEL LEVIN,
Atty. for Plaintiffs.

Order.

(Filed January 23, 1930.)

This matter being opened to the Court by Meyer M. Semel, attorney for plaintiffs, in the presence of Hudspeth & Harris, attorneys for defendants; and the Court having heard the arguments of counsel, it is thereupon on this 23rd day of January, 1930 10

ORDERED: That Paragraph Eight of the First Count of the Complaint filed herein be and hereby is amended to read as follows:

Lacerations and swelling of the left side of chin, contusions over left clavicle, contusions and ecchymosis of left thigh, contusions of left scapula, contusions of left wrist, loss of two upper teeth, miscarriage causing permanent uterine hemorrhage and sterility which may be cured by a surgical operation, separation of right sacro-illiac joint and traumatic neurasthenia. 20

and it is further

ORDERED: That the Answer to Question #2 of the Bill of Particulars be and hereby is amended to read as follows:

Lacerations and swelling of the left side of chin, contusions over left clavicle, contusions and ecchymosis of left thigh, contusions of left scapula, contusions of left wrist, loss of two upper teeth, miscarriage causing permanent uterine hemorrhage and sterility which may be cured by a surgical operation; separation of right sacro-illiac joint and traumatic neurasthenia. 30

NELSON Y. DUNGAN,
Circuit Court Judge.

40

Amended Answer.

(Filed February 6, 1930.)

ESSEX COUNTY CIRCUIT COURT.

10	ETHEL GEE and JAMES GEE, Plaintiffs, <i>vs.</i> SARAH MOSS and SIGMUND MOSS, Defendants.	} Action at Law. } Amended Answer.
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20 Defendants residing in the Township of Nutley,
County of Bergen and State of New Jersey, in
answer to the plaintiffs' complaint, say that:

ANSWER TO FIRST COUNT.

1. They deny each and every allegation contained in the first count of the plaintiffs' complaint.

30 ANSWER TO SECOND COUNT.

1. They deny each and every allegation contained in the second count of the plaintiffs' complaint.

ANSWER TO THIRD COUNT.

1. They have no knowledge or information sufficient to form a belief of the matters and things
40 set forth in the paragraph 1 of the third count

Amended Answer.

and therefore deny same leaving the plaintiffs to their proof thereof.

2. They deny paragraphs 2, 3 and 4.

SEPARATE DEFENSES TO ALL COUNTS.

10

1. The alleged injury and damage complained of by the plaintiffs was caused entirely through their own negligence, in that they did not exercise that degree of care which ordinary, reasonable and prudent persons would and should exercise under the circumstances of the case, which negligence was the proximate cause of the injury and damage complained of.

2. The alleged injury and damage complained of by the plaintiffs was caused through their negligence in that they did not exercise that degree of care which ordinary, reasonable and prudent persons would and should exercise under the circumstances of the case which negligence contributed to and was the proximate cause of the injury and damage complained of.

20

HUDSPETH & HARRIS,
Attorneys of Defendants.

30

40

Judgment, First Trial.

(Entered December 18, 1929.)

ESSEX COUNTY CIRCUIT COURT.

48436

10	ETHEL GEE and JAMES GEE, Plaintiffs, <i>vs.</i> SARAH MOSS and SIGMUND MOSS, Defendants.	Action at Law. On Verdict by a Jury. Judgment Entered December 18, 1929. Damage \$2,200.00 Costs \$ 120.69 Total \$2,320.69
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20 MEYER M. SEMEL, Atty. of plaintiff.

This action was tried before Judge Nelson Y. Dungan with a jury at the Essex Circuit Court on December 18, 1929.

The cause having been heard and submitted to the jury they return their verdict as follows:

They find in favor of the plaintiffs Ethel Gee and James Gee and against the defendants Sarah Moss and Sigmund Moss.

Whereupon it is adjudged that the plaintiffs
30 recover of the defendants the sum of Two Thousand Two Hundred dollars (\$2,200.00) damage and costs which are taxed at One Hundred Twenty dollars and sixty-nine cents making in the whole the sum of Two Thousand Three Hundred Twenty dollars and sixty-nine cents.

Judgment Entered and Signed December 18, 1929.

WM. S. GUMMERE,
C. J.

40

Book 109, Page 222 of Circuit Court Judgments.

Rule to Show Cause, First Trial.

(Filed December 24, 1929.)

ESSEX COUNTY CIRCUIT COURT.

 ETHEL GEE and JAMES GEE,
 Plaintiffs,
vs.
 SARAH MOSS and SIGMUND MOSS,
 Defendants.

10

Action at Law.

Rule to Show
Cause.

Application being duly made by the defendants,
 Sarah Moss and Sigmund Moss, within six days
 of the rendition of the verdict in the above en-
 titled matter, and good cause appearing, it is on
 this 24th day of December, 1929.

20

ORDERED that the plaintiffs show cause before
 the Honorable Nelson Y. Dungan, Judge of the
 Essex County Circuit Court, at the Hall of Rec-
 ords, in the City of Newark, on the 6th day of
 January, 1930, next, at nine-thirty o'clock in the
 morning or as soon thereafter as counsel can be
 heard, why the verdict rendered by the jury in
 the above entitled matter should not be set aside
 and a new trial granted on the grounds that the
 verdict is informal, improper, contrary to law,
 contrary to the charge of the Court, against the
 weight of evidence and is excessive; and it is fur-
 ther

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ORDERED that all proceedings other than the
 entry of judgment on the said verdict be and the
 same are hereby stayed until the further order of
 the Court; and it is further

40

Rule to Show Cause, First Trial.

10 ORDERED that the said defendants, Sarah Moss and Sigmund Moss, be permitted to reserve the exceptions taken at the trial as to the admission and rejection of evidence, the denial of the defendants' motion for a non-suit, the denial of the defendants' motions for a direction of a verdict, and to the charge of the Court, and that this rule will not preclude the taking of an appeal by the said defendants, Sarah Moss and Sigmund Moss; and it is further

ORDERED that a true but uncertified copy of this rule be served upon the plaintiffs or their attorney.

Let the above rule be entered on the minutes.

20

NELSON Y. DUNGAN,
Circuit Court Judge.

30

40

**Rule for New Trial on Damages Only,
After First Trial.**

(Filed April 12, 1930.)

ESSEX COUNTY CIRCUIT COURT.

ETHEL GEE and JAMES GEE,
Plaintiffs,

vs.

SARAH MOSS and SIGMUND MOSS,
Defendants.

Action at Law.
Rule.

10

This matter being opened to the Court by Harry H. Harris of the firm of Hudspeth & Harris, Attorneys for the Defendants, in the presence of Meyer Semel, appearing for Samuel Levin, Attorney for the Plaintiffs, and the Court having heard the arguments of the respective attorneys, and it appearing to the Court that a new trial in the above matter should be granted on the question of damages only.

20

It is, therefore, on this 14th day of January, 1930, ORDERED that the verdict rendered by the jury in the above entitled cause be set aside as to the question of damages only, and a new trial be had on the question of damages only.

30

Let the above Order be entered on the minutes.

NELSON Y. DUNGAN,
Circuit Court Judge.

40

Judgment on Second Trial.

(Entered April 10, 1930.)

ESSEX COUNTY CIRCUIT COURT.

48436

10	ETHEL GEE and JAMES GEE, Plaintiffs, <i>vs.</i> SARAH MOSS and SIGMUND MOSS, Defendants. SAMUEL LEVIN, Atty. of Plaintiffs.	Action at Law. On Verdict by a Jury. Judgment Entered April 10, 1930 Damage \$5,300.00 " \$1,560.00 Costs \$ 123.59 Total \$6,983.59
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20

This Action was tried before Judge Newton H. Porter with a jury at the Essex Circuit Court on April 10, 1930.

The cause having been heard and submitted to the jury they return their verdict as follows:

They find in favor of the plaintiff Ethel Gee and against the defendants Sarah Moss, Sigmund Moss for the sum of Five Thousand Three Hundred dollars (\$5,300.00) damage; they also find in favor of the plaintiff James Gee and against the defendants Sarah Moss, Sigmund Moss for the sum of One Thousand Five Hundred Sixty Dollars (\$1,560.00) damage.

Whereupon it is adjudged that the plaintiffs recover of the defendants the sums of Five Thousand Three Hundred dollars (\$5,300.00) damage and One Thousand Five Hundred Sixty dollars (\$1,560.00) damage and One Hundred Twenty-three dollars and fifty-nine cents making in the

40

Judgment on Second Trial.

whole the sum of Six Thousand Nine Hundred Eighty-three dollars and fifty-nine cents.

Judgment Entered and Signed April 10, 1930.

WM. S. GUMMERE,
C. J. 10

Book 110, Page 207, of Circuit Court Judgments.

**Rule to Show Cause for New Trial
After Second Trial.**

(Filed April 11, 1930.)

ESSEX COUNTY CIRCUIT COURT. 20

ETHEL GEE and JAMES GEE, Plaintiffs, <i>vs.</i> SARAH MOSS and SIGMUND MOSS, Defendants.	}	Action at Law. Rule to Show Cause.
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30

Application being duly made by the defendants, Sarah Moss and Sigmund Moss, within six days of the rendition of the verdict in the above entitled matter, and good cause appearing, it is on this 11th day of April, 1930,

ORDERED, that the plaintiffs show cause before the Honorable Newton H. Porter, Judge of the Essex County Circuit Court, at the Hall of Records, in the City of Newark, on the 25th day of 40

*Rule to Show Cause for New Trial After
Second Trial.*

10 April, next, at 10 o'clock in the morning, or as soon thereafter as counsel can be heard, why the verdict rendered by the jury in the above entitled matter should not be set aside and a new trial granted on the grounds that the verdict is im-
proper, contrary to law, contrary to the charge of the Court, against the weight of evidence, excessive, and is the result of sympathy, passion and prejudice, and it is further

ORDERED, that all proceedings other than the entry of judgment on the said verdict, be and the same are hereby stayed until the further order of the Court; and it is further

20 ORDERED, that a true but uncertified copy of this rule be served upon the plaintiffs or their attorney.

LET the above rule be entered on the minutes.

NEWTON H. PORTER,
Circuit Court Judge.

**Letters to be Used as Opinion of Judge Porter
Denying New Trial.**

ESSEX CIRCUIT COURT
Newark, New Jersey

May 29, 1930. 10

WILLIAM S. GUMMERE
CHIEF JUSTICE
NELSON Y. DUNGAN
WORRALL F. MOUNTAIN
WILLIAM A. SMITH
CIRCUIT JUDGES

Meyer M. Semel, Esq.,
60 Park Place,
Newark, N. J.

Gee vs. Moss

Dear Sir:—

20

I have very carefully considered the rule to show cause in the above matter and while, for the reasons that I stated to you I believe the verdict is high, I have concluded that I am not justified to materially reduce it under the circumstances and any slight reduction that I may make would be so slight as to accomplish no useful purpose, so I have concluded to discharge the rule.

You may send me an order accordingly.

30

Yours very truly,

NEWTON H. PORTER,
Judge, Circuit Court.

Copy to Hudspeth & Harris,
Jersey City, N. J.

40

*Letters to be Used as Opinion of Judge Porter
Denying New Trial.*

June 13, 1930.

Hon. Newton H. Porter,
Court House,
Newark, N. J.

10

Re: Gee vs. Moss.

Dear Judge Porter:

20

After the argument of the Rule to Show Cause in the above matter, we informed our clients that your Honor stated in open court that the verdict of the jury "shocked the Court". After receiving your letter of May 29th, we informed our clients as to your Honor's decision in the matter and of the contents of your letter. We have advised them that you had signed an order in the above matter setting aside the Rule to Show Cause.

In view of the expression of opinion by your Honor that the verdict is high and that it "shocked the Court" our clients feel that the verdict should have been set aside or materially reduced. They have, therefore, instructed us to proceed to take an appeal from the order of the Court.

30

In view thereof, we believe that it would be in order for your Honor to file an opinion in the matter stating in your opinion what your Honor said in open court on the argument of the Rule to Show Cause as to the verdict being shocking and also the opinion expressed by your Honor in your letter of May 29th.

Will you please advise us what your Honor is inclined to do in the matter.

We thank you for any courtesy extended to us in this matter.

40

Very truly yours,

HUDSPETH & HARRIS.

HHH/I.

*Letters to be Used as Opinion of Judge Porter
Denying New Trial.*

ESSEX CIRCUIT COURT

Newark, New Jersey

WILLIAM S. GUMMERE
CHIEF JUSTICE
NELSON Y. DUNGAN
WORRALL F. MOUNTAIN
WILLIAM A. SMITH
CIRCUIT JUDGES

10

June 16, 1930.

Messrs. Hudspeth & Harris,
15 Exchange Place,
Jersey City, N. J.

Gee vs. Moss

Gentlemen:

I have your letter of the 13th inst. in which you suggest that in view of my letter of May 29th and my remarks made at the time of the argument on the rule to show cause in the above matter that I write an opinion giving my reasons for my decision.

20

I think it unnecessary that I do so. I considered the matter very carefully from every standpoint and concluded that it was not a case under the decisions that justified my setting it aside and granting a new trial. I was not convinced that the jury decided the case because of mistake, passion or prejudice. It is true that in my opinion on the testimony the verdict was too high and shockingly so but that is not the reason in itself why I should set aside the verdict. If I set aside every verdict where it did not coincide with my views I would be more than busy retrying cases. It is not my function to decide the facts and just because the jury believes things that I do not believe is not, I repeat, sufficient for me to interfere.

30

40

*Letters to be Used as Opinion of Judge Porter
Denying New Trial.*

There was testimony in this case which fully justified the verdict, but feeling however, that the verdict was too high I considered very carefully and was quite willing to reduce it somewhat as a purely practical matter but I could not reduce
10 it below the amount of your policy and, therefore, my reducing it to the extent that I may have done so would have served no useful purpose and it was for that reason that I decided to leave it alone.

Yours very truly,

NEWTON H. PORTER

Copy to

Circuit Court Judge.

20 Meyer M. Semel, Esq.,
60 Park Pl., Newark, N. J.

June 17, 1930

Hon. Newton H. Porter,
Court House,
Newark, N. J.

Re: Gee vs. Moss

Dear Judge Porter:

30 I am thankful to you for your letter of June 16th and am communicating the contents thereof to our client. There is one thing, however, which I believe your Honor overlooked and that is that the defendants, whose interests we represent, are seriously affected by your Honor's dismissal of the rule, because of the fact that they are personally liable for the amount of the judgment and especially so, for the amount over and above the extent
40 of the policy coverage, which your Honor seemed

*Letters to be Used as Opinion of Judge Porter
Denying New Trial.*

to have taken into consideration in deciding to dismiss the Rule to Show Cause. It seems that the defendants should not be prejudiced by the fact that they carry insurance.

From your letter it looks as if you would have reduced the amount of the verdict if there were no policy of insurance in existence, but being that the reduction would not be below the amount of coverage, you are inclined not to reduce the verdict even though it is too high and shockingly so according to the weight of the evidence in the case.

10

It seems to me that if the weight of the testimony was ignored by the jury and your Honor is satisfied that according to the testimony the verdict was too high and apparently a result of the disregard by the jury of the weight of the testimony, that your Honor should not hesitate to reduce the verdict, irrespective of whether it would be reduced below the amount of the policy or not.

20

I do not believe that the question of policy should have entered into the discussion at all nor should it have been a basis of your conclusion in the matter.

I respectfully submit that in view of my client's insistence that an appeal be taken from the order, that in all fairness to the parties involved and especially these defendants, an opinion ought to be filed in the matter setting forth what you say in your letters.

30

I trust that your Honor will not look upon my writing to you a second time in this matter as an affront, especially in view of the fact that I feel that I am only doing my duty as the agent of my own clients.

Very respectfully yours,

40

HUDSPETH & HARRIS.

HHH/I.

*Letters to be Used as Opinion of Judge Porter
Denying New Trial.*

ESSEX CIRCUIT COURT

Newark, New Jersey

June 23, 1930.

10 WILLIAM S. GUMMERE
CHIEF JUSTICE
NELSON Y. DUNGAN
WORRALL F. MOUNTAIN
WILLIAM A. SMITH
CIRCUIT JUDGES

Messrs. Hudspeth & Harris,
15 Exchange Place,
Jersey City, N. J.

Gee vs. Moss.

Dear Sirs:—

20 Your letter of the 17th. received. I regret that you think it necessary to continue to object to my decision and to continue your argument. If you cannot understand my letters I am sorry. Nor do I see any reason for writing any opinion. You evidently wish to have one to submit to the Supreme Court on your appeal.

Why not submit my letters. I have no objection and they set forth my reasons even more fully than would any opinion I might write.

30

Yours truly,

NEWTON H. PORTER,
Circuit Court Judge.

Rule Discharging Rule to Show Cause.

(Filed June 2, 1930.)

ESSEX COUNTY CIRCUIT COURT.

ETHEL GEE and JAMES GEE, Plaintiffs, <i>vs.</i> SARAH MOSS and SIGMUND MOSS, Defendants.	10 Action at Law. Order.
--	--

This matter being opened to the Court by Hudspeth & Harris, Esqs., attorneys for the defendants, in the presence of Meyer M. Semel, Esq., attorney for plaintiffs; and the Court having considered the application for a new trial upon a rule to show cause heretofore issued in the within matter, and being of the opinion that the judgment should not be set aside, it is thereupon on this 2nd day of June, 1930,

ORDERED: That the rule to show cause be and hereby is set aside and for nothing holden; and it is further—

NEWTON H. PORTER,
Judge, Essex County Circuit Court.

Final Judgment After Second Trial.

(Filed August 15, 1930.)

ESSEX COUNTY CIRCUIT COURT.

10 ETHEL GEE and JAMES GEE,
 Plaintiffs,

vs.

SARAH MOSS and SIGMUND MOSS,
Defendants.

Action at Law.

Judgment Final.

20 Rule to show cause having been allowed to re-
view the verdict in favor of the plaintiffs and
against the defendants, which verdict was ren-
dered on April 10, 1930, and the Court having
considered said rule and being of the opinion that
it should be discharged:

It is on this 15th day of August, 1930, ORDERED that said rule to show cause be and the same hereby is discharged and it is further ordered and adjudged that judgment final be and the same hereby is entered in favor of the plaintiff, Ethel Gee and against the defendants, Sarah Moss and Sigmund Moss for the sum of \$5,300 damages, and also judgment final be and the same hereby is entered in favor of the plaintiff, James Gee and against the defendants, Sarah Moss and Sigmund Moss for the sum of \$1,560 damages.

Whereupon it is adjudged that the plaintiff, Ethel Gee recover of the said defendants, Sarah Moss and Sigmund Moss, the sum of \$5,300 and that the plaintiff, James Gee, recover of the defendants, Sarah Moss and Sigmund Moss, the sum of \$1,560 damages.

Judgment entered August 15, 1930.

Rule actually entered this 15th day of August
on Motion of Meyer M. Semel, Atty. for plaintiffs.

Transcript, First Trial.**ESSEX COUNTY CIRCUIT COURT.**

Tuesday, December 17, 1929.

ETHEL GEE and JAMES GEE	}	Action at Law. 10 Transcript, First Trial.
vs.		
SARAH MOSS and SIGMUND MOSS.		

Before Hon. NELSON Y. DUNGAN, J.,
and a Jury.

For Plaintiffs appears MEYER SEMEL.

For Defendants appear HUDSPETH & HARRIS
(by HARRY H. HARRIS). 20

—
(A jury is called and sworn.)

—
Mr. Semel opens for plaintiffs.
Mr. Harris opens for defendants.

—
ETHEL GEE, one of the plaintiffs, sworn in her 30
own behalf.

Direct examination by Mr. Semel:

Q. Where do you live, Mrs. Gee? A. 6 Halleck
Street.

Q. Mrs. Gee, at or about the hour 5:45 on the
20th of November, 1928, where were you? A.
Corner of Montclair Avenue and Broadway.

Q. In what city is that? A. Newark. 40

Ethel Gee, for Plaintiffs—Direct.

Q. Will you tell the Court and jury what you were doing at that time? A. Waiting to board a car.

Q. What were you doing at that time? A. Waiting to board a car.

10 Q. Where were you standing at the time you were waiting to board a car? A. At a stop sign.

Q. At what? A. A stop sign.

Q. Where was the stop sign? A. On Broadway.

Q. Where? A. On Broadway.

By the Court:

Q. Near what other street was it? A. Well, across from Montclair Avenue.

20 By Mr. Semel:

Q. Near what other street? A. Across from Montclair Avenue.

By the Court:

Q. Montclair Avenue does not cross Broadway, does it? A. No.

Q. Montclair Avenue comes from Montclair to Broadway. A. No, I don't think so.

Q. Over toward Montclair? A. Yes.

30 Q. Toward Montclair to Broadway. It does not cross it.

By Mr. Semel:

Q. Going up toward Nutley, on which side of Broadway were you? On the lefthand side or the righthand side? A. On the righthand side.

Q. On the righthand side going up? A. Yes.

40 Q. Where with reference to where you stood is Montclair Avenue? A. Right across the street.

Q. Across the street. That would be on the lefthand side of Broadway, is that right? A. Yes.

Ethel Gee, for Plaintiffs—Direct.

Q. Where was this stop sign near which you were standing? A. Near the National——

Q. Now, tell us. A. Well, it was on Broadway across from Montclair Avenue.

Q. Where with reference to the stop sign were you standing? A. Just right by the stop sign.

Q. What is that? A. Just right by the stop sign. 10

Q. On the curb or on the sidewalk? A. No, on the curb.

By the Court:

Q. On the curb, did you say? A. Well, on the sidewalk.

By Mr. Semel:

Q. Which is it? A. Well, on the sidewalk. That is the curb. 20

Q. While you were standing there did you look around? A. Yes.

Q. What did you observe? A. Well, a street car coming. Well, I saw a street car coming.

Q. Did you observe anything else there? A. Yes. An automobile.

Q. With reference to where you were standing where did you see the street car? A. Where did I see it? 30

Q. What is that? A. Did you say where did I see it?

Q. Yes. Where was the street car when you first saw it? A. Just a few yards away.

Q. Was the street car in motion? A. Yes.

Q. What else did you say you observed? An automobile also? A. Yes.

Q. Where in reference to the place where you were standing was the automobile? A. It was coming alongside of the street car. 40

Ethel Gee, for Plaintiffs—Direct.

Q. Now, tell us what was the automobile doing while you were watching it? A. Well, the street car and the automobile, they both came to a stop.

Q. And when they came to a stop where were you standing? A. Still at the sign post, the stop sign.

10 Q. Speak up. A. Still at the stop sign.

Q. On the sidewalk? A. Yes.

Q. Is that right? A. Yes.

Q. What did the automobile do as it got near to where you were standing? A. It came to a stop and the driver told me to go ahead.

Mr. Harris: I object to that.

Mr. Semel: I consent that the last part be stricken out.

20 Q. What happened to the trolley car? What did the trolley car do? A. Well, he opened the doors and beckoned for me to go on.

Q. After the trolley car had come to a stop, the automobile had come to a stop and the trolley car had come to a stop, what did you do? A. I was making to get on the car when the car came and hit me.

Q. Which car? A. Mr. Moss's car.

30 By the Court:

Q. Is that the car that had stopped alongside the trolley car? A. No, sir.

By Mr. Semel:

Q. How far had you traveled when you were struck by Mr. Moss's car? A. Well, from say here to where this gentleman is (indicating). Well, the width of a car. There is about that much.

40 Say this much space in between from there to in

Ethel Gee, for Plaintiffs—Direct.

here. The length for another car to get through.
The width of a car.

Q. When the car which Mr. Moss was driving struck you what happened to you? A. I didn't know for a few minutes. Two men picked me up and took me to the hospital.

Q. Which hospital? Do you know? A. St. Michael's. 10

Q. Now, Mrs. Gee, before you proceeded to cross from the sidewalk to the trolley car what did you observe? A. Nothing.

Q. Where was the parked car with reference to the place where you were crossing? A. Well, right in line with the trolley car by the curb.

Q. Was there any other automobiles in that neighborhood? A. One a few feet up.

Q. Was that car in motion? A. No, it was stopped. 20

Q. As you were proceeding to cross the street, when was the first time that you saw Mr. Moss's car? A. When it hit me.

Q. As you were crossing did you hear any signal or horn or any other sounding device? A. No, sir.

Q. After Mr. Moss's car hit you do you know how far it travelled before it stopped? A. Well, from about where you are to here (indicating). 30
The car was from here to that table (indicating).

Q. How long were you in St. Michael's hospital? A. About two hours.

Q. What did they do for you there? A. Just examined me and told me there was nothing broken, but just had a shake-up, to take me home and call a doctor.

Q. Who took you to the hospital? A. Two gentlemen in Mr. Moss's car.

Q. Do you know the names of those gentlemen? 40
A. Yes. Mr. Kelligan and Mr. Slater.

Ethel Gee, for Plaintiffs—Direct.

Q. Are they both here in court? A. Yes, sir.

Q. After you were in Mr. Moss's automobile and on your way to the hospital, did you hear any conversation between Mr. Moss and the other gentlemen in the car? A. Yes.

10 Q. Now, who spoke? A. Mr. Kelligan.

Q. And whom else? A. And Mr. Moss.

Q. What did Mr. Kelligan say to Mr. Moss? A. He asked him why didn't he get out of the car.

Q. Did Mr. Moss answer that question? A. He said he thought he had killed someone.

Q. Was there any other conversation that you heard between these gentlemen? A. They asked him why was he passing a car and he said he was in a hurry.

20 Q. Was there any other conversation? A. No, sir.

Q. What did they do for you at the hospital? Just tell us briefly. A. They just examined me and fixed a few bruises up.

Q. Where were you bruised? A. Under my chin and all down my arm and my left side.

Q. What part of your body had been struck by the automobile? A. My left side.

Q. Do you know on what part of the body you fell to the earth? A. No, I don't.

30 Q. After you left the hospital where did you go from there? A. To the police station.

Q. Who took you there? A. Mr. Kelligan. Mr. Moss didn't want to go.

Q. Who took you there? A. Mr. Moss, in Mr. Moss's car.

Q. How do you know that Mr. Moss didn't want to take you there?

Objected to as irrelevant and immaterial.

Objection sustained.

Ethel Gee, for Plaintiffs—Direct.

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

Exception noted as ground of appeal.

Q. Now Mrs. Gee, after you left the hospital you say that you were taken to the police station?

A. Yes, sir.

10

Q. Did you hear any conversation between Mr. Moss and the other gentlemen after you left the hospital, which related to this accident? Now answer that yes or no, please.

A. Yes, sir.

Q. Now, would you please tell us what the conversation was? A. I asked Mr. Kelligan what happened to some of my teeth, and Mr. Moss said, "Well, we will fix your teeth." He had one of my teeth in his car.

Q. What happened to your teeth? A. Well, I had five artificial teeth and he broke the plate.

20

Q. Was there any other conversation between the time you left the hospital and went to the police station with reference to this accident between these same gentlemen? A. No, just when I came home Mr. Moss told me to call a doctor right away, that there must be something serious the way he hit me.

Q. That was all the conversation that either you had or Mr. Moss, is that right? A. Yes.

30

Q. Now, when you got home what did you do? A. Went to bed.

Q. Will you tell the Court briefly how you felt at that time? A. Well, I don't know how I felt. I just was weak and I couldn't walk.

Q. What else was the matter with you? A. Well, the doctor will tell that to you.

Q. You tell it. Tell us how you felt. A. Just nervous and couldn't rest any place. Just lay down.

40

Ethel Gee, for Plaintiffs—Direct.

Q. Will you tell us why you couldn't rest? A. Well, I was nervous and I had pains too.

Q. Tell us about that pain. Where did it hurt you? How and what? A. Down my side and my back. The bottom of my stomach.

19 Q. Where else? A. Just underneath my chin.

Q. Tell us what happened to your chin. A. Well, the emblem of Mr. Moss's car hit me under there.

Q. What happened to your chin? A. It was bruised.

Q. Tell us how else you felt after you got home and you got to the house. A. I just felt all in.

Q. Did you go to bed? A. Yes, sir.

20 Q. How long did you stay in bed? A. Well, almost a month.

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

Q. Who? A. Dr. Levin.

Q. Now, during the time that you were in bed for this month, how did you feel? A. Just nervous. Just had to lay down.

Q. Did you feel anything else besides nervousness? A. Yes, I lost a lot of blood.

Q. Will you tell us when with reference to the accident you lost this blood? A. Three days after.

30 Q. Will you answer this question yes or no, Mrs. Gee? Do you know of your own knowledge why you lost this blood? Answer yes or no. A. Yes, sir.

Q. Now, tell the court why you lost this blood.

Mr. Harris: If your Honor please, I presume that this is going to lead up to something that has been intimated to me outside.

40 The Court: I sustain the objection. If you mean from what part of the body she lost the blood, that is something which may be testified to, of course.

Ethel Gee, for Plaintiffs—Direct.

Q. Then tell the Court, if you will, from what part of your body you lost this blood. A. Well, I don't know how to answer that.

The Court: Won't you have the doctor here?

Mr. Semel: Yes.

10

The Court: Can't he testify?

Mr. Semel: All right. I will not ask her any more questions on that score.

Q. Mrs. Gee, can you tell the court and jury for how long you had pain after this injury? A. For four or five months.

Q. How long was it after the accident before you were able to get out of bed? A. Between three weeks and a month.

20

Q. And after you got out of bed, will you tell us how long it was before the pain which you had suffered had entirely subsided? A. Between four and five months.

Q. During that time who took care of your home? A. A lady.

Q. What is her name? A. Mrs. McGinty.

Q. What did she do? A. She took care of the children, took care of the home.

Q. How long did she do that? A. She did that all the time, oh, for one month steady.

30

Q. And after the one month? A. She came in three or four days a week whenever she could.

Q. And when with reference to the date of the accident were you able to resume your household duties? A. About five months.

Q. During that time who did your household duties in addition to Mrs. McGinty? A. Just Mrs. McGinty.

Q. Did anybody else do any of your housework? A. No. My husband.

40

Ethel Gee, for Plaintiffs—Direct.

Q. Anybody besides your husband? A. No, sir.

Q. When was it that you were able to resume your household duties? A. About March.

Q. Of the following year? A. Yes, sir.

10 Q. Now, before you were injured did you do any work other than the household work which you were doing for your family? A. Yes, sir.

Q. Tell the Court what you were doing. A. I took care of the apartments and laundry work, laundry work for tenants.

Q. Where? A. 68 Montclair Avenue.

Q. And tell us what that work consisted of. A. Taking care of the laundry work and taking care of the apartments every day.

20 Q. How long before the accident had you been doing this work, Mrs. Gee? A. Since we took the apartment over.

Q. We don't know when that is. Tell us the month. A. In July.

Q. 1928? A. Yes, sir.

Q. Were you paid for doing that work? A. Yes.

Q. By whom? A. The tenants.

Q. How much per week did you make for this work? A. Around \$35.

30 Q. Now, after you were injured were you able to continue with this work? A. No, sir, I have never done any since.

Q. How much did you weigh before the accident? A. 125 pounds.

Q. How much do you weigh now? A. 119.

At one o'clock p. m. the Court takes a recess until two o'clock p. m.

Ethel Gee, for Plaintiffs—Direct.

AFTER RECESS.

ETHEL GEE, one of the plaintiffs, resumes the stand.

Direct examination (continued) by Mr. Semel:

Q. Now, will you tell the Court and jury a little more specifically just what injuries you received as the result of this accident? A. Bruises and internal injuries. 10

Q. Tell us where. What parts of your body? A. Down on my side, and I still have pains in my back.

Q. Which side? A. My left side.

Q. Where else were you injured? A. Down my left side, and my teeth. 20

Q. Any others? A. I had a miscarriage.

Objected to as not covered by the bill of particulars.

(Argument.)

The Court: She said she bled. She has not told where, but I understood you said the doctor will tell us about that.

Mr. Semel: Yes. I am perfectly satisfied if your Honor wants it stricken out. 30

Q. Were those all the injuries, Mrs. Gee? A. Yes.

Q. How do you feel now? A. Just nervous and sleepless.

Q. Tell the Court and jury a little more particularly what you mean by nervous. Just describe to the jury this nervousness. A. Well, I am irritable and the least thing upsets me.

Q. Now, tell us about the sleeplessness. 40

Ethel Gee, for Plaintiffs—Direct.

Objected to as not covered in the bill of particulars.

Objection overruled.

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

Exception noted as ground of appeal.

10

Q. Now, just describe to the jury this sleeplessness that you have suffered. A. Well, I just get to sleep maybe about an hour and then I get nervous and wake up.

Q. What else? A. Every time when I lay down I have pains in the bottom of my back.

Q. Anything else? A. No, sir.

Q. Now, with reference to the bleeding what has been your experience with that since the accident? A. Every two or three weeks all the time.

20

Q. Do you experience any pain or other sensations in the region in which the bleedings come? A. Yes, sir.

Q. Describe to the Court and jury just what that is. A. The bottom of my stomach and my back.

Q. What about them? Tell us what about the bottom of your stomach. A. There is where I got pain in my back, and the bottom of my stomach.

30

Q. How often do you get those pains? A. Just at periods.

By the Court:

Q. You mean that the bleeding is from the private parts of your body? Is that where the bleeding is from? A. Yes, sir.

Q. How often do you get these bleedings? A. Between two and three weeks.

Q. What was your condition in that respect before the accident? A. All right.

40

Ethel Gee, for Plaintiffs—Direct.

Q. Describe to the Court and jury how often you would get the menstruation periods before the accident. A. Just around every month. Just a few days before the end of the month.

Q. Mrs. Gee, how long have you been married?
A. Eleven years.

Q. How many children have you? A. Two.

Q. When with reference to the accident have you had your last menstruation? A. About between six and seven weeks before that.

Q. When with reference to the accident did this bleeding occur that you have described before?
A. Three days after.

Q. How long did that continue? A. For about almost a month.

Q. Now, in reference to your nervous system, what was the condition of that before the accident? A. Well, I was normal.

Q. With reference to your sleep, how was that before the accident? A. That was all right.

Q. Now, has there been any difference in your strength since the accident? A. Yes, sir.

Q. Tell us how it was before. Tell us some of the things you did before the accident, and some of the things that you are doing now. A. Well, before I could work from seven o'clock in the morning till around ten or eleven at night and now I can't do that.

Q. Are you able to do any work now? A. I just do my own and sometimes I get tired before I am through.

Q. Who is your doctor? A. Dr. Levin.

Q. How long did Dr. Levin treat you? A. Well, he came every day for about nine days.

Q. And then after that? A. Well, he dropped in every two or three days.

Ethel Gee, for Plaintiffs—Direct.

Q. How long altogether did Dr. Levin treat you for these injuries? A. Well, he still comes once in a while.

Q. Just what for? A. For my nervousness and my periods.

10 Q. When was the last time that the doctor treated you either for nervousness or for your periods? A. Two weeks ago.

Q. With reference to your teeth, did you have them fixed? A. Yes, sir.

Q. Who was the dentist? A. Dr. Chenitz.

Q. Where is his office? A. Springfield Avenue.

Q. What did he do for you? A. Just made a new plate and put six teeth in.

Q. How much did that cost? A. \$75.

20 Q. What happened to your wearing apparel when you were struck? A. They were all torn.

Q. Tell us what. A. My stockings, bloomers and dress.

Q. What else? A. That is all. My hat I lost.

Q. Were you wearing a coat? A. Yes.

Q. What happened to the coat? A. It did not get touched.

Q. Can you tell us what these things were worth that were damaged? A. Well, about \$50.

30 Q. Now, coming back to the scene of the accident, can you tell us where Mr. Moss's car came from at the time it struck you?

The Court: She has already told you that she did not see it until it struck her.

Q. Where were you standing when you saw this car?

The Court: She did not see it, she said.

(Argument.)

Ethel Gee, for Plaintiff—Cross.

Q. How many feet from the curb or sidewalk were you standing when the car struck you? A. Well, about from here to this end—between the car that was standing on the curb and the trolley car there is this much space (indicating). I was about that far in between the car and the trolley car when Mr. Moss's car came in between. 10

Q. In between what? A. The automoblie and the trolley car.

Q. And what happened? A. Well, I was hit.

Cross-examination by Mr. Harris:

Q. You say there is a stop sign there, Mrs. Gee? A. Yes, sir.

Q. What is it? One of these that turn green and red? A. No. A white painted post. 20

By the Court:

Q. A white pole for a trolley stop, you mean? A. Yes.

By Mr. Harris:

Q. Oh, it is a trolley stop, a white pole? A. Yes.

Q. It is not a stop for automobiles and things of that kind? A. It is a trolley stop; yes, sir. 30

Q. Would you be able to draw a diagram for us to show us the street and the position of the two automobiles?

The Court: Oh, no, I think not.
(Argument.)

Q. You say that there were two automobiles parked on the righthand side of Broadway, Mrs. Gee? A. Yes, sir. 40

Ethel Gee, for Plaintiff—Cross.

Q. And the distance between both of those automobiles was about how many feet? A. Well, from that table over to here (indicating).

The Court: Indicating about six feet.

10 Q. As you walked off the sidewalk between both of these automobiles to go on the trolley car—isn't that right? A. Yes.

By the Court:

Q. You went out between the two automobiles parked, did you? A. One car had been in there a while.

20 Q. You walked out there and two automobiles were parked there about six feet apart, is that right? A. Yes.

Q. And you went out between those two automobiles? A. The last one pulled for me and he beckoned for me to go ahead. The last one that was there.

Q. You are not answering my question. Did you go out between these two automobiles when you went to the trolley car? A. Yes, sir.

By Mr. Harris:

30 Q. And you say that you were looking at the motorman on the trolley car who beckoned to come along, is that right?

The Court: She also said that the driver of the second automobile beckoned her to come out.

40 Q. The driver of the second automobile parked his car along the righthand side of the curb? A. Yes, sir.

Ethel Gee, for Plaintiff—Cross.

Q. And you then looked to the motorman whom you say beckoned you to come along, is that right?

A. Yes.

Q. Did you look to your right in passing out from between these two automobiles? A. Yes, sir.

Q. Did you see the Moss car coming along? A. 10
Not until he hit me.

By the Court:

Q. How much distance was there between the left side of the parked cars and the right side of the trolley car? How far was it from the left side of the parked cars to the right side of the trolley car? A. Well, he was almost to the curb. There is enough space for a car to go through. 20

Q. You don't answer me. How far was it from the left side of the car that was parked along the curb to the right side of the trolley car to which you were going? A. Say from here to that post there (indicating). This car was along the curb.

Q. From that post to where the man has hold of the post there? A. Yes.

The Court: That is about eight feet.

By Mr. Harris: 30

Q. Then you say you were struck, Mrs. Gee, by an automobile? A. Yes, sir.

Q. You did not know what happened for the next few moments? A. No, sir.

Q. Do you know when your teeth were torn out of your mouth? A. No, not until I got in the car I did not.

Q. Then did you find your teeth were torn out? A. Yes. I put my hand to my mouth. 40

Ethel Gee, for Plaintiff—Cross.

Q. You found the teeth missing? A. Broken in two. It was off the plate.

Q. How many teeth were off the plate? A. Two.

By the Court:

10 Q. Was it a plate or a bridge? A. Well, it was half a plate and bridge.

By Mr. Harris:

Q. And those teeth were thrown out on the ground when you were hit? A. No. One was in Mr. Moss's car.

Q. You say there is a Mr. Kelligan? A. Yes.

Q. What is the other gentlemen's name that
20 picked you up? A. Mr. Slater.

Q. How long have you known these gentlemen?
A. I don't even know them.

Q. Do you know where they came from? A. No, sir.

Q. You say they helped you into Mr. Moss's car? Yes, sir.

Q. Where was Mr. Moss's car when you got into it? A. Oh, about five or six feet past the trolley car.

Q. Were you in front of the automobile of Mr.
30 Moss? A. I guess I was.

Q. Mr. Moss took you to the hospital, didn't he, in his automobile? A. Yes.

Q. Did he take you back from the hospital?
A. To the police station.

Q. Did he take you home from the police station? A. Yes, sir.

Q. Did you walk into Mr. Moss's car and out of it? A. No. I was helped. I was carried in the first time and the rest of the time I was helped in.
40

Ethel Gee, for Plaintiff—Cross.

Q. You walked along the street into the hospital from the automobile, did you not? A. No, sir.

Q. Were you carried? A. No, I was helped.

Q. You were on your own feet, weren't you?
A. With help.

Q. How long did you say you were at the hospital? A. About two hours. 10

Q. Was anything done to you there? A. Yes. I had my bruises treated and had an examination.

Q. What did they do to treat your bruises? A. Well, I don't know just what they did. They fixed them up.

Q. And put something red on you? A. Yes, I think they did.

Q. They did not put any bandages on you, did they? A. Yes, sir.

Q. Where did they place those bandages? A. 20
Around my shoulders.

Q. They made a complete examination of you at the hospital, did they not? A. Yes, sir.

Q. Then when you got home did you call a doctor? A. Mr. Moss had called a doctor. He thought it was more serious than they said.

Q. You didn't think it was necessary to call a doctor, did you? A. Yes, sir.

Q. Who was the doctor you called? A. Dr. 30
Levin.

Q. Did he come the same day? A. No. He came the morning after.

Q. What did he do to you? A. He prescribed medicine for me and fixed my bruises again.

By the Court:

Q. Was this accident in the morning or in the evening? A. Around quarter to six at night.

Ethel Gee, for Plaintiff—Cross.

By Mr. Harris:

Q. Did Dr. Levin make an examination of you?
A complete examination? A. Yes, for bruises,
but not internally until three days after.

Q. You did not go right to bed, did you, when
10 you got home? A. Yes, sir.

Q. Were you in bed all the next day? A. Yes,
sir.

Q. And all of the day following? A. Yes, sir.

Q. You did not leave your bed? A. No, sir.

Q. Not at all? A. No, sir.

Q. Now, Mr. Moss came around to see you the
next day, didn't he? A. Yes.

Q. Where did he find you? A. In bed.

Q. Are you sure of that? A. Yes, sir.

Q. Were you sorting clothes the next day when
20 he came around? A. No, sir.

Q. Weren't you dressed in your house clothes
and in your slippers working in the house? A.
No, sir.

Q. How long did Dr. Levin's examination take?
A. About an hour.

Q. That is the first time he came? A. No. He
came the morning after.

Q. I say, the first time he came he was there
30 about an hour? A. He came the morning after,
and you said examined me. He examined me
three days after.

Q. He did not examine you at all the first day?
A. Yes, for bruises.

Q. How long was he there then that first day?
A. About three quarters of an hour.

Q. And the next day he came again, did he?
A. Yes, sir.

Q. How long was he there then? A. About
40 twenty minutes.

Ethel Gee, for Plaintiff—Cross.

Q. And the third day he came again? A. Yes, sir.

Q. How many times did you say Dr. Levin came altogether? A. Between eight and nine days straight.

Q. And then? A. Every two or three days.

Q. Did he make a charge every time he came? 10
A. Yes, sir.

Q. Did you pay him? A. Yes, sir.

Q. Are you sure you paid Dr. Chenitz for the doctor bill yourself? A. My husband paid.

Q. Were you present when he paid him? A. Yes, sir.

Q. Do you know how much money he handed him? A. \$75.

Q. You are sure of that? A. Yes, sir.

Q. Did your lawyer ask you about how much 20
you paid a dentist before coming to court?

Objected to.

Objection overruled.

A. Yes, sir.

Q. How long ago was that? A. When I got my teeth.

Q. Do you remember telling the lawyer how much the dentist bill was? A. Yes, sir.

Q. How much did you tell him then? A. \$75. 30

Q. Are you sure of that? A. Yes, sir.

Q. Do you know that your bill of particulars shows your dentist bill was \$50? A. No, sir.

Q. Did you ever tell your lawyer that the dentist bill was \$50? A. No, sir.

Q. How much did you spend for medicines all told? A. Well, I don't know that.

Q. You say that your overcoat was not damaged? A. No, sir.

40

Ethel Gee, for Plaintiff—Cross.

Q. The only thing that was damaged was your dress and stockings? A. Bloomers and underwear.

Q. Did your lawyer ever ask you before what parts of your clothing were damaged? A. Yes, sir.

10 Q. Before coming to court today? A. No. When I first saw him.

Q. Do you remember telling your lawyer then that your overcoat was damaged and torn? A. No, sir.

Q. Do you know that your lawyer has in his answer to the demand for bill of particulars that your overcoat was torn as a result of this accident? A. I don't understand you.

20 (The last question is read by the stenographer.)

A. No, sir.

Q. Do you perform your household duties now?

A. As far as I can.

Q. When did you first start to perform your household duties? A. Around March.

Q. You assist your husband in taking care of the apartment, you say? How large is the apartment? A. It was then 65 families.

30 Q. You had to give up considerable time to take care of this apartment with your husband, didn't you? A. Yes.

Q. It requires a lot of attention? A. Yes, sir.

Q. And you say you had time to take care of other people's homes besides that? A. Yes, sir.

Q. How much did you receive from the other people? A. Around thirty-five a week.

Q. How many people did you work for? A. Eight.

Ethel Gee, for Plaintiff—Cross.

Q. What did you do for them? A. Wash and take care of their apartment.

Q. How many rooms all told in these eight apartments? A. Some are two and a kitchenette and some are three.

Q. Would you say there are twenty rooms? A. 10
Around twenty.

Q. And you used to dust and clean these twenty rooms besides take care of the apartment with your husband? A. Yes, sir.

Q. Besides you did the washing and ironing? A. He took care of the apartment. All I did was answer the phone.

Q. Did you help at all in taking care of the apartment? A. No, sir; not in work.

Q. What were you doing to help take care of the apartment? A. Well, answer the phone if 20
people came to see the apartments.

Q. Did you have any elevators in the apartment house? A. Yes.

Q. Did you help take care of the elevators? A. No.

Q. What was the salary that you received in taking care of the apartment house?

Mr. Semel: By whom?

Mr. Harris: Together. They were both 30
working in the apartment.

A. That is my husband's pay. That is not mine.

Q. You have some children, two, you say? You have two children? A. Two.

Q. You had to take care of those children as well as take care of those eight apartments? A. They both went to school.

Q. But you had to take care of them when they came home from school? A. Yes. 40

Ethel Gee, for Plaintiff—Cross.

Q. And before going to school? A. Yes.

Q. Do all of these people whose apartments you take care of go out during the day? A. Yes, sir.

Q. Did you have anybody help you take care of these apartments? A. No, sir.

10 Q. You were working pretty hard during this time? A. Yes, sir.

Q. How many pounds did you weigh when you went into the apartment? A. 126.

Q. You weighed about 125, you say, at the time of this accident? A. Yes.

Q. What point of the back do you claim pained you? A. The bottom of my back.

Q. How long after the accident did you discover that the bottom of your back pained you? A. Right away.

20 Q. Did you tell that to your doctor? A. Yes, sir.

Q. Did he do anything to alleviate your pain? A. He gave me some tablets.

Q. Is that all he did for the back? A. Yes, sir.

Q. Did you tell that to your lawyer when he prepared the answers to the bill of particulars? A. Yes, sir.

30 Q. Do you know that the pain to the bottom of your back is not in the bill of particulars. A. I don't know.

Q. Did you have any lacerations about the body? Do you know what a laceration is? A. No.

The Court: Lacerations are scratches or cuts.

A. Just under my chin.

Q. How old are your children? A. One eight and one is six, almost six.

James J. Kelligan, for Plaintiff—Direct.

JAMES J. KELLIGAN sworn in behalf of plaintiff.

Direct examination by Mr. Semel:

Mr. Kelligan, where do you reside? A. At 8 Vincent Street.

Q. Where? A. Newark.

Q. Do you know Mrs. Gee? A. I know her now, yes.

Q. Where did you get acquainted with her? A. I got acquainted with her the night of the accident.

Q. What was the date, if you remember? A. A year ago November 20th.

Q. What time of the day did this accident occur? A. Quarter to six.

Q. Where? A. On Washington Avenue, corner Washington Avenue and Montclair Avenue.

Q. Now, will you tell the Court and jury briefly just what you saw at that time? A. Well, I was after putting my truck up in the warehouse on Grafton Avenue, and I was walking up Washington Avenue in front of a delicatessen there.

By the Court:

Q. You say "up." Is that toward Belleville? A. Going toward Belleville. I was in front of the delicatessen, right in front of this white pole.

Q. On which side of the street? A. On the right-hand side, right where the trolley car stopped, when I seen that the trolley car had not already stopped yet. There was another car following it in the back.

By Mr. Semel:

Q. What kind of car? A. Street car. There was an automobile following the street car.

James J. Kelligan, for Plaintiff—Direct.

By the Court:

Q. The second street car or the first? A. First street car. When I got to the delicatessen the street car had already stopped. This automobile that was following it pulled up to the curb three feet in back of the door and stopped.

10

By Mr. Semel:

Q. Back of which door? A. The street car door.

Q. Front or rear? A. Front. The trolley car door opened, the step went down. Mrs. Gee stepped off the sidewalk, crossed the road in order to get onto the street car. She was three feet from the doorstep when Mr. Moss came along with his car going at the rate of 25 miles an hour and hit her, lifting her in the air, throwing her about 15 feet ahead of the trolley car. When I seen his car—no, that is wrong. I seen Mrs. Gee with her face down and went out in the road and picked her up, brought her back to Mr. Moss's car, and asked him why he didn't get out and pick the woman up. He says, "Well, I was afraid that I already killed the woman." I says, well, I says to the fellow that was with me, "Open the door and we will put her in and take her to the hospital." I put her in the rear seat, took her down to St. Michael's Hospital.

20

30

Q. Between the time that you picked her up and took her to St. Michael's Hospital, did you have a conversation with Mr. Moss? A. Yes.

Q. Tell us what the conversation was. A. I asked Mr. Moss on the way to the hospital why he was driving so fast. He told me he was in a hurry to get home.

40

James J. Kelligan, for Plaintiff—Direct.

Q. Now, with reference to the place where the trolley car was standing, how far did Mr. Moss' car travel from that point after he struck Mrs. Gee? A. His car was exactly five feet past the trolley car when he was stopped.

Q. You took Mrs. Gee to the hospital? A. I took Mrs. Gee to the hospital.

10

Q. What happened there? A. Mr. Slater and myself assisted her out of the car, brought her into the hospital where they had an examination of her.

Q. And then? A. Stayed there. I couldn't exactly say whether it was one hour or two hours.

Q. Where did Mrs. Gee ride in the automobile when you took her to the hospital? A. She rode in the rear seat with me.

Q. What happened after you left the hospital? A. After I left the hospital, Mrs. Gee, myself and Slater helped her into the automobile again, put her in the front seat, and Slater and myself rode in the back, and I says to Mr. Moss, "The best thing we better do now is to go and make a report of it at the Eighth Precinct."

20

Q. What did he say? A. He says he didn't think there was any necessity of making a report so I said, "Well, we will stop any way." So we got to the Eighth Precinct, all four of us got out of the car, went into the Eighth Precinct and made the report to the lieutenant.

30

Q. And from there? A. From there we came out of the Eighth Precinct and Mr. Moss said he would take her home. At first she didn't want to go in his car, but then he insisted on her getting into the car so he could take her home. So finally she decided to get in. From then on that is all I know.

40

James J. Kelligan, for Plaintiff—Direct.

Q. Was there any further conversation with reference to this accident between Mr. Moss and yourself or any of the other occupants of the car?

A. Not that I can remember.

Q. How many automobiles were there at a standstill at the time this accident happened? A.

10 Two.

By the Court:

Q. Where were they? A. One was standing three feet beside of the trolley car, three feet back of the trolley car door, the side. The other one was at least seven or eight feet ahead of that.

Q. Ahead of that? A. Ahead of that. That was already parked.

20 By Mr. Semel:

Q. That was a parked car? A. That was a parked car.

Q. This car which you say was three feet from the rear of the front door,—am I correct about that? A. Yes.

Q. Of the trolley car? A. Yes.

Q. How far was that car from the curb? A. That car was at least a foot.

30 Q. From the curb? A. From the curb.

Q. And with reference to the two cars, where did Mrs. Gee leave the sidewalk? Do you know? A. She left the sidewalk in front of the car that was a foot away from the curb.

Q. In other words, between these two cars? A. Between the two.

Q. And the distance between the two cars was what? A. Six or seven feet.

40 Q. Now, with reference to the intersection of Montclair Avenue and Broadway, do you know what I mean by the intersection? A. Yes.

James J. Kelligan, for Plaintiff—Direct.

Q. Where did the trolley car stop? A. The trolley car stopped,—well, Montclair Avenue sets across the street.

Q. Yes. A. It does not come across Broadway.

Q. Are you familiar with this neighborhood? A. No, not very well.

10

By the Court:

Q. Before we go into that let us find out how far it was from the left of this automobile which you say was one foot from the curb and the right side of the trolley car. What was the distance between that car that was stopped opposite the front of the trolley car and the trolley car itself? A. What is the distance?

Q. Between the parked car, the stopped car, and the trolley car. A. Between the parked car and the trolley car it is a distance of seven feet.

20

By Mr. Semel:

Q. What was the distance between the curb on the easterly side of Broadway and the right side of the trolley car? A. The distance from the curb to the track?

Q. Yes. A. The distance from the curb to the track I judge is 15 feet.

30

Q. How many feet to the right of the trolley car was Mrs. Gee when she was struck?

The Court: He has already told you that. Three feet he said.

Q. Now, coming back to my other question with reference to the intersection, Montclair Avenue does not extend, does it? A. No, sir.

Q. With reference to the intersection of Montclair Avenue and Broadway, where was the front

40

James J. Kelligan, for Plaintiff—Direct.

of the trolley car when it stopped? Do you understand what I mean? A. You mean Montclair Avenue coming out, you mean how many feet back from Montclair was it?

10 Q. No. The intersection,—you can fix that in your mind, can't you, where the intersection of Montclair Avenue and Broadway is? A. Yes.

Q. Where the two streets come together? A. Yes.

Q. How many feet from the southerly intersection of Montclair Avenue and Broadway was the trolley car when it came to a stop? A. Seven feet.

Q. Seven feet from the intersection? A. From the intersection of Montclair Avenue.

20 By the Court:

Q. Did you make measurments of these things or are you giving us your best judgment? A. Just my best judgment.

By Mr. Semel:

30 Q. How many feet was the first automobile ahead or behind the front of the trolley car when the trolley car came to a stop, the one that you referred to as a parked automobile? A. How far was it in front of the trolley car?

Q. Yes. A. Seven feet.

Q. Did you have an opportunity to observe the speed at which Mr. Moss was driving his car at the time that it struck Mrs. Gee?

The Court: He has told you. He said 25 miles an hour.

40 Q. Did you hear any signal from Mr. Moss' car? A. All I heard was his brakes.

James J. Kelligan, for Plaintiff—Cross.

Q. What was the condition of the pavement, or what was the weather condition on that day?

A. Dry.

Q. The pavement was also dry? A. Yes.

Q. Was it light or dark? A. Well, it was just breaking dark, just getting dark.

Q. Do you know what part of Mr. Moss' car struck Mrs. Gee? A. The bumper. 10

Q. Do you know what part of her body was struck? A. Oh, struck her in the left leg, throwing her off balance, which the emblem of the car struck her in the neck.

Q. Do you know what happened to Mrs. Gee's teeth? A. That I don't know.

Q. Did you observe anything at all about it? A. No. 20

Cross-examination by Mr. Harris:

Q. You don't know what happened to Mrs. Gee's teeth at all? A. No, sir.

Q. You never heard anything about her teeth? A. All I have heard her say, when I was taking her to the hospital she says, "Does my face look bad?" and I says, "No, not very bad."

Q. How about coming back from the hospital. Did anybody say anything about teeth? A. Not to me. 30

Q. Now, which way were you walking? North or South? A. North.

Q. You were going in the same direction in which the automobiles were going? A. Yes.

Q. And you say you were right opposite to where this white pole was? A. Yes.

Q. Is that white pole on the intersection? A. It is right on the righthand side. 40

James J. Kelligan, for Plaintiff—Cross.

Q. Right at the intersection? A. No, not right at the intersection.

Q. How many feet ahead of the intersection? A. Well, I should judge 15 feet.

Q. 15 feet ahead of the intersection? A. Behind the intersection.

10 Q. That is, toward the direction in which you were coming from? A. Yes.

Q. Where were you with reference to this white pole? A. Right even with it.

Q. Right even with it? A. Yes.

Q. And you were walking along with a friend of yours, were you? A. Yes.

Q. And you were talking? A. Yes, sir.

Q. Looking straight ahead? A. Well, not exactly straight ahead.

20 Q. Which way were you looking? A. Well, talking to him. Of course he was on my left. I was partly looking out in the road.

Q. You were in a hurry to get home? A. Yes, we were going to ring out our tickets.

Q. You were what? A. We were going to ring out our time cards.

Q. Where was this place you were going to ring out your time cards? A. On Washington Avenue.

Q. How far up? A. One block farther up.

30 Q. You saw this woman on the sidewalk? A. Yes, sir.

Q. How long did you see her standing there? A. At least a minute.

Q. Then you saw her step off? A. Yes.

Q. And she stepped off between two automobiles, did she not? A. She stepped off in front of this one that was parked alongside the trolley car.

40 Q. Was there anything in front of her, in front of the one that was parked alongside the trolley

James J. Kelligan, for Plaintiff—Cross.

car? A. Yes, there was another car seven feet farther up.

By the Court:

Q. What was the trolley car doing when she stepped off the sidewalk? A. The trolley car had already come to a standstill and the door was opened. 10

Q. Before she stepped off the sidewalk? A. Before she stepped off the sidewalk.

By Mr. Harris:

Q. How long was she standing there before she stepped off? A. About three seconds.

Q. And you said that you saw a trolley car in back of this trolley car which she was to board? 20
A. No, sir.

Q. Didn't I understand you to say that? A. No. The way I said, I said this automobile was following the street car and pulled up to the curb the same time the trolley car came to a stop.

Q. How long was the automobile following the street car that you saw? A. Well, when I seen it they were almost ready to come to a stop, as much as I seen.

Q. Who was almost ready to come to a stop? 30
A. The trolley car and the automobile.

Q. When you saw it they were alongside of one another? A. Surely.

Q. How do you know they were following one another? A. I did not say they were following one another.

Q. You said the automobile was following the trolley car? A. Surely.

Q. How do you know that? A. The reason I know that is that the automobile was behind the 40

James J. Kelligan, for Plaintiff—Cross.

trolley car, coming up with it, until the trolley car came to a stop, which he pulled alongside to the curb and stopped too.

Q. Well, now, between that automobile and the trolley car, what was the distance when he stopped? A. The distance was seven feet.

10 Q. That is, the automobile came to a stop alongside the curb? A. Yes.

Q. In front of which Mrs. Gee stepped off? A. Yes.

Q. That automobile wasn't following a trolley car, was it? A. Yes, sir.

Q. It was? A. Yes.

Q. Then both automobiles were following a trolley car? A. No, sir. There was only one automobile following the trolley car.

20

By the Court:

Q. When you say following the trolley car, do you mean in the track or behind where the trolley car was traveling? A. Well, just this side of the tracks.

Q. You mean to the right of the track? A. To the right of the track.

By Mr. Harris:

30

Q. When did you first see this Moss car? A. When I seen the Moss car it was when the trolley car had already stopped for three seconds and she stepped out in front of this car, three foot from the doorstep, ready to get on, when I heard brakes squeaking.

Q. You did not see it, but you heard? A. I heard brakes squeaking. I saw this car hitting her.

40

Q. That is the first time you saw it? A. That is the first time I saw Moss' car.

James J. Kelligan, for Plaintiff—Cross.

By the Court:

Q. How close to Mrs. Gee was the Moss car when you first saw it; how close to her? A. It was between three and four feet I should judge.

By Mr. Harris:

10

Q. And you heard brakes squeak? A. Yes, sir.

Q. And you saw it come to a stop? A. Saw what come to a stop?

Q. You saw the Moss car come to a stop? A. After he hit her.

Q. But it was only three feet before her that you saw this car, this Moss car? A. Yes, sir.

Q. How fast was it going when it was three feet before her? A. How fast was it going?

Q. Yes. A. It was going at the rate of 25 miles an hour. 20

Q. Three feet in front of that woman? A. Yes, sir. Three foot in front of her.

Q. It was going 25 miles an hour? A. Yes.

Q. Within how many feet did it stop? A. Five.

SECOND DAY.

Wednesday, December 18, 1929. 30

Continued pursuant to adjournment.
Present, counsel as before stated.

Mr. Semel: If your Honor please, the ownership by Mrs. Sarah Moss and the operation by Mr. Sigmund Moss are admitted. Is that right, Mr. Harris?

Mr. Harris: Yes. We admit the ownership by Sarah Moss, but do not admit the agency, of course. 40

John Slater, for Plaintiff—Direct.

JOHN SLATER SWORN in behalf of plaintiff.

Direct examination by Mr. Semel:

Q. Where do you live, Mr. Slater? A. 115 Main Street, Belleville, New Jersey.

10 Q. On the night of November 20, 1928, at about quarter of six where were you? A. I was right near Montclair Avenue, right near the National grocery store.

Q. On what street? A. Broadway.

Q. Whom were you with that night? A. Mr. James Kelligan.

Q. Is he the gentleman who testified yesterday? A. Yes, sir.

20 Q. What did you see that night with reference to an accident? A. Well, I saw two parked cars.

Q. Where were they? A. One was right in toward the gutter. The other one was right in the other side of the driver's seat, on the side of the left fender.

Q. I don't understand what you mean by the side of the driver's seat. A. This side of the left fender.

30 Q. With reference to the intersection of Montclair Avenue and Broadway, where was one car? Just tell us where that one was, and then tell us where the other one was. A. One car was right near the delicatessen store.

Q. Where is the delicatessen store with reference to the intersection? A. Right near Montclair Avenue, right opposite Montclair Avenue.

Q. Now, the first car, you say, was near the delicatessen store? A. Yes.

40 Q. Was it north of the delicatessen store or south of it? I mean, toward Belleville or toward Newark? A. North, toward Belleville.

John Slater, for Plaintiff—Direct.

Q. North, toward Belleville? A. Yes.

Q. Where with reference to the curb was that car? A. Well, that car is right toward the curb.

Q. Toward the curb? A. Yes.

Q. Was there anybody in that car? A. Well, I did not take notice.

10

By the Court:

Q. Both these cars were parked, I suppose, on the east side of the street? A. On the north side going toward Belleville.

Q. Doesn't Broadway run north and south? A. Yes.

Q. Well, as you go toward Nutley and Belleville, were these cars on the righthand side of the street or the lefthand side? A. On the righthand side. 20

The Court: That would be the east side.

Mr. Semel: That is right, your Honor.

By Mr. Semel:

Q. Now, car No. 1, which you say was near the delicatessen store, how near to the curb, the easterly curb of Broadway, was that car, if you know what I mean; on the side going up toward Nutley? A. The first car?

Q. Yes. A. It was a regular parked car; right near the curb. 30

Q. Now, was the other car ahead of that going toward Nutley, or was it behind it? A. It was right behind it.

Q. How far behind was the other car? We will call that the second car. A. That is the second car. Five feet behind.

Q. With reference to the curb, how near to the curb was the second car? A. The second car, that would be about four feet from the curb. 40

John Slater, for Plaintiff—Direct.

Q. Four feet from the curb? A. Yes.

Q. Was that car in motion when you saw it?

A. No, sir.

Q. What was it doing? A. It was just standing.

10 Q. Had you observed that second car before it came to a stop? A. Well, I did not exactly notice it.

Q. You did not? A. No, sir.

Q. Did you observe the trolley car there? A. I saw the trolley car standing.

Q. You saw the trolley car standing? A. Yes, sir.

Q. Did you see the Moss car before it struck Mrs. Gee? A. No, sir; I did not.

20 Q. When was the first intimation you had that any accident had occurred? A. When I saw Mr. Kelligan pick up Mrs. Gee.

Q. Where had you been standing at that time? A. Well, I was just walking ahead—well, Kelligan and I were walking together, and I just happened to walk up and he heard a crash.

Q. Who heard a crash? A. Kelligan.

Q. How do you know that? Did you hear it? A. Well, I didn't hear it, but I kept going.

30 Q. You kept going? A. Yes.

Q. What was the first thing you observed? A. I turned around and I saw Kelligan picking up Mrs. Gee.

Q. Where was Mrs. Gee at that time with reference to the intersection? Do you know what I mean by the intersection, Mr. Slater? The intersection means where Montclair Avenue comes into Broadway, the crossing, in other words. A. The crossing, yes.

40 Q. Where was she with reference to the lower or southerly side of that intersection? A. Where was she?

John Slater, for Plaintiff—Direct.

Q. Yes. A. I didn't see Mrs. Gee then.

Q. Where was she when you saw her the first time? A. The first time?

Q. Yes. A. The first time I saw her was on the ground.

Q. Where? A. Right in front of the car that struck her. 10

Q. Right in front of the car that struck her? A. Yes.

Q. When you say in front, can you give us any idea of the number of feet between the car and the place where she was lying? A. I figure about five feet.

Q. So it was a distance of about five feet from the place— A. Yes.

Q. Was this car in motion when you saw it? A. No, it was standing still. 20

Q. Which car are you referring to? A. Mr. Moss' car.

Q. What was the trolley car doing at that time? A. At that time the trolley car stood there.

Q. You saw Mr. Kelligan run over?

By the Court:

Q. I understand you did not see Mrs. Gee at all until after she was lying in the street? A. Yes, sir. 30

Q. You did not see her on the sidewalk? A. No, sir.

Q. Or leave the sidewalk or anything of that kind? A. No, sir.

Q. The first you saw of her she was lying in front of Mr. Moss' car? A. Yes.

Q. That is right? A. Yes.

By Mr. Semel:

Q. You did not see the car strike Mrs. Gee? A. No. 40

John Slater, for Plaintiff—Direct.

Q. Did you observe the front door of the trolley car at that time? A. I did. It was open.

Q. Can you tell us how long that trolley car stood there before you saw Mrs. Gee? Did you notice that? A. Before I saw Mrs. Gee that trolley car stood there, well, I will tell you, it stood there
10 until after we got her in the car, and in front of that car we turned around.

Q. Did you notice the trolley car before you saw Mrs. Gee on the street? A. Well, I saw the car standing there.

Q. You saw it standing? A. Yes, this trolley car.

Q. You saw it standing? A. Yes.

Q. Do you know how long that car had been standing there before you saw Mrs. Gee? A. Well,
20 I think it must have been standing there about three minutes.

Q. Did you observe any other traffic about the time that you saw Mrs. Gee on the street? A. Traffic?

Q. Yes, any other cars, trolley cars, automobiles. A. Well, I saw one ahead of that there, and that was a Belleville car, Belleville trolley car, but it was a Broad Street car but marked Belleville.

Q. That was the one which had preceded the car that was standing there, is that correct, Mr.
30 Slater? A. Yes.

Mr. Harris: If your Honor please, I did not get the answer to the previous question.

(The previous answer is read by the stenographer as follows: "Well, I saw one ahead of that there, and that was a Belleville car, Belleville trolley car, but it was
40 a Broad Street car but marked Belleville.")

John Slater, for Plaintiff—Direct.

Mr. Harris: Do I understand that that is the car that preceded this car?

The Court: That is what he said.

The Witness: That was ahead of this car.

Q. So that the only automobiles which you saw there at this time were the two which were parked along the curb? A. Yes. 10

Q. And Mr. Moss' car? A. Yes.

Q. There was no other traffic there? A. No.

Q. Now, did you see Mr. Kelligan go over to Mrs. Gee? A. Well, I just, when he went right over, I turned around, I saw him picking her up.

Q. He had been walking with you? A. Well, he had, yes.

Q. Did he say anything to you before he left you? A. No, not that I know of. 20

Mr. Harris: I object to that. That is not material.

The Court: Sustain the objection.

Mr. Semel: All right. I will withdraw it.

Q. What did you see him do with Mrs. Gee? A. Pick her up and go toward the car, toward Mr. Moss' car.

By the Court: 30

Q. Did you go with her to the hospital? A. Yes. I did.

By Mr. Semel:

Q. Who helped Mrs. Gee to get into that car? A. Mr. Kelligan and myself. I opened the door of Mr. Moss' car.

Q. Where did you go? A. Went to St. Michael's Hospital, Newark, New Jersey. 40

John Slater, for Plaintiff—Direct.

Q. On the way to the hospital did you hear any conversation between Mr. Kelligan and Mr. Moss?

A. I did.

Q. Will you tell us what it was? A. Mr. Kelligan wanted to know why he was going so fast.

10 Q. What did Mr. Moss say as to that? A. Mr. Moss says he was in a hurry to get home.

Q. Was there any other conversation? A. That is all that I know.

Q. Was there anything said about Mr. Moss' getting out of the car? A. Getting out of the car?

Q. Yes. A. Well, I did hear Mr. Kelligan say that, yes, sir.

20 Q. What did Mr. Kelligan say? A. Mr. Kelligan said, "Why didn't you get out of your car?"

Q. What did Mr. Moss say? A. Mr. Moss said, "I thought I had killed somebody".

Q. They got to the hospital, and from there did you remain with them? A. I did.

Q. Where did they go from there? A. The Eighth Precinct station house on Broadway.

Q. Now, did you hear any further conversation between Mr. Moss and Mr. Kelligan with reference to this accident on the way from the hospital to the Eighth Precinct? A. On the way from the hospital?

Q. From the hospital to the Eighth Precinct. A. No, not that I know of.

Q. Where were you sitting? A. I was sitting in the back.

Q. Where was Mr. Kelligan sitting? A. In the back with me.

Q. Where did Mrs. Gee sit? A. In the front.

Q. Did you go with them to the precinct? A.

40 Yes, sir, I did.

John Slater, for Plaintiff—Cross.

Q. Did you hear any further conversation at all between Mr. Moss and Mr. Kelligan or Mrs. Gee after that? A. After getting to the police station?

Q. Yes, after you left the police station. You rode with him from there, didn't you? A. I went to the station house; yes, sir.

Q. After you left the station house did you go with them? A. No. We left them right there. 10

Q. What? A. We left them at the station-house.

Q. So that you heard no further conversation. Now, did you see Mrs. Gee before Mr. Kelligan picked her up? A. No, sir, I did not.

Cross-examination by Mr. Harris:

Q. You did not see this accident at all at the time that it happened, or before it happened? A. No, sir. 20

Q. You did not see anything about it? A. No.

Q. The only thing you know is what happened after the accident. A. After.

Q. And you are sure Mr. Kelligan asked Mr. Moss why he was going so fast? A. Yes, sir; because I was right in the car with them.

Q. And Mr. Moss said that he was in a hurry and "I want to get home." That you are positive about? A. Yes. 30

Q. You did, however, see another trolley car that passed along in front of this trolley car? A. Yes, I took notice of that.

Q. That one you noticed? A. That one I took notice of.

Q. You say that you saw this trolley car, that you say had stopped, and with the door open, you saw it standing there three minutes? A. Yes.

Q. Before you saw Mrs. Gee? A. I never saw Mrs. Gee then. 40

John Slater, for Plaintiff—Cross.

Q. What is that? A. I didn't see Mrs. Gee then.

Q. Did you see anything alongside the trolley car during all this three minutes that you saw it standing there? A. I saw two parked automobiles—not parked, but one was parked and one was partly parked.

Q. Did you see anything else? A. I saw a trolley car and that was the trolley car I have reference to.

Q. Did you see anything else beside the trolley car? Did you see Moss' car? A. Yes, I saw Moss' car right after she was picked up, right after I saw Mr. Kelligan pick her up.

Q. But not until then? A. Not until then.

Q. Where was Moss' car with reference to this trolley car? A. Where was it? It was five feet ahead of the car, trolley car.

Q. It was five feet ahead of the trolley? A. Yes.

Q. Where? In the middle of the trolley car? A. No, right alongside of the car.

Q. You don't know whether this trolley car was standing there three minutes before Mrs. Gee was hit or three minutes after Mrs. Gee was hit? That you don't know? A. After, too.

Q. What is that? A. After.

Q. Why not before? A. And before, too.

Q. How do you know it was before when you don't know when Mrs. Gee was hit? A. Well, I can see a car when it is standing there.

Q. You say you don't know when Mrs. Gee was hit; you didn't see her; you don't know whether it was before Mrs. Gee was hit that it came to a standstill, or after.

Mr. Semel: The witness testified that he saw the car standing there for about three

John Slater, for Plaintiff—Cross.

minutes before he saw Mrs. Gee. He did not see how Mrs. Gee was hit.

Q. For all you know, the trolley car may have come to a standstill after Mrs. Gee was hit; isn't that right? A. No. In fact, it stood still.

Q. That is what I want to know. How do you know that? A. Well, when I saw a trolley car going up ahead of this trolley car that stood, it always discharged passengers on that corner. 10

Q. It stopped and discharged a passenger, did it? A. It stopped and opened one door, and that was the door you get in. It says, "Entrance."

Q. Did any people come out of that trolley car? A. Not that I know.

Q. How long was the door open? A. Three minutes. 20

Q. Three minutes? A. Yes.

Q. You were walking along the easterly side of Washington Avenue or Broadway—you call it Washington Avenue also—where Mr. Kelligan was to your left; is that it? A. I was on Mr. Kelligan's left.

Q. You were on Mr. Kelligan's left? A. Near the curb.

Q. You were near the curb? A. Yes.

Q. And he was toward the stores? A. Yes, toward the stores. 30

Q. And you were talking to each other as you were going along? A. Yes, talking about the day's work, where we went to and all.

Q. You weren't interested in what was going on outside of this conversation that you were having with Mr. Kelligan as you were walking along? A. No, sir; I wasn't interested.

Q. Where is this National Grocery Store that you speak of? A. Right opposite Montclair Avenue. 40

John Slater, for Plaintiff—Cross.

Q. Right opposite Montclair Avenue? A. Yes, sir.

Q. Directly opposite? A. Well, I figure just directly opposite; yes, sir.

Q. Right in front of that National grocery store there is a pole, isn't there? A. Yes, sir.

10 Q. Marked "Stop", painted white, marked "Stop" for the trolley cars? A. Yes.

Q. It is a trolley car stop? A. Yes.

Q. And that is right opposite Montclair Avenue, about? A. No, it is a little ways down from there.

Q. Then it is not opposite the National grocery store, is it? A. No.

20 Q. Where is this white trolley car stop? A. It is about a little ways down from the sidewalk, a little ways past the delicatessen. I don't know if you know where the delicatessen is.

Q. You said the delicatessen, in your direct examination, was opposite Montclair Avenue. Is it right next door to the National grocery store, the delicatessen and the National grocery store right next to one another? A. Yes, sir. The delicatessen store and the National grocery store.

30 Q. Then the National grocery store is right opposite Montclair Avenue and the delicatessen is adjoining south? A. The delicatessen adjoining south.

Q. And the pole is in front of the delicatessen? A. A little ways down from it.

Q. A little ways down past the delicatessen? A. Yes.

Q. About how many feet? A. About two feet.

Q. That is two feet south, toward Newark? A. Toward Newark; yes, sir.

40 Q. How long did it take for Mr. Kelligan to run over and pick up Mrs. Gee? A. When I turned

John Slater, for Plaintiff—Re-direct.

Marion Shortman, for Plaintiff—Direct.

around he was right over there. I don't know how long it took him.

Q. It was instantly, wasn't it? A. It must have been.

Q. And the only conversation that you heard while they were riding is this particular conversation about why he did not get out of his car, and he said he thought he killed somebody, and the other one why he was going so fast, and he said, "I was in a hurry to get home"? A. Yes. 10

Q. And that is the only thing that you remember was ever said, and nothing else was ever said in this car about this accident? A. That is all I can remember.

Q. You are sure of that? A. Yes. 20

Re-direct examination by Mr. Semel:

Q. Can you tell us how much time passed between the time when the first trolley car passed Montclair Avenue and the second trolley car got to it? A. Well, as soon as this first trolley car started right up, this here one must have been right in back of it.

30

MARION SHORTMAN, sworn in behalf of plaintiffs.

Direct examination by Mr. Semel:

Q. Mrs. Shortman, where do you live? A. I live at 371 Lake Street in Newark.

Q. Where were you on the evening of November 20, 1928, at about quarter of six? A. On Broadway opposite Montclair Avenue. 40

Marion Shortman, for Plaintiff—Direct.

Q. What were you doing there? A. I was talking to a gentleman who was in a parked car.

Q. How many cars were there parked in that immediate vicinity when you were there? A. What do you mean by parked? Actually there standing still?

10 Q. Yes, actually standing still. A. The car that I was at. Immediately after that another car drew up. If you consider that a parked car, that one was parked.

Q. Well, did he stop? A. Yes.

Q. Where with reference to the intersection of Montclair Avenue and Broadway was this parked car where you were standing? A. Oh, about five feet ahead of it.

20 Q. Five feet ahead of what? A. Of the intersection.

Q. Which side of the intersection, the upper side or the lower? A. The side toward Newark, the lower side.

Q. About five feet above the Newark side, above the lower side of the intersection? A. That is the south side.

By the Court:

30 Q. In other words, the second car was about five feet south? A. No, sir. The car that I was standing at, as I face Montclair Avenue on my left, we were about five feet above that corner.

Q. I think what Mr. Semel asked you was how far back of the car which was parked and in which was the gentleman with whom you were talking was the other car when it came to a stop. A. Oh, that was about ten feet back. I misunderstood you.

Marion Shortman, for Plaintiff—Direct.

Mr. Semel: I don't think I intended to ask that question. I wanted to try to get the location of the car which Mrs. Shortman said was parked at the curb and in which was somebody sitting with whom she was talking. I will try to specify that as the first and second cars later. 10

By Mr. Semel:

Q. You say that the car at which you were standing was parked at the curb, is that right?

A. Yes.

Q. And then later another car drew up in back of it? A. That is right.

Q. Now, you were talking to somebody in that car which was parked? A. That is right. 20

Q. Where, with reference to the southerly side of the intersection, was that car parked? A. Five feet in advance of it.

Q. Five feet in advance of it? A. Five feet north of it.

Q. Where with reference to that car did the other car stop? A. About ten feet back.

Q. Ten feet back of it. How far from the easterly curb did the second car stop, about, if you can tell us? A. Oh, about three feet. 30

Q. Did you observe a trolley car there? A. Yes.

Q. When you saw that trolley car where was it? Where with reference to the intersection was the trolley car? A. About on a line with it. I will say on a line— What do you mean, the same intersection we spoke of when you spoke about the car?

Q. Yes. A. On a line with it.

Q. On a line with the intersection? A. Yes. 40

Marion Shortman, for Plaintiff—Direct.

Q. Which end, the upper or the lower? A. Southerly.

Q. Where, with reference to the intersection, was the front door? A. Whatever the width of that door is, that distance back of it.

10 Q. Can you tell us, did you see this accident actually occur? A. I actually saw it.

Q. Will you describe to the Court and jury just what you saw from that point on? A. I saw the trolley car come up Broadway. It wasn't moving very fast. It did stop. I saw an automobile draw up with the trolley car—that is, coming along with the trolley car, pull in toward the curb and stop.

Q. That is what you referred to as the second car before? A. That is the second car.

20 Q. What did you see then? A. I saw Mrs. Gee standing on the curb. As a matter of fact I spoke to her before she left the curb; saw her step off the curb, go in front of the car that stopped, because the trolley car was, I presume——

Q. The second car you mean? A. The second car; saw another car suddenly come up and strike Mrs. Gee and throw her.

30 Q. Now, with reference to the southerly intersection again, where did Mrs. Gee proceed to cross the street? A. About on a line with it.

Q. About on a line with the southerly intersection? A. Yes.

Q. Did you observe the door of the trolley car as she got off the curb to go toward it? A. The door was open.

40 Q. Do you know what distance there was between the right side of the trolley car and the left side of the second car? Can you tell us what space there was between them, how wide that space was? A. I don't quite understand that. I

Marion Shortman, for Plaintiff—Direct.

know what you mean by the left side of the car. What do you mean, that second car, the car that stopped in order to let her cross the street?

Q. Yes. A. Will you ask me again?

Q. What was the distance between the right side of the trolley car and the left side of that second car which had come to a stop? Do you understand my question? A. Yes, I think so. I don't want to add the width of a car to it; about ten or twelve feet. 10

Q. There was a distance of ten or twelve feet? A. Yes.

Q. Did you observe whether the car which struck Mrs. Gee came between the trolley car and this second car which had parked? A. It had to.

Q. Well, did it? A. Yes. 20

Q. Can you tell us whether, at that time the Moss car came through that space, the trolley car was in motion? A. Can I tell you if it was in motion?

Q. Yes. A. It was not in motion.

Q. And the car to the right, which we referred to as the second car, was that in motion? A. No.

Q. Mrs. Gee crossed the street where, with reference to that second car? In front of it or in back of it? A. In front of it.

Q. About how many feet had she traveled from the time she left the curb until she was struck, about? A. Oh, twelve feet, fourteen feet. 30

Q. How far was she from the entrance, the front entrance of the trolley car, when she was struck, about, if you know? A. Six I would say, five or six feet. I am no judge of distance.

Q. Can you tell us how wide Broadway is? A. Yes. It is 20 feet, about 20 feet wide.

Q. The entire street? A. Oh, how wide Broadway is? 40

Marion Shortman, for Plaintiff—Direct.

Q. Let me finish my question. Can you tell us how wide Broadway is at that intersection from the easterly curb to the opposite—

The Court: Easterly rail of the trolley tracks.

10

A. You want the distance from the curb to the first track where a trolley would be standing.

Q. Yes, approximately. A. 20 feet, 22 feet.

Q. Now, when this automobile struck Mrs. Gee how was she standing? A. When it struck her how was she standing?

Mr. Semel: I will withdraw that question.

By the Court:

20

Q. What was she doing when she was struck?

A. She was going for the trolley, I presume.

Q. Was she standing or was she walking or running or what? A. No, she was walking. She simply stepped off the curb and walked across.

By Mr. Semel:

Q. What part of her body was struck? Do you know? A. She was struck on the left.

30

Q. What part of the automobile struck her?

A. The front end of it, more toward the left of the automobile than the right, not exactly in the center.

Q. What happened to her as the automobile struck her? A. She was thrown in the air and thrown forward.

Q. Thrown in the air? A. I would say in the air. She was thrown up and she was thrown opposite the car that I was standing at.

40

Q. About how many feet was that? A. Oh, I would say twelve feet.

Marion Shortman, for Plaintiff—Cross.

Q. After she was struck, did you observe any persons come to her assistance? A. Two men.

Q. Two men came to her assistance, and what did they do? A. They picked her up. They took her back to the car that struck her.

Q. Can you tell us how many feet the car which struck her continued after it struck her? A. I 10
would say five or six feet.

Q. Do you know what happened to Mrs. Gee after that? Did you go with them to the hospital? A. No.

Cross-examination by Mr. Harris:

Q. Where do you live, Mrs. Shortman? A. Where do I live now? Newark, at 371 Lake Street. 20

Q. Where did you live on the date of this accident? A. 68 Montclair Avenue.

Q. That is the apartment house that Mr. Gee was the superintendent in; isn't that right? A. Yes.

Q. You knew Mrs. Gee quite well at that time? A. I knew Mrs. Gee as the wife of the superintendent.

Q. You knew her quite well? A. What do you mean by quite well?

Q. You knew her well? A. What do you mean? 30

Q. How long did you know her? A. From the time she came in there as the superintendent's wife.

Q. How long was that? A. I don't know when Mrs. Gee moved into the apartment.

Q. Were you living there before Mrs. Gee came there? A. Yes.

Q. Up to the time of this accident, can't you recollect about how long you knew her? A. What-
ever the length of her time was there. 40

Marion Shortman, for Plaintiff—Cross.

Q. Was it a year? A. No, I don't believe it was; three or four months.

Q. You were standing and talking to her on the sidewalk? A. Oh, no.

10 Q. Didn't you say on direct examination that you had spoken to Mrs. Gee? A. I said I spoke to Mrs. Gee. Mrs. Gee stood on the curb some distance back of me. I may have nodded my head. I may have said, "How do you do?" I mean that I recognized her. That is what I mean to convey.

Q. You were talking to this man in the automobile? A. Yes.

Q. How long were you standing and talking? A. About five minutes.

Q. And he was sitting in the car? A. Oh, yes.

20 Q. What kind of automobile was he in? A. Closed car or open car? A. Closed car.

Q. The top of that car, as you stood on the sidewalk, was beneath your face? A. Oh, yes.

Q. You had to bend down to look into the automobile and talk to him? A. No. He moved over and opened the door of the car. He moved from the driver's seat over to the righthand seat and talked to me from there.

Q. And you were talking to him, and which way were you facing? A. South.

30 Q. You were facing south? A. Yes.

Q. Now, did you see a trolley car go up ahead of this trolley car that you say stopped at the intersection? A. I got off it.

Q. How far ahead was that trolley car; how far ahead of that trolley car that you say stopped was the trolley car that went ahead? A. What do you mean? In distance? I don't know.

Q. Was it very far ahead? A. I don't know.

40 Q. Well about how long was it before this trolley car pulled up, this second trolley car? A. I would say about five minutes.

Marion Shortman, for Plaintiff—Cross.

Q. It was all of five minutes before this second trolley car moved up? A. I won't say it is all of five minutes. It is difficult to determine time if you are standing and talking casually.

Q. It was quite some time before the second trolley car pulled up? That is, you got off the first trolley car and walked over to the automobile and were talking to this man in the automobile? A. No, the second trolley car pulled up while I was talking to him.

10

Q. How long do you think it took before the second trolley car pulled up? A. I would say a matter of two or three minutes. I will say all of three minutes.

Q. And then the second trolley car, you say, stopped? A. Yes.

Q. This automobile that drew up in back, did it draw up along the curb? A. Fairly close in, yes.

20

Q. Do you know whether it left the scene after the accident? A. Not until Mrs. Gee was taken away.

Q. You didn't see it leave? A. I didn't see which car leave?

Q. You didn't see the second automobile? A. Yes, I saw it leave.

Q. How long was that standing there? A. Until Mrs. Gee was put in the car. I know that that car and the trolley car moved about at the same time.

30

Q. How long did it stand there from the time it pulled up to the time it left? A. Whatever time elapsed while they were picking up Mrs. Gee, putting her in the car that hit her, and that car pulled in front of the trolley car and went away.

Q. How long would you say that was? Five minutes? A. A matter of five or six minutes, yes.

40

Marion Shortman, for Plaintiff—Cross.

Q. You were standing there all this time? A. Yes.

Q. Do you know about what point the trolley car struck Mrs. Gee with reference to the trolley car? A. The trolley car didn't strike her.

10 Q. Or rather, at what point the automobile struck Mrs. Gee with reference to the trolley car? A. What do you mean, at what point?

Q. How far away from the front of the trolley car. A. It didn't strike her—you mean that his car struck her when she was back of the front of the trolley car?

Q. Yes. A. No, it did not. It struck her right up at the front of it.

Q. Right in front of it? A. Struck Mrs. Gee opposite the step of the trolley car.

20 Q. Was she about to walk up on the step? A. To step up?

Q. Yes. A. No.

Q. How fast was she walking? A. The ordinary pace.

Q. Did she have any bundles? A. Something in her arm, a purse for one thing. I saw that thing thrown.

Q. Anything else? A. I don't know.

30 Q. You saw her there; you remember her? A. I remember her distinctly. I certainly did not observe her in detail.

Q. You don't know whether she had any bundles or not? A. No, I saw she had her purse. That is all I do know.

Q. You did not go to the hospital with Mrs. Gee? A. No.

Q. You don't know what was the matter with her or anything like that? A. No, I don't, other than I inquired for her.

Marion Shortman, for Plaintiff—Re-direct.

Lillian McGinty, for Plaintiff—Direct.

Re-direct examination by Mr. Semel:

Q. Did you ever visit her after the accident?

A. I don't recall actually visiting her. I may possibly have asked Mr. Gee——

Mr. Harris: I object to what she may possibly have done. 10

LILLIAN MCGINTY, sworn in behalf of plaintiff.

Direct examination by Mr. Semel:

Q. Where do you live, Mrs. McGinty? A. 205 William Street, Belleville.

Q. Do you know Mrs. Gee? A. Do I know her? Yes. 20

Q. How long have you known her? A. Altogether seventeen months.

Q. You did not see this accident at all, did you? A. No. I know nothing about it.

Q. Have you ever done any work for her? A. Yes.

Q. When did you start to? A. The day after she was hurt that she met with the accident.

Q. You came to her house, of course? A. Yes. 30

Q. Where was she? A. Lying on the couch in the living room.

Q. What work did you do for her? A. House work. Her whole entire house work, done the work, got the meals.

Q. For how long did you do that? A. For one month straight.

Q. By straight you mean every day? A. Every day for a month, yes. 40

Lillian McGinty, for Plaintiff—Direct.

Q. During that one month that you worked there, what was Mrs. Gee doing, if anything? A. Lying on the couch.

Q. You call this a couch. Tell us what it is. A. Well, it is a day bed. You pull it out during the night, and then in the day it is a couch.

10 Q. Did Mr. and Mrs. Gee occupy this bed as their regular bed, if you know?

Objected to.

(Question withdrawn.)

Q. During the day you say that Mrs. Gee occupied this couch? A. During the day Mrs. Gee occupied this couch.

Q. Who occupied it at night? A. I couldn't say.

20 Q. Will you tell us what kind of an apartment the Gees occupied at that time? A. In what way do you mean?

Q. Well, how many rooms? A. Three rooms.

Q. What were they? A. Bedroom, kitchen, living room.

Q. You only worked there during the day? A. That is all.

Q. You say one month you worked there every day? A. Every day.

30 Q. How much were you paid for that? A. \$8 a week for the month.

Q. \$8 a week for the month? A. Yes.

Q. Who paid you? A. Mr. Gee.

Q. Now, after the month was up did you continue to work there? A. Yes.

Q. How long? A. Four months.

Q. How often did you work there then? A. Well, put in four or five hours a day, just part time.

Q. Every day? A. Every day for four months.

40 Q. At the end of the four months you left your position? A. Yes.

Lillian McGinty, for Plaintiff—Cross.

Q. How much did Mrs. Gee pay you altogether for working for them during this time? A. \$102.

Q. Did Mrs. Gee do anything at all during the time you worked there? A. No, not that I seen while she was in my presence.

Cross-examination by Mr. Harris:

10

Q. What did you do in Mrs. Gee's apartment when you worked there? A. Did her whole entire house work, everything—got the meals, waited on the children, got them to school, done her work, answered her 'phones and things for her.

Q. Did you do anything around the apartment house? A. No, only in her apartment.

Q. Did you do anything for the tenants? A. 20
Not at the time I was tending to her, no.

Q. Well, at that time when you weren't tending to her. A. Yes, I worked in the building.

Q. You worked in the building? A. Yes.

Q. You did the work that Mrs. Gee said she used to do? A. Yes, but not Mrs. Gee's work I did not do. It was my own work.

Q. How many tenants did you work for? A. 30
Why, I had about eight or nine of them. I went in and cleaned.

Q. You had eight or nine tenants that you went in and cleaned for? A. I had eight steady. Occasionally once in a while someone would ask me to do something.

Q. Did you do it every day? A. Every day.

Q. What were you paid for that? A. Why, I got \$4 a day for that.

Q. You got \$4 a day? A. I got \$4 a day.

Q. And you did that when? When did you start to do that? A. Why, before Mrs. Gee moved 40
in the apartment.

Lillian McGinty, for Plaintiff—Cross.

Q. I am talking about during the time that you took care of Mrs. Gee. A. Oh, I did not do no work for nobody. I just simply give my time to Mrs. Gee.

Q. During these five months that is all you did?

A. That is all.

10 Q. You gave up the tenants upstairs? A. Yes, I got a relief.

Q. You got a relief? A. Yes.

Q. Although you got \$4 a day upstairs and \$8 a week downstairs you gave up the upstairs work?

A. Certainly.

Q. You got \$4 a day from them, didn't you?

A. No, not \$4 a day I got from the tenant.

Q. How much did you get from each tenant?

20 A. Why, I got 50 cents an hour.

Q. How many hours did you work for each tenant? A. Well, sometimes I would put in an hour, half an hour, two hours. I can't just exactly tell you.

Q. How much did you earn a day from each tenant? A. I told you just now \$4, not from each tenant.

Q. Well, from all the tenants? A. All told?

Q. Yes. About \$4 a day? A. Yes, about \$4 a day.

30 Q. That would make about how much you earned a week upstairs? A. About \$16 a week.

Q. You earned \$16 a week and you gave up this \$16 a week upstairs and gave all your time to Mrs. Gee downstairs for \$8 a week? A. Yes.

Q. You were losing money during this time, weren't you? A. Well, that didn't bother me any.

James Gee, for Plaintiff—Direct.

JAMES GEE, one of the plaintiffs, sworn in his own behalf.

Direct examination by Mr. Semel:

Q. Mr. Gee, you are the husband of Mrs. Gee?
A. Yes.

10

Q. You are one of the co-plaintiffs? A. Yes.

Q. When were you married? A. We were married on the 12th of March, 1919.

Q. How many children have you? A. Two.

By the Court:

Q. Were you married here or on the other side?
A. In England, sir.

By Mr. Semel:

20

Q. You were married in England? A. Yes.

Q. Do you remember the night of November 20, 1928? A. Yes, sir.

Q. Now, will you tell us what you observed about your wife sometime after quarter of six that night? Where were you and what happened?
A. Well, about five-thirty she left the apartment—

Q. No, no. I want to know what happened when she came back. A. Well, I was busy in the basement. I had just been fixing the fires.

30

Q. Never mind that either. Let us get right down to the time when she came into the house. Tell us what time it was that evening. A. Well, it must have been around eight o'clock.

Q. Who was with her? A. Mr. Moss.

Q. Mr. Moss, the defendant? A. Yes.

Q. This gentleman here (indicating)? A. Yes.

Q. Anybody else? A. No, sir.

40

James Gee, for Plaintiff—Direct.

Q. Now, what did you observe about her general appearance? A. Why, she was just ready to collapse.

10 Q. Tell us what you saw actually? A. Well, I saw she was just staggering there. Mr. Moss was assisting her. I went and got hold of her and took her in the living room.

Q. What did you say to her? A. I said, "What is the matter, Honey? What has happened?"

Q. What did she say? A. She said, "I got knocked down with a car," mumbled it. I made out what she said, but more or less she just mumbled it.

20 Q. What did you observe about her appearance? A. Well, she was as though she had been in a terrible brawl, as though she had been fighting with someone.

Q. Tell us what you saw. A. Well, a torn dress. I saw her stockings torn, all tore, and the shoes were all torn and no hat on. The side of the face was kind of smudgy and dirty, smudgy; and there had been a bandage on her, but the blood had come through the bandage.

30 Q. Now, was there any conversation between you, Mr. Moss or your wife and Mr. Moss when they came back to your house that evening? A. Yes.

Q. What was the conversation? A. Mr. Moss said after I got my wife in the living room, Mr. Moss said, "You had better send for a doctor right away. She is hurt more than what they think. The way I hit her I thought she was dead."

Q. What did you say to that? A. Well, I went ahead and got the doctor.

40 Q. Did you discuss the manner in which this accident happened with Mr. Moss? A. I asked him how it happened. He said he did not know.

James Gee, for Plaintiff—Direct.

Q. He said he did not know? A. He said he did not know.

Q. Did you have any other conversation with Mr. Moss that night? A. I don't recollect any further conversation.

Q. Mr. Moss left right after that? A. Well, shortly afterward. 10

Q. Did you get a doctor immediately? A. Well, my wife—I laid her down on the couch; we live in the apartment. The apartment we are in we have a Murphy bed in the living room which we use on account of having the two children having the other bedroom, of a night time we take the Murphy bed out of the wall.

Q. Is the Murphy bed what was referred to before as the couch? A. I guess that is what most witnesses was speaking about the couch, is the Murphy bed. 20

Q. You have another couch in your home? A. Yes, we have a three-piece living room suite.

Q. But that is not the same as this couch? A. No, sir. The Murphy bed is a double bed.

Q. Will you tell us—I don't know whether all the gentlemen of the jury know what a Murphy bed is. Will you explain to them what it is? A. The Murphy bed is partitioned off in the wall. Of a night time you open the glass folding doors, pull open the French doors, swing out the Murphy bed, which is on a frame, and then pull down the bed ready for sleeping on. 30

Q. In other words, it is a bed that is built into the wall, is that right? A. Exactly.

By the Court:

Q. The bedding and all in it? A. Yes. Pack the bed up, put the clamps on, lift it right up and swing it into the wall. 40

James Gee, for Plaintiff—Direct.

By Mr. Semel:

Q. Is that the bed on which you placed your wife or assisted your wife on the night she came home? A. Yes, sir.

10 Q. How long did she remain on that couch? A. Until the next morning, sir.

Q. And then? A. And then there is the Murphy bed takes up so much room in the living room, which she wanted to be fixed up on the day bed. That is the couch belonging to the three-piece suite.

Q. In other words, the three-piece set had a day bed? A. Yes, sir.

20 Q. What did you do? A. Well, I went ahead and fixed the day bed up for her and assisted—practically carried her to the day bed, while I put away the Murphy bed so there would be a little room to walk around in case people came in for the place.

Q. Did you have an opportunity to observe her condition that night? A. Yes.

Q. Tell us about that. A. Well, she did not sleep very, very little, and constantly moaning practically all the night.

30 Q. Can you tell us how long your wife was actually laid up? A. Yes, sir. Approximately about a month.

Q. During that time? A. She was absolutely unable to do anything at all.

Q. She would be where? A. She would lie on the couch during the day time.

Q. In the night you would remove her to bed? A. I put her in the Murphy bed during the night time.

40 Q. During that month that she was confined, did you have the doctor? A. Yes.

James Gee, for Plaintiff—Direct.

Q. Whom did you have? A. Dr. Levin.

Q. How often did he come to the house? A. Well, the first two or three or four days he came every day. Then afterwards he came every other day for several times, and then he gradually drew it out to two times a week.

Q. For how long a time after the accident was your wife being treated by Dr. Levin? A. Well, roughly between four and five months. 10

Q. Can you tell us about how many visits the doctor paid to her? A. Well, I never seriously considered it, but it must have been well over a hundred, I should say. Not a hundred; pardon me. It must have been about fifty.

Q. After this month was your wife able to get up? A. She wanted to get up and naturally just walk around in her own apartment. 20

Q. Now, can you tell us whether anything unusual occurred to your wife about three or four days after the accident? A. Yes.

Q. Will you tell us? Did you see it personally or do you know of your own knowledge? A. Yes, sir.

Q. Tell us just what happened. A. Well, two or three days after the accident, at six o'clock in the morning I got up to fix the fires. When I came back she said, "Jimmy, there is something happened." I said, "What is the matter?" 30

Q. Don't tell us the conversation. Tell us what you saw. A. I was leading to that.

Q. I am sorry. We cannot have it. A. There was all blood all over the mattress.

Q. Do you know of your own knowledge when in reference to that day your wife had menstruated previously? A. Yes, sir. She said she had missed a period. 40

James Gee, for Plaintiff—Direct.

Q. Do you know that to be so of your own knowledge? A. Yes, sir.

Q. Now, was there anything about this blood which you observed in any particular, anything about it which looked unusual to you? A. Yes, sir, it wasn't a pure reddish color. It was kind of a little black chunks in, and I should call it in vulgar language just little chunks in it.

Q. What did you do when you observed that? A. Immediately called Dr. Levin.

Q. Did the doctor come over? A. The doctor came over.

Q. Did the doctor take charge of her? A. Yes, sir.

Q. What is your occupation? A. I am superintendent of the apartments, sir.

Q. What apartments? Where were you living? A. 68 Montclair Avenue, known as the Montclair Apartments.

Q. And you had your home? A. Yes.

Q. And you were there all the time? A. Twenty-four hours a day, sir.

Q. And did you have no other occupation? A. No, sir.

Q. Now, how long was it before your wife got up and resumed her household duties? A. Well, to tell the candid truth, she does not do her own household duties properly yet.

Q. When did she commence to do any household duties? A. It must have been four or five months after the accident before she was able to do anything at all.

Q. And in the meantime who took care of your home for you? A. A lady called Mrs. McGinty.

Q. That is the lady who just testified? A. Yes.

Q. And you paid her? A. \$8 a week for the first month. She was unable to do anything. My

James Gee, for Plaintiff—Direct.

wife was unable to do anything. Then the second month my wife was just able to putter around in the apartment, but not do any work at all, but just things like giving the children a glass of milk.

Q. In other words, the lighter duties? A. Absolutely.

Q. How long was it before your wife undertook all of the duties again? A. Roughly about four or five months after the accident. 10

Q. Is she doing those duties, performing those duties now? A. No, sir, she is doing as best she can, but she has a very big handicap.

Q. What was the condition of her health so far as you know before the accident? A. Good.

Q. How did she engage her time? What did she do? A. Well, she looked after several of the apartments and she did the silks and the body clothes belonging to some of the tenants, washed and ironed them. 20

Q. She was paid for that? A. Yes.

Q. Do you know of your own knowledge how much she earned per week from that work? A. Well, roughly, I should say between thirty-five and thirty-eight.

Q. How long prior to the accident had she been doing that? A. From the latter end of July up to the accident. 30

Q. Did you observe any change in her health after the accident? A. Yes, sir.

Q. Will you tell us what the changes were? A. The very least thing she is so irritable she doesn't know what to do with herself. A little cross word spoken and she just goes half crazy.

Q. Was she that way before the accident? A. No, sir, she was pretty mild tempered as the average woman. 40

James Gee, for Plaintiff—Direct.

10 Q. Now, tell us what difference, what way her temperament or her conduct changed since the accident? A. Yes, sir. Well, when the telephone bell rings she answers the phone and she is so irritable, if someone calls down and wanted me to go up right away for something, which every apartment renter wants you right away naturally—they take the turn when you are ready for them—she thinks I should go to ten places at once. If a person calls down twice in succession I get a bawling out every time; that is all.

Q. What else is there in her general conduct? How else has her general conduct changed? A. Well, about every couple of weeks or so she has periods.

20 Q. By that you mean what? A. I mean she menstruates at the end of every two weeks or so, I don't know, just a few days either way.

Q. How does that differ from her menstruation before the accident? A. Well, previous to the accident she was normal, about every month or so.

Q. With reference to the duration or length of time of her menstruation since the accident, are they changed? A. Yes, sir.

30 Q. Tell us what difference there is. A. Previous to the accident, about three, three and a half days or so, roughly three or four days previous to the accident. Now she never knows when she has stopped.

Q. Have you had a chance to observe that? A. Well, I should say they go about five or six days now.

Q. Has there been any difference in her weight since before the accident? A. Yes, sir. I think she has lost considerable.

40 Q. Do you know of her own knowledge? A. No. I don't think she ever bothered with being weighed for certain. I don't know for sure.

James Gee, for Plaintiff—Direct.

Q. But you feel that she has lost? A. I am certain in the general appearance of her.

Q. With reference to her sleep has there been any difference, any change in her sleep before and since the accident? A. Yes, sir.

Q. Tell us about that. A. Well previous she was a pretty good, sound sleeper. Since then she is a very, very, very nervous sleeper. That is I can say I want to waken up about one o'clock in the morning, one o'clock in the morning she wakens me up. If I say two o'clock she can wake me at two. Any hour of the night I want to wake up she can wake me. 10

Q. Have you had an opportunity to observe her while she is sleeping? A. Yes, sir.

Q. What is there? A. Very restless.

Q. Has there been any change or improvement in her sleep since the accident? A. I do not see a great deal of change at all. 20

Q. Has there been any improvement, any change in her general disposition since the accident? A. No, sir. I don't think she is very much better now than what she was five months after the accident.

Q. Has your wife complained at all to you recently or since the accident, has she complained? A. Yes, sir. 30

Q. Of what? A. Well, she always complains about the pain in her back mostly.

Q. Any other complaints? A. Well, yes. She says every time she has her period she is so weak she can't stand up.

Q. Do you know whether that is any different than it was before the accident? A. Well, that is a delicate question that I couldn't very well answer, because previous to the accident she may have used half a dozen napkins. Since then she may have used a dozen, I don't know. 40

James Gee, for Plaintiff—Direct.

Q. I am talking about the weakness accompanying it. A. Yes, sir.

Q. Was that weakness there before? A. No, sir.

Q. Was she able to work? A. Yes, all during her menstruation previous.

10 Q. She worked during the menstruation? A. Yes, sir.

Q. Did she complain of anything else besides her back and besides this weakening during the periods? A. Yes, sir. She has general pain all over as a matter of fact, pain in the stomach, in the side, and mostly the trouble was in the back. According to what she complains that is where she feels the trouble. I don't know where it is the trouble.

20 Q. Has your wife done any other work for the tenants since the accident? A. No, sir.

Q. Do you know whether she has tried to do some of it? A. Well, no. She tried to do her own house work and she could not manage to do that properly.

Q. So that she has not done any work for these tenants since that time? A. No. It was impossible for her to do so.

30 Q. Now, Mr. Gee, before the accident did your wife help you in any of your duties as superintendent of this apartment? A. Yes.

Q. What would she do for you? A. Well, she helped me in the light duties, which was answering the phone, anyone coming to see apartments, to rent apartments, she was able to take them around; that is, if she wasn't busy upstairs. If she was busy upstairs I was always downstairs; and she helped me in regard to agents coming, the storekeepers coming with packages, special
40 deliveries and these small incidentals that goes along with apartment buildings.

James Gee, for Plaintiff—Cross.

Q. Since she has been injured has she been giving you that assistance? A. She can answer the phone and take in packages.

Q. Is there any trouble with the phone? A. She doesn't like answering the phone on account of being so irritable.

Q. Has this accident in any way affected a change in your general marital or domestic life? A. Yes, a terrible lot. 10

Q. Will you just tell the Court and jury what? A. Yes, sir. Since the accident I can truthfully say I haven't touched my wife only four or five times in the last year.

Q. In any other respect has there been any change? A. Yes, sir, she repels me all the time. She doesn't want me to go near her.

Q. Getting away from the sexual, have there been any other changes in your married life? A. She has been just as I said, so nervous that it makes it very, very miserable for me and the children. 20

Q. And she wasn't that way before the accident? A. No, sir.

Q. Now, have there been any other changes in your general domestic marital life other than what you have just mentioned? A. Yes, sir. As I just said, she is so irritable that it has made life unbearable. That is all I can say. 30

By the Court:

Q. The question is anything else? A. No, sir, I don't know of anything else.

Cross-examination by Mr. Harris:

Q. You did not know about this accident until late in the evening, did you? A. No, sir.

Q. And Mr. Moss brought her home? A. Mr. Moss. 40

James Gee, for Plaintiff—Cross.

Q. He advised you to get a doctor? A. Yes.

Q. And did you go out and call a doctor right away? A. Yes.

19 Q. Whom did you call? A. We were new in the neighborhood. I had no necessity to call a doctor previous to that. We were new in the neighborhood, had only been there three months, from July up to the 1st of November.

Q. Whom did you call? A. I went and saw Mr. Newman, the druggist, and asked him to recommend a doctor, and he recommended Dr. Levin.

Q. Did you call Dr. Levin? A. We tried him, but he was busy on the line.

20 Q. Did you get Dr. Levin that night? A. No, sir, I came back in the apartment and my wife was lying there and she said never mind.

Q. Did you get him that evening? A. No, sir.

Q. Did you try him again? A. No, because my wife was sleeping.

Q. That was the first time you tried him? A. Yes.

Q. The line was busy and you went away and did not try him again that evening? A. Yes, sir.

Q. Did you try him again the next day? A. Yes.

30 Q. What time did you try him? A. First thing in the morning. I should say about seven o'clock.

Q. You got him on the wire and he came over? A. Yes.

Q. Is that the doctor who was on the stand? A. Yes.

Q. Is he the brother of this Mr. Levin here? A. Yes.

Q. He is the one who introduced you to Mr. Levin here, isn't he? A. No, sir.

40 Q. Did you know Mr. Levin before? A. No, sir.

Q. Who introduced you to Mr. Levin?

James Gee, for Plaintiff—Cross.

Objected to as not proper cross-examination.

Objection sustained.

(Argument.)

Q. Now, when the doctor came, did your wife complain of any pains and did you hear what she complained of? A. Yes, sir. 10

Q. What did she say pained her? A. She ached all over. No one pain—all over.

Q. She did not point out any specific place? A. Her neck hurt her.

Q. Outside of that, did she point out any specific place? A. Yes. She said that her back was a little bit sore.

Q. That is the day right after the accident? A. No, sir. She did not say about the back until a few days after the accident. 20

Q. When she complained about bleeding, you say you called the doctor again? A. Yes.

Q. Did you call him the same day? A. Yes, sir; the same morning.

Q. Did you get him then on the wire? A. Yes, sir.

Q. And he came right over? A. Yes.

Q. Speaking about the periods that your wife had, the periods of menstruation, will you tell us about what time of the month they came along before the accident? Her usual periods of menstruation. A. Well, to tell the candid truth, I don't recollect whether it was the beginning or the latter end of the month. 30

Q. Was it around the time that the bleeding was discovered that the regular period of menstruation was due? A. No, sir; I don't think so.

Q. Well, now, do you know? A. Well, from the time she should have been unwell and she missed 40

James Gee, for Plaintiff—Cross.

that time, then it went on about three weeks afterward.

Q. You are married about ten years? A. Ten and a half years.

10 Q. And you said that you don't know when the period of menstruation of your wife is? A. Well, no, because for the simple reason the time changes; that is, I mean a day or so, a day each month or so.

Q. I am not talking about a day of the month. I am talking about whether it is the beginning of the month or the end of the month. A. Well, I would not swear on this witness stand that I know because I don't know just exactly when the periods start.

20 Q. She would tell you when she would be unwell? A. Yes.

Q. Is that how you discovered it? A. Yes.

Q. You don't know whether this fall was the cause of her menstruation? A. That I don't know, because I am not a doctor.

Q. That might have been the cause of her menstruation? A. I am not a doctor. I won't answer that question.

30 Q. It may have been around the time that her menstruation was due? A. It may have been. It may not have been. I don't know.

Q. You say that after that did she have her periods of menstruation, a year after that, her usual periods? A. No, sir.

Q. She never had her usual periods of menstruation? A. After that she went, oh, about four or five weeks after before she commenced going on the usual periods again.

40 Q. From the first time you discovered the blood and the next time you saw blood again was four or five weeks? A. Yes.

James Gee, for Plaintiff—Cross.

Q. And that was the second time you discovered the blood? A. Yes, the second time.

Q. Then the third time that you discovered the blood, how many weeks passed? A. Just about four weeks.

Q. About four weeks? A. Yes.

Q. This question of the Murphy bed, although 10
it is not important, I would like to know whether the Murphy bed had not a head stead and a foot stead for the bed? A. Yes.

Q. Do you know what I mean? It opens in the shape of a regular bed. A. Regular bed. Iron frame too.

Q. It doesn't look like a couch? A. No, sir.

Q. It opens up like a regular bed? A. Yes.

Q. It could not be mistaken for a couch, could it? A. No. The couch is the couch belonging to 20
the three-piece living room set.

Q. And your wife was on the couch all these times the witnesses testified they saw her the next morning and after that? A. Through the day, not of a night.

Q. Was she dressed during the day? A. She just slipped her dress on over her night dress.

Q. This Mrs. McGinty that you say worked for you, when did she commence her employment in your apartment? A. The day after the accident, 30
sir.

Q. She worked every day? A. Yes.

Q. From what time in the morning to what time at night? A. She came about seven-thirty in the morning and went home about five o'clock at night.

Q. Did you ever see her around the apartment before that? A. Yes, sir.

Q. Is she related in any way to you people? A. No, sir. 40

James Gee, for Plaintiff—Cross.

Q. Do you know why she consented to come to the apartment? A. Yes.

Q. Whether she worked for anybody in the apartment? A. Yes.

10 Q. Did she work for the same people that your wife said she worked for? A. To tell the candid truth, I don't know who she worked for. I know she worked for several people in the apartment.

Q. And you paid her \$8 a week? A. Yes, sir.

Q. You paid her in cash? A. Yes, sir.

20 Q. Now, you say your wife earned \$35 or \$38 a week doing what? A. Well, being superintendent, I had the chance of picking out which were the best places to work for naturally, and several of those she was being paid for were only staying in the apartment perhaps one or two days a week, which means that she did not have to go in there every day although she was being paid for it.

Q. What did she have to do with these tenants? A. Well, when they wasn't in there she made the bed up and dust.

Q. Is that all? A. Absolutely.

30 Q. Didn't she have to wash and iron for them? A. No, sir; not for the same people. While it might in some cases be the same ones she was doing the cleaning for, in other cases which was for other ladies in the house that had silk underwear, dresses and so forth that they don't want to trust them for the laundry, my wife did the silk underwear and silk pieces.

Q. She did not help you in other ways in the apartment, dusting around the hallways and polishing the nickel? A. That is not a woman's work, no.

Q. I am asking you whether she did. A. No, she did not.

40 Q. Never? A. No. She helped me with the phones and light part of my duties.

James Gee, for Plaintiff—Cross.

Q. So this money she earned was her own money, this \$35 or \$38 a week? A. Well, it was thrown in the common fund for the two of us.

Q. But it was not connected with any part of your work? A. No, sir.

Q. And she did not help you in your work at all outside of answering telephones or the bells? A. 10
And the hundred and one light parts of a superintendent's work.

Q. Who has been doing that since this accident? A. She can take care of most of that right now.

Q. When did she resume her work along those lines? A. About five, four or five months after the accident.

Q. And since then she has been doing it and taking care of all these hundred and one things that you speak of? A. Yes. 20

Q. Who did it during the time that she was ill? A. Mrs. McGinty and myself.

Q. And that was all included in this \$8 a month that Mrs. McGinty got? A. Yes.

Q. You speak of her being so very irritable now, more so than she ever was before? A. Yes.

Q. And before she was like the average woman, but now she is very irritable, that when you say anything to her she gets excited. Just for instance 30
what would you have to say to her to get her excited? A. Well, for instance, someone phones down and wants me to go up and make an appointment for me to collect the rent on, say, the second of the month or the third of the month, and I will ask her, "Now are you sure they said on the second or the third?" and she will just go, "Yes, sure," and just blow her head off if I just question her word once in a while.

Q. She never did that before? A. No. She 40
was, as I said, pretty fair.

James Gee, for Plaintiff—Cross.

Q. Now she gets up during the night and she can wake you at any time during the night? She does not sleep well? Are you up during the time?

A. At times; yes, sir.

Q. How often do you get up during the night?

A. Whenever the phone goes.

10 Q. That is when she gets up during the night?

A. No, sir; she wakens me to go and answer the phone.

Q. That is when you discover that she is up? A. Yes, sir. Sometimes I waken up myself during the night and see that she would be lying awake.

Q. Is it dark in the room that you sleep in? A. Well, we use a little small night light.

Q. Now, you say she is not better now than five months after the accident? A. Exactly.

20 Q. How well was she five months after the accident? A. Well, I class her a semi-invalid.

Q. And she is a semi-invalid today? A. Yes, sir.

Q. She does not take care of the house today? A. She just dusts around.

Q. Takes care of the children? A. With my assistance.

Q. Does the washing and ironing? A. No, sir, we got an electric washer and an electric ironer and all the laundry goes to the laundry.

30 Q. Who has the electric washer? A. I had it.

Q. Who owns it? A. That is my own personal property.

Q. How long have you had it? A. I bought it before the accident.

Q. She uses that now to wash and iron with? A. Just the few silk things and the children's colored dresses.

Q. What laundry do you send out? A. The flat
40 work.

James Gee, for Plaintiff—Cross.

Q. Is that wet wash and laundry? A. No, sir, all finished laundry.

Q. You never used that laundry before? A. Yes, sir.

Q. And you used it before the accident too? A. Yes, sir.

Q. So she does now practically what she used to do before the accident? A. No, sir. 10

Q. What doesn't she do now that she did do before the accident? A. Before the accident she could take care of apartments and take care of her own house thoroughly, which she cannot do now, cannot take care of her own house thoroughly let alone apartments that she looked out for.

By the Court:

Q. What Mr. Harris means is what in your own apartment did she do before that she does not do now. A. She can't bend down to scrub the floors. I do that personally now myself. 20

By Mr. Harris:

Q. Didn't you do that before the accident? A. No, sir; I did not.

Q. Is that the only thing that she can't do, just bend down and scrub the floor? A. Yes, sir; and the bath room floor, kitchen floor; all floors. 30

Q. You said that she used to take care of these hundred and one incidentals excepting when she was busy upstairs? A. Yes.

Q. Then you used to take care of these incidentals? A. Yes.

Q. What do you mean by "when she was busy upstairs"? A. When she was busy cleaning in the apartments that she was taking care of.

Q. And that had nothing to do with reference to the care that you had to take of the apartment? A. No, sir. 40

James Gee, for Plaintiff—Re-direct.

Re-direct examination by Mr. Semel:

Q. Do you know what happened to your wife's teeth the night of the accident? A. Yes.

10 Q. What? A. Well, she came back minus her teeth. As a matter of fact, there was one tooth, if I am not mistaken, she had one tooth in her hand.

Q. Did you have to have her teeth fixed? A. Yes.

Q. Who fixed them for you? A. Dr. Chenitz.

Q. How much did he charge? A. \$75.

Q. Did you pay him? A. Yes, sir.

Q. Did you also pay Dr. Levin? A. The first few visits, sir.

Q. You owe him some money yet? A. Yes.

20 Q. Do you know how much you owe him? A. Yes.

Q. How much? A. I owe him \$87 yet, sir.

Q. How much was his bill altogether? A. \$117.

Q. Did you have any other expenses? A. Yes, there was drugs and medicines that the doctor prescribed for her.

Q. About how much were they, if you know? A. Oh, roughly, \$20 worth.

30 Q. Did you have any other expense besides that? A. Yes. Her clothes.

Q. What were they worth? A. Well, around \$50.

Q. And any other? A. Well, the expense of having someone to take care of the place for me.

Q. That you paid for also? A. Yes.

Q. And that \$102 that you paid to Mrs. McGinty? A. Yes.

Q. Did you have an X-ray taken? A. Yes, sir.

40 Q. Where is that X-ray? A. I don't know where it is, sir.

James Gee, for Plaintiff—Re-cross.

Q. Did you pay for it? A. We paid either \$10 for three pictures taken—two pictures taken.

Q. At how much per picture? \$10, sir.

Q. Now, are there any other items? Did you pay for this? A. Yes.

Q. To whom did you pay? A. I gave it to Dr. Levin. He paid for it. 10

Q. Did you have any other expense besides what you have just mentioned? Was there any other doctor attending your wife? A. Yes, sir. Dr. Levin advised her to go and see some other doctor, a doctor—I have just forgotten the name, the specialist anyway. The woman's specialist; went to see him.

Q. How many times did she go to see him? A. Just the once.

Q. How much did she pay him? A. \$50. 20

Q. Did you pay that too? A. Yes.

Re-cross-examination by Mr. Harris:

Q. You say you paid a dentist bill of \$75? A. Yes.

Q. Dr. Chenitz? A. Yes, sir.

Q. By cash or by check? A. Cash.

Q. Did you give the information to Samuel Levin, the attorney in this suit regarding the total bill? A. Yes, sir. 30

Q. Did you tell him that it was \$50? A. No, sir, \$75.

Q. Do you know that he had in his bill of particulars \$50? A. I don't know. That is the price I paid for it. It was \$75 I paid for that.

Q. Did you tell him what was torn and destroyed with reference to clothing? A. Yes.

Q. Did you tell him that the overcoat was torn? A. Yes, I believe I did. 40

James Gee, for Plaintiff—Re-cross.

Q. Well, did he take notations as you were talking? A. Yes. He itemized them.

Q. And then dictated them to the girl to draw up a bill of particulars? A. Yes, I guess so.

Q. And you were there? A. No, not at the time to draw the bill of particulars. He took the
10 notes down as I gave them to him.

Q. You know that was with reference to the bill of particulars that had to be furnished to the defendant? A. Well, frankly, I did not know what it was. I know it was to get a bill of how much it cost, the expenses. That is all I knew.

Q. The overcoat wasn't torn? A. It was so that it wasn't fit to wear afterwards.

Q. Your wife said that there was nothing the matter with the overcoat; she wore the overcoat
20 after that? A. Yes, a few times.

Q. It was an old overcoat? A. No, well, not an old one. It was not a season old. You see, it was dragged along the floor and it did not make no holes in it, but it kind of wore the nape, that long place.

Q. Is that the overcoat that she has on now? A. No, sir.

Q. Who made the X-rays? A. That I don't know the doctor's name, sir.

30 Q. Who ordered the X-rays? A. Dr. Levin advised me to have the X-rays taken.

Q. Weren't the X-rays made in the hospital? A. One X-ray was taken there.

Q. Did you pay the hospital for that? A. No, sir, I did not pay the hospital for that.

Q. And then one was taken outside the hospital? A. Yes.

Q. And you went up for one X-ray? A. Yes.

40 Q. How much did you pay for that one? A. \$10.

James Gee, for Plaintiff—Re-cross.

Q. A moment ago you said you paid Dr. Levin \$20 for the X-rays.

The Court: Oh, no, \$10.

Mr. Harris: \$10 apiece, two X-rays.

The Court: Oh, I did not understand that.

10

By the Court:

Q. \$10 apiece, two X-rays? A. Yes.

Mr. Harris: He said he gave Dr. Levin \$20 for the two X-rays.

The Witness: That is right, sir.

By Mr. Harris:

Q. You only gave him \$10? A. No, I gave him two separate \$10, that I recollect right now. I gave one \$10, and then it was several months afterwards when the other picture was taken. 20

Q. That other picture. Are you talking about the one that Dr. Levin ordered? A. Yes, sir; the two that Dr. Levin ordered.

Q. Oh, he ordered two? A. Yes. There was one he was kind of doubtful about in the first place.

Q. The hospital made one, you say? A. Yes.

Q. Were there three X-rays? A. No, sir, two. 30

Q. You say there were two X-rays altogether? A. Yes.

Q. But one you say was made in the hospital?

Mr. Semel: Which hospital?

Mr. Harris: The hospital where Mrs. Gee was attended the first time.

A. Well, I guess it was that.

Q. St. Michael's Hospital? A. I guess it was that where she was taken afterwards. 40

James Gee, for Plaintiff—Re-cross.

Q. Right after the accident? A. Yes.

Q. And there is where they made that first X-ray? A. Yes, sir.

Q. You did not pay for that yourself? A. No, but I will have to pay for that.

10 Q. I am asking you whether you paid for it.
A. No, I have not paid yet for it.

Q. You have never received a bill for it? A. No, sir.

Q. How do you know you have to pay for it?

A. Well, because I know it is my place to pay for it.

Q. How about those X-rays Dr. Levin ordered?

A. Yes.

Q. You say he ordered one then, is that right?

20 A. Yes.

Q. He did not order two? A. No, sir, not as far as I recollect.

Q. Then you only had to pay Dr. Levin for one? A. Yes.

Q. Then why did you give him \$20? A. Well, I don't recall giving him the \$20. I gave him \$10 for the one. I knew that much.

Q. Well, now, didn't you say a moment ago that you gave him \$10 at one time and \$10 at another time? A. Yes.

30 Q. Then you gave him \$20? A. Well, I misunderstood what you were saying at the time. The \$10 I paid him was for the one that he advised. The other \$10 is due and the other one is not paid yet, and I have not paid it.

Q. Then you did not give him \$20? A. No, sir, I gave him \$20.

Q. The X-rays were negative?

Objected to.

40

(Question withdrawn.)

James Gee, for Plaintiff—Re-cross.

Q. You don't remember the name of this other doctor that got this \$50 bill, do you? Is he in court today? A. I don't know whether he is in court or not.

Mr. Semel: I expect him to be here.

A. (Continuing) As a matter of fact, I wouldn't know the gentleman if I saw him in court right now. I have never met him. 10

Q. And you paid that \$50? A. Yes.

Q. Whom did you pay it to? A. Paid it to Dr. Levin to give to him.

Q. You don't know whether his charge was \$50, then, do you? A. Yes.

Q. Why? Did you see a bill? A. Because Dr. Levin's statement that it was \$50. 20

Q. That is the only reason you knew he charged \$50 for one visit? A. Yes.

Q. Do you know how long your wife was there? A. I know she was away from the house several hours.

Q. Where does this doctor live? A. That I don't know.

Q. Where does he have his office? A. That I don't know. Dr. Levin came for my wife, took her to the doctor's and brought her back right to my own door. 30

Q. And you gave Dr. Levin \$50 for that call? A. Yes, sir.

Q. You never got any change? A. No, sir.

Q. You still owe Dr. Levin \$87? A. Yes.

Q. Are you supposed to pay him out of the proceeds of this case? A. That I don't know why that should be brought up.

Q. I am asking you a question. Will you please answer the question? 40

James Gee, for Plaintiff—Re-cross.

The Court: What do you mean by "supposed"? Whether there is such an agreement?

Mr. Harris: Yes.

10 A. No, sir, there is no such agreement. I have got to pay Dr. Levin whether I receive a nickel or ten million. It is the same price.

Q. You have got to pay him this \$87? A. Yes.

Q. You say he came about fifty times? A. Roughly. I wouldn't say. I don't know whether it was either way, fifty-one or forty-nine. I say about fifty times.

Q. How much did he charge for each visit? A. I believe his usual fee is about \$3 per visit.

20 Q. Did he charge you the usual fee? A. Yes, sir, for the first ten visits.

Q. And after that? A. Well, he just rendered me a bill.

Q. Did he charge you the usual fee or did he charge you less than the usual fee? A. Whether he charged me the usual fee or not, he gave me the bill after I took out the ten first visits.

Q. And then Dr. Levin came every four or five weeks after the accident when your wife used to have this bleeding that you speak of? A. Yes, sir.

30 Q. During that time he would not come and he would only come when she would be bleeding? A. Pardon me, sir. Now, Dr. Levin had one or two patients in the apartment which I took care of. The result was that he would be visiting the patients and he would call in my place perhaps one or two times per week, but not on a professional visit.

40 Q. He did not charge you for it? A. No, sir. He would just say, "Well, how are you today?" and if there was anything out of the way I would bring it to his notice.

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Q. You did not bring anything out of the way to his notice except this bleeding? A. Until there was necessity to bring it to his notice.

Q. And that was this bleeding that you speak of, that you call the necessity to call to his attention? A. Yes, sir. 10

PLAINTIFFS REST.

Defendants' counsel moves that the plaintiffs be nonsuited on the ground that the plaintiffs have not made a *prima facie* case, and on the further ground that no negligence has been shown on the part of the defendants; and on the further ground that contributory negligence on the part of the plaintiffs has been shown. 20

Motion denied.

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

Exception noted as ground of appeal.

SIGMUND Moss, one of the defendants, sworn in his own behalf.

30

Direct examination by Mr. Harris:

Q. Mr. Moss, you are one of the defendants in this suit, are you not? A. Yes, sir.

Q. The defendant Sarah Moss is your wife? A. Yes, sir.

Q. She owned the car that you were driving on this occasion? A. Yes, sir.

Q. Will you tell us where you were coming from when driving this car? A. From Newark. 40

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By the Court:

Q. Where did you live at that time? A. Nutley.

By Mr. Harris:

Q. You were going to Nutley? A. Yes.

10 Q. About what time of day was it? A. I left Newark 5:30. I know that.

Q. Why were you in Newark? A. For business.

Q. You were coming home from business? A. Yes, sir.

Q. You were on your way home? A. Yes.

Q. Did you have permission to use the car? A. Yes, sir.

20 Mr. Semel: I object to this line of questions. They are highly leading, your Honor.

By the Court:

Q. Is your business in Newark? A. All over, your Honor.

Q. What is your business? A. Building specialties.

Q. What is that? A. The different specialties for buildings, like fireproof materials.

30 Q. Oh, you deal in them, you mean? A. Yes, sir.

By Mr. Harris:

Q. What kind of automobile was this? A. Essex sedan.

40 Q. Now, coming up to the scene where this accident happened, where Mrs. Gee claims she was hit, will you tell us everything that you know about the circumstances surrounding that accident, what you were doing, what Mrs. Gee was doing, and anything else around this neighborhood? A. Com-

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ing from Newark my first stop was right there in front of the police station on Broadway. There were two officers in the street car, and they got off; so I stopped. An officer got off. The conductor closed the door; I started my car on second.

Q. Where was this? How far from the accident? A. Within a block.

10

Q. Within a block from the accident? A. Yes. I started my car and I was way ahead, between about fifteen feet in front of the street car all the way through. Coming up to that intersection there was two trucks parked right on the curb. I saw a lady jumping out between those two trucks and jumped right in front of my car. I stopped the car on the spot, walking out. While I walked out of the car I saw two men come over. They picked up Mrs. Gee. I went back to the car. I opened the door and Mrs. Gee went in. Those two men went in. We took her over to the hospital.

20

Q. Did you get out of your car? A. Yes, sir.

Q. Did you help these two men put Mrs. Gee in your car? A. No, sir. I opened the door. They had Mrs. Gee already.

Q. Did you have any conversations with these two men while you were in the car? A. No, sir; not a word.

Q. Did anybody say to you why were you driving so fast? A. No, sir.

30

Q. Did you say that, "I was in a hurry to get home"? A. Never in a hurry to go home.

Q. Did Mr. Kelligan say to you, "Why didn't you get out of your car"? A. No, sir.

Q. Did you say that, "I thought I killed somebody"? A. I made that remark, not at that time, after we—when we came to the police station.

Q. Did you have any teeth in your hand while you were in the car? A. No, sir.

40

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Q. Either going to the hospital or coming from the hospital or any time? A. No, sir. I didn't know anything about the teeth until next morning. Mrs. Gee showed me, they were lying on the mantel piece.

10 Q. What is that? A. Mrs. Gee showed me, they were lying on the mantel piece. I don't know anything about it until the next morning.

Q. What did she show you? A. Teeth.

Q. Loose teeth? A. Two teeth.

Q. Off the plate? A. I don't remember.

Q. They were single teeth, were they? A. I don't know. I know she told me, "There is my teeth. I broke my teeth last night," and she showed me teeth. I don't know if they were in a plate. I don't know anything about the teeth
20 anyhow, how they came off.

Q. Now, will you tell us about this accident before it happened and at the time it happened?

The Court: You just asked him that. Do you want him to repeat it?

Mr. Harris: I want a certain part where I interrupted him. I should not have interrupted. He said there were two cars parked and a woman jumped out between
30 them.

The Court: He struck her, stopped his car right away.

Q. Did you see a trolley car? That is what I am referring to. A. I saw the trolley car when I went out of the car when those two men started to pick up Mrs. Gee, the trolley car came over and stopped. One man goes out of the trolley car, and Mrs. Gee went in the car. I mean they put
40 Mrs. Gee in the car.

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Q. What car? A. My car. While I was turning around my car to go back to Newark, this man who walked out of the car told the conductor to stop the car and he didn't go any further until we passed around the car, around in front.

Q. What kind of a street car was it? A. I don't know. 10

Q. I mean, was it a Broad Street car? What was the name of it? A. I don't know.

Q. Was there a car that went up ahead of you? A. No. What do you mean ahead of me?

By the Court:

Q. You mean that the trolley car did not stop until after you had struck the woman? A. Absolutely, your Honor. 20

By Mr. Harris:

Q. Was there any trolley car in sight that was ahead of you? A. I don't know.

Q. As soon as you saw Mr. Gee step out from in between these two trucks, what did you do? A. I saw Mrs. Gee coming right between those two trucks right in front of my car.

By the Court: 30

Q. How near to your car? A. Just even, two or three inches, as close as that, I struck Mrs. Gee and I stopped my car.

By Mr. Harris:

Q. From the point that you struck her to the point where you stopped, about how many feet did you go? A. About four feet.

Q. Did you see an automobile ahead of you pull up to the curb? A. No, sir. 40

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Objected to as leading.

The Court: It is a little leading.

Q. Did you see anything pull up to the curb?

A. No, sir. There was only two trucks parked.

10 Q. When was it first that you saw they were parked? How far down the street were you? A. Well, I didn't pay any attention to the trucks. I paid attention to—but when I saw Mrs. Gee coming up from between the two trucks, when I hit her, then I knew the trucks were there.

Q. Were these trucks moving or were they standing still when you first saw them? A. They were standing still.

20 Q. What kind of trucks were they? Describe the trucks. A. I don't know, big, something what they call express. One was like what they move furniture with, and the other was some kind of other truck.

Q. Did you see these two men that ran over to pick her up? A. Yes.

Q. Did you see where they came from? A. Right across the street. No, not across the street; right on the sidewalk to my right.

Q. Was there a pleasure automobile standing on the righthand side?

30 Mr. Semel: I object to that question as being leading, your Honor.

Q. Was there anything besides these two trucks? A. No, sir.

Q. Wait a minute. Let me finish my question. Was there anything besides these two trucks standing on the righthand side of Washington Avenue, known as Broadway, when you drove up there? A. No, sir.

40 Q. Did you see this woman here at the scene of that accident? A. No, sir.

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The Court: You are indicating now Mrs. Shortman?

Mr. Harris: Mrs. Shortman.

Q. Was there anybody at the scene of the accident besides these two men and the man that came off the car? A. No, sir; nobody else. 10

By the Court:

Q. Do you mean that Mrs. Shortman wasn't there, or just that you didn't see her? A. Nobody else was there, your Honor, except those two men and the man that stopped the motorman to start his car.

Q. And you say there was no woman there except the one that was hit? A. Nobody else except Mrs. Gee. 20

By Mr. Harris.

Q. When this trolley car pulled up and stopped, had Mrs. Gee been in your automobile yet? A. I just opened the door at that time for those two men to put Mrs. Gee in.

Q. They were putting her in at the time the trolley car pulled up? A. Yes.

Q. Now, you went to the hospital with Mrs. Gee? A. Yes, sir. 30

Q. Will you tell us how she got into the hospital, where she walked or was carried or how? A. By the assistance of myself and those men here sitting right in back of Mrs. Gee.

Q. Indicating Mr. Kelligan? A. And this other man, who was it? Who was holding Mrs. Gee's handbag.

Q. Did Mrs. Gee walk? A. Yes, sir.

Q. How did you assist her? A. We kept her under her arms. 40

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Q. How long were you at the hospital? A. About two hours.

Q. Did you take Mrs. Gee home in your car?

A. Yes, sir.

Q. You went into the apartment of Mrs. Gee?

A. No. First we went to the police station.

10 Q. And after you came from the police station where did you go? A. Took her home.

Q. Did you want to go to the police station?

Mr. Semel: I object to that as leading.

The Court: You may proceed.

Q. Did you say to anyone that you didn't want to go to the police station? A. No, sir; never say that.

20 Q. Did you want to go to the police station to report the accident?

Mr. Semel: I object to that.

The Court: Objection sustained.

Q. Who suggested that you go to the police station? A. Myself, and the hospital also. They told us we should go and report to the police station.

30 Q. Did Mr. Kelligan make the suggestion that you go to the police station? A. No, sir. I know that I am going to make it, and the hospital, they told us we should go downstairs to the police station and report it.

Q. Downstairs? A. In the hospital they told me to go over and report it.

Q. You mean the people downstairs in the hospital? A. No, not downstairs. The doctors, when I went in after Mrs. Gee was examined, I asked the doctor, "What is the matter with her?" So the doctor told me what is the matter and he told
40 me to go to report to the police station. I says,

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"I know about it, because I have to report to Commissioner Dill about an accident, you have to report."

Q. Then you took her home? A. Yes.

Q. In your car? A. Yes.

Q. Did you go into the apartment with her? A. Yes, sir.

10

Q. Tell us what part of the apartment you went into, who you saw there when you got there. A. When we came in with Mrs. Gee nobody was in except her two children. Then her husband, Mr. Gee, came in. When he came in Mrs. Gee stood there and he says, "Ethel, what happened?" So I told him, I says, "I hit her with the automobile." So he says to me, "Have you got insurance?" I said, "What has that got to do with it?" He says, "Well, give me your name and address." So I gave my name and address and I gave him my plates, you know, the numbers on the plates, and I stayed there for a while and I told him, I says, she started to shiver and all that, I told him, I says, "If you want, why don't you send for a doctor?" So I stayed there for another five minutes; I went home.

20

Q. Did Mr. Gee go out and call a doctor? A. No, sir, not in my presence.

Q. Were you there when he took her into the front room and pulled out this Murphy bed? A. No, sir.

30

Q. Did Mrs. Gee seem as if she was very much hurt?

Mr. Semel: I object.

The Court: Objection sustained.

Q. How did Mrs. Gee look to you as to whether or not she was very much hurt? A. I couldn't say anything, how she was hurt. I know she was hurt. That is all.

40

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Q. Did you say to Mr. Gee, "You better call a doctor because I think she is hurt worse than they think she is," or words to that effect? A. No. I told him, I say here, "The way I hit her I thought I killed her," I says, "but I should advise you, if you are so afraid, send for your home
10 doctor." He says, "I don't know anybody here, just a new man in this section", he says, "I don't know anybody."

Q. Did you see Mrs. Gee after that date? A. Yes, sir.

Q. When was it? A. Next morning.

Q. When was the occasion? A. Well, I just passed by there, going to Newark; I thought I will stop in, see how she feels, that is all.

Q. Did you see her? A. Yes, sir.

20 Q. Did you talk to her? A. Yes.

Q. Where did you find her? A. She was sitting on the couch there, dressing her children.

Q. Where? In what part of the apartment? A. In what they call the living room.

Q. Was she dressed? A. Well, she had a house dress on.

Q. You say she was dressing the children? A. One of them.

Q. What time of day was it? A. Well, about
30 quarter to eight, I should say.

Q. For how long did you stay there? A. Oh, about five minutes.

Q. Was Mr. Gee around? A. Then he came in. He was down somewheres in the building.

Q. What did you say to her and what did she say to you? What did Mr. Gee say to you and what did you say to him? A. I asked him if he had a doctor. He says, "No, but there is a lady living in this apartment. She is going to send her
40 doctor." Then Mrs. Gee told me about her teeth.

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She showed me there was something laying there on the mantelpiece.

Q. This was the next morning? A. Next morning.

Q. What was said back and forth? A. I don't remember.

Q. Did you ask Mrs. Gee about her health? A. 10
Yes, I asked her.

Q. What did she say? A. Well, she told me her shoulder pains her and her side pains her and her shin, complained it hurts her.

By the Court:

Q. Indicating the shin? A. Indicating right here (indicating).

By Mr. Harris:

20

Q. Did you see her the next day? A. Yes, sir.

Q. Where did you see her? A. Her apartment.

Q. Who was present besides yourself and Mrs. Gee? A. Herself and the two children.

Q. Did you talk to her then? A. Yes, sir.

Q. What part of the apartment did you find her in? A. In the kitchen.

Q. How was she dressed? A. The same as the day previous.

Q. What was she doing? A. She was sitting at the kitchen table giving to eat one—holding something in a cup for one of her little children.

30

Q. Was there a woman around the house doing the work? A. No, sir.

Q. You didn't see anybody? A. No.

Q. Did you talk to her? A. Yes.

Q. What did she say and what did you say to her? A. Well, she didn't say anything. I asked her how she feels. She told me, she says, "The same." 40

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Q. How long were you there? A. About five minutes.

Q. Did you ever see her after that? A. Yes.

Q. When was that? A. Next morning.

Q. How many days after the accident? A. Three days.

10 Q. Where did you see her? A. In the kitchen.

Q. How was she dressed? A. The same way.

Q. What was she doing? A. She was assorting some clothes.

Q. What kind of clothes? A. Different things I suppose, ready for washing or something. I don't know what it is.

Q. Was she sitting or standing? A. Standing.

Q. Where were her clothes? A. In a basket.

Q. Where? A. On the chair.

20 Q. Did you talk to her? A. Yes, sir.

Q. Did she talk to you? A. Yes, sir.

Q. What did you say to her and what did she say to you? A. I asked her how she feels. She told me the same. I asked her if she had a doctor. She said yes, so that is all.

Q. Did you see her after that? A. Yes, sir.

Q. When did you see her? A. The next day.

Q. Did you see her again? A. Yes.

Q. How many times did you see her altogether?

30 A. Five.

Q. Where did you see her? A. In her room.

Q. Where was that? A. At the apartment where she lived.

Q. What part of the apartment? A. She was in the kitchen. I knocked at the door and she came over.

Q. How was she dressed? A. The same way.

Q. Did you see any woman around the house then? A. No, sir.

40 Q. This Mrs. McGinty? A. Never saw her.

Sigmund Moss, Defendant—Direct.

Q. What was she doing around the house, did you see? A. She wasn't doing anything.

Q. Did you talk to her and did she talk to you?

A. Yes. I started to ask her how she feels. Mr. Gee walked in.

Q. What did she say and what did he say? A. He told me that he doesn't know what is the matter with her. I says, "Was the doctor here"? He says, "Yes, there was a doctor here. He examined her." And that is all it was that day. 10

Q. And you say then you saw her again, did you? A. Once more.

Q. Where was that and when? A. That is two days after.

Q. Where was that? A. In the apartment.

Q. How was she dressed? A. The same way about. 20

Q. What was she doing? A. She was in the kitchen.

Q. Was there anybody else around? A. No.

Q. Did you talk to her? A. I started to talk to her, and then she went into another room, the living room, and Mr. Gee came over.

Q. Then what was said and what did you say? A. I asked Mr. Gee, I says, "How does she feel"? He says, "Well, the same way. Well, I got a doctor and I got a lawyer already." I said, "Who is your lawyer"? He says, "The doctor's brother." 30

Q. Was anything else said? A. So he had a lawyer, I went home.

Q. After that did you hear from a lawyer? A. Yes, about a day or two later I received a letter from him telling me I should come over to him and settle the case, something like that.

Q. Did you go to him? A. No, sir. 40

*Sigmund Moss, Defendant—Cross.**Cross-examination by Mr. Semel:*

Q. Where was your place of business in Newark at that time? A. 185 Market Street, Newark.

Q. What line of business were you in? A. Building specialties.

10 Q. Did this automobile you were driving belong to your wife? A. Yes.

Q. Did you have a car of your own? A. No, sir.

Q. You didn't have any car of your own. Did your wife drive a car? A. Once in a while.

Q. Did she drive it at that time? A. No, sir.

Mr. Harris: Do you mean at the time of the accident?

20 Mr. Semel: Yes, of course I am talking about the time of the accident.

Q. Whatever driving was necessary with that car you did? A. Once in a while when I left the car home she would have it.

Q. Did she have a driver's license at that time? A. Yes.

Q. You were using this car every day in your business, is that right? A. Practically every day.

Q. You didn't have your own car? A. No, sir.

30 Q. Have you got the driver's license and registry card for 1928 with you? A. 1928, no, sir.

Q. Have you got them for 1929? A. Yes, sir.

Q. Let me see them. A. Haven't got them with me.

Q. You haven't got them with you? A. No, sir.

Q. Did you drive down here this morning? A. No, sir. I haven't got the car out. I don't take out the car in weather like this.

40 Q. You say your place of business is at 185 Market Street? A. Yes, sir.

Sigmund Moss, Defendant—Cross.

Q. And you drove over to 185 Market Street and you left your office about 5:30; is that right?

A. I left not 185 Market Street. I left Frelinghuysen Avenue.

Q. Where? A. Frelinghuysen Avenue right about—I don't know what street is there, near where. It is there where the Eastern Sash & Door. It must be about 500 feet above the railroad trestle. 10

Q. Near the Elizabeth line? A. No. Right opposite—

Q. Near the Durant Motor Plant? A. No. It is in Newark. It is about 500 feet above the railroad trestle.

By the Court:

Q. The Lehigh Valley? A. Yes, the Lehigh Valley. 20

By Mr. Semel:

Q. You mean above toward Newark or toward Elizabeth? A. Toward Elizabeth.

Q. And you drove all the way from there, you started out at 5:30, is that right? A. Yes.

Q. And you drove all the way from there to Montclair Avenue and Broadway? A. Yes, sir. 30

Q. Before this accident occurred? A. Yes, sir.

Q. You were on your way home? A. Yes, sir.

Q. The accident occurred at what time? A. Around six o'clock.

Q. You were going home to have your dinner, weren't you? A. No. I never eat home.

Q. You never eat home? A. Except Sundays.

Q. Why were you going home on that day at six o'clock? A. Because I had to be in Passaic at seven. It is on my way. 40

Q. In other words, you had to be in Passaic at seven o'clock? A. At seven o'clock.

Sigmund Moss, Defendant—Cross.

Q. So that you weren't going to Nutley that night? A. Yes. Always when I pass there I stop in home.

Q. You were going to go to Nutley, first stop in to see your wife and family? A. Yes.

10 Q. You weren't going to have your dinner? A. No.

Q. You were going to go to Passaic? A. Yes.

Q. Where in Passaic? A. I had to meet a customer.

Q. Where in Passaic? A. On Howe Street.

Q. What number? A. 53.

Q. What is the name? A. Caddigan.

Q. Did you go to see him that night? A. No, not that night.

20 Q. You had one hour's time from the time that this woman was struck at six o'clock at Montclair Avenue and Broadway, to get to Nutley, see your family and get into Passaic, is that right? A. Yes.

Q. All within an hour? A. Yes. It is only three miles.

Q. How fast were you driving your car at the time you struck this woman? A. At about between 20 and 25.

30 Q. You did not see the trolley car? A. What do you mean, I did not see the trolley car?

Q. Did you see a trolley car as you approached Montclair Avenue? A. There was no trolley. I passed the trolley.

Q. You passed the trolley. Was the trolley in motion or standing still? A. Where.

Q. When you passed it. A. It started and I started my car.

40 Q. Where did the trolley car start? A. Right in front of the police station.

Sigmund Moss, Defendant—Cross.

Q. Where is the police station with reference to the accident? A. A block and a half away from Montclair Avenue.

Q. A block and a half south? A. Toward Newark.

Q. And the next cross street is Montclair Avenue, isn't it? A. I presume so. 10

Q. The trolley car didn't stop at Montclair Avenue at all, did it? A. The trolley car stopped when I passed.

Q. When you passed the trolley car stopped? A. When I was at Montclair Avenue the car was about 20 feet in back of me.

Q. When you were at Montclair Avenue the car was 20 feet in back of you? A. Yes, sir.

Q. And you say you saw two trucks? A. Yes, 20 sir.

Q. Did you notice the names on those trucks? A. No, sir.

Q. Where were the trucks standing? A. Right in front where those stores are.

Q. What stores? A. Stores, I don't know what stores; delicatessen store, a National grocery store, and some other stores. I don't know.

Q. Were there any other lights on this truck? A. No, sir.

Q. There were no lights on it? A. No. 30

Q. It was dark already, wasn't it? A. No. It was just about, well, it wasn't very dark.

Q. Quarter of six on the 20th of November last year? A. There was no lights on the truck. I know that.

Q. And there were no lights on your car? A. On my car, yes, sir.

Q. I thought you said it wasn't dark yet. A. Well, it was dark—

Q. Why did you have to have lights if it wasn't 40 dark? A. It was dark then.

Sigmund Moss, Defendant—Cross.

Q. So you are willing to change your mind about it then? A. I said it wasn't very dark.

Q. There were no lights on the truck? A. No, sir.

Q. Did you notice whether there were any chauffeurs with these trucks? A. No, sir.

10 Q. What do you mean "no, sir"? A. I didn't notice it.

Q. You are quite certain there were no lights on the trucks? A. No, sir.

Q. Did you notice the names on these trucks? A. No, sir.

Q. Why not? A. I wasn't interested while passing, and then I didn't have no time to look at the names or what kind of trucks they were after, when the accident happened.

20 Q. You were in front of the trolley car when you struck Mrs. Gee, is that right? A. No, I wasn't in front of the trolley car.

Q. Where were you? A. I was over myself.

Q. Where? Where with reference to the intersection of Montclair Avenue? A. Coming to Montclair Avenue I was over myself. The car was about 20 feet in back of me.

30 Q. You told us that before. Now, where with reference to the intersection were you when you struck Mrs. Gee? A. I was just coming into Montclair Avenue.

Q. Coming into Montclair Avenue? A. No, no. Passing Montclair Avenue, just where Montclair Avenue comes down here.

Q. And Mrs. Gee came from the sidewalk, didn't she? A. No. Right off the sidewalk between those two trucks.

40 Q. Between the two trucks. How wide were these trucks? A. I don't know how wide the trucks are.

Sigmund Moss, Defendant—Cross.

Q. How wide about were they? A. I don't know. I would say about eight or nine feet, or seven feet, six feet. I don't know.

Q. When you approached Montclair Avenue and Broadway you didn't slow down, did you? A. No, sir.

Q. You kept the same pace at 25 miles an hour? 10

A. Yes, sir.

Q. Even though there is an intersecting street there, is that right? A. There is no intersecting street there at all, no, sir. There is no cross street.

Q. You didn't slow down even though there is a stop sign for trolley cars there?

Mr. Harris: If your Honor please, I do not think he has to slow down. 20

The Court: Sustain the objection. He says he did not slow down. That is all there is about it.

Q. You did not get out of this car to help Mrs. Gee in, did you? A. I did.

Q. You did get out of the car? A. Absolutely.

Q. I thought you told us before that the other two men helped you? A. I got out.

Q. And you only opened the door; now, which is correct? 30

Mr. Harris: I object.

The Court: He did tell us that he got out of the car and opened the door for these two men and put this lady in.

Q. And while you were opening this door you saw a man get out of the trolley car? A. Yes.

Q. Which had come to a stop, and told the conductor not to go on any further, is that right? A. He got out of the car. I was just about making 40

Sigmund Moss, Defendant—Cross.

that turn around the car to go back to Newark, and he said to the motorman, "Don't move your car", and I turned my car way around and went back to Newark.

10 Q. The car wasn't moving when he said that to the conductor? A. No. He got there so the car couldn't move.

Q. And you were right in front of the car? A. When?

Q. When he said that to the motorman? A. I was just starting to make my turn.

Q. Already on the tracks? A. No, just starting in.

20 Q. Although your car was making a circle around, this man told the motorman not to continue with his car; is that right? A. This man noticed, when they put in Mrs. Gee, and I says to this other fellow, I says, "Where should we go?" He says, "Go to Newark".

By the Court:

Q. When this trolley car came up and stopped, was it right opposite where your automobile was? A. No. There were about five in back of me. I was ahead.

30 Q. What was the distance between you and the trolley car? A. It couldn't be any more than about, well, two feet.

By Mr. Semel:

Q. How many feet did you travel after you struck her before you came to a stop? A. I put on the brakes and I stopped, I say, within two feet or three feet, something like that. I know I stopped it right on the spot.

Q. You were going 25 miles an hour? A. Yes.

40 Q. And you were able to stop within three feet? A. Three or four feet.

Sigmund Moss, Defendant—Cross.

Q. How far was Mrs. Gee thrown? A. She was thrown about eight or ten feet.

Q. And landed where? A. Right on the pavement.

Q. Now, you say you were two hours at the hospital? A. Yes, sir.

Q. Do you know what they did with her there? 10
A. Yes.

Q. What did they do? A. They examined her.

Q. Were you present when they examined her?
A. No, sir.

Q. But you know that she was there for two hours before they let her go, is that right? A. About that, yes.

Q. And you waited all that time? A. Yes.

Q. During the time that you rode down with these gentlemen to the hospital, you had no conversation with them at all? A. No. 20

Q. Nothing was said about it? A. Not a word.

Q. And from the time you went from the hospital to the precinct there was nothing said there?

A. Only the conversation of when they was at the hospital while Mrs. Gee was being examined.

Q. What was the conversation? A. About how this happened, all that.

Q. Tell us how it was. You told them you thought you had killed her? A. Yes. 30

Q. And you were very glad that you had not killed her? A. Absolutely.

By the Court:

Q. The place where you stopped, how far were you from the parked truck? A. From the parked truck, about a foot; between the parked truck and my car was about a foot.

Q. And between your car and the trolley car when they stopped, about two feet? A. About two 40

Sigmund Moss, Defendant—Cross.

or three feet, about that, because it could not be any more space.

Q. And even though they had her at the hospital for two hours and let her go, when you got back to the house you told Mr. Gee that you thought he ought to get another doctor, is that right? A. Well, I would advise anybody—

Q. Never mind. Didn't you tell that to Mr. Gee? A. Yes, sir.

Q. Because you thought that she was more seriously injured than they might have found out at the hospital, isn't that right? A. No, sir; I did not.

Q. And even though you told him that he ought to get a doctor right away, the next morning when you got there she was already on the job? A. No, she was only dressing a child.

Q. When you got there the following day she was working? A. No, she wasn't working.

Q. What was she doing? A. She was sitting at the kitchen table giving one of her children something to drink in a cup.

Q. What was she doing the next day? A. The next day she had a basket of clothes, and she was just picking on it.

Q. What did she do the next day after? A. I don't know. I knocked at the door and she came over and then Mr. Gee came over and he told me he has got a doctor and a lawyer.

Q. What did she do the last day when you were there? That was only the fourth day. What was she doing the last day? A. She wasn't doing anything; I know that.

Q. Was this conversation about the doctor and lawyer on the fourth day? A. The last day that I was there.

Sigmund Moss, Defendant—Cross.

Q. Then what did she do on the fourth day?
 A. Nothing. That is only twice I saw her doing something, the second and the third days.

Q. Why did you go there so many times? A. Well, I have that feeling, if I see anybody hurt, especially when I am the guilty one.

Q. You felt that you were the guilty one in this case? A. I am being at least blamed for it. 10

Q. Now, during the time you were driving this car for your wife, did you ever take her riding anywhere? A. Yes, sir.

Q. How often? A. Quite often.

Q. Did you ever perform any errands for her? A. Yes, sir.

Q. Did she ever call you up and ask you to bring her things from downtown? A. Yes, sir.

Q. What else would you do for her? A. Well, whatever it was necessary. 20

Q. So that you were really her official chauffeur, weren't you, Mr. Moss? A. Well, you can call it whatever way you want it.

Q. Isn't it a fact that whatever driving of the car was necessary you did? A. I think everybody would do the same.

Q. No, please; didn't you?

Mr. Harris: If your Honor, please, I think it should be confined to this particular incident. 30

The Court: I am just wondering this, whether there is any contention in this case that the car was not being driven by him as agent of his wife.

Mr. Harris: At the time of the accident he said he was coming back from business.

The Court: That will be your contention?

Mr. Harris: Well, he did say that he was coming back from his own business. You 40

Sigmund Moss, Defendant—Re-direct.

mean whether I asked him specifically whether he was doing anything for her. My contention is that he was not the agent of his wife.

The Court: That is what I am asking. Then I think the question is proper.

10

Q. So that whatever driving of that car was necessary you did, didn't you, except occasionally when your wife might take it? A. Right.

Q. But generally, and that went all along during the time she owned the car? A. Yes.

Q. And that was the situation on the day when you drove this car? A. Yes.

Q. And you used to also use the car for your own business? A. Yes, sir.

20

Re-direct examination by Mr. Harris:

Q. On this particular occasion were you on your own business?

Mr. Semel: I object.

The Court: What is the objection to that?

Mr. Semel: There was a general theory of agency if he used this car at all times. I do not think it makes any difference.

30

The Court: It makes all the difference in the world.

Mr. Semel: I withdraw my objection.

The Court: *Durant vs. Thompson* is very specific on that, holding that at the time of the accident he must have been acting as the agent of the wife about her business.

40

Q. On this particular occasion when the accident happened you were on your own business, weren't you?

Sigmund Moss, Defendant—Re-direct.

The Court: That is very leading.

Q. On whose business were you at the time of this particular accident? A. Well, within the two hours before the accident I done something for the wife, and then I used the car for myself.

Q. The last time you did something, was that for yourself or for your wife? A. Well, for myself, just driving the car to Passaic. 10

Q. You were on your way to Passaic? A. For business.

Q. For business? A. Yes.

Q. The particular trip that you were on, were you doing anything for your wife at that time? A. When?

Q. At the particular time that you were going to— 20

The Court: Suppose we find out what it was that he had done for his wife two hours before.

The Witness: We live in Nutley, and the wife had a habit, you know, a little thing, about all this, you know, buying things in Prince Street, Newark. So she called always up her sister and she done her shopping for her, and then I picked up the bundles. So I went to the sister and she did not buy anything yet. Then I went back to Frelingheysen Avenue, and at Frelingheysen Avenue I told you what I had to do, and then I was going on my way to Passaic, thinking of stopping in home, you know, as I always do, and take the wife and children over,—the rest of the evening to Passaic and attend to the rest of my business and go home. 30 40

Sigmund Moss, Defendant—Re-cross.

Q. Then you didn't have the bundles with you; the sister didn't have the stuff? A. Right.

Q. And you were on your way to Passaic from Frelingheysen Avenue? A. Yes.

Q. That was on your own business?

10 Mr. Semel: I object to that.

The Court: Objection sustained.

At one o'clock p. m. the Court takes a recess until two o'clock p. m.

AFTER RECESS.

SIGMUND MOSS, resumes the stand.

20 *Re-cross-examination by Mr. Semel:*

Q. Mr. Moss, I understood you to say that on the afternoon of this day you went to your sister-in-law to get some packages for your wife; is that correct? A. Yes, sir.

Q. And from there you went to Frelinghuysen Avenue on a business matter of your own? A. Yes.

30 Q. And then you were going into Nutley, is that correct? A. Yes, sir.

Q. To your home? A. Yes, sir.

Q. To pick up your wife and family? A. Yes, sir.

Q. And take them to Passaic? A. Yes, sir.

Q. So that they could spend the evening there while you were taking care of your business? A. No, sir.

40 Q. Didn't you say that? A. Always when I used to go out somewhere and I only make one or two stops, I always take my family along with me.

Sigmund Moss, Defendant—Re-cross.

Q. Was your family going with you on this business trip? A. Just to Passaic.

Mr. Harris: If your Honor please, I object to that. If his family was going on the business trip, if the trip was particularly a business trip, he would not be the agent of his wife. 10

The Court: The question may be answered.

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

Exception noted as ground of appeal.

Q. They weren't going with you on the business trip? A. Just to take them along.

Q. They had nothing to do with that? Your wife had nothing to do with this business matter of yours at all? A. No, sir. 20

Q. You would take your wife and family for a ride, is that right? A. That is all; yes, sir.

Mr. Harris: If your Honor please, he could not take them until after he got home.

The Court: I suppose he means by that that that was the intention.

Mr. Harris: If so, if your Honor please, I think the destination or the termination of his business trip would be at his home. 30

The Court: Is there an objection? That is the only way I can rule on these matters.

Mr. Harris: I appreciate that. I object to the question.

The Court: Your objection is timely, and I will overrule it.

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

Exception noted as ground of appeal. 40

Sigmund Moss, Defendant—Re-direct.

By the Court:

Q. Now, let me see about this trip to Prince Street. Had your wife telephoned you at all? A. No, she told me in the morning.

Q. What did she tell you in the morning? A. Before I go home I should stop into her sister and get whatever she bought there.

Q. And you did that? That is, you went up there to Prince Street? A. Yes.

Q. Was that your sister-in-law? A. Yes, sir.

Q. You found she had not bought anything? A. Yes, sir.

Q. Did you buy anything? A. No, sir.

Q. You went, then, back to Frelinghuysen Avenue? A. Yes, sir.

20 Q. And resumed your work there? A. Yes, sir.

Q. Then what? A. Then I know I have to be in Passaic at seven. As soon as I got through there I started on my way home.

Q. Did you stop anywhere else? A. No, sir.

Q. Your first stop after you left from Frelinghuysen Avenue was as the result of this accident, wasn't it? A. Yes, sir; except traffic stops.

Re-direct examination by Mr. Harris:

30 Q. On direct examination, if I recollect, you said that you went to see Mrs. Gee, in response to a question by counsel, because you always were interested in seeing somebody that is hurt when you are guilty, as I understood it. Then you qualified by saying when you are blamed for the accident. What do you mean when you say, "when I am guilty"?

Mr. Semel: I object.

40 A. I did not mean that, to say that I am guilty.

Sigmund Moss, Defendant—Re-cross.

Mr. Semel: Just a moment. I have objected to the question.

The Court: The question may be answered.

A. (Continuing) I did not mean to say that I am guilty. I know that I wasn't guilty and I ain't guilty, but I meant to say that I was blamed for it. 10

Re-cross-examination by Mr. Semel:

Q. If you felt you weren't guilty, what interest did you have in going up there to see these people?

A. I just have that feeling, not only to Mrs. Gee, but when I saw the accident and I knew where the people lived, I went there to see, to find out.

Q. Even though you felt you weren't guilty? 20

A. No.

Q. Even though you felt you weren't to blame, you went to this house five days one right after the other, is that correct? A. Going always on my way toward Newark and stopped in.

Q. And stopped in for five successive mornings?

A. Yes.

DEFENDANTS REST.

Mr. Semel: I have some rebuttal, your Honor, and I would like at this time, if your Honor will indulge me, to reopen my case only for the purpose of explaining the apparent contradiction between the testimony of Mr. Gee and Dr. Singer relative to the \$50. I feel that the impression might have been wrongly made on the Court and jury, and if your Honor will indulge me, I am sure that I can straighten it out. Your Honor will recall that Mr. Gee said he paid \$50 for the specialist's examination. 30 40

James Gee, Recalled—Direct.

The Court: He said he paid it to Dr. Levin.

Mr. Semel: Yes, to Dr. Levin for the specialist. That is what I understood him to say.

10 The Court: Of course if Dr. Levin did not pay it over——

Mr. Semel: That is not the situation, and then subsequently Dr. Singer said he was not paid at all. Now, if your Honor will be kind enough to indulge me to that extent, I would like to have him explain just what he meant.

The Court: You may proceed.

20

JAMES GEE, one of the plaintiffs, recalled in his own behalf in rebuttal.

Direct examination by Mr. Semel:

Q. Mr. Gee, you testified before that you paid Dr. Levin \$50 for a specialist? A. Yes, sir.

Q. Now, did you pay Dr. Levin \$50? A. No, sir; I did not give him that direct.

30 Q. Listen. Will you just listen to my question?
A. Oh, pardon me.

Q. So that I can clear the situation up. You did not pay Dr. Levin the \$50, did you? A. No.

Q. Now, will you tell the Court what the situation was with reference to those \$50? A. Yes, sir.

40 Mr. Harris: If your Honor, please, I think on his direct testimony he stated that he paid to Dr. Levin \$50. This seems to me to be impeaching his own witness. I do not think he has a right to impeach him.

James Gee, Recalled—Direct.

If he is going to make a liar of his witness, I do not think he has a right to do so.

Mr. Semel: He is not going to do anything of the kind, your Honor. I asked your Honor and your Honor said I might show the jury just what was meant by that.

10

By the Court:

Q. Well, what is the fact, Mr. Gee? I certainly understood you to say that you gave Dr. Levin \$50 to pay the woman specialist whose name you couldn't remember. A. Yes, sir.

Q. Was Dr. Singer that woman specialist? A. I find out since it was the woman specialist; yes, sir.

Q. Now, have you any correction of your testimony to make on that point? A. Yes, sir; I would like to explain that point, sir.

20

Q. I think it is not subject to explanation. It is subject to correction. If there is any correction to be made your testimony may be corrected. A. Yes, sir.

Q. Now, explain. A. Thank you, sir. My wife told me that Doctor Levin recommended—

Mr. Harris: Just a minute, if your Honor please. I think he is going into an explanation.

30

The Court: Oh, yes. That will be stricken out, what he is now saying. He may not explain it. He may correct any testimony that he desires which has been erroneously given.

The Witness: My wife—

The Court: No. It is quite improper to state what your wife said, any conversation with your wife.

40

James Gee, Recalled—Direct.

By Mr. Semel:

Q. Correct that part of your testimony which you gave to the Court and jury before in which you said you paid Dr. Levin \$50. Did you pay him \$50? A. No, sir.

10 Q. Why did you testify to that fact?

Objected to.

Objection sustained.

Q. Was it your understanding that \$50 had been paid? A. Yes, sir.

Objected to.

Objection sustained.

20 Mr. Semel: I would like very much to have the matter explained, but I think it is beyond the rules of evidence unless your Honor can help us in some manner.

By the Court:

Q. Did you pay anything to Dr. Levin? A. My wife, sir.

Q. Did you pay anything to Dr. Levin? A. Well, from my wife who has most of the money all the time.

30 Mr. Harris: I object to that, if your Honor please.

The Court: That will be stricken out.

Q. My question is did you pay anything to Dr. Levin? A. No, sir.

Q. Nothing at all? A. Yes, sir, for the visits, the first visits, that is all.

Q. What? A. For the first visits.

Q. I mean for the specialist. A. No, sir.

40

Ethel Gee, Recalled—Direct.

Q. You did not pay anything? A. No, sir; I would like to explain.

The Court: Now, we will have Mrs. Gee come up and see if she paid Dr. Levin the \$50. It is as much as we can do within the rules of evidence.

10

ETHEL GEE, one of the plaintiffs, recalled in her own behalf in rebuttal.

Direct examination by Mr. Semel:

Q. Mrs. Gee, during the course of your treatment from Dr. Levin, did Dr. Levin ever say anything to you about a specialist? A. Yes, sir. 20

Q. Tell us what he said. Tell what the conversation was between Dr. Levin and yourself. A. Well, he told me I ought to see a specialist.

Q. What did you say in response to that?

By the Court:

Q. No, did you do that? Did you go to see the specialist? A. Not right away.

Q. Did you go to see any specialist? A. Yes, sir. 30

Q. Whom did you go to see? A. Dr. Singer.

By Mr. Semel:

Q. Did you pay Dr. Singer for his examination? A. No. I asked him how much his fee—I don't know whether I asked Dr. Levin or whether I asked the specialist—and one of them said \$50.

Objected to.

Objection overruled.

40

Ethel Gee, Recalled—Direct.

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

Exception noted as ground of appeal.

By the Court:

10 Q. I understand you then to say that you did not pay Dr. Singer any money? A. No, sir.

Q. Did you give any money to Dr. Levin for Dr. Singer? A. No. My husband——

Q. Did you give Dr. Levin any money for Dr. Singer? A. No, sir.

By Mr. Semel:

20 Q. Did you tell your husband about the charge of \$50? A. Well, he asked me how did I go——

Objected to.

Objection sustained.

Q. Did your husband give you the \$50 to pay to Dr. Singer?

Mr. Harris: I object to that, about his evidence that he gave Dr. Levin \$50.

30 The Court: I understood the husband to say himself that he did not. He said she had the money, she had most of the money.

Q. Will you tell the Court what you said to your husband with reference to this \$50?

Mr. Harris: I object to that.

The Court: Mr. Semel, you certainly must know that that is quite improper.

Mr. Semel: I will withdraw it.

40 The Court: I have gone the limit and a little bit more to let you explain this matter, and I think we cannot transgress the rules of evidence too far in an explanation.

Ethel Gee, Recalled—Direct.

Mr. Semel: I will withdraw it. While she is on the stand I will have my rebuttal.

Q. Mrs. Gee, did you run out into the street in the path of Mr. Moss's car or between two trucks on the night of the accident? Answer the question yes or no. A. No, sir. 10

By the Court:

Q. Were they trucks? A. No, sir.

Q. If not, what kind of cars were they that were parked there? Were they trucks, the two cars that were there? A. No, sir, two private cars. One car was parked, and then the other car came up and told me to go ahead.

Q. You have not quite answered my question. It may be answered by yes or no. Were the automobiles that were parked there trucks? A. No, sir. 20

Q. Neither one of them? A. No, sir.

By Mr. Semel:

Q. Were there any trucks in the vicinity of the accident at that time? A. No, sir, I never saw any.

Q. Did Mr. Moss come to see you the morning after the accident? A. Yes, sir. 30

Q. Were you sitting on the couch fully dressed, dressing one of your children that morning? A. No, sir; I was lying there.

Q. Did Mr. Moss visit you again the second morning after the accident? A. Yes, sir.

Q. And at that time were you sitting at the kitchen table giving one of your children something to eat? A. No, sir.

Q. Did Mr. Moss visit you the third morning after the accident? A. Yes. 40

Ethel Gee, Recalled—Cross.

Q. Were you at that time sorting some clothes from a clothes basket which was on a chair in the kitchen? A. No, sir.

Q. Did Mr. Moss visit you the fourth morning after the accident? A. Yes.

10 Q. Did he also visit you the fifth morning after the accident? A. Yes.

Q. And did you on that morning tell him that you already had a lawyer and a doctor? A. We did not have a lawyer.

Q. Did you tell him that? A. No, sir.

Cross-examination by Mr. Harris:

Q. I understand you to say you did not have a lawyer then? A. No, sir.

20 Q. When did you engage your lawyer? A. I don't just know.

Q. How long after the accident? A. I couldn't tell you. My husband went for a prescription to the drug store and he asked him if he needed a lawyer.

Mr. Harris: I ask that that be stricken out, if your Honor please. The druggist man or whoever he was asked him whether he needed a lawyer. That is hearsay evidence.

30

The Court: It will be.

Q. When was the first time that you found out that a lawyer was in this case? A. I don't really know.

Q. Are you sure it wasn't before the fifth visit of Mr. Moss that you found out that there was a lawyer in this case? A. No, sir; I don't remember telling Mr. Moss that we had a lawyer. I

40

don't think we had one then.

Marion Shortman, Recalled—Direct—Cross.

Q. Well, it may be that you did have one then, isn't that so? A. I couldn't tell you that.

Q. Before you said that you did not. You were positive about that before, but now you don't know. Which is it? Did you or didn't you have a lawyer on that day? A. I don't think so.

10

MARION SHORTMAN, recalled in behalf of plaintiffs in rebuttal.

Direct examination by Mr. Semel:

Q. Mrs. Shortman, did Mrs. Gee run into the path of Mr. Moss's car from between two trucks standing on that street? A. No.

20

Q. Were there any trucks in that vicinity at the time of the accident? A. I didn't see any trucks.

Q. Well, now, were there? A. None that I saw. The two cars that I spoke of this morning were passenger cars.

Q. Were there any other motor vehicles in that immediate vicinity? A. None that I saw.

Cross-examination by Mr. Harris:

Q. There may have been trucks there, but you didn't see them? A. I didn't see them; no, sir.

30

Q. Did you go over to the scene of the accident? A. No.

By the Court:

Q. Mrs. Shortman, are you quite familiar with that locality? A. Oh, very.

Q. The buildings there, are they used mostly for residences or business? Upon Broadway, I

40

Marion Shortman, Recalled—Cross.

mean, at Montclair Avenue. A. On Broadway, on Montclair Avenue, there are four stores occupying the lower part of an apartment house. In other words, there is the delicatessen; next to that the National; then the entrance to the apartments themselves, which occupy the upper floors; then a
10 druggist and a cleaner's.

Q. Is that pretty well built up there, or are there very few buildings there? A. There is that apartment. There is an apartment to the north of it.

Q. How close to it? A. Immediately adjoining it. There is nothing to the south of it.

Q. For how far? A. Approximately a block.

Q. How about to the north of that second
20 apartment? A. There is a space, I believe, between that and a garage.

Q. How far is the garage away? A. That is up at the next corner.

Q. That would be a half a block away? A. No. I think the garage faces Irving Street. There is a space between that garage and the apartment north of the apartment before which the accident occurred. That is a strictly residential apartment. Where the accident occurred there are these stores in the lower front part of it.

30 Q. How far do you think it is to the south of the apartment in front of which this accident happened, to the next building? A hundred, two hundred, three hundred, five hundred feet? A. Now, wait. There are two large apartments there. There is the full length of 68 Montclair Avenue. They have since erected two apartments next to that, and there is a space on the corner. It is a block.

40 Q. 68 Montclair Avenue is on Broadway? A. Southwest corner of Broadway.

Marion Shortman, Recalled—Cross.

Q. That is the southwest corner? A. Yes.

Q. I am speaking now about the east side of Broadway. A. Well, the best way that I could—I am not enough of a judge of distance to say what that length would be. I do say that that open space faces what approximates three apartment houses. 10

Q. What is the next street to the south? A. Halleck Street comes into Broadway in the same manner as Montclair Avenue. Below that Grafton Avenue, where the police station is. That is a cross street.

Q. So that the next street to the south of where this accident occurred is Grafton Avenue? A. Grafton Avenue.

Q. How far is Grafton Avenue, do you think, from this apartment house? A. From the apartment house in front of which the accident occurred? I will have to visualize what is in there. I would judge the distance a thousand feet. 20

Q. And there is no building in that thousand feet? A. Oh, yes. You said to Grafton avenue.

Q. I understood you to say there wasn't anything between this building and Grafton avenue. A. Oh, yes. I will say there is nothing for a distance of 300 or 400 feet, but there is—they were going to erect an apartment. They did do some excavating. 30

Q. Halleck street comes in from the other side, doesn't it? A. Halleck and Montclair are identical. They are parallel to one another.

Q. Between Halleck, between a point opposite Halleck and Grafton, are there buildings on Broadway? A. Yes, but between a point opposite Halleck and Montclair, where the end of the delicatessen is, there might possibly be one house. 40

Q. Now, Irving is the next street on the north,

Marion Shortman, Recalled—Cross.

isn't it, and is there any building between the apartment next north to the one in front of which the accident happened and Irving Place? A. Nothing but the garage, which may be a little south of Irving Street. My impression is that it practically faces Irving.

10 Q. Does Irving Street cross Broadway? A. No. It comes into Broadway, but doesn't cross.

Q. The garage is on the other side of the street, then? A. The garage is on the easterly side of Broadway, the same side as the accident occurred.

Q. How far would you say it is from that apartment which is north of the one in front of which the accident happened to the garage? A. Another three or four hundred feet.

20 By Mr. Semel:

Q. How about the westerly side of Broadway? How is that built up along that block? A. At that time there was one large apartment, I will say the same size as 68 Montclair Avenue, occupied half the distance from Montclair Avenue to Irving Street. That was all there was there at the time. Since then I believe they have built up.

Q. I mean at that time A. At that time just
30 those two big houses.

By the Court:

Q. And 68 Montclair Avenue was the only building between Montclair Avenue and Halleck Street at that time? A. Oh, no. These other apartments must have been either erected or under construction. I don't know when they completed them. I left there in January, after this accident.

40

James Kelligan, Recalled—Direct—Cross.

JAMES KELLIGAN, recalled in behalf of plaintiffs in rebuttal.

Direct examination by Mr. Semel:

Q. At the time that this accident occurred, were there two automobile trucks parked in the immediate vicinity of that accident? A. No, sir. 10

Q. Were there any trucks there at all during the time of the accident? A. No, sir.

Q. Did Mrs. Gee run from the sidewalk between two trucks into the path of this automobile? A. No, sir.

Cross-examination by Mr. Harris:

Q. Where were your trucks? A. Didn't have a truck at the time. 20

Q. What is that? A. Didn't have any truck at that time.

Q. You drive a truck, don't you? A. Yes, sir.

Q. What time do you start to work in the morning? A. Seven o'clock.

Q. What time did you finish at night? A. Seven till five.

Q. And this was almost six o'clock? A. Yes.

Q. You were just coming home from work? A. Yes. 30

Q. So you worked late that night, didn't you? A. Yes, sir.

PLAINTIFFS REST.

Defendants' counsel moves for the direction of a verdict in favor of the defendants upon the ground that no negligence has been proven on 40

Motions.

the part of the defendants and upon the ground that contributory negligence has been proved on the part of the plaintiff.

Motion denied.

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

10 Exception noted as ground of appeal.

Defendants' counsel moves for the direction of a verdict in favor of the defendant Sarah Moss on the ground that there has been no evidence of the agency of the person driving the automobile owned by Mrs. Moss and that there is no evidence that Mrs. Moss was the principal of the person driving the car at the time of the accident.

Motion denied.

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

Exception noted as ground of appeal.

Mr. Harris sums up in behalf of defendants.

Mr. Semel sums up in behalf of plaintiffs.

Charge.

The Court charges the jury as follows:

30 DUNGAN, J.

Gentlemen: You have in this case two plaintiffs and two defendants. The plaintiffs are Mrs. Ethel Gee, who was injured in an automobile accident in this city on Broadway opposite Montclair avenue on the 20th day of November, 1928, and her husband, who seeks to recover for certain elements of his damage, which I shall presently mention. The defendants are Mrs. Moss, who was the

40 owner of the automobile which collided with Mrs.

Charge.

Gee, and Mr. Moss, who was driving the automobile at that time.

The mere fact that there was a collision and Mrs. Gee was injured as the result of being struck by the automobile of the defendants, does not alone entitle her to your verdict. That does not entitle either plaintiff to your verdict. More than 10
that must appear before either of them is entitled to recover. It must appear by the greater weight of the evidence, because the burden of proving negligence is upon the plaintiff, that the collision was due to negligent operation of that automobile by Mr. Moss; that is, that he failed to operate it as a reasonably careful and prudent person ordinarily does and would operate it under the same or similar circumstances and conditions.

The story of Mrs. Gee, shortly—I shall not attempt to quote all the testimony in the case within 20
the confines of a short charge—is that she had been waiting on the east side of Broadway, opposite Montclair avenue, to board a trolley car; that there was an automobile parked slightly to the north of where she was standing; that she saw the trolley car approaching, and either following it or running alongside of it an automobile; that the trolley car stopped at about the south crosswalk, or what would be the south crosswalk 30
if there were one there, of Montclair avenue; and that the automobile came on to a point slightly to the south of the front of the trolley car and stopped near to the curb; that the door of the trolley car was opened and the motorman motioned her to come on. She says that the driver of the automobile, which had stopped also, motioned her to come on, and she did, and passed out in front of that automobile. She says that she looked to the left and to the right and then went 40

Charge.

on toward the trolley car, but before she reached the trolley car she was struck, admittedly by Mr. Moss' automobile.

10 Mr. Kelligan, who was an eye witness, and who was corroborated in many particulars by Mrs. Shortman, who said she was talking at the time with a gentleman in the more northerly parked automobile, said that he saw this accident. He corroborates the plaintiff that she was standing on the sidewalk, that there were two parked pleasure cars there, that as the trolley car came up and stopped, the door being open, she left the sidewalk, went out to board the trolley car, and when she was within three or four feet of it Mr. Moss' automobile came along and struck her.

20 Mrs. Gee indicated that between the left side of that standing automobile in front of which she passed and the right side of the trolley car there was about eight feet. Mr. Kelligan said seven feet, and Mrs. Shortman said about ten to twelve feet; but the defendant himself seems to place that distance even nearer. He says that there was one foot between him and the vehicle on his right and two feet between him and the trolley car at the time the accident happened.

30 Whether or not Mr. Moss was negligent in the operation of his automobile may be influenced by certain provisions of the automobile act which was in force at that time. Those are the provisions of the act relating to the speed at which automobiles may run upon the public streets, and to the passing of standing trolley cars. I will read both provisions to you. The act in force at that time was the new 1928 Traffic Act, which had been passed by the legislature of 1928, and which, according to the act itself, became effective on the
40 1st day of September of that year. This acci-

Charge.

dent, occurring on the 20th of November, was affected by that act.

The speed at which automobiles may run upon the public streets, so far as it may affect this case, is this: Fifteen miles an hour on highways in a business district when the traffic on such highway is not controlled at intersections by traffic officers or traffic signals. There was no traffic officer or traffic signal at this intersection, so far as the evidence in this case goes. So in a business district the limit of speed is fifteen miles an hour where the traffic is not so controlled, and twenty miles an hour in a residence district. 10

The act defines business and residence district, and a business district is defined as being "the territory contiguous to a highway when fifty per centum or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business;" and a residence district is "the territory contiguous to a highway not comprising a business district when the frontage on such highway for three hundred feet or more is mainly occupied by buildings, or by dwellings and buildings in use for business." That is the reason the Court asked Mrs. Shortman about conditions there so far as the buildings were concerned. It appears that to the south of the scene of this accident, according to her testimony, there is no building for three or four hundred feet, and to the north there is no building until you come to a garage which she says is three or four hundred feet away. 20 30

Then the act relating to speed goes on to say that forty miles an hour may be maintained under all other conditions, but, and this is a very important "but", gentlemen, the act provides that even these permitted rates of speed are not allowed 40

Charge.

where such speed would be unsafe, and if it is unsafe, then the act says it is unlawful.

10 Mr. Moss admits that he was going at that time twenty or twenty-five miles an hour. Mr. Kelligan says that he was going twenty-five miles an hour. He was passing a trolley car, according to the testimony of the plaintiffs' witnesses, and he was passing, if you believe their testimony, under conditions which are forbidden by this law, and that is this: "The driver of a vehicle overtaking any street car, stopped for the purpose of receiving or discharging any passenger, or passengers, shall bring such vehicle to a full stop, at least ten feet in the rear of the nearest entrance or exit, then in use, of such street car, and shall remain stationery until such passenger or passengers shall have boarded such car or reached the adjacent sidewalk; provided, that where a clearance of at least eight feet between the passing vehicle and such street car can be observed the vehicle if otherwise permitted to proceed need not be brought to a full stop before passing such street car, but may proceed past such car at a speed not greater than is reasonable and proper, and with due caution for the safety of pedestrians."

20

30 Admittedly if the defendant was passing this street car there was no way by which he could have maintained a distance of eight feet from that trolley car. I have already called your attention to his own testimony, that when all three of them were standing there, the trolley car, his automobile and the truck, as he says, to his right, after this accident happened, there was only one foot between his automobile and the truck to his right and two feet between the left side of his automobile and the trolley car. So if he was passing a

40 trolley car at that time at any rate of speed

Charge.

where he could not maintain a distance of eight feet from the trolley car, he was doing so in violation of this provision of the Traffic Act then in force; and if he was, and if he was doing so at a rate of speed of twenty or twenty-five miles an hour, and as a result of such speed and of passing a standing trolley car when stopped to receive passengers, this collision occurred, it will be for you to say whether or not that was the act of a reasonably careful and prudent man. If it was not, it was negligence for which the plaintiff would be entitled to recover if she herself was in the exercise of due care for her own safety. 10

But Mr. Moss tells an entirely different story. He says he was not following this trolley car; he was not passing this trolley car. He says that a block up, or two blocks, a block on one side of the street, two blocks on the other, he had stopped or slackened speed because of a trolley car that was stopped to discharge or take on passengers, and that then as they started, he passed the trolley car, and that he proceeded ahead of the trolley car, and at the time this collision occurred the trolley car was fifteen feet he said at one time, twenty feet he said at another, behind him. He says that there were not two pleasure cars parked on the right-hand side of the street as he was going, which would be the east side of the street, but that there were two trucks there, and that passing along at the rate of speed at which he was going, when he was opposite one of these trucks, I understood it to be the most southerly, the plaintiff darted out, "dashed out," I think, were the words he used, from in front of the more southerly truck and only three or four inches in front of his automobile. Now, if that is the way this collision happened, then it will be for you to 20 30 40

Charge.

say whether or not he did not do what a reasonably careful and prudent man should have done, which was to put on his brakes and immediately stop, which, he says, he did within three or four feet—one of the plaintiffs' witnesses said four or five feet, another said about eight feet, and I think
10 another one put it a little farther than that, indicating about from the witness stand to that rail over there, which would be about sixteen feet.

Not only that, if this plaintiff without any warning, or without looking for the approach of automobiles, or without looking in such a way as to make her looking effective, dashed out from in front of an automobile and directly in front of Mr. Moss's automobile, not only is the question of
20 negligence of Mr. Moss involved, but the question of contributory negligence on the part of Mrs. Gee, because it was her duty to take reasonable care for her own safety, to take such care as a reasonably careful and prudent person ordinarily would before going out to this trolley car, if it had not yet come to a stop for her to board it. Or even if it had come to a stop for her to board it, it was her duty to take reasonable care for her own safety, and if it had stopped, certainly it was
30 her duty to look for the approach of the automobile and to look at such a place and at such a time as to make her looking effective. But if instead of doing that she dashed out in front of this standing truck and directly in front of Mr. Moss's automobile when it was so close that by the exercise of ordinary care he could not have stopped it, or because of the presence of the other vehicles there he could not have diverted it from its course in order to avoid a collision, and if he was otherwise in the exercise of due care, then not only
40 was there no negligence on his part, but that

Charge.

would be contributory negligence on the part of the plaintiff, Mrs. Gee, which would prevent her from recovering in this case.

Of course, gentlemen, if, as she and her witnesses say, this trolley car had stopped, and if there was not room between it and the standing automobile, whether it was a truck or a pleasure car, for an automobile following to clear that trolley car at least eight feet, she had a right to presume, in view of this statute, that any automobile which was following that trolley car and intending to pass it would obey the statute and stop until all the passengers had alighted from the trolley car and all the passengers intending to board it had actually boarded it, and until both had reached a place of safety.

So it will be for you, gentlemen, taking into consideration all the evidence in the case, to consider and determine whether or not Mr. Moss, under the circumstances which you find to be established by the greater weight of the evidence in this case, did what a reasonably careful and prudent man ordinarily should have done and ordinarily does under the same or similar circumstances and conditions. If he did, then he is entitled to your verdict, and the plaintiff cannot recover. If he did not, and there was no contributory negligence on the part of the plaintiff, she is entitled to your verdict and so is her husband. The husband's right to recover depends upon the wife's right to recover.

If you decide that the greater weight of the evidence in the case shows negligence on the part of Mr. Moss and that the greater weight of the evidence fails to show any contributory negligence on the part of Mrs. Gee, then you come to the consideration of the question of damages. I am

Charge.

speaking now only of damages against Mr. Moss, who was the operator of that automobile. If Mrs. Gee is entitled to recover, she is entitled to be compensated for the injuries which she sustained, for the pain and suffering and disability which resulted from those injuries, and if she is not yet
10 cured, for such pain and suffering and disability as you believe from the evidence she is likely to undergo in the future.

Damages should be awarded by way of compensation, not by way of punishment of Mr. Moss. This is not the kind of case where you can award punitive or exemplary damages against Mr. Moss, but only such amount as will compensate Mrs. Gee for all her injuries, disability, pain and suffering in the past, in the present, and in the future, and also for the loss of her clothing, which she said was worth \$50, which does not seem to be disputed, and for her loss of earnings. She says that her husband was the superintendent of the apartment at 68 Montclair Avenue, and that by reason of that she was in a position where she earned money for herself by doing laundry work, her husband says, with silk dresses and silk underwear which the tenants of the apartment did not want to send to the laundry, and for work which
20 she did in the house, which she says netted her about \$35 a week. He said \$35 to \$38. She says \$35 a week. For four weeks she was in bed, or her husband says on the couch in the day-time and on a bed which they take down from the wall in these small apartments at night and for four or five months after that she was unable even to do her housework, and to this day, over a year, she has been unable to resume her occupation as helper of the tenants of the apartment house. In
30 fact, the plaintiffs left that apartment house some-
40

Charge.

time in the spring of the present year, I think; I have forgotten just the month. Even if it is in evidence, I am not sure about that. But if she is entitled to recover, she is entitled to recover compensation not only for her pain and suffering and disability resulting from this accident, but also for the damage to her clothing and any loss of earnings occasioned by it. 10

If she is entitled to your verdict, the husband is entitled to compensation for the loss of the conjugal society and services of his wife. Now, it appears that she helped her husband doing his work. He says she now has resumed doing a portion of it, answering the telephone, but that she is so irritable that life is made miserable for him in the home, and particularly is she irritable in matters relating to the telephone. 20

Now, he is entitled to enjoy her society as he enjoyed it before his wife was injured by this collision, and if your verdict be in his favor, it should include that element for the loss of the society and services of his wife. The use of the term "conjugal society" means more than mere service rendered. A husband, particularly among young people such as these appear to be, is entitled to those sexual gratifications and enjoyments which are usually an incident to married life. The husband says he has been deprived of that because that act is now repugnant to his wife, and he is denied that pleasure and gratification. 30

In addition to that, he is entitled to be compensated for the amount of money which he has expended, for which he is responsible. That would be the dentist's bill (it seems that her teeth were broken in this accident), \$75; Dr. Levin, \$117; Mrs. McGinty, the housekeeper, \$134; X-rays, \$20, and Dr. Singer, \$10. 40

Charge.

10 A great deal has been said about the \$50. Evidently the husband was mistaken about that. Of course, if you believe that he deliberately told what he knew to be untrue as to that \$50, then that was false testimony which would warrant you in disbelieving everything that he said, because there is a Latin maxim applicable to such a situation: "False in one thing, false in all things". But if he is just merely mistaken about it, then, of course, that is another situation and a matter which you may take into consideration.

These elements of damage, as I figure it, amount to \$356.

20 Of course, this subject of damages you should not consider at all unless you first determine that the plaintiffs are entitled to your verdict because of your having already found that the defendant was negligent in the operation of his automobile, as a result of which he struck Mrs. Gee.

30 Now, there is one more question, and that is whether or not, if you find a verdict against Mr. Moss, you should also find a verdict against his wife. She is a party defendant to this suit. There is a presumption, which arises from the admission of ownership, that the person operating the automobile was at that time acting as the agent of the owner and was acting in part or entirely upon the owner's business. It is denied that Mr. Moss was at that time doing anything for his wife, and even though it was her automobile, if you are satisfied from the evidence that at that time he was in no way acting as the agent of his wife, at that time doing nothing for his wife, nothing which she directed or authorized, then, even though your verdict be against Mr. Moss, it cannot be against Mrs. Moss. There is this presumption of which
40 I have spoken which arises from ownership. The

Charge.

question is: Has that presumption been overcome? The presumption is that he was acting as her agent at that time. He says that on that morning when he left his home his wife asked him to go to Prince street and get some things which his sister-in-law would get for her, and that after he had gone his wife telephoned to the sister-in-law to get these things. He went around to Prince street, found that his sister-in-law had not done so, and went back to Frelinghuysen avenue, where he was working, without getting anything for his wife; and from there he went directly to the point where the accident occurred, intending to go to his home, get his wife and family, go to Passaic and transact some business, not for his wife, but for himself, taking his wife and family along merely for their pleasure. But neither the wife nor any other member of the family was in the automobile at the time of the accident. So it will be for you to say whether, at the time the accident occurred, he was acting in any way as the agent or servant of his wife. "Servant" has a legal significance here. We do not mean in a servile way, but agency is the better word. 10 20

If at that time he was not acting as the agent of his wife, if the evidence does not so show, then, even though you find a verdict against Mr. Moss, you cannot find any verdict against his wife, and your verdict must be in her favor. If on the other hand you decide that he was at that time acting as the agent of his wife, then, if you find a verdict against Mr. Moss, your verdict should also be against Mrs. Moss. 30

Now, a great deal has been said during the progress of this trial about the restrictions of the bill of particulars. Dr. Levin says, and so does Dr. Singer, that they found that the plaintiff Mrs. 40

Charge.

Gee was suffering from a sacroiliac strain. That means a strain of the joint between the sacrum and the ilium, the ilium being usually called the pubic bone and the sacrum, a little wedge-shaped bone, being the bone that goes between the two sides in the back. They say there was a strain of the sacroiliac joint, and they say that they found a retroverted uterus. That means that the womb bends backward when it ought to bend slightly forward. They claim that these two conditions were the result of injuries received in this accident, but as you have already heard the Court say, the plaintiff is bound by the description of the injuries which is given on her behalf in the answers to the demand for a bill of particulars. Her right to recover is limited by the injuries and disability described in the bill of particulars, and the bill of particulars does not describe or say anything about a sacroiliac strain or a retroverted uterus. All that is said is this. The second question in the demand for particulars is, "State specifically and in detail the nature, extent, location and duration of the injuries alleged to have been sustained to plaintiff, Ethel Gee, and which of these injuries will be claimed at the trial of this issue as permanent." The answer, and this is all for which the plaintiff may recover compensation in this case by way of injury and pain and suffering and disability resulting therefrom, is laceration and swelling of left side of shin, contusions over left clavicle or collarbone, contusions and ecchymosis of left thigh, contusions of left scapula, the shoulder bone, contusions of left wrist, two upper teeth of right side of plate missing, uterine bleeding, and shock and nervousness. The plaintiff may recover compensation for any of those items which have been proven in this case,

Charge.

if she is entitled to recover. Anything beyond that she may not recover for in this case.

(The jury retires.)

Defendants' counsel prays an exception to that portion of the Court's charge in which the Court said that if the trolley car stopped and there was not room for an automobile following to clear that trolley car by at least eight feet, the plaintiff had a right to presume that the automobile would obey the statute and stop. 10

Exception noted as ground of appeal.

Transcript, Second Trial.

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ESSEX COUNTY CIRCUIT COURT.

April 9, 1930.

ETHEL GEE and JAMES GEE <i>vs.</i> SARAH MOSS and SIGMUND MOSS.	}	Action at Law. Transcript Second Trial.
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Before:

HON. NEWTON H. PORTER, J.,
 and a Jury.

For Plaintiffs appears MEYER M. SEMEL.

For Defendants appear HUDSPETH & HARRIS
 (by HARRY H. HARRIS).

(A jury is called and sworn.)

40

Ethel Gee, for the Plaintiffs—Direct.

Mr. Semel opens for plaintiffs.

Mr. Harris opens for defendants.

10 ETHEL GEE, one of the plaintiffs, sworn in her
own behalf.

Direct examination by Mr. Semel:

Q. Draw your chair up. You are the plaintiff
in this case? A. Yes, sir.

Q. Speak louder, so we can all hear you. Where
do you live? A. 6 Halleck Street.

Q. On or about the 20th of November, 1928,
you were struck by Mr. Moss's car? A. Yes, sir.

20 Q. Tell the Court and jury what happened to
you when the car struck you. When the autom-
obile struck you what happened to you? A. I was
getting on the street car.

Q. After the car struck you, what happened?
A. I don't know.

Q. You do not know? A. No.

30 The Court: By the way, let it be stipu-
lated on the record that because of the ill-
ness of juror No. 2 counsel has agreed to
finish this case with eleven jurors. Pro-
ceed.

Q. Compose yourself and answer my question.
Do you remember when the automobile struck
you? A. I know I was hit.

Q. When you were struck by the automobile,
what happened to you? A. I was taken to the
hospital.

40 Q. Before you were taken to the hospital, what
did the automobile do to you? A. My left side.

Ethel Gee, for the Plaintiffs—Direct.

Q. Where were you immediately after the accident? A. From here to where you are.

Q. What do you mean by that? A. What you asked me.

Mr. Harris: I cannot hear, your Honor.

The Court: Now, Mrs. Gee, you are here 10
to get damages, and we do not want to be
severe and scold you, but unless you can
talk up so that we can hear you, you are
wasting your time and ours.

Q. Just compose yourself, Mrs. Gee, and keep
your voice up, because if these gentlemen cannot
hear you there is no use of your talking at all.
When the automobile struck you, what happened
to you? A. I was taken to the hospital. 20

Q. Before you were taken to the hospital? A.
I don't know.

Q. Who took you to the hospital? A. Mr.
Moss.

Q. What hospital were you taken to? A. St.
Michael's.

Q. How long were you there? A. A few hours.

Q. What did they do with you there? A.
Nothing.

Q. Where did you go from the hospital? A. 30
Home.

Q. Can you tell us if you had any injuries? A.
I told you once.

The Court: Well, repeat it, please.

Q. Have you any injuries as the result of this
accident? A. Yes, two teeth.

Q. What else? A. The left side of my chin,
here.

Q. What else? A. I don't know. 40

Ethel Gee, for the Plaintiffs—Direct.

Q. Were you confined to bed after the accident? A. About three weeks or a month, on and off.

Q. Then, after that were you able to go back to your work? A. No, sir.

10 Q. How long was it before you were able to resume your work? A. I haven't done any since.

Q. How long was it before you were able to do any work at all? A. About three or four months, I guess.

Q. During those three or four months when you were unable to do any work were you treated by any doctor? A. Dr. Levin.

Q. What did Dr. Levin treat you for? A. Nervous and bleeding.

20 By the Court:

Q. Where were you bleeding from? A. I don't want to tell, can't the doctor tell?

Q. Was it a vaginal hemorrhage, is that the reason you do not wish to tell?

The Court: Withdraw the question.

By Mr. Semel:

30 Q. How long did Dr. Levin continue to treat you? A. He is still treating me.

Q. Do you have any pain from these injuries? A. Yes, sir.

Q. Where? What parts of your body? A. My back. From bleeding too. I had headaches. I am so nervous.

Q. Before the accident did you work? A. Yes, sir.

40 Q. What did you do? A. I cleaned the apartments for tenants.

Ethel Gee, for the Plaintiffs—Direct.

Q. Did you earn any money? A. Yes, sir.

Q. How much did you earn a week? A. Around \$35.

Q. What would your work consist of mainly?
A. Just general cleaning.

Q. Where did you do this work? A. In the apartment. 10

By the Court:

Q. Where is the apartment? A. On Montclair Avenue.

Q. What number? A. 68.

Q. 68 Montclair Avenue, Newark? A. Yes, sir.

By Mr. Semel:

Q. Your husband is also employed in that apartment? A. Yes, sir. 20

Q. As what? A. Superintendent.

Q. The work which you were doing was that part of his work or separate work? A. No, that was my own.

Q. That work you did you did for tenants in the building, their house cleaning work? A. Yes, sir.

Q. Since the accident have you done any work?
A. No, sir. 30

Q. For these tenants? A. No.

Q. Have you tried to do any? A. Yes, I have tried to, but I couldn't; I am unable to.

Q. What is the matter with you now? A. I am just nervous, that's all.

Q. Do you have any other pain of any kind now? A. My back aches.

Q. What else? A. I have a headache.

Q. Did you have your teeth fixed? A. Yes, sir.

Q. By whom? A. Dr. Chenitz. 40

Ethel Gee, for the Plaintiffs—Direct.

Q. What did he do for you? A. I had a plate and the teeth broke off from the plate. I had this on the plate and the plate was broken; two were broken off.

By the Court:

10

Q. The two teeth which were made loose were false teeth, were they? A. Yes, sir.

Q. Tell us a little more about the pain in the back, how often you get it and when. A. When I lay down I get it.

Q. How often is the pain? A. On and off; all the time mostly.

Q. During your menstrual period? A. Yes, sir.

20 By Mr. Semel:

Q. Do you know what your condition was just before the accident? A. I was the same as everyone else.

Q. I do not mean general physical condition, I mean in respect to the child. A. I was all right. I have two healthy children.

Q. What was your condition with respect to childbirth just before the accident, on the day of the accident?

30

By the Court:

Q. Were you pregnant? A. Six weeks pregnant.

By Mr. Semel:

Q. What happened to you about two days after the accident? A. I started to pass clots of blood.

Q. The baby was never born? A. No.

40

Q. It was a miscarriage? A. Yes, sir.

Ethel Gee, for Plaintiffs—Cross.

Q. This accident happened in November, 1928?
A. Yes, sir.

Q. Have you ever been pregnant during that time? A. No, sir.

Q. Have you tried? A. Yes, sir.

Q. You did not tell us before how often you got the pain in the back and the headache you spoke about. How often did they come? A. Frequently. Mostly when I am sick. 10

Q. Otherwise, how often do they recur other than during your menstrual periods? A. Quite often. I don't know; I just don't know.

Q. Were you nervous before the accident? A. No.

Q. What was the general condition of your health before the accident, so far as you know? A. Perfect health. 20

Q. How was your sleeping before the accident? A. Fine.

Q. How is it now? A. I cannot sleep now; I am awfully nervous.

Cross-examination by Mr. Harris:

Q. Do you remember testifying at a former trial of this same matter? Do you? A. Yes. Hurry up and get done. 30

The Court: Calm yourself, Madam.

Mr. Semel: If it will be of any assistance to the Court and counsel on the other side, I am satisfied that the testimony given by Mrs. Gee on direct and cross be read into the record.

(Argument.)

The Court: She seems to be ready.

Mr. Harris: If it is going to serve the purpose of saving this woman's health I 40

Ethel Gee, for Plaintiffs—Cross.

will agree to let her go and she can come back later in the trial.

The Court: Do you wish to be excused, Madam?

The Witness: No.

10 Q. You knew, the last time, how long you were at the hospital? A. Yes, a few hours.

Q. At the last trial, you knew what they did to you at the hospital, didn't you? A. They fixed me up; I already told you that once.

The Court: You will have to tell us again. You are here to get damages, and you must answer the questions. You are not a child, and you must answer the questions. Proceed.

20

Q. What did they do to fix you up, do you remember? A. Fixed my bruises.

Q. Did they give you a complete examination there? A. No; he told me to go home and call the doctor.

Q. When did you first call Dr. Levin? A. The morning after the accident.

Q. Do you remember saying at the last trial that they made a complete examination at the hospital of you? A. I said my bruises, they fixed me all up and told me to go home and see my doctor.

30 Q. Do you remember my asking you at that trial: "They made a complete examination of you at the hospital, did they not?" and you said: "Yes, sir"? A. Yes, sir; bruises, I meant.

Q. Is that what a complete examination of you meant the last time? A. I told you what they did. They fixed me all up.

40 Q. What parts of your body did they fix up? Point them out and tell us what they were. A.

Ethel Gee, for Plaintiffs—Cross.

On my left side, my chin, my knuckles, my shoulder blade.

Q. Is that all they did? A. Yes, sir.

Q. They did not do anything to your back there, did they? A. They looked at my back; I don't know what happened.

Q. How did you get into the hospital, do you remember? A. Mr. Moss took me there. 10

Q. Did you walk in? A. I was helped in.

Q. But you were on your own feet, weren't you? A. Well, I was helped there.

Q. You walked on your own feet? A. I couldn't have walked by myself.

Q. You were on your feet? A. On your feet.

Q. How did you leave the hospital? A. The same way.

Q. Were you on your feet? A. I was helped. Yes, I was on my feet. 20

Q. You went to the police station? A. Yes, sir.

Q. Did you walk into the police station? A. I was helped in.

Q. Who helped you? A. Mr. Moss and I don't know the other man's name.

Q. What did they do at the hospital? What did they put on? Wasn't it something red? A. I don't know. They bathed it. I don't know what they did; they fixed it up. 30

Q. Do you remember saying at the last trial in answer to this question, "And put something red on you," that was my question, and you said, "Yes"? A. Yes, all under here on my chin and on my knuckles.

Q. Did they put any bandages on you? A. No, sir.

Q. Do you remember at the last trial you answered in response to my question, "They did not put any bandages on you, did they?" and 40

Ethel Gee, for Plaintiffs—Cross.

you said, "Yes, sir"? A. No, I had no bandages on.

By the Court:

Q. Did you say that? A. I told him that. I
10 didn't say there was bandages on.

By Mr. Harris:

Q. Do you remember the next question I put, "Where did they place those bandages?" and you answered, "Around my shoulder"? A. No, the doctor did that, around here [indicating]; not at the hospital.

Q. I was speaking about the hospital at the time. Going back a few questions, "How long did
20 you say you were at the hospital?" and your answer was, "About two hours." "Was anything done to you there?" "Yes, I had my bruises treated and was examined." The question then was, "What did they do to treat your bruises?" "Well, I don't know just what they did. They fixed them up." "And put something red on you?" "Yes, I think they did." "They did not put any bandages on you, did they?" "Yes, sir."
30 "Where did they place those bandages?" "Around my shoulders." The next question, "They made a complete examination of you at the hospital, did they not?" "Yes, sir." Does that refresh your recollection? A. I just told you that.

Q. They did not put any bandages on you? A. I told you that they told me to go home and see a doctor.

Q. They did not put any bandages on you at the hospital? A. No.

Q. All they did was to put a little something
40 red on you, that's all? A. Yes, sir.

Ethel Gee, for Plaintiffs—Cross.

Q. Now, when Dr. Levin came the next morning did he make a complete examination of you?

A. Yes, sir.

Q. What did he examine you for? A. Just to see what was wrong.

Q. Where did he examine you? A. All over.

Q. The first time he came did he make an internal examination of you? A. I don't know. No, I don't think so; the third, I think it was. 10

Q. He made an internal examination the third day? A. I don't know whether Dr. Levin or someone else, or your doctor.

Q. Did Dr. Levin make an internal examination? Don't you remember that? A. Yes, sir; he did, but I don't know when.

Q. How long did Dr. Levin's examination of you take? A. I don't know. 20

Q. You knew at the former trial, didn't you? A. I don't know whether I did or not.

Q. Do you remember in answer to my question, "How long did Dr. Levin's examination take?" you said, "About an hour." Do you remember that? A. I don't know.

Q. When you got home the day of the accident, where did you go? A. To bed. It was night.

Q. It was night? A. Yes, it was night.

Q. Did you get up the next morning? A. No. 30

Q. Did you stay in the same bed the next morning? A. I wasn't in bed. It was a couch. We just come over here.

Q. Didn't you have a bed? A. Well, we had a bed for the children.

Q. Did you have a bed for yourself? A. That was the bed.

Q. How many times did Dr. Levin come to see you? A. I don't know.

Q. Right after the accident how many times did he come? A. Say about a dozen times. 40

Ethel Gee, for Plaintiffs—Cross.

Q. Did you pay Dr. Levin every time he came?
A. No, sir.

Q. Who paid him? A. I think he was paid for two or three visits, not the long time, because we didn't have it.

10 Q. How much was your husband making a month? A. \$100 a month. You can ask him that.

Q. How much were you making before the accident? A. Around \$35 a week.

Q. And you didn't have any money to pay Dr. Levin?

Mr. Semel: I object. She says she didn't have it.

20 The Court: She said so. She said she paid him for two or three visits and then didn't pay any more, because she didn't have it. It is repetition.

Q. Do you have a bank account?

Mr. Semel: That is objected to as immaterial.

The Court: Objection sustained.

Mr. Harris: That is as to whether they spent \$220 a month.

30 The Witness: What could you do with strangers in a place?

Q. How many hours a day did you work before the accident? A. Until I got through.

Q. Do you know about how many hours a day you worked? A. No. My time was my own.

Q. How many apartments did you take care of before the accident? A. I just don't know how many.

40 Mr. Harris: If it is going to help I do not want to cross examine a woman who is being hurt by my questions.

Ethel Gee, for Plaintiffs—Cross.

Mr. Semel: I object to that.

The Court: You may go on with it.

Q. What did you do for these other tenants?

A. Just done the cleaning, general cleaning.

Q. What else? Anything else besides general cleaning? A. Laundering and a few things. 10

Q. You don't know how many tenants you took care of? A. No.

Q. How do you figure that you made \$35 a week? A. I got \$3 and sometimes \$5 for everyone I did; there was no price on anything.

Q. Did you have that work regularly? A. Yes, sir.

Q. Do you remember at the former trial you told us exactly how many tenants you took care of in that apartment? A. I have forgotten how many; maybe ten or twelve. 20

Q. The former trial took place on December 17, 1929. The accident took place on November 20, 1928, over a year before the last trial. Would you say that you remembered then exactly how many people you took care of in the apartment? A. Some weeks more than others; sometimes I got more than other times.

Q. About how many rooms in all the apartments were there that you cleaned? A. One, two or three. 30

Q. All told, how many rooms did you take care of? A. I don't know.

Q. At the former trial I asked you how many people you worked for and you said "Eight". A. I said from eight to twelve, ten to twelve.

Q. Do you remember saying "eight" at the former trial? A. I don't know. Maybe I did.

Q. Do you remember telling us that there were twenty rooms in those apartments? A. No. 40

Ethel Gee, for Plaintiffs—Cross.

Q. Did you help your husband in the apartment any? A. No.

Q. Didn't you do anything for him? A. Just when the apartments became vacant.

Q. Is that all you ever did? A. Anything that was needed. I don't know what.

10 Q. You would do that to help your husband, whatever was needed? A. If he would need me for anything.

Q. What things might he have need of you for? A. Anything.

Q. Did you have any party in the apartment house to take care of besides yourself and your husband? A. No, sir.

Q. During this time that you speak of you were working pretty hard, weren't you? A. Yes, sir.

20 Q. You have two children? A. Yes, sir.

Q. How many times have you been pregnant during your lifetime? A. Three times.

Q. Do you remember being examined by Dr. Condon? A. Yes, sir.

Q. Do you remember him asking you how many times you were pregnant during your lifetime? A. Yes, sir.

Q. Do you remember telling him that you were only pregnant twice during your lifetime? A. I didn't mean it that way.

30 Q. Did you tell him that you were only pregnant twice in your lifetime? A. I meant the children.

Q. I say did you tell him that you were only pregnant twice in your lifetime? A. Yes, but I didn't mean the other one. He asked me if I ever had any miscarriages and I told him no.

Q. You told him that you never had any miscarriages? A. Before the one of the accident. He asked me of any miscarriages before this.

40

Ethel Gee, for Plaintiffs—Cross.

Q. Are you sure that you did not tell Dr. Condon that you never had any miscarriages? A. I told him what I just repeated.

Q. Didn't Dr. Condon ask you this question, "How many miscarriages did you ever have?" and you said, "None"? A. Yes, sir, he asked me before that.

10

Q. Did you say that, yes or no? A. Yes, I said for the children.

Mr. Harris: I object to the rest of that answer after "Yes" as not responsive.

The Court: I will let it all stand.

Q. How long did you have a pain after the accident? A. I still have it.

Q. Do you remember at the former trial being asked by your own attorney, Mr. Semel, "Mrs. Gee, can you tell the Court and jury for how long you had a pain after this injury?" "For four or five months"? Do you remember saying that? A. Yes, sir. He asked me how long I really suffered. That is what he asked me.

20

Q. Do you remember this question, "Can you tell the Court and jury for how long you had a pain after this injury" That is what the question was. Do you remember that question? A. Yes, sir.

30

Q. Do you remember the answer, "For four or five months"? A. Yes, sir.

Q. How long were you in bed? A. Between three weeks and a month.

Q. Do you remember this question put by your own counsel, "After you got out of bed tell us how long it was before the pain which you had suffered had entirely subsided," and you said in answer, "Between four and five months." Do

40

Ethel Gee, for Plaintiffs—Cross.

you remember that question and that answer?

A. No, it was not put to me that way.

Mr. Harris: Will counsel consent that that is the way it was put, or shall I send for the stenographer?

10

Mr. Semel: I object to that now. I made my offer before and counsel would not take advantage of it.

Q. Who took care of your house during all this time? A. Mrs. McGinty.

Q. You had how many children, two children?

A. Yes.

Q. What were their ages at the time of the accident? A. One will be nine in May and the other one five.

20

Q. How old were they at the time of the accident? A. Seven and four.

Q. You had not borne any children in the four years before the accident, had you? A. No, sir, because we never had any work before we came here.

Mr. Harris: I object to the answer and ask that it be stricken out as not responsive.

30

The Court: Strike it out.

Q. Do you have a savings account of your own?

Mr. Semel: The question is objected to as not cross-examination.

The Court: Objection sustained, unless the question is for the purpose of attacking the witness's credibility.

Mr. Harris: The question of the \$35 a week.

40

Mr. Semel: Withdraw the objection.

Ethel Gee, for Plaintiffs—Cross.

Q. Do you have a savings account? A. No, sir.

Q. Do you have any bank account? A. No, sir.

Q. Did your husband? A. I don't know.

Q. Did you give your husband this money? A. No.

Q. What did you do with the money? A. Let me tell you, we didn't have a machine or anything. We were strangers here. Clothes for the children. 10

Q. Did your husband buy any clothes for the children? A. How could he?

The Court: I take it that he did not. You must not ask any questions of counsel, Mrs. Gee. You must answer the questions.

Q. You say these pains you receive in your back come around your menstrual period, is that right? A. Yes, sir. 20

Q. Do they ever come at any other time? A. Frequently.

Q. How frequently? A. Often.

By the Court:

Q. Every day? A. No.

By Mr. Harris: 30

Q. Have you a pain in your back now? A. No, sir.

Q. When did you have the last pain in your back? A. I don't know.

Q. A long time ago? A. No.

Q. How long ago? A. Sunday.

Q. When you speak of this bleeding two or three days after the accident, did you ever have 40

Ethel Gee, for Plaintiffs—Cross.

any bleeding before the accident at all? A. Just normal periods.

Q. How long before the accident did you notice your last bleeding? A. About six weeks, seven weeks.

10 Q. Did your husband have any relationship with you before the accident within six or seven weeks?

Mr. Semel: I object.

The Court: Objection sustained.

Q. You say you were pregnant at the time of the accident. How do you know? A. I knew. I was always normal before and I missed a period.

Q. Is that the only reason you knew you were pregnant? A. Yes, sir.

20 Q. There was nothing else to call your attention to it? A. No, sir.

Q. Didn't you work from seven in the morning until about ten o'clock at night each day? A. I started at seven, and I went on my time, my own, I could do whatever I wanted to.

Q. How long did you work each day? A. All day.

Q. Until what time in the morning? A. Started between seven, around seven o'clock.

30 Q. Until what time at night? A. Sometimes nine, sometimes ten o'clock; sometimes before and sometimes after.

Q. Most of the time you would stop about nine or ten o'clock, isn't that the case? A. Around that.

Q. You took care of your own home besides taking care of tenants' apartments? A. No, I wasn't taking care of them. I did them when I could.

40 Q. You did what when you could, your own home? A. Yes, sir.

Ethel Gee, for Plaintiffs—Cross.

Q. Who took care of your home when you could not? A. Mrs. McGinty.

Q. That was after the accident, wasn't it, or before the accident? A. It was left until it got done.

Q. Who prepared the meals for your children? A. Me or my husband, the lunch. 10

Q. Who prepared the breakfast? A. I did.

Q. Did the children go to school? A. Yes, sir.

Q. Did you dress them and send them to school yourself? A. I dressed them, but I didn't send them off to school.

Q. You prepared the supper too? A. Yes, what we got.

Q. Did you clean your own home? A. When I could. 20

Q. You kept it in good condition, didn't you? A. Not so good.

Q. Did you tell Dr. Levin that the first time you noticed these blood clots they came two or three days after the accident? A. I called him.

Q. What did he do for you? A. What could he do?

Q. Did he do anything at all? A. He told me to rest. I don't know whether he gave me anything or not.

Q. Did he give you any medicine? A. I had some medicine, yes. He gave me medicine. 30

Q. When was the last time that Dr. Levin saw you with reference to this accident? A. I don't know after; he still comes. He was there Friday.

Q. This last Friday? A. Yes, sir.

Q. When was the time before this last Friday he saw you? A. He drops in around once a week.

Q. Does he come every week? A. He does come around every week.

Q. What does he do for you every week? A. He doesn't do anything particular. 40

Ethel Gee, for Plaintiffs—Cross.

Q. What does he come for? A. I am just nervous.

Q. Doesn't he give you any applications or medicines? A. Only medicine.

Q. Does he give you a new prescription each week? A. No.

10 Q. Did he ever give you any internal treatment? A. No, he told me to go to a specialist.

Q. Did you ever pay Dr. Levin after the accident, outside of the first few times? A. No, sir.

Q. Did he ever render you a bill? A. We got one bill and have another bill coming.

Q. Did you ever go to a specialist? A. No, sir.

Q. You never went to a specialist? A. No, sir.

Q. Do you remember Dr. Singer? A. Yes, sir.

20 Q. Did you go to him? A. Yes, sir.

Q. Isn't he a specialist? You testified at the last trial he examined you. A. Yes, but that wasn't the one I had reference to.

Q. Did you ever go to any other specialist? A. No, sir.

Q. What specialist do you have reference to? A. I am going to one.

Q. You never went to any yet? A. Yes, I went to Dr. Singer.

30 Q. Was he the specialist you went to? A. No, he wasn't the one I had reference to. I went to him.

Q. Did he ever do anything for you? A. An examination.

Q. You testified before that your doctor, Dr. Levin, did not do anything for you, but that he sent you to a specialist for treatment. When was the first time he sent you to a specialist for treatment? A. I don't know. A long time ago. I don't know when it was.

40 Q. You never went? A. No, sir.

Ethel Gee, for Plaintiffs—Re-direct—Re-cross.

Re-direct examination by Mr. Semel:

Q. Why didn't you go? A. Because I didn't have the money.

Q. I just want to clear up one point. Where, with reference to the place where the automobile struck you, did you fall after the accident? A. 10
From here to that railing away (indicating).

Q. How did you get there? A. I was knocked there.

Q. By the automobile? A. Yes, sir.

Re-cross-examination by Mr. Harris:

Q. Didn't you say before on direct examination that you did not know where you were after the accident? A. No, sir; I pointed to Mr. Semel before. 20

Q. Now you say the railing back there (indicating)? A. I said from here to the railing.

Q. Do you remember at the other trial that question as to how far you were thrown by the automobile, Mr. Semel asked you: "How far did you travel when you were struck by Mr. Moss's car?" and you answered, "From say here to where this gentleman is", and you indicated a place, "well, the width of a car".

Mr. Semel: I object to that as not cross-examination of my question. That relates to what happened before she was struck. 30

Q. "Say this much space, from between here to in here (indicating), the length of another car to get through, the width of a car." Do you remember that? A. Yes, sir.

Hyman Chenitz, for Plaintiffs—Direct.

Max Singer, for Plaintiffs—Direct.

HYMAN CHENITZ, sworn in behalf of plaintiffs.

Direct examination by Mr. Semel:

10 Mr. Harris: I understand that this is the dentist, and the damages was \$75 on account of the plates being broken. In order to save the time of the jury, I will admit that.

Mr. Semel: Very well.

MAX SINGER, sworn in behalf of plaintiffs.

Direct examination by Mr. Semel:

20 Q. You are a regularly licensed physician and surgeon of the State of New Jersey? A. Yes, sir.

Q. Practicing in Newark? A. Yes, sir.

Q. How long? A. About nine and one-half years.

Q. Are you connected in any way with any institutions? A. Yes. Associate visiting surgeon of Newark Beth Israel Hospital.

Q. Do you know Mrs. Gee, the plaintiff, who just testified? A. Yes, sir.

30 Q. Did you have occasion to examine her? A. Yes, sir.

Q. Do you remember the date? A. I don't remember the exact date, but about four and a half or five months ago.

Q. You testified at the last trial? A. Yes, sir.

Q. Did you examine her before the last trial in December? A. A few weeks before the last trial.

40 Q. As a result of your examination what did you find? A. I found she had a right sacroiliac strain and retroversion of the uterus.

Max Singer, for Plaintiffs—Direct.

Q. Tell us what that means. A. That she had an injury to the right sacroiliac joint, which is a joint situated on one side of the lower end of the spine, and is composed of the ilium, or hip bone, and sacrum, or next to the lowermost section of the spinal column. And a retroversion of the uterus means that the uterus is tipped back, and she was extremely nervous during the examination. 10

Q. Have you, by chance, examined or observed her since that time? A. No, sir. I observed her on the stand this morning while waiting here, but did not examine her.

Q. With reference to the sacroiliac strain, as you called it, assuming this woman on or about the 20th of November, 1928, was struck by a moving automobile and thrown a distance from the place where you are sitting to this banister (indicating), in your opinion would the sacroiliac strain be the natural, proximate and probable result of such an accident? A. Why, it would if she never had it before the accident or did not develop it subsequent to the accident. That is the proximate cause if you rule out the fact that she may not have had it before or after. 20

Q. Assuming that she did not have it before would you say that the sacroiliac strain could be the result of such an accident? A. Yes, sir. 30

By the Court:

Q. Is it probable it could be the result of such an accident? A. It is probable if it did not pre-exist or occur after the accident happened. With those provisions in it is probable.

Mr. Harris: May I cross-examine him on this point?

The Court: You may. 40

Max Singer, for Plaintiffs—Direct.

By Mr. Harris:

Q. You never examined her before the accident? A. No. That is why I put that in.

Mr. Harris: I ask that his testimony in this respect be stricken out.

10 The Court: I will allow it to stand.

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

Exception noted as ground of appeal.

The Court: All he said was that probably a person being struck and knocked that far would have that injury.

Mr. Harris: If she did not have it before.

The Court: And did not get it since.

20 The Witness: Yes.

By the Court:

Q. And that she might be knocked that far and not get it, might not be so hurt? A. Yes, certainly.

Q. It is probable that if she was knocked that far, it is probable that she would have her sacroiliac joint hurt? A. Yes, sir.

By Mr. Semel:

30 Q. With respect to the retroversion, would you say that the retroversion is a probable or proximate result from such an accident? A. That is a very difficult question to answer.

Q. Could it be brought about—

Mr. Harris: I object to "could".

By the Court:

40 Q. Is it probable it was the result of such accident? A. Well, from my experience—I cannot answer that question, because—

Max Singer, for Plaintiffs—Direct.

Q. Not because. You cannot answer it. That is all we want to know. Not the reason.

By Mr. Semel:

Q. With reference to her nervous condition, can you specify the type of nervousness she is suffering from? A. The type? 10

Q. Yes. A. I am not a psychiatrist or neurologist.

Mr. Harris: May I cross-examine?

By the Court:

Q. Are you planning to give us your opinion?

A. I said nervousness.

Q. That is all you are testifying to? A. That's all. 20

Mr. Semel: I just want him to describe it to the Court and jury.

The Court: He may.

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

Exception noted as ground of appeal.

By Mr. Semel:

Q. Tell us the kind of nervousness she is suffering from. A. I would call that a type of neurosis. 30

Q. Is it a particular kind of neurosis? A. The same thing holds here. If it is a result of the accident then we call it traumatic neurosis.

Mr. Harris: I object to that.

The Court: Objection sustained. Strike it out.

Max Singer, for Plaintiffs—Direct.

Q. Is the neurosis she was suffering from at the time you examined her the probable and proximate result of this accident? A. Yes, sir, if she did not have it before or since the accident.

10 Q. So, in your opinion, the sacroiliac condition, the retroversion of the uterus and the nervous condition can all be ascribed to this accident, if she did not have it before the accident?

By the Court:

Q. Is it probable the condition you found when you examined her is the result of this accident?

A. The first and third and probably the second one.

20 Q. What is the first? A. Right sacroiliac strain. Second, the retroversion and third the neurosis. I haven't enough facts in this case to make any comment on the retroversion. I didn't see it come there and what I read about it—

Q. How about the first and third? A. Probably if she did not have it before or since the accident she probably received it in the accident.

Q. How about the second? A. I cannot answer that.

30 Q. You already answered that you never experienced one from trauma. A. Not in my own experience.

Q. All you know is what you read and hear? A. Yes, sir.

By Mr. Semel:

Q. In reference to the sacroiliac condition, can you tell us whether that condition is a temporary or a permanent one? A. At the time I last examined her it was still slightly active.

40 Q. How long was that after the accident, if you know? A. When was the accident?

Max Singer, for Plaintiffs—Direct.

Q. November 20, 1928. A. Approximately a year after.

Q. Thirteen months after? A. Yes. We usually wait a year and a half before we say these things are permanent or not. Personally I believe that this sacroiliac strain will subside to the extent that she will only experience occasional pain when she overworks her trunk, such as when she bends repeatedly, or in lifting; otherwise I do not think she should feel very uncomfortable. 10

Q. Would you say, if she has that limitation which is permanent in its scope, it will always be there when she overworks herself? A. Yes, I say that the same condition she had on my examination persisting for the long time of a year and a half since the accident, then it is safe to assume that she will have a certain amount of permanent disability, which is not much, because at the time I examined her it was not a very severe case. 20

Q. With reference to her nervousness from your observation of her this morning, would you say whether the nervousness is temporary or permanent? A. I would rather not talk about that as an expert.

Q. I am asking you from your general practice and experience. 30

Mr. Harris: I object.

The Court: Objection sustained.

Q. What was your bill for treatment? A. I did not treat her.

Q. For examination? A. I think it was brought out at the last trial that my examination was \$10.

Q. With reference to the retroversion, can that be cured? A. Oh, yes. 40

Max Singer, for Plaintiffs—Direct.

Mr. Harris: I object, as there is nothing in the case that shows that that was from the accident.

The Court: I will allow it.

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

10

Exception noted as ground of appeal.

Q. Can that condition be cured? A. Yes, sir.

Q. What will be necessary?

Mr. Harris: I object.

The Court: I will allow it in on the theory it will be connected up, and if it is not connected up we will disconnect it.

20

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

Exception noted as ground of appeal.

A. The usual cure is by operation; however, in some cases they are treated electrically and put back into place that way, but that is not the rule.

Q. What would an operation cost? A. It depends on the surgeon.

Q. What would you charge? A. It depends on the patient's circumstances.

30

Q. What would you charge Mrs. Gee? A. I don't know what her circumstances are.

Q. Isn't there a general standard price for an operation of this kind which you usually guide yourself by for people of modest circumstances?

Mr. Harris: I object.

The Court: I will allow it.

By the Court:

40

Q. What would the charge be for a person in moderate circumstances? A. If they came to me for the operation?

Max Singer, for Plaintiffs—Cross.

Q. Yes. A. I would say from what I know of her about \$100.

By Mr. Semel:

Q. Would that require any hospitalization? A. Yes, sir; probably two weeks.

Q. Can you tell us how much that would cost? A. It depends on the room she takes and whether she has a private nurse.

Q. Would there be a nurse necessary? A. Not necessarily.

Q. She would require some nurse, whether it was paid or public? A. If she wanted a private room and just had a floor nurse there would be no extra charge, but if she had a private nurse there would be a charge made. Usually for people of her type the hospital expense would be about \$120 or \$100.

Q. How long would she have to be confined to bed if this operation were performed? A. We usually keep them in bed two weeks in the hospital after the operation.

Q. After that would she be able to resume her usual employment? A. No, we usually allow a few weeks for convalescing.

Q. So, she would be laid up a month altogether? A. Four to six weeks in an uncomplicated case.

Cross-examination by Mr. Harris:

Q. You are connected with the Beth Israel Hospital? A. Yes.

Q. As associate visiting surgeon? A. Yes, sir.

Q. There are a number of associate visiting surgeons at the Beth Israel Hospital, aren't there? A. Not on the service I am on; there are on other services.

Max Singer, for Plaintiffs—Cross.

Q. You are not considered a specialist in gynecology, are you? A. No, never claimed to be.

Q. How long did your examination of Mrs. Gee take? A. I don't recall. It probably took ten to twelve minutes.

10 Q. A very, very short time, wasn't it? A. I had only two places to divide my attention to.

Q. Only two places? Where was that? A. On her back and pelvic organs.

Q. Did you make an internal examination at that time? A. Yes, both vaginal and rectal examinations.

Q. Did you use any instrument? A. I did not look at the cervix.

20 Q. Then you did not make a complete examination of this woman? A. You mean a complete gynecological examination?

Q. Yes. A. No, except that I applied manual and rectal palpitation.

Q. What does that mean? A. I examined her pelvic organs with my fingers and also inserted a finger into the rectum because I could not feel it abdominally, which made the diagnosis of retroversion, tipped back.

Q. Did you examine her cervix? A. I did with my fingers; I didn't look at it.

30 Q. You do not know whether it was diseased or not? A. There was some discharge on my fingers which would indicate some cervicitis.

Q. Was it torn? A. I don't recall.

Q. Just what is the cervix? A. The mouth of the womb, and if a woman had two children it is safe to presume it was torn.

Q. But you do not know whether it was torn or not? A. I don't remember.

40 Q. Suppose it was torn, would she suffer pain from it? A. She might and she might not, depending on how much infection she had there.

Max Singer, for Plaintiffs—Cross.

Q. Suppose there was inflammation there, would she suffer pain? A. Local inflammation doesn't give rise to pain, but if the inflammation travels up through the ligaments, maybe.

Q. Isn't there a reflex pain in the back from the retroversion? A. Yes.

Q. And from a lacerated cervix? A. An infection from a lacerated cervix. 10

Q. You say the cervix was infected, from the discharge on your fingers? A. Yes, sir.

Q. That shows there was an infection there? A. Yes, sir.

Q. You say if there was an infection in the cervix then there would be a pain in the back? A. I would say there might be or might not.

Q. Especially when she had her periods? A. Especially if she has pain during her periods means it will be followed by pains in the back. 20

Q. I mean if she had pain in the back when she had passed her periods. With an infected cervix the pain would be in the back? A. I said it might or might not.

Q. If there were pains in the back would you say it was from an infected cervix? A. As one of the things to consider.

Q. It would more probably be from an infected cervix than any other thing? A. I wouldn't say that. This woman had a retroversion which gave her pain, and she had a right sacroiliac strain. 30

Q. This retroversion and infected cervix would cause pain in the back? A. Yes.

Q. This sacroiliac strain you speak of, how did you determine that? A. The woman had a slight spasm in the right sacral muscle from across the hipbone all the way up her back, and there was some limitation of flexion forward of the trunk and some limitation of lateral flexion to the left 40

Max Singer, for Plaintiffs—Cross.

side of the trunk. In putting her on the table and pressing her right femur and thigh forward there was some resistance felt when all the sacroiliac ligaments were put on the stretch, and all those physical findings are those that are necessary for a diagnosis of a sacroiliac strain, together with tenderness over the sacroiliac joint.

10

Q. Was an X-ray taken of this sacroiliac joint?

A. Yes.

Q. What did it show? A. Negative.

Q. It showed a normal condition? A. It showed no abnormal condition of the bones or structures visible on the X-ray.

20

Q. Did you ever hear of Professor Harry S. Crossin, M.D., Associate Gynecologist, Washington Hospital, and gynecologist to a dozen other hospitals? Did you ever hear of him or his book on the diagnosis and treatment of the diseases of women? A. Yes.

Q. Famous man, isn't he? A. Yes, by reputation.

Q. Did you ever read his book? A. I never read his book through. I had occasion to refer to it a few times.

Q. Did you ever read this part—

30

Mr. Semel: I object to any reading from the book.

The Court: Objection sustained.

Q. Do you rely upon this professor in your practice when treating cases of this kind?

Mr. Semel: That is objected to as improper cross-examination.

The Court: I will allow it.

40

A. I do not rely on any one text book and neither does the doctor sitting next to you.

Max Singer, for Plaintiffs—Cross.

Q. Did you ever hear of William P. Mathis, Professor of Gynecology at Harvard Medical School, and Surgeon in Chief at the Flood Hospital, Brookline, Consulting Physician to the Boston Lying-In Hospital? Did you ever hear of his book on gynecology? A. Yes.

Q. Did you ever refer to him for your advice and knowledge? A. No, sir; I don't remember whether I have.

Q. Would you accept his statement as something that is true and especially his treatment in infected cervix cases and retroversion of the uterus? A. I would have to have his statement.

By the Court:

Q. Would you consider his work an authoritative work? A. Yes, I would say from his experience he is right.

By Mr. Harris:

Q. It is an authoritative text book well recognized in the profession, isn't it? A. Yes.

Q. He has had a great deal more experience than you have? A. No question about it.

Q. You say that you never heard of such a thing as retroversion coming from an accident? A. I told you before that I never personally experienced any such case that I could say was a traumatic retroversion, but I have read about them.

Q. A retroversion may come from childbirth?

Mr. Semel: I object to any questions along this line or expert cross-examination on the question of retroversion as regards this doctor. He has only given his opinion from a statement of facts submitted to him, in regard to retroversion.

Lillian McGinty, for Plaintiffs—Direct.

The Court: Objection sustained.

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

Exception noted as ground of appeal.

10 Q. There is bleeding. When this woman speaks of a retroversion, it will cause bleeding, will it not? A. Well, it usually comes near the periods.

Q. At periods other than the menstrual periods? A. No, usually near the periods.

Q. At other times, too? A. It may, yes.

(At 1 o'clock the Court takes a recess until 2 o'clock P. M.)

20

AFTER RECESS.

LILLIAN MCGINTY sworn in behalf of plaintiffs.

Direct examination by Mr. Semel:

Q. Where do you live? A. 205 William Street, Belleville.

Q. Do you know Mrs. Gee? A. Yes, sir.

Q. When did you first get acquainted with her?
30 A. When she came to take charge of the apartment on Montclair Avenue.

Q. When was that? A. She came first to do little odds and ends in July, but she came in in August for good.

Q. What year was that, do you remember? A. Not last year, but the year before.

Q. 1928? A. Yes, sir.

Q. Where were you living, on Belleville Avenue? A. No, in Belleville, William Street, Belleville.
40

Lillian McGinty, for Plaintiffs—Direct.

Q. How did you get acquainted with her? A. When she came in to take charge of the apartment I was working there when she came in.

Q. Do you remember when she was injured in November, 1928? A. Well, I don't just remember the time, but I worked the next day and Mr. Gee told me about it. 10

Q. You went to her home, didn't you, about this time or soon thereafter? A. Why, I was working in the building, and I was in the laundry doing some work and Mr. Gee come out and told me about it, and he asked would I attend his wife, and I said, "Yes".

Q. Do you know how many days or weeks it was after she was hurt you first went to see her? How soon after the accident was it you went to see her? A. The next day. 20

Q. Where was she? A. Lying on the folding cot, on what they call a day bed which goes with the parlor suite.

Q. What time of day was it that you went to see her? A. I went in in the morning when Mr. Gee came into the laundry; I was working around maybe nine or ten o'clock.

Q. How long had you been working in that apartment? A. Before she was hurt.

Q. Before Mrs. Gee was hurt? A. Yes. I guess, 30 to my knowledge about four months.

Q. How often before would you see her? A. I seen her every time I went into the apartment.

Q. Were you able to observe how she occupied her time before the accident, during the time you knew her those four months or so? A. Not at the time I was working. I was working in the apartment, too, but I know Mrs. Gee was working through the apartment at the same time.

Q. Do you know what kind of work she was doing? A. Yes, cleaning, like I done, and some laundry work. 40

Lillian McGinty, for Plaintiffs—Direct.

Q. Do you know whether she did that for many or few people? A. I couldn't say that.

Q. Do you know how many days a week she put in at the cleaning and laundry work? A. I was in the building every day for a short time, and every day I was in there she was going through too.

10 Q. It continued steadily? A. As near as I know.

Q. Can you tell us whether she did as much work as you did? A. I think she done more, because I only done four apartments and I had to go in every day to attend to those four apartments.

Q. How much did she get? A. I couldn't tell you.

Q. How much did you get a week? A. \$16 a week.

20 Q. She made at least \$16 a week or more? A. I couldn't say anything about her business. That is up to her.

Q. So far as you could observe what was her general physical condition? How did she look to you? A. When I first met her?

Q. Yes, up until the time of the accident. A. Why, she looked to me apparently all right, and she was all right in her way, very pleasant, always ready to oblige if you asked her to do something for you.

30 Q. What did you observe, if anything, about the condition of her health so far as you were able to observe? A. Before the accident?

Q. Yes. A. Perfect, as near as I can tell you anything.

Q. Now, after the accident did you go to her home very often? A. After the accident?

Q. Yes. A. Why, Mr. Gee came in and asked me to do some work for him.

Q. Did you do it? A. Oh, yes.

40 Q. For how long? A. Well, I figure about three months, I think, I worked for her steady in and

Lillian McGinty, for Plaintiffs—Direct.

out during the day—go in in the morning and go home at night.

Q. Every day in the week? A. Yes, sir.

Q. What was she doing during the three months? A. Lying on the folding couch, as near as I can tell you.

Q. After the three months were up did you continue to do any work for them? A. The next month I went in part time. 10

Q. Is that when she started to do some house work? A. Yes, sir.

Q. How long after that did you continue to do any housework for them at all? A. After that?

Q. Yes. A. Why, I couldn't just tell that.

Q. Did you stop doing their work? A. No, I am still going back and forth.

Q. What do you do? A. Maybe once or twice a week I am in their place cleaning up the place, doing odds and ends. 20

Q. Who does the laundry? A. She sends that out.

Q. Does she do any work at all now? A. Not that I see.

Q. In other words, since she has been injured has she been doing any work for other people in the building that you know? A. No, I don't know. I don't think she does. 30

Mr. Harris: I object to the last part of that answer. She said she doesn't know.

By the Court:

Q. You do not think she does? A. No.

Q. Have you seen her? A. No.

The Court: Strike it out.

Lillian McGinty, for Plaintiffs—Direct.

By Mr. Semel:

Q. Have you seen her do any work? A. No.

Q. Do you know of your own knowledge whether she does any cleaning or laundry work for other persons as she used to do before the accident? A.

10 No.

Q. What do you mean by "no"? Does she or not? A. No.

By the Court:

Q. She does not? A. No.

Q. All right. A. No, she does not.

By Mr. Semel:

20 Q. Who does that work now? A. I don't know, outside of the empty apartments, I do that.

Q. Who did the empty apartments before, you or her? A. She did it herself.

Q. And since that time you have done it? A. Yes, sir.

Q. Who pays you? A. Mr. Gee.

Q. How much did you charge Mr. and Mrs. Gee for the work you did for them during those first three months? A. \$8.

30 Q. How much did they pay you? A. They gave me \$8 a week and the whole amount, as near as I can get to it, is \$102.

Q. Who paid that? A. Mr. Gee.

Q. Who has been paying you for taking care of the vacant apartments? A. Mr. Gee.

Q. Have you any idea how much he has paid you for that? A. No, I really haven't. He gives me \$4 an apartment.

40 Q. Have you any idea how many apartments you have done since Mrs. Gee was sick? A. No.

Q. Many or few? A. Some months three vacant apartments or two or four.

Lillian McGinty, for Plaintiffs—Direct.

Q. Is it two, three and four every month? A. No, not every month. There is one anyway.

Q. At least one a month since she has been sick?

A. Yes, or two.

Q. How often have you seen Mrs. Gee since she was hurt? A. How often?

Q. Yes. One time, once a week or once a month? 10

A. I see her when I come in in the morning.

Q. Have you observed any change in her mental attitude or condition or temperament since she was hurt as compared to what it was before? A. You mean in the way she acts now?

Q. Yes. A. Yes, a whole lot.

Q. Tell us what you observed. A. Now, when you go in in the morning and you sometimes say "Good morning, Mrs. Gee", sometimes she will fly right up at you; no civil answer to you; get angry and nervous and start to cry, and I always walk away and then come back to see whether she calmed down or not. 20

Q. Did that ever happen to you before she was sick? A. No.

Q. What else have you observed, how she acted in any way besides what you just told us? A. Nothing only she occasionally lies in bed not being able to do anything for herself at times, on this here davenport. 30

Q. Did you see her lying around in the daytime before she was hurt? A. No.

Q. What have you observed about her weight, if anything, since she was hurt? Is it any different now than it was before the accident? A. Of course, that is the part I can't answer. I don't know how much.

Q. I don't mean in pounds. Were you able to observe whether there was any difference?

Mr. Harris: I missed that.

40

Lillian McGinty, for Plaintiffs—Cross.

The Court: Whether she has been able to observe any difference in her size.

A. I don't see any difference in her getting any bigger. I do see that she is getting a little thinner at times, but she doesn't get any fatter.

10

By Mr. Semel:

Q. Is she thinner now than she was before the accident? A. Yes, sir.

Cross-examination by Mr. Harris:

Q. Isn't she a little stouter now than she was at the last trial? Do you remember the last trial?

A. I remember.

20

Q. Don't you think she is a little stouter now than she was then? A. I couldn't say about that.

Q. Doesn't she look a little stouter now? A. Not to me. I am around her all the time. I wouldn't say.

Q. You wouldn't say that she was thinner? A. I said I don't know.

Q. Do you remember the last trial? A. Yes, sir.

Q. You remember that you testified in that trial, don't you? A. Oh, yes, I was there.

30

Q. Do you remember testifying at that trial as to how long you worked steady for her after the accident? A. I said three months, didn't I?

Q. Strike that out. Do you remember, yes or no?

The Court: She said yes.

Q. Do you remember answering counsel for the plaintiff at that time in answer to this question,

40

"What work did you do for her?" "Housework"? A. Yes, sir.

Lillian McGinty, for Plaintiffs—Cross.

Q. "Her whole entire housework? Done the work and got the meals?" "Yes, sir." "For how long did you do that?" "For one month straight."

A. No, I said three months.

Q. You do not remember that? A. No, I didn't say no one month, because how could I get \$102 for one month? 10

Q. You say you still work for them now too? A. Yes, cleaning the apartments.

Q. How often do you work now for them? A. Why, cleaning apartments?

Q. How many days a week? A. I am in the building every day doing my own work and if there is an empty apartment Mr. Gee will ask me to clean it.

Q. Did you work at the apartment where they used to live before? A. Yes, 68 Montclair Avenue. 20

Q. Do you still work there now? A. No, down on Halleck Street now.

Q. Mr. Gee is superintendent there? A. Yes, sir.

Q. Did he get you the work in this apartment? A. Yes, sir.

Q. You left all your customers in the other building? A. I left a year ago last March.

Q. Now you are working in the same building where Mr. Gee is? A. Yes, sir. 30

Q. Do you work in Mr. Gee's own rooms? A. Yes, about twice a week.

Q. What do you do there twice a week? A. In his apartment?

Q. Yes. A. I go in and clean the house through and scrub it.

Q. And get the meals ready for him, too? A. If Mrs. Gee is down I do; I get the children's dinner. 40

Lillian McGinty, for Plaintiffs—Cross.

Q. You say if Mrs. Gee is down. A. If she is lying in bed and cannot get up.

Q. Does she lie in bed twice a week? A. Sometimes three days a week. Two weeks ago she was down four days.

10 Q. How did you get this work at 68 Montclair Avenue? A. Through a married woman.

Q. Mr. Gee didn't get you any of that work? A. No.

Q. But when Mr. Gee spoke to you after the accident you were working down there? A. Yes, in the laundry.

Q. Did you do all your work in the laundry? A. I done that day's work.

20 Q. Did you do anything in the Gee apartment the day after the accident? A. No.

Q. You did not work there at all? A. Not the day after the accident.

Q. Do you remember testifying at the former trial in answer to a question if you had done any work for her, "Yes, I started the day after she was hurt, when she met with the accident." You did say you worked the day after, didn't you? A. No, I done my own work in the laundry, and I told Mr. Gee I would be in afterwards to see him.

30 Q. Did you work that day after the accident for him? A. No.

Q. Do you remember testifying at the last trial that you did?

Mr. Semel: I object. The testimony doesn't say that.

A. No, and I didn't know that she was hurt until the day after the accident. Then Mr. Gee came in the laundry.

40 Q. You did not work that day at all for her? A. No, because I had to finish up in my own apartment there.

Lillian McGinty, for Plaintiffs—Cross.

Q. You worked for other tenants and you say you had how many tenants? A. Four.

Q. How much did you make a week? A. \$14 to \$16.

Q. How much did you get a week from Mrs. Gee? A. \$8 a week.

Q. Then you lost money for working for Mrs. Gee? A. Yes, sir. 10

Q. You dropped your customers and lost \$8 a week by working for Mrs. Gee? A. Yes, sir.

Q. You say up to today you got \$102? A. Not until today.

Q. Up until when? A. When the three months were up I got \$102 and I worked the next month off and on for her part time.

Q. You are sure you still continued working there? A. I worked in the building, yes, and I would go in her apartment too. 20

Q. Do you remember testifying at the former trial in this fashion, "Now, after the month was up did you continue to work there?" "Yes". "How long?" "Four months." "How often did you work there then?" "Well, I put in four or five hours a day, just part time"? A. Yes.

Q. "Every day for four months, and at the end of four months you left your position?" "Yes, sir." A. Yes, sir. 30

Q. Do you remember saying you left your position then, that you were through? A. Yes, sir; certainly.

Q. Did you do anything for the tenants while you were taking care of her apartment? A. No.

Q. You didn't see her working every day in that apartment house, did you? A. I seen her going through the floors with me; I don't know what apartments she went in.

Lillian McGinty, for Plaintiffs—Cross.

Q. You don't know whether she worked there in the apartments she went into, do you? A. Certainly, she had the key to open the door, and had a sweeper and a broom and things.

Q. Did you see her inside the room? A. Yes, sir; one day on her knees.

10 Q. Did you ever see her on her knees other than that one day? A. Sure.

Q. Didn't she deliver things to the apartment like milk and papers and take them up to the apartments, to the tenants? A. Not that I could say. The paper boy went through the house.

Q. Didn't she deliver things to the tenants like milk? A. I didn't say I seen her do that.

Q. Didn't she ever send anything up on the dumbwaiter while you were working there in the apartment? A. No.

Q. Did you help Mr. Gee any in this apartment house? A. No.

Q. All you got was \$8 a week? A. Yes, sir.

Q. \$16 a week from the other tenants? A. Yes, sir.

Q. Can you tell us how much you got up to date from Mr. Gee, up to now? A. No, I cannot.

Q. Did you ever get any more after you got that \$102? A. Certainly. The fourth month I worked for him I got \$5 for part time work I put in for him.

Q. \$5 in four weeks? A. No, \$5 a week.

Q. Did you ever clean an apartment? A. In part time work I helped Mr. Gee out after the three months were up.

Q. Helping Mr. Gee? A. No, helping Mrs. Gee in her own rooms.

Samuel B. Greenwood, for Plaintiffs—Direct.

SAMUEL B. GREENWOOD, sworn in behalf of plaintiffs.

Direct examination by Mr. Semel:

Q. You are a practicing physician and surgeon of the State of New Jersey? A. I am a practicing physician. 10

Q. Do you have any specialty? A. I specialize in X-rays.

Q. Do you know Mrs. Ethel Gee, the plaintiff in this case? A. Yes, sir.

Q. Did you make an examination of her? A. I did.

Q. Also an X-ray of her? A. I made an X-ray examination.

Q. I show you this plate and I ask you whether this is the X-ray photograph resulting from your examination. A. Yes, sir. 20

Mr. Semel: I offer this plate in evidence.

Mr. Harris: No objection.

(Same is received in evidence and marked Exhibit P-1.)

Q. Tell the Court and jury what you found as a result of the X-ray examination that you made. A. This is an X-ray film made of the back and includes the lumbar spine and pelvis and the hip joint. The only abnormality here is a curvature of the spine and a slight rotation of the spine. 30

Q. In what region of the spine? A. In the lumbar region.

Q. Where would that be? A. Just above the pelvis.

Q. Can you tell us whether that deviation is to the left or right? A. The convexity is to the right and the rotation is a little in the same direction. 40

Samuel B. Greenwood, for Plaintiffs—Direct.

By the Court:

Q. A little louder, Doctor. A. The rotation is to the right.

By Mr. Semel:

10 Q. What does that mean in layman's language?

A. The vertebral column is turned.

Q. In which direction? A. To the right, probably due to muscular spasm, because there is no defect in the bone structures themselves.

Q. We didn't hear you. A. This condition is probably due to muscular spasm.

By Mr. Harris:

20 Q. What does that mean? A. The muscles on one side drawing the spine offside, because there is no physical defect in the bony structures themselves.

By Mr. Semel:

Q. The bone itself is intact? A. The vertebral column is made up of a series of bones, one on top of the other, and those are intact and apparently the rotation and deviation of that side is due to the pull of the muscles due to muscular spasm.

30 Q. What, in your opinion, might be the cause of muscular spasm? A. An injury to the back would cause that.

Q. When did you make this examination? A. I would have to refresh my recollection from my notes.

Q. You may. A. This was made on March 18th.

Q. Of this year? A. Yes, sir.

40 Q. Assuming that Mrs. Gee was struck by an automobile on or about the 20th of November, 1928, and thrown a distance of from the place

Samuel B. Greenwood, for Plaintiffs—Direct.

where you are sitting to this railing (indicating), in your opinion would you say the muscle spasms which are the apparent cause of this spinal curvature are the probable result of that accident?

Mr. Harris: And include that the striking was on the left side.

10

Q. Assuming that she was struck on the left side and thrown a distance of from where you are sitting to this railing (indicating), would you say that the muscle spasms which are the cause of this curvature are the probable and proximate or direct result of the injury which she received on that day? Yes or no. A. I would say it was.

Q. Assuming that that condition has existed from the 20th of November up until the present time, the condition of muscle spasms, would you say that that would be the cause or effect for which this curvature is now present in the spine? A. I would say that is the cause of this curvature.

20

Q. Explain why that would be the cause. A. The spasticity of the muscles due to injury, the injury would be the direct cause of the spasm of the muscles and the muscles on that side would be favored as they are attached to the bony structure and pulled to the opposite side.

Q. Would you say this curvature might be due to the fact that the patient favors the side which was injured? A. That is a large part of it.

30

Q. That is what you mean by your previous explanation? A. Yes, because any attempt to straighten it out might cause pain.

Q. By spasm you mean what? A. A contraction of the muscles.

Q. Would there be any pain attending that? A. The pain would be the cause of the contraction.

40

Samuel B. Greenwood, for Plaintiffs—Cross.

Q. And because of the pain the patient would favor that side of the spine and cause a curvature of the spine? A. Yes, sir.

Cross-examination by Mr. Harris:

10 Q. Curvature of the spine is also caused by the fact that a woman bears a child for nine months too, isn't that so? A. That would cause a curvature?

Q. Sometimes? A. It is a possibility, but I do not think so.

Q. It happens very often, doesn't it? A. I never noticed it.

20 Q. You wouldn't say it doesn't? A. No, I wouldn't say it doesn't, but if that was the case every woman who had borne a child would have a tendency to have a curvature.

Q. In some cases it happens and some cases it doesn't? A. I don't think it does.

Q. What? A. That the bearing of a child can cause a curvature of the spine?

Q. You have said it caused it. A. Anything may be possible.

30 Q. It is probable in a great many cases too, isn't it, that the carrying of a child for nine months, and especially a heavy child, would cause a curvature of the spine? A. It might cause a bending back of the spine.

Q. Suppose she was a right-handed person, wouldn't that be caused by her lifting up with her right hand all the time? A. The constant posture?

Q. Yes. A. If you could prove that a person was in an occupation to cause the constant posture it might.

40 Q. Suppose I told you that this woman was in the habit of working from seven in the morning

Samuel B. Greenwood, for Plaintiffs—Cross.

until nine at night, doing general housework and washing clothes and ironing, laundering, and she got down on her knees and washed floors and cleaned, wouldn't that cause a curving of the spine? A. I don't think it would.

Q. What do you mean if a person is in an occupation? What kind of an occupation would it have to be for them to bend any more than that? 10

A. If you have a person bending to one side all the time.

Q. You don't mean bend over forever? A. In several hours a day in one posture, but I don't see that housekeeping can keep a person bent in one posture all the time.

Q. Isn't it true that as a person grows older his spine becomes more brittle and firm? That is true? A. What do you mean by that? 20

Q. I mean it becomes more brittle and harder to bend the older you grow. A. The joints of the spine become less mobile. Mobility is limited as a person gets old, but by old I mean a man who is senile.

Q. Isn't it true that curvature of the spine happens in youth, the developing stage of a person? A. Curvature of the spine is not a normal condition.

Q. It is not normal with everyone but it happens in some, doesn't it? A. It is not normal for anyone. 30

Q. But it happens? A. Yes.

Q. Isn't it true that it forms in the youth of a person? A. You mean some disease that would cause it. That is the only thing I know would cause it. There would have to be some abnormality to cause it.

Q. Isn't there anything else but disease which could cause a curvature of the spine in youth? A. It is an abnormality. 40

Samuel B. Greenwood, for Plaintiffs—Cross.

Q. Is it disease? A. A blow is not a disease.

Q. You went to school a long time and so did I. You remember the teacher telling us to sit back in our seats straight. Isn't it a fact that if a child bends forward it causes a curvature of the spine?
10 A. It might cause round shoulders and it might cause a curvature of the spine too. It all depends on what you mean by curvature. The spine itself is naturally curved and becomes exaggerated by posture, but that is an antero-posterior position.

Q. When did you make this X-ray? A. In March.

Q. March of what year? A. This year.

20 Mr. Harris: I didn't know that an X-ray was taken at that time.

The Court: It only shows the condition in March, 1930. That's all it was put in for.

Mr. Semel: That's all.

Q. You say this curvature of the spine might come from an accident? A. Yes, sir.

30 Q. A person struck by an automobile, as described to you by counsel for the plaintiffs, and thrown from where you are sitting up to the railing, to cause a curvature of the spine wouldn't that person be knocked unconscious, in all probability?

Mr. Semel: I object to that, as the doctor is not qualified. The doctor did not say that she received a curvature of the spine from the force of the collision between the car and her body.

40 The Court: The question is she received a curvature because of the injuries she re-

Samuel B. Greenwood, for Plaintiffs—Cross.

ceived. The doctor didn't say the blow caused the curvature, but that the contraction of the muscles caused it from the injuries to the muscles she received in the accident.

Q. The curvature is not then a condition other than the sacroiliac strain? A. I said that there was no traumatic evidence of injury to the spinal cord. 10

Q. What would you say about that question (question read)?

Mr. Semel: I object.

The Court: The question is not proper as to form.

Q. When would a curvature of the spine take place in the case of an accident of this kind? A. You might have a curvature immediately, because of the fact it might be more marked at the time of the accident. 20

Q. As time goes on it would be less marked? A. Yes, if the condition entirely cleared up it would be less marked.

Q. Could curvature of the spine come long months after the accident by reason of the accident? A. I imagine the injury to the muscles was immediate. 30

Q. Would that curve the spine immediately? A. Yes.

Q. Now, I ask you the question as to whether or not a person knocked from where you are sitting over to this railing (indicating) by an automobile, struck on the left side, hurting her muscles and causing muscular spasm from which a curvature of the spine takes place, wouldn't be knocked unconscious? A. That might 40

Samuel B. Greenwood, for Plaintiffs—Cross.

be so. I have seen injuries of this sort from much more severe accidents.

Q. You are an X-ray specialist? A. Yes, sir.

Q. That is all you do? A. X-ray diagnosing.

Q. You do not do general practice? A. No.

10 Q. You do not generally know the cause and effects for what you find in X-ray plates, do you?
A. I am a physician and it is my idea. No.

Q. You haven't practiced medicine for a long time? A. I have practiced as an X-ray specialist for a long time, and we take the cause and effects. This is not only taking the pictures, it is diagnosis.

Q. An X-ray is not positive proof, is it? A. Just what you see on the X-rays.

20 Q. It is calculative? A. We cannot see the muscles of the back.

Q. Do you examine the patient too? A. No, I take the history of the patient.

Q. You never examined them? A. No.

Q. You never examined Mrs. Gee? A. No.

Q. Sometimes X-rays do not tell the truth? A. Why, there are conditions that do not show on the X-rays.

30 Q. Sometimes X-rays show deceiving conditions? A. No, if it is in the X-ray we can see it wherever it is, but sometimes conditions occur that do not show on an X-ray.

Q. Then you say every time an X-ray shows something it is true? A. Yes.

Q. Isn't it so that sometimes X-rays taken in certain positions will show the condition in a certain position and sometimes in another position? A. I don't know just what you mean unless you mean the posture and change of appearances on the plates.

Samuel B. Greenwood, for Plaintiffs—Cross.

Q. Yes. A. That would depend on who was taking the X-ray.

Q. Wouldn't the posture make a change? A. Yes, there may be one hip larger than another.

Q. Yes. A. I can take full face of you or profile.

10

By the Court:

Q. He means an exaggerated condition. A. I do not see how you can exaggerate a condition on the X-ray.

By Mr. Harris:

Q. According to the way you focus the lens? A. Yes.

Q. If you take a picture in this position (indicating) that way it would show one way and this way it would be different (indicating)? A. Yes. 20

Q. You could take a picture in a position that would exaggerate very materially a break? A. If it was not properly done.

Q. Of course. A. Yes.

Q. There is no question but that roentgenologists can take X-ray pictures which would very materially exaggerate a condition, isn't that so? A. Yes. 30

Q. Did you take this X-ray yourself? A. Yes, sir.

Q. Is the pelvis normal on that X-ray? A. The pelvis is normal.

Q. Isn't the sacroiliac joint the pelvis? A. It is the posterior part of the girdle.

Q. The pelvis is normal? A. I do not see any abnormality in the bony structure of the pelvis.

40

Samuel B. Greenwood, for Plaintiffs—Re-direct.

By the Court:

Q. Would an X-ray show a strained sacroiliac joint? A. If there was a separation of the joint it would show it.

Q. If there was not a separation, would it show it? A. We only see the bony structures.

By Mr. Harris:

Q. If there is a sacroiliac strain, isn't there a pulling on the tendons which would show up on the X-ray? A. If the position caused a relaxation of the joint, then it would show up.

Q. Wouldn't you have that condition in a severe strain? A. Yes.

Q. Isn't it why you took those pictures to see whether the sacroiliac joint was strained partly? A. That I don't remember.

Re-direct examination by Mr. Semel:

Q. There could be a sacroiliac sprain without a separation, couldn't there?

Mr. Harris: Is he qualified as an expert on that?

A. There are various degrees of sacroiliac joint sprains.

Q. There could be a sacroiliac sprain without any separation though, couldn't there? A. Yes, sir.

Q. Assuming there is a sacroiliac sprain without separation there would be muscle spasm, wouldn't there? A. Yes, sir.

Q. In your opinion would a sacroiliac sprain resulting from trauma be permanent in its duration, or temporary? A. That would depend on the clinical evidence as time goes on.

Samuel B. Greenwood, for Plaintiffs—Re-cross.

Q. Are you able to tell from your examination of the patient?

Mr. Harris: No, he says he did not examine the patient.

Q. This spinal condition you were able to observe from your X-rays, can you tell whether that will be temporary or permanent? A. From the history of the accident presumably this condition is permanent. 10

Re-cross examination by Mr. Harris:

Q. Isn't it true that the commonest cause of sacroiliac sprain causing back aches is labor from childbirth? A. No, sir, the sacroiliac joint is one of the strongest joints in the body. 20

Q. Didn't you ever hear of a woman suffering from sacroiliac pains caused by childbirth? A. That is not a sacroiliac sprain.

Q. I said pain. A. You cannot strain the sacroiliac joint.

Q. Isn't it true that when a woman is carrying a child her muscles spread around the sacroiliac joint and cause a pulling of the tissues, the labor? A. The only way that you can separate them in childbirth— 30

Q. I mean the bearing of the child. A. That is a muscular condition. Women have what you call sacroiliac pain due to a strain of the muscles of the back.

Q. You cannot tell from that picture what condition this woman is in? A. I just told you that the pelvis is normal on this X-ray.

Q. If it is normal the sacrum is normal? A. You may have a condition which would not show up on the X-ray. 40

Samuel B. Greenwood, for Plaintiffs—Re-direct.

Elizabeth Goodwin, for Plaintiffs—Direct.

Q. You say the pelvis is normal? A. Yes, sir.

Q. You say that the sacroiliac joint does not show there that it is not normal?

10 Mr. Semel: I object. The doctor testified that he couldn't tell anything about that.

The Court: He said he couldn't tell.

Q. You never examined this woman? A. No.

Re-direct examination by Mr. Semel:

Q. I show you a bill of \$15 for taking the plate. Is that reasonable? A. Yes, sir.

20 Mr. Semel: I offer this bill in evidence. (The same is received in evidence and marked Exhibit P-2.)

ELIZABETH GOODWIN, sworn in behalf of plaintiffs.

Direct examination by Mr. Semel:

30 Q. Where do you live? A. 6 Hallock Street.

Q. Speak up louder, please. Where is that? A. Newark.

Q. Do you know Mrs. Gee? A. Yes, sir.

Q. How long have you known her? A. Since she came to the apartment, I think it was in August.

Q. Have you seen her constantly since that time? A. Yes, sir.

40 Q. When she came to the apartment to live, in August, do you know whether she was engaged in any occupation? A. Housecleaning apartments

Elizabeth Goodwin, for Plaintiffs—Direct.

for people and as an apartment would be empty she would get it ready for another tenant.

Q. Were you living in the apartment house at that time? A. Yes, sir.

Q. You were able to observe she did that work? A. Yes, sir.

Q. Did she ever do work for you? A. Yes, sir. 10

Q. What did she do for you? A. Cleaning occasionally and laundry work.

Q. How much did you pay her? A. It varied. If she did my laundry work three or four days, depending on how long she worked.

Q. If she just did the cleaning how much? A. We didn't pay her so much, we paid her in accordance with the time she spent on the work.

Q. How much an hour? A. We didn't go by the day. 20

Q. How much a day? A. \$3 or \$4 for laundry work.

By the Court:

Q. How much would it be for a day of eight hours? A. About 50 cents an hour.

Q. That is what it was? We do not want your imagination. We want facts. Take the number of hours and multiply it by 50 cents then. A. She didn't get any special amount. You paid her what you thought. For me, if she did my laundry work I paid her \$3 and if she cleans my apartment I would give her \$3 or \$4. 30

By Mr. Semel:

Q. Do you know of your own knowledge if she did any work of that kind for other people in the building? A. Yes, sir.

Q. Can you tell us how many days a week she put in on that work? A. Every day. 40

Elizabeth Goodwin, for Plaintiffs—Direct.

Q. That continued up until when? A. Up until she was hurt.

Q. Do you remember when that was? A. Before Christmas some time.

By the Court:

10

Q. What year? A. 1928.

Q. Not last August? A. 1928.

By Mr. Semel:

Q. You knew her three or four months before she was hurt? A. Yes, sir.

Q. When was the first time you knew she had been injured? A. The night after she was injured.

20

Q. Did you visit her then? A. Yes, sir.

Q. Where did you find her? A. Laying on the couch.

Q. Did you visit her after that? A. Yes, sir.

Q. How often? A. Every day.

Q. Why? A. Because I was interested in how she was coming along.

Q. Do you know of your own knowledge how long she was actually confined to bed after the accident? A. I should say around a month or
30 three or four weeks.

Q. After that do you know whether she got around at all? A. I never saw her doing any work after that.

Q. Did you ever see her doing any housework at all in her own home since she was injured? A. No—well, dusting once in a while.

Q. You have seen her do some light work? A. Yes, sir.

Q. When, according to your recollection, did
40 she begin to do light work again? A. Five or six

Elizabeth Goodwin, for Plaintiffs—Direct.

months after, I should say. I don't know exactly.

Q. Has she done any work in apartments for tenants and yourself since she was injured? A. She has done nothing for me and no tenants that I know of.

Q. What did you observe her general mental condition to be before the accident? A. She was an absolutely normal person. 10

Q. What was her disposition and temperament? A. Very pleasant to me.

Q. Has there been any change since the accident? A. Yes, she is extremely nervous.

Q. What else? A. Hard to get along with.

Q. Have you observed any change in her physical condition? A. Yes. She is nervous, especially when in a car. When I take my child out and I take her and her two children out once in a while, she is a back seat driver. 20

Q. How was she before? Did you ride her in your car before the accident? A. Once or twice, yes.

Q. How was she then? A. Very calm, and didn't say anything.

Q. Have you observed whether there has been any improvement in her mental condition or demeanor or deportment since the accident? A. No, she has just been worse since the accident. 30

By the Court:

Q. She was all right before the accident? A. Yes, sir.

By Mr. Semel:

Q. Has she improved any? A. No, not at all.

Q. Do you know whether she has lost or gained weight since the accident? A. She used to be quite stout before. She lost weight. 40

Elizabeth Goodwin, for Plaintiffs—Cross.

Q. Would you say much or little? A. I couldn't say exactly. I see her every day and cannot notice it, but she has lost weight; you can tell that.

Cross-examination by Mr. Harris:

- 10 Q. You see her every day? A. Yes, sir.
 Q. You are very friendly with her? A. Not necessarily friendly.
 Q. You take her out for a ride? A. Yes, for the children's sake; the children don't get out.
 Q. Still, you are not friendly with her? A. Friendly in that sense, yes.
 Q. You are very much interested in her case, are you not? A. I am anxious to see her get along.
 Q. Anxious to see her get some money? A. No,
 20 it won't give me any money if she gets it. Why should I care?
 Q. You used to live in the same apartment where she was before? A. Yes, sir.
 Q. And now you live in the same apartment she lives in now? A. Yes, sir.
 Q. You used to see her work for other people? A. Yes, sir.
 Q. Go in their apartments? A. I had friends in the apartment she worked for.
 30 Q. You went into the apartment while she was working there? A. I called on my friends.
 Q. And you saw her working there while you were there? A. Yes, sir.
 Q. Every day? A. Not every day. I saw her going around working every day.
 Q. Where? A. In the different apartments. She would leave the door open.
 Q. You did not miss a day? A. I couldn't say that I didn't miss one day, certainly.
 40 Q. You did not pay her a regular salary? A. No, as I needed her.

James J. Kelligan, for Plaintiffs—Direct.

Q. How often did you need her, once every three weeks A. Probably once a week.

Q. And probably once in two weeks. A. Twice a week in two weeks—at least every week.

Q. You don't know how much you paid her a day? A. Around fifty cents an hour.

Q. Would she work one hour sometimes? A. 10
She worked longer than an hour mostly.

Q. Would she work two hours and stop? A. Sometimes two or three hours.

Q. If you paid her fifty cents an hour for three hours that would be a dollar and a half a day? A. If she did the laundry work it was \$3 a day.

Q. If she only worked an hour and a half? A. I used to pay her fifty cents an hour and if I had the money to spare I would give her more. 20

Q. Just for good fellowship? A. Yes, for cleaning for me. I appreciated it.

JAMES J. KELLIGAN, SWORN in behalf of plaintiffs.

Direct examination by Mr. Semel:

Q. Where do you live? A. 8 Vincent Street. 30

Q. What is your occupation? A. Chauffeur.

Q. Do you know Mrs. Gee? A. I know her now.

Q. When did you get acquainted with her? A. Last November.

Q. Tell us where it was that you first met her. A. The day of the accident, the night of the accident.

Q. Do you remember when it was, the day? A. November, I think, the 28th.

Q. What year? A. A year ago this last November. 40

James Gee, for Plaintiffs—Direct.

Q. How many feet did the Moss automobile throw Mrs. Gee when it struck her? A. To the best of my knowledge I would judge fifteen feet.

(Cross-examination waived.)

10

JAMES GEE, one of the plaintiffs, sworn in his own behalf.

Direct examination by Mr. Semel:

Q. You are the husband of Mrs. Gee? A. Yes, sir.

Q. How long have you been married? A. Eleven years on the 8th of March.

20 Q. You have two children? A. Yes, sir.

Q. Do you remember the accident? A. I remember the night when she came home after the accident.

Q. That is what I mean. A. Yes.

Q. Prior to the date of the accident was your wife employed in any gainful occupation? A. Yes, she was cleaning the apartments as she specified.

30 Q. What were you doing at that time? A. Working in that capacity.

Q. In what capacity? A. I am superintendent.

Q. As superintendent you had certain fixed duties? A. Yes, sir.

Q. Your wife helped you there? A. Yes, sir.

Q. And took care of your family and yourself? A. Yes, sir.

Q. In addition to that you say she cleaned apartments for tenants? A. Yes, sir.

40 Q. Do you know of your own knowledge how much Mrs. Gee earned a week? A. Well, sometimes about \$30, \$35 or \$36.

James Gee, for Plaintiffs—Direct.

By the Court:

Q. A week? A. Yes, sir.

Q. She earned more than you? A. My salary is not a money salary. I get coal, gas, heat in three rooms and milk.

Q. Then, she did not earn as much as you? A. 10
No, sir.

By Mr. Semel:

Q. How long prior to the 20th of November, 1928, had she been doing this work? A. Well, when we first moved down to the apartment.

Q. When was that? A. I moved down in the middle of July and worked down there a couple of weeks before I took it permanently there.

Q. How long prior to the 20th of November, 20
1928, had Mrs. Gee been doing that work? A.
About three or four weeks.

Q. Before that time had she been doing any work elsewhere? Did she ever earn any money? A. No, just housewife down in Indiana. We came up from Indiana.

Q. What was the condition of her health, as far as you know and could observe before the accident? A. It was pretty good. Never had no trouble much at all outside of an occasional head- 30
ache.

Q. In all other respects, so far as you knew? A. Her health was good.

Q. After the accident was there any change in her general condition of health so far as you could observe? A. Yes.

Q. Tell us of the changes you have been able to observe. A. Well, since then, as far as sexual means are concerned, I have no pleasure at all, no pleasure whatsoever since after this accident. 40

James Gee, for Plaintiffs—Direct.

Q. Tell us whether there has been any notice of marked change in your sexual relation with your wife since the accident. A. Yes, she kind of repulses me when I want to go near her.

Q. In other words she does not acquiesce to you now and she did then? A. Yes.

10 Q. In what other respect has she changed? A. She is terribly fidgety and nervous and continually telling the children that I have no business in the house because she is always fussing and flaring right up, she flares up and goes in tantrums.

Q. How was she in that respect before the accident? A. She was like the average woman, all right.

Q. Companionable? A. Yes, sociable.

20 Q. Has that companionship changed since? A. Absolutely.

Q. In what manner has she changed? A. Well, she can no longer be a companion and doesn't keep the house the way she used to keep it previous to the accident.

Q. Anything else? A. She never wants to go anywhere. She is tired all the time and wants to be sleeping and resting all the time.

30 Q. Does she complain of anything? A. Yes, she still complains about her back and headaches and about her menstrual period, she is always having trouble with that. Every time she has a menstrual period she is troubled with aches and pains all over.

Q. What was her condition before she was injured? A. Well, all the time since we have been married she was regular as clock work.

40 Q. Did she have any trouble with her menstruation? A. Not outside of her two children. Of course then she stopped.

James Gee, for Plaintiffs—Direct.

Q. How many times to your knowledge was your wife actually pregnant, if you know, since you were married? A. Three times, as far as I know of.

Q. The first two children came after the first two pregnancies? A. Yes, sir.

Q. Do you know what happened to her in regard to the third pregnancy? A. She told me she missed a period. 10

Mr. Harris: I object to that.

Q. What happened immediately after? A. She missed a period and after the accident about three or four days I wanted to be certain—

Q. Tell us what you observed three or four days after the accident. A. Three or four days after the accident I was busy in the basement of the apartment house and she screamed and cried and one of the children came running to me—it was just at lunch time—and she said, “Daddy, mother is sick. Something is wrong with mother.” I rushed in the house and she was laying on the day bed where I left her while I was busy in the building, and I helped her up, and her night dress was all blood and all over the bed. I lifted the blankets up and she said something happened, and I lifted the blankets and sheets up and saw the blood all over. Naturally I didn’t do anything. I called for the doctor. 20 30

Q. Can you tell us from what part of her body that blood came? Did you observe? A. It was all over the middle, blood on her night dress and everything, and was stuck up in the bottom of the stomach. Of course I sent for the doctor immediately.

Q. How long after the accident was Mrs. Gee actually confined to this bed or the day bed? A. 40

James Gee, for Plaintiffs—Cross.

Then, she was laying down all the time for about a month or so.

Q. Then, after that? A. Well, she has been laying down ever since, more or less.

10 Q. Has she been doing any work since the accident? A. No, sir, outside of a little bit of dusting once in a while.

Q. Who has been taking care of your home? A. I got Mrs. McGinty to come in once or twice a week, to come and do cleaning. My wife dusts it.

Q. Has Mrs. Gee done any work for other tenants in the building since she was injured? A. She cannot look after her own, never mind anyone else's.

20 Q. She hasn't done any of that work? A. No, sir.

Q. Can you tell us what the condition of her sleep is since the accident? A. I like reading a lot at night, and while I am sitting there reading she is tossing and turning about in bed all the time. She is very restless and lots of times she wakes me up at one, two, three o'clock in the morning and says she hears noises outside and all that sort of thing.

Q. Has your wife been pregnant since the accident? A. No, sir.

30 Q. Have you lived with her in such a manner that she could become pregnant? A. Yes, sir.

Cross-examination by Mr. Harris:

Q. You have not lived with her since the accident as man and wife every week? A. No.

Q. Twice a week? A. Perhaps about twice a month.

40 Q. No more than twice a month? A. After the accident during the last four or five months. Previous to that very seldom I could get near to her.

James Gee, for Plaintiffs—Cross.

Q. Did you ever try to get near her before that? A. Yes, sir.

Q. You could not? A. She repulsed me to such an extent there was no pleasure.

Q. Before the accident didn't you experience trouble with your wife with reference to the relationship as man and wife? A. No, sir. 10

Q. None at all? A. Nothing like it is today.

Q. She did not want to have intercourse at times? A. At times, sure.

Q. That happened several times, didn't it? A. Naturally, in the years we were married.

Q. Very recently, before the accident it happened quite often, didn't it? A. No, sir.

Q. Didn't you notice that your wife before the accident was suffering pain every time you had intercourse with her? A. No, sir. 20

Q. Immediately before the accident was there any indication of illness? A. No, sir, not as I know of.

Q. None at all? A. Well, she told me she had missed a period. No illness.

Q. Outside of that she appeared perfectly normal and healthy? A. Yes, sir.

Q. Your wife had two other children before this? A. Yes, sir.

Q. Didn't you notice in her very early stages of pregnancy that she was somewhat sick to her stomach? A. After the first month or so she vomited a little. 30

Q. This time there was no indication of any illness before the accident? A. Yes, she vomited the morning before the accident.

Q. Then, there was an indication of illness? A. She vomited a second or so and then she was all right. 40

James Gee, for Plaintiffs—Cross.

Q. Didn't she feel sick? A. At least she did not complain, if she did.

Q. Did she complain after vomiting? A. She said she felt a little sick.

Q. Then, she did feel a little sick? A. Yes, sir.

10 Q. Although before you said that she was not sick at all. Which is it, was she or was she not sick before the accident? A. She vomited a little.

Q. That is all? A. Yes, sir.

Q. You say that she was pregnant three times? A. Yes, sir.

Q. You know that of your own knowledge? A. Yes, sir.

Q. The first two times because she was pregnant? A. Yes, sir.

20 Q. How did you know it the last time? A. Because you cannot be married to a person eleven years and not know when they are unwell if you are living with them every day. She had not been unwell since the time previous. I knew about the time she should be.

Q. Did she ever miss a period? A. Not to my knowledge up to just before the accident.

By the Court:

30 Q. Of course, when she was pregnant with two children she did. A. Yes.

By Mr. Harris:

Q. You say she earned about \$30 to \$35 a week? A. Yes, sir.

Q. Might it have been less? A. At times, yes.

Q. Might it have been \$10 a week? A. I would like to explain to the jury how that money came to be earned.

40

James Gee, for Plaintiffs—Cross.

Q. Might it have been \$10 a week at times? A. No, it was always more than \$10. Well, more than \$10.

Q. \$15 a week? A. More than that. Never dropped below \$20, to my knowledge.

Q. Did you ever get any of that money? A. She kept that separate. We just come up from Indiana and we had to buy furniture and clothes and everything else and it took the both of us to work all the time to get a little home together. That's why she was working. 10

Q. You say she has occasionally had headaches before the accident? A. Yes, sir.

Q. How occasionally? A. Perhaps once or twice a month.

Q. What was that due to? A. I am not a doctor and I don't know why. 20

Q. Did you ever have a doctor to find out what was the matter with her? A. Yes.

Q. How often did she go to the doctor to find out what was the matter with her? A. During the last eight years a \$20 bill would cover it.

Q. How many times would she have gone? A. Figure \$3 a visit how many times.

Q. During the eight years you say she only spent \$20 on doctors although she had headaches once a month? A. Outside of her confinements. 30

Q. She had headaches and you did not try to find out what the headaches were from? A. She may have had four one month. She had headaches, that's all I know.

Q. She felt nervous and sick? A. No, she wasn't nervous.

Q. Were they bad headaches? A. At times I guess she had bad headaches.

Q. She was cranky when she had headaches? A. No, she was a normal woman. 40

James Gee, for Plaintiffs—Cross.

Q. What did the doctor say was the matter with her when he would come to visit her during the eight years? A. One time she had trouble with her throat, quinsy, and then as far as the headaches were concerned I don't think she ever saw the doctor. She took aspirin and laid down and they passed off all right.

10

Q. She would have to lay down? A. Yes, sir.

Q. Did she ever have pain anywhere else in all this period of years? A. Like all people, you have a little aching pain now and then, but I am not a doctor.

Q. She did complain of pain in the back now and then? A. No, not to my knowledge.

20

Q. That was, not to your knowledge? A. If she did I have forgotten it, but I don't think she did.

Q. You may have forgotten it? A. Yes, but I am practically certain that she never said a word to me about it.

Q. After childbirth did she ever complain of pain in the back? A. She complained of weakness.

Q. No pain? A. She had pain all over after the childbirth.

Q. How long did that last? A. Probably a month or two after the baby was born.

30

Q. For five and a half years you never had any children before the accident? A. No, four and a half.

Q. It is five and a half now? A. Yes.

Q. You have tried all those years to have other children? A. To tell you frankly at that time we did not, because at that time we weren't in shape to have more children, but now we are.

40

Q. You weren't in shape to have children when the accident happened but you were before that? A. Yes.

James Gee, for Plaintiffs—Cross.

Q. Still you tried to have children then? A. I am not saying I tried. I didn't take precaution.

Q. In all these years you took precaution? A. No. I was careful once in a while.

Q. When was the first time you say you saw this blood? A. Pardon me?

10

By the Court:

Q. On the davenport. A. A few days after the accident.

By Mr. Harris:

Q. What time of day was it? A. About half-past nine or ten o'clock. Half-past eleven or twelve o'clock. The children come home at half-past eleven.

20

Q. You say the children came running out and crying because your wife was sick? A. The oldest little girl did.

Q. The children were home? A. The oldest girl.

Q. Was Mrs. McGinty there? A. She had just gone upstairs for some reason. I couldn't tell you why.

Q. Do you remember testifying at the former trial? A. Yes, sir.

30

Q. Do you remember testifying about this very same thing then? A. Yes, sir.

Q. Do you remember these questions and answers? A. I remember some of them.

Q. "Can you tell us whether anything unusual occurred to your wife three or four days after the accident?" "Yes, sir." This is in answer to your counsel's question, "Tell us if you know from seeing it personally or do you know of your own knowledge," and you said, "Yes." "Tell

40

James Gee, for Plaintiffs—Cross.

us just what happened.” “Well, two or three days after the accident at six o’clock in the morning I got up to fix the fire, and when I came back she said, ‘Jimmy, something has happened.’ I says, ‘What’s the matter?’ ” “Do not tell us the conversation. Tell us what you saw.” “I was leading up to that,” that was the answer. “I am sorry we could not have it.” “There was all blood over the mattress.” “Do you know of your own knowledge with reference to that time if your wife menstruated previously?” “Yes, she said she missed a period.” “Do you know that to be so of your own knowledge?” “Yes.” “Now, was there anything about this blood which you observed, anything particular, anything about that which looked unusual to you?” “Yes, it was not a pure reddish color. It was kind of little black chunks, just like chunks in it.” “Do you remember that this was about six o’clock in the morning and you were out fixing the fires?” “It may have been six o’clock, but I know the children were home.” Now, you say it was eleven o’clock and the children were up. Do the children usually get up at six o’clock? A. No, the children don’t get up as a rule at that time.

Q. You say Mrs. McGinty was upstairs. Was she working at that time, six o’clock in the morning? A. No, if that was the time, six o’clock in the morning, Mrs. McGinty was not there at the time. I thought it was noon time, to tell the truth. I know it happened, but I don’t know just exactly when it happened.

Q. As a matter of fact you have seen blood very often from your wife before the accident happened, haven’t you? A. Yes.

Q. Very often at periods other than menstrual periods, haven’t you? Yes or no. A. No.

James Gee, for Plaintiffs—Cross.

Q. Are you sure about that? A. I say not that I know of.

Q. Might it have been that you saw it? A. No.

Q. Would you swear positively that you never saw blood at other times than the menstrual periods? A. Coming from her?

Q. Yes. A. No, sir, I never seen blood in my life from her. 10

Q. Were her menstrual periods always regular? A. Yes, sir.

Q. Did you pay these doctor bills? A. No, sir.

Q. Did you know that your wife was told to go to a specialist? A. Yes, sir.

Q. Did you ever send her to a specialist? A. She went to a doctor. She went to one doctor. She went to so many doctors in fact that I can't recall who. She went to three or four, I think. 20

Q. Name those doctors. A. Dr. Singer and the dentist doctor and another doctor who took X-ray pictures and I know a specialist for something, a doctor for some other reason, and then she had to be examined when she got the notification from you people.

Q. She went, of your own knowledge, to two doctors besides Dr. Levin and the dentist. Two other specialists, Dr. Singer one and the other you do not know the name of? A. Yes. 30

Q. Did you pay for that? A. No, sir.

Q. Did you pay anyone to pay Dr. Singer? A. No, sir. At the time my wife was supposed to have had the money for it, but she didn't have it.

Q. Did you give it to your wife? A. No, sir.

Q. You say you never gave her any money to pay for this doctor bill? A. Yes.

Q. Do you remember testifying in reference to that at the former trial? A. Yes. 40

James Gee, for Plaintiffs—Cross.

Q. In answer to this question, "Did you have any other expense?" "Yes, doctors and medicines. Doctors prescribed for her." "How much were they, if you know?" "Roughly, \$20." That is on examination of your counsel. You said you paid a dentist bill of \$75. Did you give the information to the attorney in this suit, a record of such a bill? A. Yes.

Q. "Did you tell him \$50?" "\$75." That is in reference to the dentist bill.

Mr. Semel: If there is going to be any cross-examination later I am going to object to it, because I did not bring this out on direct examination, any damages he is claiming now.

The Court: It is proper to attack his credibility.

Q. You do not remember the name of this other doctor who got this \$50 bill, do you?

The Court: Today?

Mr. Harris: No, at the other trial.

Mr. Semel: Read your question.

Q. Do you remember testifying at the former trial that you paid Dr. Singer \$50 in answer to your attorney's question? A. Yes, sir.

Q. Did you pay Dr. Singer \$50? A. No, sir.

Q. You kept saying that you paid it to him, didn't you? A. Yes, I would like to explain that.

Q. Then, you said afterwards that you gave \$50 to Dr. Levin to pay for this specialist. Do you remember that? A. Yes, sir.

Q. Then afterwards you changed that again and you said that you thought you gave it to your wife. A. That is correct, I did. My wife had it already.

James Gee, for Plaintiffs—Re-direct—Re-cross.

Q. Didn't you say that you gave it to your wife? A. I said I gave her my salary. That is giving it to her.

Q. Didn't you say you gave it to her to give to Dr. Levin? A. She had the salary. I gave her more than \$50 altogether. She had the salary as well. 10

Q. You said you gave her that particular \$50 to give to Dr. Singer. Do you remember saying that? A. Yes, sir.

Q. Was that true? A. No, sir, because the way you gave me the question——

Mr. Harris: I object to any further explanation.

Re-direct examination by Mr. Semel: 20

Q. Tell the Court and jury what you meant when you said you gave \$50 to your wife for Dr. Singer. A. My wife was examined by Dr. Levin and told she had to go to see this specialist. She misunderstood Dr. Levin. She thought that Dr. Levin meant a specialist, but it turned out he wasn't a specialist. Of course we wanted to know why and she said, "More expense?" I said "It is \$50 for this specialist?" so she went to see the doctor and she came back and she said, 30
"What about the \$50?" I said, "Pay it," and that's all there was to it, and I understood at the time that it was paid for.

Q. That is why you testified at the other trial that you paid Dr. Singer \$80? A. Yes, sir.

Re-cross examination by Mr. Harris:

Q. When did you find out she did not pay it? A. From the evidence. 40

John B. Morrison, for Plaintiffs—Direct.

Q. It was for that reason you came back and testified that you thought your wife paid the \$50?

A. Yes, because I didn't know a thing about it.

10 JOHN B. MORRISON, sworn in behalf of plaintiffs.

Direct examination by Mr. Semel:

Q. You are a licensed physician and surgeon of the State of New Jersey? A. Yes.

Q. How long have you been practising? A. Thirty years.

Q. Where is your office? A. 66 Milford Avenue.

20 Q. Do you know Mrs. Ethel Gee, the plaintiff in this case? A. Yes, sir.

Q. Did you examine her? A. Yes, sir.

Q. When? A. The 20th of March, I believe.

Q. Of this year? A. Yes, sir.

Q. Tell us what you found as a result of your examination. A. I found that she had a displaced uterus, what we call retroversion, turned back instead of being in its normal position.

Q. What else? A. Laceration of the cervix.

30 Q. What does that mean? A. That there is a tear across the mouth of the uterus, which is shaped like a pear with the small end down, and it was torn across the mouth, and that was spread open and raw, and the cervix was eroded and discharging.

By the Court:

Q. What do you call that? A. A laceration of the cervix and we call the ulceration the endocervicitis.

John B. Morrison, for Plaintiffs—Direct.

By Mr. Semel:

Q. What is that? A. Inflammation of the cervical glands in the canal, the neck of the uterus, where lacerated.

Q. Did you find anything else with respect to retroversion of the uterus? A. No.

10

Q. Tell us what you mean when you said there was a discharge. A. She had a thick—I couldn't say pussy, but a thick vaginal discharge.

Q. What does that mean? A. It means that there is ulceration or disease, either in the uterus or the cervix, present to make that discharge.

By the Court:

Q. Is that what they call leucorrhea? A. Yes, sir.

20

By Mr. Semel:

Q. Can you tell what may have caused that lacerated cervix? A. That was undoubtedly caused at some childbirth.

Q. Can you tell what may have caused retroversion? A. Well, the retroversion sometimes very frequently follows childbirth, when the uterus is enlarged very much, and after childbirth it usually comes back to normal, both as to size and position, following pregnancy, and once in a while it doesn't come back.

30

Q. Assuming that Mrs. Gee was injured on or about the 20th of November, 1928, at which time she was struck by an automobile and thrown a distance of about fifteen feet, would you say that the retroversion was the probable result of that accident? A. No, I would say it is a possible result of that accident.

40

John B. Morrison, for Plaintiffs—Direct.

The Court: Strike that out. Everything is possible. We are only concerned with probabilities.

10 Q. Can you say from your experience that the retroversion might be or is a probable result of this accident? A. I can only testify that I have seen cases of retroversion following a forcible accident.

Q. In other words— A. Where a person has been thrown several feet.

Q. In other words, those people could probably have a retroversion resulting from trauma?

Mr. Harris: I object to the possibility. Only probabilities.

20 Mr. Semel: Yes.

By the Court:

Q. You have seen it and that is as far as you can go? A. Yes, sir.

By Mr. Semel:

Q. What is the effect upon a patient with a retroversion as regards the possibility of childbirth?

30 A. Well, it is a question as to whether or not the retroverted uterus produces miscarriage about the end of three months. Many men contend that in retroversion a woman aborts at the end of three months.

By the Court:

Q. They are less apt to become pregnant? A. Yes.

By Mr. Semel:

40 Q. Is a miscarriage probable within three days after a retroversion has occurred? A. I do not

John B. Morrison, for Plaintiffs—Direct.

believe in a normal uterus, simply changing its position three days after an accident need of necessity cause an abortion; no.

Q. Suppose a woman figures in an automobile accident, as I have just explained to you, and suppose that for six weeks, or between six and seven weeks prior thereto, she has not menstruated and has gone beyond her menstrual period, would you say that such an accident would bring about a miscarriage? A. I cannot testify that it would. I can testify that it might.

10

The Court: Strike it out.

Q. Is it probable that a miscarriage will follow within two or three days of a traumatic injury of any nature, particularly being struck by an automobile and thrown a distance of fifteen feet? A. Well, I should say yes, that a woman who is pregnant, if she is struck by an automobile and thrown a distance of fifteen feet, it is probable.

20

Q. Very probable? A. I would say it is probable.

By the Court:

Q. It is probable they could be killed or have a leg broken and have a miscarriage besides? A. Yes.

30

Q. If you got the history in the case of a woman who had missed her menstrual period two weeks, a woman who had last menstruated six weeks before being struck by an automobile, and three or four days afterward begins to flow, would you say in all probability a miscarriage, if it were that, or the flowing was due to the injury she received? A. Yes, undoubtedly.

40

John B. Morrison, for Plaintiffs—Cross.

By Mr. Semel:

Q. Did you examine Mrs. Gee's back? A. No, she was quite nervous. I examined pictures taken of her back. She was so nervous at the time we were there that we were coming back, but did not do so.

10 Q. What did you find subjectively in the back? A. Subjectively she complained of a great deal of pain in the back.

Q. On which side? A. I think over the left side.

Q. What did you observe about her nervousness particularly? A. She was not hysterical, but particularly nervous.

20 Q. Were you able to observe the nature of that nervousness? A. No, because I only saw her once.

Q. Would you say that that nervousness could be the probable result of this accident? A. Oh, yes, undoubtedly.

Cross-examination by Mr. Harris:

Q. A woman may miss her period for two weeks without being pregnant? A. Oh, yes.

30 Q. It is very frequent that happens? A. Quite frequent.

Q. You described the chronic inflammation of the cervix or womb and that that condition might cause a miscarriage? A. Yes, sir.

Q. You found this woman had this condition? A. Yes, sir.

Q. It was an old condition, wasn't it? A. The laceration is an old condition. The ulceration need or need not be an old condition. The ulceration would be set up on the lacerated cervix.

Joseph Levin, for Plaintiffs—Direct.

JOSEPH LEVIN, sworn in behalf of plaintiff.

Direct examination by Mr. Semel:

Q. You are a practicing physician and surgeon of the State of New Jersey? A. I am.

Q. Practicing in Newark? A. Yes.

10

Q. Do you know Mrs. Gee? A. I do.

Q. When did you first get acquainted with her? A. At the end of November, 1928.

Q. What brought that about? A. She was in an automobile accident, and she called me the morning after she was hurt.

Q. What time was she hurt on that day? A. Sometime in the morning; I don't remember the exact time.

Q. What did you find her condition to be then? A. May I use my notes? 20

By the Court:

Q. Were they taken by you at the time? A. Yes, sir.

Q. Do you know when? A. They are just a few odds and ends.

Q. Keep them in your pocket until you get stuck. A. She was highly nervous and bruised on the left side of the body with pain over the collarbone and over the left wrist. She had an extensive abrasion under the chin. 30

Q. Were there any lumps? A. Sort of a bruise under her chin, and she complained of general aching and pain all over, and was very shaky.

Q. In shock, you mean? A. Not in shock, your Honor. Shock follows immediately. That would be the time she was injured.

Q. She was not in shock when you saw her? A. No, just shaking and nervous. 40

Joseph Levin, for Plaintiffs—Direct.

By Mr. Semel:

Q. What else did you observe? A. She had a black and blue mark on the left thigh.

Q. What else? A. She had a couple of teeth, from that partial plate she wore, broken off.

10 Q. What else? A. She complained of pain in the back.

Q. You said something about the collarbone. Tell us about that.

Mr. Harris: I object as leading.

The Court: The doctor already told us about that.

A. She complained of pain over the left collarbone.

20 Q. That is what you observed on your first examination? A. Yes, sir.

By the Court:

Q. You couldn't see the pain; you don't mean that? A. No.

Q. Just a composite picture you are giving us of your visit, the subjective and objective symptoms? A. Yes.

30 By Mr. Semel:

Q. Tell us the result of your examination. A. She was lying on the day bed in the living room quite ill at ease, and looked as if she was suffering some pain and discomfort, and on my examination I found she had a bruise under her chin and was tender over the collarbone, left collarbone, and left wrist, and she had a black and blue mark on her left thigh, and she told me that she had pain in her back and some tenderness there.

40

Joseph Levin, for Plaintiffs—Direct.

Q. What did you do then? A. I told her to rest, gave her a sedative and told her to rest, and I had her X-rayed shortly after that.

Q. Tell us the course of your treatment which you prescribed and gave her. A. The treatment I gave her was just to rest, because there was nothing there to sew up, and the only thing was to rest her general aches and pains. 10

By the Court:

Q. That was not all? A. I gave her a sedative to quiet her.

Q. That was the same treatment. You wanted her to sleep to quiet her nerves? A. Yes, sir.

By Mr. Semel:

20

Q. When was the next time you saw her after that? A. Once every day for about a week or so.

Q. What happened the second or third day you saw her? A. She called me and she told me that she was bleeding vaginally.

Q. When was that? A. About three or four days, and the insurance doctor examined her two or three days after the injury, and I examined her a day or so after he had examined her.

Q. You called on her? A. Yes.

30

Q. What did you observe? A. I observed that she was bleeding vaginally.

Q. What do you mean by that? A. Bleeding from the vagina.

Q. What did you do? A. I ordered her to bed and told her to rest.

By the Court:

Q. Wasn't she in bed? A. Yes, but I wanted to make doubly sure that she would do what I told her. 40

Joseph Levin, for Plaintiffs—Direct.

Q. How did you order a person to bed who was in bed? A. She wasn't exactly in bed.

Q. Where was she? A. Resting on a day bed.

Q. How was she dressed when you were there? A. She had a dress on.

10 By Mr. Semel:

Q. What was the cause of the bleeding, if you know? A. I will have to bring in the history of the case.

The Court: You may do that. You were the attending doctor.

A. I started to take her history and asked her as to her menstrual period and she told me that she
20 had been regular, but missed a period normally due two weeks prior to the time she began to bleed, and I asked her if she had been regular in her periods previous to that, and she said she had, and from what I found from her history I concluded that the woman must have been pregnant, and she was having an abortion.

Q. What made you think that rather than it was a delayed menstruation? A. Because she passed clots, and in an ordinary menstruation they
30 do not pass clots or pieces.

Q. Did you see the clots and pieces? A. Yes, sir.

Q. You saw no fetus? A. If there was, I didn't see it.

Mr. Harris: I think this question of pregnancy should be stricken out.

The Court: No, this doctor's diagnosis was made from the history of the case and what he saw.

40

Mr. Harris: Without a fetus?

Joseph Levin, for Plaintiffs—Direct.

The Court: Yes. He saw what he saw. The fetus may have been disposed of before he saw it. Proceed.

Q. How long did you continue to treat her? A. As a matter of fact she is still under my care. I see her occasionally. 10

Q. Are there any permanent injuries resulting from the accident so far as you know? A. Well, the injury to her back, for one.

Q. What injury is that you definitely determined? What is it? A. I think it is an injury to her back and sacroiliac joint.

Q. Would you say that is permanent? A. If it has not cleared up in the length of time which has elapsed between the time of the accident and today I would say it is permanent. 20

By the Court:

Q. You say if it has not cleared up. Has it? A. No, it has not.

By Mr. Semel:

Q. You know that definitely? A. Yes, sir.

Q. What other permanent injury would you say she has as a result of the accident? A. Her nervousness. 30

Q. Tell us about that. A. Well, she is extremely nervous and irritable, and I know that several times she had to be examined and I had to do an awful lot of coaxing on account of her irritability.

Q. What else? Did you make any tests to ascertain the degree of her nervousness? A. I have had enough chance to observe her. I have seen her several times. 40

Joseph Levin, for Plaintiffs—Direct.

By the Court:

Q. Have you made any tests of her for nervousness, Doctor? A. Nothing but her reflexes and they were hyper-active.

10 By Mr. Semel:

Q. Did you submit her to the Romberg test? A. No.

Q. In your opinion of the case can you tell whether her nervousness is permanent? A. From the history of the case I would say it was.

Q. So from your opinion of the case the nervousness is the result of the accident? A. No.

By the Court:

20 Q. Did you know her before? A. No.

Q. How long had you been practicing at the time, general practice? A. I started in May; about seven months.

By Mr. Semel:

Q. With reference to the uterine condition, would you say that that condition as you found it was permanent? A. Yes, unless it is corrected by an operation.

30 Q. Is it positively assured that an operation will correct the present condition? A. Well, I couldn't say absolutely, but there is a good chance that it could be.

Q. What is the uterine condition today, as you know it from your last examination? A. Her uterus is retroverted and she has a marked erosion, sort of a eating off of the lining of the neck of the womb, and it is red and raw, and there is a discharge there present.

40

Joseph Levin, for Plaintiffs—Direct.

Q. When was the first time you noticed that condition other than the retroversion? A. The first time I noticed the discharge was about a month or five weeks after the accident, when I examined her, and looking into the cervix I found this mucus present.

Q. Was that the first examination you made? 10

A. That was the first official examination.

Q. Did you find the retroversion at that time?

A. I do not think I did a manual examination—just looked at it.

Q. You did not examine to see whether there was a retroversion at the time of the miscarriage?

A. No.

Q. Did you find also a lacerated cervix at any time since the accident? A. Yes.

Q. When was the first time you observed that? 20

A. When I saw her; when I looked at it.

Q. You did not observe it when you examined her the first time? A. When I looked into it the first time I saw it.

Q. Could that lacerated cervix be the result of an injury? A. No, it is probably due to childbirth.

Q. How much will it cost to perform an operation to fix this condition?

Mr. Harris: I object. What condition? 30

Q. The retroversion. A. The cervix will have to be repaired.

By the Court:

Q. We are not concerned with that. I suppose no surgeon would fix one without the other.

Joseph Levin, for Plaintiffs—Direct.

By Mr. Semel:

Q. Can you estimate, Doctor, the reasonable cost for operating so as to correct the retroversion and distinguish from the cost of treating the cervix, if that is possible? A. An operation
10 would run, including hospital expense, between \$225 and \$250.

Q. Including a nurse? A. Providing she does not have a private nurse.

Q. How long in your opinion will she be confined? A. At least two weeks; that is in the hospital.

Q. After that? A. She will have a period of convalescence at home.

Q. How long will that be? A. In an uncomplicated case about four to six weeks after the
20 operation.

Q. How much is your bill for the service which you rendered Mrs. Gee for treatment in respect to these injuries? A. It will run about \$130.

Q. To date? A. Yes, about to date.

Q. That does not include any other treatment? A. No.

Q. Have you received any money on account? A. No, I have not.

Q. Nothing at all? A. Once or twice I received
30 some money.

Q. You say you will perform an operation which includes hospitalization for about \$225? A. Yes, to correct the uterine condition.

Q. In your opinion is this retroversion probably the result of the injuries she received? A. I couldn't say. I don't know the condition of this woman before she was injured.

Q. Assuming she had no retroversion before. A. It probably could be, but—
40

Q. That's all I want to know, whether it is probable. A. It is probable.

Joseph Levin, for Plaintiffs—Cross.

Cross-examination by Mr. Harris:

Q. And just as probably not? A. Yes.

Q. Isn't it more probable that it comes from childbirth, as you first testified? A. Not necessarily.

Q. It is not more probable? A. It is more 10
probable that it could come from childbirth.

Q. This condition of the cervix is a diseased condition, as described by some of the other doctors on the stand, Dr. Morrison? A. Yes, it is a disease.

Q. It is a chronic condition? A. Well, I wouldn't say exactly chronic, because I examined her in January, 1929, and did not find the same condition she has now.

Q. But it is getting worse all the time? A. 20
This particular condition, if not corrected, gets worse as time progresses.

Q. It is getting worse today? A. If it is not corrected it will.

Q. As time goes on she will get worse? A. Naturally. You can lead a horse to water but you can't make it drink.

Q. How many times did you speak to her about an operation? A. Four times.

Q. When was the first time? A. When I noticed she began having irregular periods for 30
an unreasonable length of time.

Q. How long ago was that? A. Probably three or four months after she started in to bleed.

Q. How often did you visit her then? A. I would say that was maybe once a week when she would call me officially, or if I was in the neighborhood I would drop in to say hello.

Q. Retroversion causes bleeding? A. It might.

Q. Does a diseased cervix cause bleeding? A. 40
It can cause bleeding.

Joseph Levin, for Plaintiffs—Cross.

Q. It does, doesn't it? A. Yes.

Q. Why do you say it can when you know it does? A. It may be something else that would cause it. It might not be due to the cervix.

10 Q. What else did you find in there which caused this bleeding? A. The fact that she had had a miscarriage.

Q. Would that continue to bleed forever? A. You can bleed for quite a long while.

Q. Would it bleed a year? A. Yes.

Q. Two years? A. It might.

Q. More so because of the cervix being diseased? A. It might.

By the Court:

20 Q. Did it? A. That I couldn't say, as far as the bleeding is concerned.

Q. Did you do anything about this miscarriage? A. I put her to bed.

Q. Anything else as a matter of fact? A. No.

Q. You found no necessity of curetting? A. I did find the necessity later on.

Q. Did you curette her? A. No.

By Mr. Harris:

30 Q. You told her to go to a specialist, didn't you? A. I needed an assistant.

Q. A specialist is an assistant? A. Dr. Morrison is a surgical specialist.

Q. You told her to go to a specialist? A. I didn't tell her. I told her I would take her to someone.

Q. What specialist did you take her to? A. I didn't take her to anyone.

Q. You didn't take her to a specialist? A. No.

40 Q. Why did you say that you took her? A. Did I say that?

Joseph Levin, for Plaintiffs—Cross.

Q. Yes. A. She came to my office and Dr. Singer examined her there.

Q. You did not take her to a specialist? A. He came to my office.

Q. Why did you say that you took her to your office? A. Because I didn't have a chauffeur to call for her. 10

Q. Who didn't have a chauffeur to take her there? A. I did not.

Q. Couldn't you get a taxicab? A. I had him come up to my office.

Q. Is he a specialist? A. No.

Q. Why did you say he was a specialist? A. I don't think I did, I took it back. I said I would have her see another doctor.

Q. Didn't you just say that you advised her to go to a specialist? A. I don't think I did. If I did I made a wrong statement. 20

Q. Are you making wrong statements about her bleeding? A. I am not. Are you insinuating that I am committing perjury?

By the Court:

Q. He is asking you. A. No.

By Mr. Harris:

Q. Did you make any wrong statements on the stand today? A. Not in my opinion, no. 30

Q. Did you make a wrong statement when you said this bleeding comes from the abortion or miscarriage rather than from the cervix being diseased? A. It is perfectly probable it could.

Q. Which is the more probable? A. That's hard to say.

Q. What is hard to say? About finding a diseased cervix there today? What is hard to say? A. Because I can see the cervix, but I cannot see inside the womb. 40

Joseph Levin, for Plaintiffs—Cross.

Q. Can't you examine inside this woman's womb with an instrument? A. You cannot tell what is going on inside.

Q. Aren't there instruments to permit you to examine her internally? A. Not to look inside.

10 Q. You don't know that there is any condition there that is probably causing this bleeding other than the cervix being diseased? A. No, I do not.

Q. You know that the cervix is diseased? A. That I can see.

Q. You know that causes bleeding? A. Yes, sir.

Q. If you did not see anything else and you saw the bleeding, as a doctor, what would you say that came from? A. I have been following this case up now for over a year and I ought to know where the bleeding comes from.

20 Q. Where does it come from? A. Partly from the inside and partly from the lacerated cervix.

Q. Now will you answer my previous question (question read as follows: "If you did not see anything else and you saw the bleeding, as a doctor what would you say that came from?") A. If that's all I saw and I didn't know anything about the case I would say it was coming from an eroded cervix.

30 Q. If you did not see anything in the woman you would still say it comes from that? A. I can't look up there.

Q. You do not see it if you do not look. A. It is perfectly possible it comes from there.

Q. It may be possible, but it could not be probable? A. I would say probable.

Q. Do you know the distinction between possible and probable? A. Yes.

40 Q. What is possible and what is probable? A. Probable, I should judge, you are more sure of what you are saying.

Joseph Levin, for Plaintiffs—Cross.

Q. What is possible? A. It might be so.

Q. And it might not be so? A. That's right.

Q. In this case, if you did not know that there was anything wrong with the woman as you say you do not know, and you know that the cervix is diseased, still you would say that the bleeding comes from the womb and not from the cervix? 10

A. From what I know of the case I have a right to say that the bleeding comes from the inside of the womb.

Adjourned to April 10, 1930, at ten o'clock
a. m.

SECOND DAY.

April 10, 1930. 20

Continued pursuant to adjournment.

Present, counsel as before stated.

JOSEPH LEVIN, recalled in behalf of plaintiffs.

Cross-examination (continued) by Mr. Harris:

Q. How long did you treat Mrs. Gee after the accident? A. I am still treating her.

Q. How long did you treat her continually after the accident? A. Well, for one week continually every day and then I would see her every other day and after that whenever the occasion demanded. 30

Q. In the period of a year and a half since the accident, a little over a year and a half, how many times did you see her? A. I must have seen her—well, I charged her for 35 or 40 times, but I have seen her much more than that.

Q. You did not charge for other visits, did you? 40
A. No.

Joseph Levin, for Plaintiffs—Cross.

Q. Were you called to her home by her especially on these other occasions? A. No, I happened to be in the apartment house or the neighborhood, and I dropped in to say hello to her.

10 Q. You weren't called there because of her health; it was because you were interested in her case? A. When I was in the neighborhood I dropped in anyway. There is no reason why I should not go down and say hello.

Q. You did not expect to be paid for saying hello, did you? A. I didn't charge her for that.

Q. How many times have you been called by her to her home to visit her since you were paid last? A. I wasn't paid.

20 Q. You were not paid at all? A. One or two visits, but the bulk of my bill has not been paid.

Q. When do you expect to be paid?

Mr. Semel: That is objected to as immaterial.

The Court: What is the materiality of that?

Mr. Harris: I will show that he has a contingency on the outcome of this case.

The Court: Ask him that.

30 Q. Are you going to be paid when this suit is over? A. I will be paid when she has the money to pay me.

By the Court:

Q. Suppose she doesn't win this suit? A. I will get paid anyway.

Q. The same amount? A. Yes, sir.

Q. Your services have nothing at all to do with this litigation? A. No, sir.

Joseph Levin, for Plaintiffs—Cross.

By Mr. Harris:

Q. How much do you expect to be paid? A. The amount of my bill.

Q. How much is that? A. About \$130.

Q. Altogether? A. Yes, sir.

Q. Including the \$117? A. That is because I saw her a couple of times after that, not exactly \$130, but somewhere in that neighborhood. 10

Q. How many visits did you make within the last six months? A. I couldn't say offhand.

Q. How many visits did you make before the last trial? A. All but about two, three or four.

Q. All but about three visits? A. Yes, sir.

Q. Since the last trial you made three visits? A. Yes, sir.

Q. Was it on the occasions when you were at the apartment house and dropped down to say hello? A. No, sir. 20

Q. Were you called there? A. Yes, sir.

Q. You examined her for the purpose of testifying here today, didn't you? A. I examined her because I was her physician.

Q. Didn't you examine her especially for the purpose of testifying here today? A. I had to know what I was talking about on the stand, didn't I? 30

Q. That is why you examined her? A. There were two purposes: one to know what I was talking about, and second, I am going to take some operative procedure in regard to Mrs. Gee's condition.

Q. But the main reason was because you were going to testify here today, isn't that the fact? A. No, sir.

Q. When did you examine her last? A. About three or four weeks ago.

Q. Where was that? A. At her home. 40

Joseph Levin, for Plaintiffs—Cross.

Q. What made you go there? A. Well, I had been talking to Mrs. Gee about having an operation done.

Q. You are still talking to her about it? A. Yes, sir.

Q. You have been talking to her for over a year and a half about having this operation performed?
10 A. Yes, sir.

Q. What is this operation? A. The thing that concerns me most now as far as she is concerned is to see if I can cure her of that inability to bear children.

Q. What kind of an operation would you have to perform? A. One would probably be to curette the lining of the womb, and the second to correct the diseased condition of the cervix, which,
20 in my opinion, prevents her from having children.

Q. In your opinion, the diseased condition of the cervix is what prevents her from having children? A. Yes, sir.

Q. That did not come from the accident, did it? A. I believe it did.

Q. The diseased condition of the cervix came from the accident? A. That is right.

Q. Didn't you testify yesterday that it came from a tearing of the womb when she was having children? A. I did not.
30

Q. You heard Dr. Morrison testify, didn't you? A. Yes.

Q. Didn't he say that is what it came from? A. I guess the stenographer will be able to clear you up better on that.

Q. (Question read.) A. I wouldn't say he said it or not.

Q. Did you ever see a case where an accident caused a diseased cervix? A. It is perfectly
40 probable.

Joseph Levin, for Plaintiffs—Cross.

Q. Did you ever see a case like that? A. I never had one in my experience.

Q. Why do you say it is probable? What makes you say that? A. The woman had an abortion which leaves the womb wide open to infection and the vagina, as a direct cavity of infection, carries the germ up, giving her inflammation of the lining of the womb, and the inflammation of the lining of the womb gives her a secretion, and this secretion as it comes out leaves the neck of the womb or the cervix in the condition Mrs. Gee had of erosion; a sort of raw area. 10

Q. Did you see her abortive fetus? A. No, I didn't see the fetus.

Q. You did not know she had an abortion, did you? A. Sure.

Q. You didn't see the fetus, but you know she had an abortion? A. The fetus might have been down the sewer. 20

Q. Did you see the fetus? A. No.

Q. How can you swear on the stand there then that she had an abortion? A. Because I am a doctor and I know what I am talking about.

Q. Does one doctor know any more than another doctor if he doesn't see the fetus, but can swear there was an abortion? A. When a patient gives me the history of having had regular periods and then misses a period, and then two weeks after missing that period she suddenly begins to pass pieces and clots, there is only one thing for a doctor to conclude, and that is that that woman has been pregnant and has had an abortion. 30

Q. Did you see these clots? A. Yes, sir.

Q. But you did not see the fetus? A. No.

Q. Isn't it possible that a woman could pass a period for two weeks without having an abortion? A. Yes. 40

Joseph Levin, for Plaintiffs—Cross.

Q. Haven't you seen women pass their periods for two or three weeks and then see clots without there having been an abortion? A. That is not very likely.

Q. Did you ever see it? A. No.

Q. Did you ever hear of it? A. No, sir.

10 Q. You never heard of it? A. No, sir.

Q. You knew Mrs. Goodwin before you knew Mrs. Gee, isn't that so? A. No.

Q. Isn't it a fact that Mrs. Goodwin sent you to Mrs. Gee? A. I never knew Mrs. Goodwin until I met Mrs. Gee.

Q. Whose apartment did you come to in the place she is now? Name some of the people. A. Mr. Hillman. About two. The other person I don't remember.

20 Q. You also had people in the other apartment where Mrs. Gee used to live, didn't you? A. That's right.

Q. Who did you go to there? A. The only one that I remember off-hand was a patient by the name of Murray.

Q. You never went to Mrs. Goodwin, never? A. I went to her once.

Q. When was that? A. When her little girl was born.

30 Q. How long ago was that? A. At least a year or more.

Q. Wasn't it more than a year and a half ago? A. No, since Mrs. Gee's accident.

Q. Who sent you to Mrs. Goodwin? A. Why, Mrs. Goodwin knew me.

Q. She knew you? A. Yes.

Q. Isn't it a fact that she called you up to go to Mrs. Gee's place? A. She did not.

40 Q. Your brother is attorney of record in this suit, isn't he?

Joseph Levin, for Plaintiffs—Re-direct.

Mr. Semel: I object, because I was substituted as attorney for the plaintiff long before this accident was tried.

Mr. Harris: If there was a substitution I never received a copy of it.

The Court: Yes, it was filed December 11, 1929. 10

Mr. Semel: I am willing to state for the benefit of the Court and jury that Dr. Levin's brother was attorney of record and he thought there should be another attorney to try the case and I was substituted in his stead.

The Court: Very well.

Q. Your brother still has an interest in this case, hasn't he? A. I don't know. 20

Q. You know if he has, don't you?

Mr. Semel: I object to that as improper cross-examination.

The Court: Allow it.

Q. You know if he has an interest in this case, don't you? A. He might have.

Q. You know he has. A. He might.

By the Court: 30

Q. Do not spar and do not waste time. You either know or you don't know. You know he has? A. Yes, sir.

Re-direct examination by Mr. Semel:

Q. In those visits you made since the last case, one of the visits was in the company of Dr. Condon, wasn't it? A. That's right.

Q. The doctor for the other side, at the request of the other side? A. Yes, sir. 40

John F. Condon, for Defendants—Direct.

JOHN F. CONDON, sworn in behalf of defendants.

Direct examination by Mr. Harris:

Q. Do you know that woman, Mrs. Gee, who was on the stand yesterday? A. I met her once.

10 Q. Did you examine Mrs. Gee at my request? A. I did.

Q. Where did you examine her? A. At my office.

Q. When was that? A. March 10, 1930.

Q. Will you tell us where you practice medicine? A. I practice at 686—

Mr. Semel: We will admit the doctor's qualifications.

20 Mr. Harris: I want to show the type of doctor he is.

A. 686 Mt. Prospect avenue, Newark.

Q. Tell us with what hospitals you have been connected and what your experience has been. By the way, how many years have you been practicing? A. Twenty-nine.

Q. What is your specialty? A. Obstetrics and gynecology, which means the diseases of women and maternity.

30 Q. Tell us with what hospitals you are connected and what your position is. A. Medical director of St. James in charge of the Department of Women and Obstetrics, and attending obstetrician at the City Hospital, Hospital for Women and Children, and attending obstetrician of the Presbyterian and Irvington General Hospitals.

Q. You say you examined this woman. Do you know the date? A. March 10, 1930.

40 Q. Who was present at the time of the examination? A. Dr. Levin and Dr. Rosenberg.

John F. Condon, for Defendants—Direct.

Q. Did you get the history of Mrs. Gee's case?
A. I did.

Q. Is your recollection clear on that or must you refer to your record? A. Fairly clear. I may have to refer to my record.

Q. How many women do you examine in a month or so? A. I have office hours three days a week and have an average of seven women a week in private practice. 10

Q. You make the examinations at hospitals? A. That depends. I see them every day.

Q. Tell us what you found on examination of Mrs. Gee. Tell us what parts you examined, how long your examination to each part took and what your finding was.

Mr. Semel: I object to the relating of any history. 20

The Court: He is not trying to. He can only tell us what he found. He is an examining doctor and the only exception to the hearsay rule is the attending physician.

Q. Tell us what you found. A. I made a gynecological examination.

Q. What does that mean? A. It means I confined my examination to her pelvic organs. I found the abdomen negative on palpation. The abdominal muscles were quite flaccid which would be expected in a woman who has had children. The pelvic examination consisted of palpation which showed no diseases on the outside. The vagina, the uterus was slightly relaxed, which you get from childbirth. On palpating with the fingers I found that she had a large, thickened cervix, which is the neck of the womb, and by putting my hand in the abdomen by palpation I was able 30 40

John F. Condon, for Defendants—Direct.

10 to map out the whole uterus. The rest of her organs were negative as to pathology or disease on palpation. My next examination consisted of inserting the speculum inside the cervix or mouth of the womb. I found that markedly diseased with a laceration across it and erosion, which bled at the slightest touch of gauze, and I would say that that erosion was about diameter of a half a dollar.

Q. What does this laceration come from? A. Laceration of the cervix is always caused by childbirth.

Q. Does it come from accidents? A. Never.

20 Q. What is this disease of the cervix caused by? A. Disease of the cervix is caused by infection where the laceration lowers the vitality of the structures and makes them susceptible to infection.

Q. Is that ever caused by accident? A. Never by accident unless some trauma by some instrument or something which was inserted into the vaginal canal injures the cervix.

Q. Something would have to go in? What? A. Absolutely, an instrument.

30 Q. Could it ever be caused by external trauma or injury caused by applying a blow on the outside of the body? A. Positively not.

Q. From her condition what would you say as to her being able to bear children? A. In her present condition she would not conceive, likely.

Q. Why wouldn't she conceive? A. Because of the chronic ulceration of the cervix the secretion blocks the cervical canal and the male parts cannot get entrance to the uterus. This is one of the commonest causes I find of sterility.

40 Q. What percentage of women have that? A. Some authorities say $33\frac{1}{3}$ per cent.

John F. Condon, for Defendants—Direct.

Q. Is that condition ever caused by accident?

A. Never has anything to do with it.

Q. Is it possible to be, or probable to be caused by an accident? A. I cannot conceive it.

Q. Will you give us a definite answer on the probability of whether or not such a condition, where a woman is not able to bear children on account of this condition you describe because of the disease of her cervix, whether such a condition could probably be caused by an accident or trauma, due to an accident where she is struck from the outside? A. No, sir. 10

Q. Did you examine her sacrum? A. No.

Q. You can read X-rays? A. I wouldn't want to qualify on the interpretation of X-rays.

Q. If an X-ray shows, as has been testified here yesterday, that the pelvis is perfectly normal and the sacrum is normal, there was no dislocation, that there was a slight curvature of the spine to the right and the woman complained of pains in her back, and knowing the condition of her cervix, what would you say as to what was the cause of this pain? 20

Mr. Semel: I object. The doctor not only refused to qualify with reference to the sacroiliac condition, but——

The Court: I will allow it. 30

Q. (Question read.) A. The cause of the pain was due to the diseased cervix.

Q. Would a woman with a diseased cervix have pain at any time when passing her menstrual period? A. Oh, yes.

Q. Having examined her and knowing of the condition of the cervix and knowing that she complains of having pain around her menstrual periods and knowing that she had this accident 40

John F. Condon, for Defendants—Direct.

where she had a blow from the outside of her body, what would you say would be the probable cause of the pains she suffers in her back during her menstrual periods? A. Due to the pathology of her pelvic organs, the diseased condition.

10 Q. Would it have anything to do with the trauma applied, or force that she met with in an accident applied to the outside of her body? A. I do not believe so.

Q. If a woman had a sacroiliac strain caused by a blow applied to the outside of her body could she stand on her feet, and even if assisted, walk into a hospital? A. I don't think I can answer that.

Q. Let it be put more specific. You were here yesterday while the case was going on? A. Yes.

20 Q. You heard it testified to that she was struck by an automobile, and you heard how she was struck. A. In the back?

Q. She was struck on the left side, if I remember, and was thrown for a distance of about fifteen feet, and she then was picked up, placed in an automobile and taken to the hospital. She was assisted out of the automobile, but was on her feet. She walked, assisted, into the hospital. It is now claimed that she has a sacroiliac strain
30 by reason of that blow. Could she, if she had a sacroiliac strain right after the accident and at the time she was walking into the hospital, could she stand on her feet and walk into the hospital? A. I think she could.

Q. When would she first experience that pain? Would it be immediately? A. That depends on the nature of the blow and what condition she was in at the time of the accident, whether she was conscious or unconscious.

40

Ethel Gee, for Defendants—Direct.

Q. If she received a sacroiliac strain and was thrown that distance, would she be conscious or unconscious? A. That sacroiliac strain is a confused term. I cannot get that.

Q. Tell us what it is. A. When you speak of a sacroiliac strain, the sacrum has one bone in the back, and on the other side is two, the ilium. Now, between the three bones there are joints, and if you strain them, which we find in childbirth, or labor, the strain, bearing down strain of the ligaments or joints, we call that a sacroiliac strain, but how a blow could do that I cannot get it in my mind. 10

Q. You have seen women with a sacroiliac strain? A. It is common.

Q. But is it most common? A. Whenever they have a severe labor, oversized baby, or instrument delivery, they usually complain of backache. 20

Q. Did Mrs. Gee tell you what the size of her children were? A. Oh, yes.

Mr. Semel: I object.

The Court: Objection sustained. That is the history. You cannot prove it by this man. It is hearsay.

Mr. Harris: May I for the moment call Mrs. Gee? 30

The Court: You can if she is here.

ETHEL GEE, recalled in behalf of defendants.

Direct examination by Mr. Harris:

Q. You gave birth to two children? A. Yes, sir.

Q. How many pounds did the oldest child weigh at childbirth? A. Nine pounds. 40

Ethel Gee, for Defendants—Cross.

Q. How many pounds did the next child weigh at childbirth? A. Almost eleven.

Q. How long were your labors during the time of the confinement of the first child? A. Not very long. I just don't know how long.

10 Q. In the case of the second child about how long? A. Say about five hours.

Q. In the case of the first child? A. I just told you I don't really know.

Q. Was it longer than the second labor? A. I don't know.

By Mr. Semel:

Q. Have you tried to refresh your recollection? Did it take more than five hours or less than five hours? A. More than five.

20 Q. About how long? A. I don't know.

Cross-examination by Mr. Semel:

Q. After your children were born did you ever experience any pain in your back at any time?

Mr. Harris: I object.

30 The Court: She has already testified that she did not have the backache before the accident, and that this condition that she described was since the accident, not before. I think she said that. If there is any doubt about it you may look it up.

By the Court:

Q. Did you have a backache before the accident? A. No, sir.

Q. You had no headaches before the accident except occasionally, is that right? A. Yes, sir.

Ethel Gee, for Defenants—Re-direct.

John F. Condon, for Defendants—Direct.

By Mr. Semel:

Q. Did you have any trouble or discharge or unusual bleeding from your privates at any time before the accident?

10

Mr. Harris: I object as not cross-examination.

The Court: Allow it.

A. No, sir.

Re-direct examination by Mr. Harris:

Q. You never did before the accident? A. Outside of the menstrual periods, you mean?

Q. Yes.

20

The Court: She said no.

JOHN F. CONDON, recalled in behalf of defendants.

Direct examination (continued) by Mr. Harris:

Q. What is the normal size for a baby? A. The average weight for males is seven pounds and females seven and a quarter pounds.

30

Q. What is the usual time of labor? A. The average for the first baby is twelve hours and the average for the second or other babies is five to seven hours.

Q. Knowing that this woman gave birth to a nine pound baby first and an eleven pound baby thereafter, would that have anything to do with the condition of her uterus? A. Oh, yes.

Q. What would be the condition that would result from the birth of these oversized children?

40

John F. Condon, for Defendants—Direct.

10 A. In an average sized child in a rapid birth you would injure the lining portion of the cervix so much so that there would be a tearing, and that tear would be in the structure; in other words, that is what we call the process of involution; that is, going from the pregnant stage of labor back to its condition as before. Some patients suffer what we call a sub-involution; that is, the uterus is not entirely restored to its normal size and condition and the laceration interferes with the circulation and sets up this chronic inflammation due to the trauma to the cervix.

Q. It has been testified that this uterus is slightly retroverted. A. The uterus was slightly displaced. I found a slight retro-displacement, but not retroversion; there is a big difference.

20 Q. What is the difference? A. The normal position of my hand would be this way (indicating) and if it was back like this (indicating) it would be retro-displaced, and if it was down like this, upside down, it would be retroverted.

Q. The condition of this uterus, is it turned upside down or just displaced from its ordinary position? A. Retro-displaced, not retroverted.

Q. Could that be caused by an accident? A. I never heard of it.

30 Q. Is it probable that such a thing could happen in an accident of this kind as described here? A. I think anything could happen in an accident.

Q. Is it a probability? A. A woman struck on the back and knocked fifteen feet, that it would throw her uterus back?

Q. Yes. A. It is improbable.

Q. Being struck on the side? A. That is improbable.

John F. Condon, for Defendants—Direct.

By the Court:

Q. What is the cause, doctor? A. Sub-involution of the diseased uterus comes from the woman's hard work, rapid labors and an oversized baby, and her organs are not in normal position.

10

By Mr. Harris:

Q. This woman testified that she was not accustomed to working until she moved to this apartment about three months before the accident.

Mr. Semel: I object. She didn't say that.

The Court: That was different work than what she had been doing. I think that there was testimony that this was an unusual situation she was called upon to do.

20

Q. You heard Mrs. Gee testify that she was doing work for other tenants in the house, washing, ironing, cleaning and scrubbing floors and never did that before she moved into this apartment, which was about three months before the accident; that when she moved into this apartment she started to do this work and worked from seven in the morning until nine or ten o'clock at night, and she was able to do enough work, the kind of work which would pay her \$30 to \$35 a week, and usually made \$3 to \$4 a day, which probably meant she worked every day. Would you say that the work that she had to do had anything to do with the pain in her back and the condition of her cervix? A. I think it would aggravate it.

30

Q. Would the fact that this woman had borne oversized children have anything to do with the pain in her back? A. Indirectly by the injury to the neck of the womb.

40

John F. Condon, for Defendants—Direct.

Q. Something was said about an operation on this cervix and also of the treatment to be performed. You are familiar with those operations?

A. Very.

Q. You perform many? A. Many.

10 Q. Is that a simple operation or a complex operation? A. Which operation are you speaking of, the cervix?

Q. Take the cervix first. A. Very moderate operation.

Q. How about the operation to the uterus? A. I did not see any indication of the necessity of operating on this uterus.

Q. You say it is not necessary? A. I couldn't see it from my examination.

20 Q. If there would be a necessity would you know? That is in your field, is it not? A. Yes, sir.

Q. You are the head of a hospital? A. Yes, sir.

Q. Are many operations of that nature performed in the hospital? A. Yes, sir.

Q. What is the usual charge of a hospital for an operation of that kind? A. The hospital charges?

30 Q. The hospital charge and also yours. A. The hospital charge would depend on the room the patient engaged, plus the operating room fee, which is around \$10. The pathology fee, which means the examination of the tissue, which runs around \$3, and the usual period of ten days in the hospital, about ten days; say that woman was in a \$5 room, which is a medium priced room, her expenses would be probably to the hospital \$63.

40 Q. What would you charge for an operation of that kind? A. That depends on the social position of the patient. If she was a woman who

John F. Condon, for Defendants—Direct.

couldn't afford to pay, it wouldn't cost her anything for an operation.

Q. You would do it for nothing? A. Yes, we do that every day.

Q. A woman of this woman's station in life, what would it cost? A. A woman of her social standing we would possibly put in the general ward, semi-private room, around \$2 a day, and the operation, if she could afford it, wouldn't be more than \$25. 10

Q. If she couldn't afford it you would do it for nothing? A. Yes, sir.

Q. The bleeding condition described as uterine bleeding, did you find any bleeding condition when you examined this woman? A. Yes, she was bleeding from an ulcerated condition. I caused it to bleed by touching it with gauze. 20

Q. Was there much pressure applied to make it bleed? A. No, I just demonstrated to her doctor that the bleeding was coming from the cervix.

Q. Is that considered uterine bleeding? A. The cervix is a part of the uterus, but it is not generally accepted as uterine bleeding; the uterine bleeding is inside the uterine canal.

Q. Was there any such condition? A. No.

Q. How long did it take you to examine her? A. She was in my office an hour and a half or an hour and a quarter. 30

Q. You examined her that period of time? A. Both an oral and physical examination.

Q. How long was the physical examination? A. Maybe twenty-five minutes.

Q. Is it probable that such bleeding could be caused by an accident? A. I cannot see it.

Q. There is some testimony here as to a miscarriage. In your experience, have you ever found women pass their periods of menstruation? 40

A. That is common.

John F. Condon, for Defendants—Direct.

Q. After they passed their period of menstruation, say, for a period of two weeks and then menstruated and small clots of blood came out, would that be a common condition? A. Will you repeat that, please?

Q. (Question read.) A. Yes.

10 Q. What are causes of women passing their menstruation? A. That can be delayed menstruation, or the most presumptive thing would be pregnancy.

Q. Should you find that a woman passed her period of menstruation and then passed blood two weeks after, small clots of blood, and you did not see any fetus, is it probable that a woman having passed this blood would have been pregnant, or is
20 is more probable that she had passed the period of menstruation without pregnancy? A. I do not believe that she was pregnant, from her history and examination.

Q. In the ordinary case where you do not see the fetus, is that a sign of pregnancy, the passing of a period? A. It can only be presumptive both ways. You cannot say positively unless you made a microscopic examination of the uterus to say whether pregnancy existed or not.

Q. Would you have to make a microscopic examination of the uterus? A. Yes, you would
30 have to get some evidence of conception.

Q. Could you tell by looking at it? A. Oh, no.

Q. In the first steps of a woman's pregnancy is she sick? A. The usual symptoms of early pregnancy at the end of the fourth week a woman is nauseated in the morning, what we call morning sickness, which can occur any time of the day, and that is the usual picture, but there are cases that do not have any symptoms.

John F. Condon, for Defendants—Cross.

By the Court:

Q. How large would the fetus be at that stage if there were a pregnant condition? A. It wouldn't be any larger I don't think than the size of a nickel.

10

By Mr. Harris:

Q. About how old was this condition you found there? A. I would call it chronic. I would say from the size and condition of the cervix it is hypertrophied and a thing that must have existed for years; possibly I would trace it to the birth of her last child.

Q. Could she become pregnant in such a condition? A. It is possible, but very improbable.

Q. We are not dealing with possibilities, Doctor. A. If you block the secretion, out of that cervix, of a healthy male, you will eliminate reproduction, because she would not become pregnant. You would have to remove the inflammatory condition of the cervix canal.

20

Q. And if it was not removed? A. She would remain sterile.

Cross-examination by Mr. Semel:

Q. How much do you say the fetus would be after two weeks? A. You would have to see it under a microscope.

30

Q. So small you could scarcely observe it with the naked eye? A. Yes.

By the Court:

Q. Six weeks we are talking about. A. At the end of six weeks the size would be about the same as a robin's egg.

40

John F. Condon, for Defendants—Cross.

By Mr. Harris:

Q. If a woman could not become pregnant and usually has a delayed menstruation, it is usually customary for that menstrual flow to be unclotted, isn't it? A. Not necessarily.

10 Q. I am talking of usually. A. No, most women clot at menstrual time.

Q. All of them? A. I said most women.

Q. Is it customary in a case of menstruation for women to clot? A. Yes, a virgin is troubled by clotting in passing the cervix.

Q. It is not uncommon in every woman to have a normal unclotted flow though, is it? A. I believe every menstruation clots. I believe so, because it is blood and it clots.

20 Q. Isn't it a fact that ordinarily in a great number of cases women do not generally clot when they flow normally and have menstruation normally? A. Normal menstruation or any bleeding will finally clot.

Q. I am asking if it is not the usual thing that when a woman menstruates normally and without delay that there should not be any clotting? A. I would not say that, no.

30 Q. Have you ever seen a menstruation which was normal in the sense that it did not clot? A. I never saw a menstruation.

Q. You never had the opportunity to study a woman who brings a menstrual condition to you? A. Yes, but they don't come while they are menstruating.

Q. You treat women's diseases and are a specialist in women's illnesses? A. Yes.

Q. Menstrual troubles and sickness and disorders are quite common among women? A. Yes.

40 Q. They come to men like you? A. Yes.

John F. Condon, for Defendants—Cross.

Q. Yet you have never had a woman come to you while she was menstruating? A. No, if they did I would send them home until it was over.

Q. You would not treat them? A. Not during that time.

Q. You really haven't paid any attention to cases of menstruation, have you? A. Consider- 10
able.

Q. You haven't examined the menstrual flow, have you? A. No doctor examines a woman while she is menstruating.

Q. No doctor examines a woman while she is menstruating? A. That is not customary.

Q. Not when she comes to see a doctor because her menstruation is giving her trouble or bothering her or causing pain? A. No. My practice is to examine in between periods. 20

Q. You haven't had as much experience in matters of this kind as you would care to have the jury believe, have you? A. I think I have had plenty of experience.

Q. You haven't had any experience with sacroiliac matters, have you? A. Oh, yes I have. Not as an X-ray expert.

Q. Not as an expert? A. No, not as an X-ray expert.

Q. How many cases of sacroiliac sprain have you had in your years of experience? A. I never kept statistics on sacroiliac sprains, but it is common practice to examine different women, and some have sacroiliac pain and we treat them for that immediately. 30

Q. Did you ever hear of such a thing as sacroiliac sprain coming from trauma? A. I never heard of it except in here.

Q. You never heard of it except here? A. That's all. 40

John F. Condon, for Defendants—Cross.

Q. Although for twenty-nine years you have been paying attention to sacroiliac conditions brought about by women bearing children? A. Yes.

Q. Yet you never heard of a sacroiliac sprain coming from an injury? A. Never.

10 Q. You wouldn't say unqualifiedly there is no such thing as traumatic sacroiliac sprain, would you? A. I wouldn't say there wasn't, certainly not.

Q. Have you ever heard of a traumatic retroversion? A. I heard it in court twice and found it once mentioned in literature, but I never had any personal experience with it.

Q. You never had any experience with it? A. I don't believe there is any such thing.

20 Q. Have you ever had any experience along that line? A. Never.

Q. Isn't it a fact that the retroversion of the uterus is known among women particularly as either a misplaced womb or a womb that is out of place? A. No, sir, that is wrong.

Q. What do they mean by that? A. By misplaced womb?

Q. Yes. A. It could be misplaced forward, sideways or backward or down.

30 Q. When they talk of the womb they mean the uterus? A. Yes.

Q. The uterus is not held in any position in a woman's body, is it? A. Yes.

Q. By what? A. Eight ligaments suspended there.

Q. What causes the womb to be misplaced? A. It is commonly—do you mean backward retroversion?

40 Q. Yes, retroversion. A. The two classifications of retroversion of the uterus are congenital which

John F. Condon, for Defendants—Cross.

happens in the development of a child and the acquired retroversion from childbirth.

Q. Any other causes? A. That is the only cause I am familiar with.

Q. That is the only cause you are familiar with? A. That's all.

Q. You wouldn't want to say it could not be 10
occasioned by trauma or injury of some kind?

A. You would have to show me the case.

Q. Would you say so? A. No.

Q. If the authorities on it say there is? A. There isn't any authority.

Q. You never heard of a woman having a misplaced womb as the result of a fall downstairs? A. Never.

Q. You never heard of that? A. No, never.

Q. Do you want to say from your examination 20
of this woman that the pains in the sacroiliac region have not been caused by this woman being thrown fifteen feet? A. From my examination what I found, this woman suffers from backache due to the pathology in her pelvis.

Q. You wouldn't say that she had a backache because she had borne an eleven pound child, would you? A. Yes.

Q. Tell us, if this woman is suffering from backache from her eleven pound child, who at the 30
time of injury was two or three years old, how she was able to do heavy housework from seven in the morning until nine at night. A. We find many women coming to our clinics who are hard working and still keep on working.

Q. They do not work continually, do they? A. They seem to.

Q. They cannot work six days a week. A. Some do.

Q. The majority of them cannot if they have a 40
backache? A. I believe the majority continue to work.

John F. Condon, for Defendants—Re-direct

Q. Is it the usual thing for a woman who gives birth to a nine pound baby to have a backache constantly from it? A. It depends on the kind she has.

Q. Suppose she had the birth of a nine pound child which took only five hours of labor, which is natural. A. Yes.

Q. Would you say a woman who is able to bear a nine pound child in five hours would have a back condition? A. It will show then if she has slow labor.

Q. Isn't it a fact it is quite natural for a woman to have nine and eleven pound babies? A. No, it is not, it is an exception.

Q. Isn't it a fact that women today have eight and nine pound babies because the doctor puts them on a diet? A. That is theoretical.

Q. Isn't it practical? Isn't it general and the usual thing? A. No.

Re-direct examination by Mr. Harris:

Q. Tell us on what authorities you rely in giving your testimony in this case.

Mr. Semel: I object as not proper re-direct.

The Court: I will allow it.

30 A. From my own experience I would refer to men like Crossin of St. Louis University, Culverson of New York and professor at Harvard. I think I have the March edition of the Journal of the College of Obstetrics, March, 1930, this last month.

Q. Do those authorities bear out what you say about these pains and the condition of this woman?

Mr. Semel: I object.

The Court: I will allow it.

40 A. They do.

Albert B. Rosenberg, for Defendants—Direct.

ALBERT B. ROSENBERG SWORN in behalf of defendants.

Direct examination by Mr. Harris:

Q. Tell us how long you have been practicing medicine. A. Practicing in this state since 1924. 10

Q. Tell us what experience you have had in the practice of medicine and also what hospitals you are connected with. A. Resident physician at the Metropolitan Hospital in New York and instructor and assistant professor at the New York Homeopathic College and Flower Hospital. Attached to Mount Sinai Hospital in New York and on the gynecological service attached to the Hospital for Joint Diseases in New York, on the orthopedic service, and recently on the staff of Beth Israel Hospital on the gynecological service. 20

Q. What does that mean? A. Gynecology is the study of the diseases of women.

Q. How many women have you examined a week on this gynecological service you speak of?

A. I judge fifty to sixty women.

Q. You have examined Mrs. Gee at my request?

A. I have.

Q. How many times did you examine her? A. On three occasions. 30

Q. When was the first time you examined her?

A. In November.

Q. What year? A. May I refer to my notes?

By the Court:

Q. Were they taken by you as your own memoranda? A. Yes, your Honor.

The Court: You may refer to them if you need to. 40

Albert B. Rosenberg, for Defendants—Direct.

The Witness: Yes. I examined her the first time on the 24th of November, 1928.

By Mr. Harris:

Q. When was the second time? A. I examined her on the 1st of January, 1929.

10 Q. When was the third time? A. March of 1930.

Q. Where was that? A. The office of Dr. Condon in the presence of Dr. Levin and Dr. Condon.

Q. Tell us what the condition of Mrs. Gee was the first time you examined her. What you found.

A. I found she had a contusion of the left jaw, contusion of the left wrist, left clavicle, posterior chest, left thigh and a broken plate, two teeth were broken.

20 Q. When you say "plate" they were false teeth? A. Yes, sir.

Q. She showed you that? A. Yes, sir.

Q. Did she have them in her mouth? A. I just don't recall.

Q. Is there anything else she complained of at the time? A. Nothing.

Q. That was on the 24th of November? A. Yes, sir.

30 Q. Do you know how many days before that the accident happened? A. Yes, four days.

Q. Did she complain to you on that occasion of having had uterine bleeding? A. She did not.

Q. Did she complain of having had a pain in her back? A. No, except the one in the chest.

Q. I am talking of her back. A. Low down?

Q. Yes. A. No.

Q. When you say chest, what do you mean? A. In the thoracic cavity in the chest wall.

Q. Did she have any bandages on? A. No.

40 Q. What was the nature of these injuries you found on her abdomen? Were they severe or

Albert B. Rosenberg, for Defendants—Direct.

slight? A. The abdomen was negative, no injury to the abdomen.

Q. Were there any abrasions? A. No abrasions, just contused areas.

Q. What is a contusion? A. Just from a blow causing a discoloration of the skin.

Q. In plain English is that what they commonly called a black and blue mark? A. Yes, sir. 10

Q. Did you examine her reflexes? A. Yes. They were negative.

Q. When you say negative what do you mean, normal or abnormal? A. They were normal.

Q. Did you examine her joints? A. The joints moved freely.

Q. Did she tell you at that time that she had had a miscarriage? A. She did not.

Q. Did they have X-rays taken at that time? A. They did not. 20

Q. When was the first time you saw the X-rays? A. I never saw any X-rays.

Q. They never showed you any X-rays? A. No, sir.

Q. Can you read X-rays? A. I have read a considerable number of them, yes.

Q. I show you an X-ray which has been marked Exhibit P-1. A. Yes.

Q. And I ask you to read that and tell us what that shows. A. May I have the report? 30

Mr. Semel: I object.

The Court: Sustain the objection.

A. I want to check the number.

By the Court:

Q. Assuming that is the X-ray of this woman, Mrs. Gee, what do you say that X-ray shows? A. This appears to be a normal sacrum. 40

Albert B. Rosenberg, for Defendants—Direct.

Q. Point out what part the sacrum is. Come down in front of the jury and hold it between the jury and the light. A. This is the sacrum bone as it sets on this bone here known as the ilium, and this comes in in this wise (indicating).

10 Q. What do you say in respect to the spine? Is it twisted or curved in any way? A. I cannot testify as to that because I was not present at the time the X-ray was taken to see the position the woman was placed in at the time it was taken.

Q. Assuming the X-ray was taken properly and assuming that the camera lens was properly applied what is the position of the spinal column? A. There seems to be a slight convexity toward the right side.

20

By Mr. Harris:

Q. Did you get a history of this accident? A. I did.

Mr. Semel: I object to any history except that received by the attending physician.

The Court: He has not asked any questions about that as yet.

30

Q. This curvature of the spine that you speak of there, could that be caused by a trauma or blow to the left side of a person's body?

Mr. Semel: The question is objected to as leading.

By the Court:

40 Q. Is it probable that may have been caused by that? A. The bending is so slight I hardly think it possible.

Albert B. Rosenberg, for Defendants—Direct.

Q. Is it probable? A. Anything is probable.

Q. You mean possible. I am talking of probabilities. A. It is improbable.

By Mr. Harris:

Q. Do you know the distinction between possible and probable? A. Yes, I think I do. 10

Q. If you knew that this woman, Mrs. Gee, was in the habit of working from seven in the morning until nine or nine-thirty at night, doing housework, bent on her knees, bending with washing and ironing, and then saw that X-ray plate and also know that she had this accident, would you say it was more probable she had curvature of the spine you see there from the work she was doing or from the accident? 20

Mr. Semel: I object.

The Court: Objection sustained.

Q. Leaving out the accident part, if you know that she did this work from seven in the morning until ten o'clock at night is it probable that the curvature of the spine could be caused by that kind of work? A. Yes, that being on the right side there is a tendency toward it.

Q. Why? A. Most people are righthanded. 30

Q. If they are righthanded what does that mean? A. The brunt of the work is placed on the right hand.

Q. That would probably cause a curving of the spine? A. Yes, it is so slight it is insignificant.

Q. You heard this woman testify yesterday? A. I did not.

Q. This woman complained of a sacroiliac strain and pain in the back. Would this curving of the spine have anything to do with the pain in the back? A. I cannot answer that question. 40

Albert B. Rosenberg, for Defendants—Direct.

Q. There is no dislocation there, is there?

Mr. Semel: I object. I do not think that counsel should lead.

10 The Court: Do not lead. The doctor said from an examination of this plate it is normal except for this slight deviation of the spine. Am I right?

The Witness: Yes, which is insignificant.

Q. If the pelvis is shown to be normal on the X-ray does that indicate the condition of the other organs around the pelvis? A. I do not get your question.

By the Court:

20 Q. The X-ray only shows the bony structure?

A. Yes, sir.

Q. The X-ray would only show bony structure?

A. Yes.

By Mr. Harris:

Q. You examined this woman a second time. How long after the accident was that? A. That was on the 1st of January, 1929.

30 Q. Over a year ago? A. Yes, sir.

Q. Where did you examine her? A. At her home.

Q. Where was she at the time? A. In the living room of the apartment. Dr. Levin was there and we examined her together, that is, Dr. Levin and myself.

Q. What examination did you put her through? A. We did a bi-manual vaginal examination.

40 Q. What do you mean by a bi-manual vaginal examination? A. The inserting of the index and little finger of the right hand into the vagina and the left hand palpating the abdomen.

Albert B. Rosenberg, for Defendants—Direct.

Q. What did you find her condition when you did that? A. I found nothing wrong gynecologically.

Q. When you say that what do you mean? A. The organs, the uterus and the organs adjacent to the uterus were normal.

Q. Did you use any light or look in? A. Yes, we had a light. 10

Q. Did you look in? A. Yes, we inserted a speculum and then viewed the vaginal cavity including the cervix of the uterus.

Q. When you examined the cervix of the uterus did you see a laceration?

The Court: Do not lead.

Q. What did you find? A. I found a marked endo-cervicitis. 20

Q. What is that? A. By that is meant an inflammation involving the neck of the womb and in the cervical canal there was a plug of mucus.

Q. Did you remove that plug of mucus? A. I didn't know it was there.

Q. You examined her body too at that time? A. No, it was just in connection with the gynecological examination.

Q. Did she complain of any other injuries at that time? A. She did not. 30

By the Court:

Q. What was the cause of what you found, in your opinion? A. Chronic irritation and inflammation of the neck of the womb.

Q. What caused that, in your opinion? A. Childbirth.

Albert B. Rosenberg, for Defendants—Direct.

By Mr. Harris:

Q. You knew the woman had borne a nine pound child the first time and an eleven pound child the second time——

Mr. Semel: I object to that as leading.

10

The Court: Objection sustained.

Q. It was testified that this woman had borne a nine pound child and an eleven pound child. A. Yes.

Q. The period of labor the second time was five hours and the first time she didn't know how long, but longer than that, and then when you examined this woman's uterus you say you found the endo-cervicitis. Was the fact that she had borne these
20 children in such a period of time, would that have any effect upon the uterus and the condition of the uterus and cervix? A. Yes, it would.

Q. Could such condition as you found come from an accident? Is it probable that such condition would? A. No, sir.

Q. What was the condition of the uterus in reference to its position? A. The uterus appeared to me in my estimation to be normal.

30 By the Court:

Q. In position. A. It was in position. It was not completely anteverted, anteflexed.

By Mr. Harris:

Q. What does that mean? A. The normal position of the uterus is what we call anteversion, tipped forward with just a slight twist, and after pregnancy the uterus just sort of comes up a bit due to the fact that during pregnancy the womb
40 has markedly increased in size and with the advent

Albert B. Rosenberg, for Defendants—Direct.

of labor the womb, the support of the womb is tightened, and the result is that the womb by necessity compresses and contracts.

By the Court:

Q. Therefore, after childbirth the uterus is not in the original position, is that what you mean? 10
A. Yes.

Q. For a woman who had borne a child this was normal? A. Yes.

Q. What would you say would be her physical condition because of what you saw? Would she have pain or would she not, and if so where? A. She ought have no pain.

By Mr. Harris:

Q. Would she have pain during her menstrual periods? A. Yes, due to the inflammation increasing during the course of menstruation. 20

Q. Where would those pains be? A. In the uterus itself.

Q. Would she have pain anywhere else? A. No, sir.

Q. This condition you found there in the cervix of the uterus, does that cause a bleeding condition at any time? A. Yes, sir.

Q. Would the fact that her husband performed matrimonial duties have any effect on it? A. It would cause her pain. 30

Q. Would it be very painful? A. I imagine it would. I don't know.

Mr. Semel: I object.

The Court: Do not lead.

Q. What would be the effect of such relationship with reference to the bleeding condition? A. I think it would cause it to increase. 40

Albert B. Rosenberg, for Defendants—Direct.

Q. It was testified to that this woman has this condition and passes blood at periods other than normal and that she is highly nervous. Would the fact that she passed blood have any effect on her nervous system? A. I think it would have an effect on her nervous system.

10 Q. What effect would it have? A. It would tend to increase the nervousness.

Q. You examined her you say at Dr. Condon's office. A. Yes, when Dr. Condon and Dr. Levin were there.

Q. Is her condition any better or worse? A. It is worse so far as the endo-cervicitis is concerned.

By the Court:

20 Q. That is worse? A. Yes.

By Mr. Harris:

Q. What is causing the aggravation of her condition? A. In my opinion the fact that there has been no treatment.

Q. Has her nervous condition become better or worse since the last time you examined her? A. I do not think it is any worse.

30 Q. If this woman was struck on the left side by an automobile and thrown a distance from where you are sitting to here (indicating) a distance of fifteen feet, and after that she was taken to the hospital where she was treated for some contusions and they did not put any bandages on her and she went home and went to bed, and then three or four days after she showed some blood clots; she had passed the period of menstruation for a period of two weeks and there was no visible fetus, would you say it was probable she had a mis-

40 carriage? A. No, sir.

Albert B. Rosenberg, for Defendants—Cross.

Q. Is it usual for women to pass their menstrual periods? A. Yes.

By the Court:

Q. Without being pregnant? A. Yes.

Cross-examination by Mr. Semel:

10

Q. When you examined Mrs. Gee on the 24th of November, 1928, did you find any condition of endo-cervicitis? A. I didn't examine her gynecologically.

Q. You did not? A. No.

Q. When did you examine her gynecologically? A. The 1st of January, 1929.

Q. Did you find endo-cervicitis at that time? A. I did.

20

Q. Did you find any discharge at that time? A. I did.

Q. Did you find any bleeding at that time? A. There was no bleeding.

Q. Any evidence of bleeding? A. No, sir.

Q. Are you sure about that? A. Absolutely.

Q. You say you found no evidence of bleeding at all? A. No, sir.

Q. Did you find any erosion at that time? A. I did.

30

Q. What did you mean when you said on direct examination that you found that there was nothing wrong with her, that she was absolutely normal, if you found the erosion? You wouldn't say she was normal in that case, would you? A. On the first examination?

Q. I didn't know what examination you referred to. A. I said that she was gynecologically negative. I didn't make a gynecological examination on my first visit to the Gee home, but on my

40

Albert B. Rosenberg, for Defendants—Cross.

second visit I found the endo-cervitis, the erosion, the mucus plug and the discharge.

Q. You say that you never heard anything at all about any miscarriage from either Dr. Levin or from her? A. Dr. Levin called me on the 'phone and told me she was bleeding.

10 Q. Bleeding from where? A. The vagina.

Q. He told you that she had a miss, didn't he? A. I don't recall. He told me that she had uterine bleeding.

Q. That was on the 1st of January? A. Yes, sir.

Q. You went up there then? A. Yes, sir.

Q. She was bleeding when you got there? A. No, sir.

20 Q. Then, why if she was not bleeding did you examine? A. Because Dr. Levin called me and told me that she was, after I consulted with him.

Q. Was there a retroversion or misplacement when you examined Mrs. Gee together with Dr. Condon? A. There was no retroversion.

Q. Any misplacement? A. No.

Q. She was absolutely normal then? A. She was.

Q. Then, Dr. Condon was wrong when he said there was?

30 Mr. Harris: I object to that.

The Court: Objection sustained.

Q. This curvature you say is very slight? A. Yes.

Q. You say the curvature might be due to hard work? A. Yes.

40 Q. Would you want to say that three or four months of hard work would bring about that curvature as you found it on the X-ray plate in an otherwise normal, healthy person? A. Yes, I think that would be a natural sequence.

Albert B. Rosenberg, for Defendants—Cross.

Q. Have you had any experience in sacroiliac matters? A. Yes.

Q. Is it or is it not a fact that if a person has a sacroiliac strain which causes muscle spasm that they are very likely to favor the spine by reason of those spasms—I do not mean favor the spine on one side or the other—in order to lessen the pain and thereby bring about a curvature? A. I didn't get your question. 10

By the Court:

Q. The question is this: If a person has a sacroiliac strain— A. If there was a sprain, not strain.

Q. In the sacroiliac joint, would the tendency be for a person to so hold the spine that it would cause it to twist? 20

Mr. Harris: Your Honor means sprain?

The Court: No, strain.

(Argument.)

The Court: Change the question to sprain then, Doctor.

A. What was the question?

Q. (Question read.) A. I don't understand it.

By Mr. Semel: 30

Q. Did she complain about a pain in the back?

A. What part of the back, what side?

Q. Right side. A. No, sir.

Q. Didn't you testify at the last trial that in your examination of her you found contusions of the back? A. In the posterior chest wall.

The Court: He said so today, that her back was contused. 40

Albert B. Rosenberg, for Defendants—Re-direct.

Q. Would that cause any pain in her back? A. Yes.

Q. So, she did complain about a pain in the back? A. Yes.

Re-direct examination by Mr. Harris:

10

Q. What part of the back is that? A. The posterior chest wall.

Q. Is that the sacroiliac region? A. No, sir.

Q. Is that far away from the sacrum? A. Quite a distance.

Q. Point it out to the jury.

The Court: He has already done that.

A. Down here (indicating).

20

SIGMUND MOSS, one of the defendants, sworn in his own behalf.

Direct examination by Mr. Harris:

Q. You are the gentleman who was driving this car at the time of the accident? A. Yes, sir.

30 Q. You went to the hospital with Mrs. Gee? A. Yes, sir.

Q. How long was she at the hospital? A. A little over two hours.

Q. When she came out of the hospital was she assisted out, carried out, or did she walk out? A. No, walked herself, followed by myself and two other gentlemen.

Q. Did you hold her or the other gentlemen hold her? A. Not going down.

40 Q. Did they hold her at all after coming out of the hospital? A. No.

Sigmund Moss, for Defendants—Direct.

Q. She walked on her own feet? A. On her own feet.

Q. Where did you take her? A. Down to the Sixth Precinct.

Q. Did she walk into the Sixth Precinct or was she carried in? A. Walked in.

Q. When she came out of the Sixth Precinct, 10
how did she get out? A. Walked out.

Q. Where did she go? A. I took her home.

Q. In what? A. My car.

Q. When you got home did you visit her after the accident? A. Yes, sir.

Q. How many times did you visit her? A. Four or five times at her house.

Q. When you came to her home, when was the first time? A. The next morning after the accident. 20

Q. Where did you find her? A. In the kitchen.

Q. How was she; dressed? A. Yes, dressed.

Q. What was she doing? A. Giving one child something to eat.

Q. Did you visit her again? A. Yes.

Q. When? A. The next morning.

Q. Where did you find her? A. The living room.

Q. How was she dressed? A. In a house dress. In the kitchen I found her the second day. 30

Q. What was she doing? A. Sorting clothes.

Q. When did you visit her the next time? A. The third time?

Q. Yes. A. The third day.

Q. Where did you find her? A. In the living room.

Q. How was she dressed? A. House dress.

Q. Did you visit her again? A. Yes.

Q. Where did you find her? A. In the living room also. 40

Q. How was she dressed? A. The same way.

Sigmund Moss, for Defendants—Cross.

Cross-examination by Mr. Semel:

Q. Did you testify at the last trial that when you hit her you hit her so hard you thought you killed her?

Mr. Harris: I object.

10

The Court: Objection sustained as not cross-examination.

Q. July 3rd, how did you get in the house? A. I rang the bell and there was a screen door there.

Q. The back door? A. That is the only door I saw. I think it is the main door. She lived in the basement and she came over to the door and opened it for me.

Q. I was wondering where the door was. A. She has a screen door in the basement to her apartment.

20

By the Court:

Q. This is an apartment house? A. Yes, sir.

Q. The superintendent's quarters, apparently, were in the basement? A. Yes, sir.

Mr. Semel: July 3rd, then she must have had a door in the living room or the dining room, off the hallway.

30

The Court: I never called on the lady.

DEFENDANTS REST.

Ethel Gee, for Plaintiffs—Direct—Cross

ETHEL GEE, one of the plaintiffs, recalled in her own behalf in rebuttal.

Direct examination by Mr. Semel:

Q. Did Mr. Moss visit you five days after the accident? A. He visited me some, I don't know how many. 10

Q. On the first morning after the accident did he find you sitting on the couch dressing one of the children?

The Court: Feeding, in the kitchen.

By the Court:

Q. Did he find you in the kitchen feeding your child? A. No, and he knows that too. 20

Q. On the second time did you go to the door to let him in or on any of the days that he came? A. No, I had a woman there.

By Mr. Semel:

Q. Did you go to the door yourself at any time to let him in? A. No.

Cross-examination by Mr. Harris:

Q. Did you talk to him any time when he came there? A. Sure. 30

Q. Where were you each time he came? A. On the couch.

Q. Were you dressed? A. I was dressed laying down.

Q. Did you have your house dress on? A. No.

Q. Was the woman there when he came? A. Yes.

Q. Is the woman in court today? A. Yes.

Q. Weren't you in the kitchen with your husband? A. No, my husband was not there. 40

Joseph Levin, for Plaintiff's —Direct—Cross.

Q. Was your husband there when he was there?

A. No, he wasn't there at the time. He was always called.

Q. Was he ever there when he came? A. He was called.

10

JOSEPH LEVIN recalled in behalf of plaintiffs in rebuttal.

Direct examination by Mr. Semel:

Q. When was the first time you found erosion in Mrs. Gee? A. I saw slight evidence of it when I examined her on January 1, 1929, when I saw the mucus plug there.

20

Q. Did you seek for anything of that kind before?

By the Court:

Q. Was that your first vaginal examination?

A. Yes, sir.

By Mr. Semel:

Q. You say you found slight evidence of it then?

30 A. That's right.

Q. How old was it at that time? A. From my examination it must have been a recent thing.

Q. What in your opinion was the cause of it?

A. In my opinion that miscarriage she had a few weeks prior to that.

Q. Was the cause of this erosion? A. Yes, sir.

Cross-examination by Mr. Harris:

Q. Did you ever hear of a miscarriage causing an erosion of that kind? A. It is perfectly probable.

40

Joseph Levin, for Plaintiffs—Cross.

By the Court:

Q. Did you ever hear of it? A. No.

By Mr. Harris:

Q. Did you ever see one? A. No.

Q. How do you know it is perfectly probable? 10

A. I am a doctor and I ought to know.

Q. Does a doctor know everything that it perfectly probable?

Mr. Semel: I object.

The Court: Objection sustained.

Q. Have you ever seen it in any authority you ever consulted? A. I do not make a practice of specializing in gynecology so I do not have much occasion to refer to authorities on that. 20

Q. You never saw it in any authority? A. I didn't look for it.

By the Court:

Q. The question was, you never saw it? A. No, sir.

By Mr. Harris:

Q. How do you know it is probable when you never saw or heard of it and never saw an authority? Didn't you say it is probable? A. The erosion is due to the irritation or secretions which are coming down from the womb into the cervical canal and these secretions in my opinion are due to an infection in the uterus following the miscarriage. 30

PLAINTIFFS REST.

John F. Condon, for Defendants—Direct.

JOHN F. CONDON recalled in behalf of defendants in rebuttal.

Direct examination by Mr. Harris:

- 10 Q. You heard this last question I put to Dr. Levin about this condition of the cervix or the erosion as to how such a thing happened, that it might be caused by——

By the Court:

Q. Would you say that this condition was caused by the erosion due to the miscarriage? A. No, sir.

By Mr. Harris:

- 20 Q. Have you ever seen it in all of your experience? A. Never.

DEFENDANTS REST.

Mr. Harris sums up for defendants.

Mr. Semel sums up for plaintiffs.

The Court charges the jury as follows:

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Charge.

PORTER, J.:

- 40 On the 20th of November, 1928, there was an automobile accident in which Mrs. Gee was hurt, and that automobile was being driven and operated by Sigmund Moss. Sigmund Moss and Sarah Moss are being sued by Ethel Gee and James Gee to recover the damages that they have both suffered and will suffer because of the negligence of the Mosses. One of the Mosses evi-

Charge.

dently owned the car and the other drove it, but we are not concerned with that, because we have gotten past the negligence situation in this case.

This is a retrial. There was a trial before at which time the negligence was decided, but it was necessary to retry it because of the question of damages, and this trial is just with respect to damages that the plaintiffs are entitled to. They must both have a verdict, and the only question you are confronted with is how much should the verdict be, a rather narrow issue that you are called upon to decide, and there is a dispute of facts here with reference to the nature and extent of the damage that was sustained by reason of this accident.

The plaintiff Mrs. Gee says that she was a normal and healthy woman, that she did laborious work, and that for a period of about three months she did very heavy work and was able to do it, and that she suffered no disability except an occasional headache before the accident; that since the accident she has been a wreck; since the accident she has suffered headaches and backaches and has been extremely nervous and she has changed from a normal woman to an abnormal woman. She is cross, cranky, cantankerous, and there is no living with her, as I take it from the testimony, and she says that is all due to the accident; and she asks for compensation for the damage she has suffered. She says through her witnesses that she has a sacroiliac sprain as a result of this accident; that she has a retroversion of the uterus from this accident; that she has a tear in her cervix from this accident, and it is because of these things that she has become a nervous person, and further she asks that you compensate her in such sum as you think will com-

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Charge.

10 pensate her fairly for the physical disability which
she has as a result of this accident and may have
in the future, and any pain and suffering she has
undergone and may undergo in the future as the
result of this accident; for loss of earnings that
20 she has suffered and may suffer in the future
because of this accident. She got \$30 to \$36 a
week during the three months prior to the acci-
dent, according to her husband's testimony, and
about \$35 according to her testimony, from the
work that she performed in this apartment house
where her husband was superintendent just prior
to the accident, and she has been unable to do
any of those things since, has not been able to
perform any of that work. That is the measure
20 of damage that Mrs. Gee asks, and Mr. Gee asks
that he be compensated for the amount of money
that he has been obligated to lay out and expend
to effect a cure of his wife because of these in-
juries, and that amounts to the figures Mr. Semel
gave you with one exception: he left out the \$10
item of Dr. Singer's charge, otherwise his state-
ment was correct as to the disbursements the hus-
band has had, and that is the measure of dam-
ages the husband is entitled to receive; first, the
30 sums he might be obliged to lay out and expend
in the future; then, in addition to that, such sum
as you think proper to compensate him for the
loss of the society of his wife; the loss of that
consortium. He is entitled to be compensated for
such sum as you think proper to compensate him
for the deprivation of the society and companion-
ship of his wife which he previously had and
which he has not been able to have since because
of this condition which they claim. There has
40 been some dispute with respect to the amount it
would cost to have an operation performed on

Charge.

Mrs. Gee. The doctors did not agree with respect to that as well as they did not agree with respect to anything else in this case.

Dr. Levin said \$225 to \$250. I have forgotten what Dr. Morrison said, if anything, but Dr. Condon gave us the information that it would cost nothing if she was not able to afford it, but if she did come there and took a \$5 a day room and was able to pay that, he thought perhaps in her circumstances that that would be a fair proposition and then the hospitalization would cost about \$63 for the time that he would estimate she would be there, and that the fee of the physician would be \$25. That is quite a difference as between Dr. Levin's figure as to the cost of this operation. Then, there is the question as to whether or not this condition is becoming worse as time goes by. I think the doctors are all rather of the opinion, those who examined her more than once, that this is a progressive condition and she is getting worse, and I think they all agree there should be an operation.

Mrs. Gee was under the legal necessity to mitigate her damages. She could not allow herself to continually get worse and expect Mr. and Mrs. Moss to pay the aggravation of damages because of the neglect of herself and you must take that into consideration in estimating the damage whether or not she has aggravated the condition by her unwillingness to have it done or her fear of the operation, or whatever it might be. The law requires that a person who is injured must mitigate the damages; they cannot aggravate them and complain about it and expect the other fellow to pay because of that negligence, and there is that element in this case too.

The real test in this case, the question you are called upon to decide, the question of fact, is

Charge.

10 what happened to her as a result of this accident?
Did all these things happen as a result of this ac-
cident or were those pathological conditions pres-
ent at the time the accident occurred? That is
the real question. Is her uterus and cervix con-
10 dition that has been described to you, which the
doctors do not seriously disagree on, a result of
this accident or childbirth or some other cause,
that is the question. If it be a result of this ac-
cident then she is entitled to recover for those
things, and if it not be caused by this accident
she is not entitled to recover for those things.
She is only entitled to recover for the damage
which this accident caused her, nothing more, and
that is the big question and practically the only
20 question in this case.

You have the picture presented by the plaintiff
and her doctors of these conditions being the re-
sult, the proximate result of the injury she sus-
tained by being struck by this automobile, and on
the other hand you have the medical witnesses for
the defendant saying that is not true, that these
conditions that they describe, the cervix laceration
and the misplaced pelvis, if it is misplaced, and
there is some dispute about that, and the back-
30 aches, are not due to the accident but to child-
birth. Both of those situations cannot be true,
and that raises the question of fact which you are
called upon to decide. You take into considera-
tion, as you weigh the testimony, the likelihood of
the stories of the various witnesses being true
or not; you take into consideration the fact that
this case is largely medical opinion, expert testi-
mony; that is the opinion of these men from their
knowledge, from their experience and from their
40 study; they have given their testimony on those

Charge.

elements. What basis have they for the conclusion they have come to? What is the common sense of it and what is the likelihood of the stories being true? What is the correct answer to these problems? You have seen the witnesses and sized them up. You know their experience and you know the interest they may have, or otherwise, in the outcome of this suit. You say what the real facts are.

10

If the plaintiff's version is correct then Mrs. Gee is entitled to be paid what you feel is a proper sum, on that basis and on that theory, but if the defendants' version is correct, that she was injured to the extent of being shaken up and bruised and that these serious matters she complains of were not the result of that injury, then, of course, the amount would be considerably different. Then, of course you cannot say she should receive anywheres near the amount which she would otherwise receive, and that raises this question of fact, I repeat, that you are called upon to decide, and it is purely a question of fact: What happened to her as a result of this accident; how badly was she hurt; that is the question, and when you have decided that then you should decide what she is entitled to receive and what her husband is entitled to receive. You will separate the amounts and bring in your verdict so much for Mr. Gee and so much for Mrs. Gee under the rule of damages as I have laid it down to you. You decide the case from the testimony as you recall it, because I have spoken from my recollection of it. If in my narration of any testimony I have misquoted it in some particular, of course you will disregard any misstatements I have made and depend on your own recollection of what the testimony was.

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Charge.

10 The burden is on Mr. and Mrs. Gee to establish
to your satisfaction by the clear weight of the
testimony that what they contend is true. They
must prove that by the greater weight of the testi-
mony, and not by the number of witnesses
necessarily, but by the quality rather than the
quantity of the testimony, and you are the sole
judges of the quality; you weigh the testimony
and separate the sheep from the goats, the truth
from the untruth. You decide the facts. What
are the facts? That is for you to say, and you
will say that from your weighing of the testimony;
you will say that from your consideration of it
and your analysis of it, and on that finding you
will reach your verdict. I repeat—it will be
20 against both defendants but there must be sepa-
rate amounts for both Mr. and Mrs. Gee.

You may retire.

(The Jury Retires.)

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New Jersey Court of Errors and Appeals

ETHEL GEE and JAMES GEE,
Plaintiffs-Respondents,

v.

SARAH MOSS and SIGMUND MOSS,
Defendants-Appellants.

Action at Law.
On Appeal.

BRIEF IN BEHALF OF THE APPELLANTS.

1.

Statement of the Case.

This appeal brings before this Court for review judgments in favor of the plaintiffs-respondents (hereinafter referred to as the plaintiffs) and against the defendants-appellants (hereinafter referred to as the defendants). The judgment appealed from (p. 28) was entered after a second trial of the case, the jury having brought in a verdict in favor of the plaintiff Ethel Gee for \$5,300 and in favor of the plaintiff James Gee for \$1,560. The action was brought to recover damages for personal injuries sustained by Ethel Gee and the consequent loss to her husband, James Gee (p. 4).

As a result of the first trial the plaintiffs recovered an aggregate verdict of \$2,200. On rule to show cause (wherein all of the exceptions of the defendants taken during the course of the trial were reserved, p. 16), the trial court set aside the verdict of the jury as to damages only and ordered

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a new trial on the question of damages (p. 17). Thereafter, the case proceeded to trial on damages only and verdicts of \$5,300 and \$1,560 were rendered (p. 18). Thereafter, the trial court again granted rule to show cause to review the trial on damages only and on the argument of that rule and after the trial court had reserved decision, the rule was discharged notwithstanding that the trial court found that the verdicts were "shockingly" excessive. One of the reasons why the trial court would not reduce the verdicts was because the trial court understood that the defendants had an insurance policy of \$5,000, whereas the aggregate verdicts were \$6,860 and the court feeling that it would not reduce the verdicts below \$5,000 therefore refused to disturb the aggregate verdicts of \$6,860 (p. 24, ll. 1-15). The rule discharging the second rule to show cause which was limited to damages only was thereupon entered and thereafter judgment was entered (pp. 27 and 28). It is from the final judgment entered after the second trial that this appeal is taken.

2.

Grounds of Appeal.

The grounds of appeal are seven in number, but only the last three grounds will be argued. They are as follows (p. 3, l. 30; p. 4, l. 10) :

5. The trial court abused its discretion in refusing to grant a new trial to the defendants.

6. The trial court abused its discretion in refusing to grant a new trial to the defendants, because the trial court had concluded that the verdict of the jury was so excessive as to

shock the conscience of the court and yet, notwithstanding that conclusion, the trial court refused to grant a new trial.

7. The trial court abused its discretion in that the trial court properly concluded that the verdict was so excessive as to shock the conscience of the court, and that said verdict was clearly excessive and against the weight of the evidence, and yet, notwithstanding said adjudication by the trial court, the said court arbitrarily and illegally refused to grant the defendants a new trial.

3.

BRIEF OF THE ARGUMENT.

I.

The trial court committed an abuse of discretion in refusing to set aside the verdicts rendered on the second trial.

The law is settled that whether or not a verdict is adequate and proper, is on application for a new trial a matter of sound discretion in the trial court and in the absence of an abuse of discretion the Appellate Court cannot review the trial court's action. However, *where there is an abuse of discretion the Appellate Court can review the trial court's action and reverse it, although with respect to the question of damages, apart from such discretion the Appellate Court has nothing to do.* The law will be found settled in *Gaffney v. Illingsworth*, 90 N. J. L. 490, at 492, where WALKER, Chancellor, speaking for this Court in a unanimous opinion said (italics ours):

“The power of the court in granting a new trial upon the ground that the damages are

excessive, upon terms that a new trial shall be had unless the plaintiff will accept a certain sum named, less than that awarded by a verdict, is too well established to be questioned. It would seem to follow, by parity of reasoning, that when a new trial is granted because the damages are inadequate, the Court may impose like terms, that is, terms to the effect that if the defeated party will pay a certain sum, greater than that awarded by the verdict, the rule will be discharged; subject, doubtless, to the power of an Appellate Court to vacate any such terms *when they appear to be an abuse of discretion*. No such showing is made on the record before us, and this makes it inappropriate for us to give consideration to the appellant's other contention, namely, that the verdict, as it stands, is adequate and proper and evinces no prejudice or partiality on the part of the jury. As to whether or not the verdict is adequate and proper, is, on application for a new trial, a matter of sound discretion in the trial court, *and in the absence of an abuse of discretion*, the Appellate Court cannot review the trial court's action. *And with the question of damages, apart from such discretion, we have nothing to do.*"

When the rule to show cause for new trial after the second trial was argued, the trial court reserved decision (pp. 19-20). After reserving decision the trial court did not write an opinion but communicated its views to counsel by means of correspondence. When asked to write an opinion so that the grounds upon which the new trial were denied might be submitted to this Court on appeal, the trial court said (p. 26, ll. 25-30) :

"Nor do I see any reason for writing any opinion. You evidently wish to have one to submit to the Supreme Court on your appeal. Why not submit my letters. I have no objection and they set forth my reasons even

more fully than would any opinion I might write.

Yours truly,

NEWTON H. PORTER,
Circuit Court Judge."

The state of case therefore contains the correspondence which the trial court stated should be used as his opinion on appeal. The first letter from the trial court is dated May 29, 1930, and is as follows (*italics ours*) (p. 21):

"I have very carefully considered the rule to show cause in the above matter *and while, for the reasons that I stated to you I believe the verdict is high*, I have concluded that I am not justified to materially reduce it under the circumstances *and any slight reduction that I may make would be so slight as to accomplish no useful purpose*, so I have concluded to discharge the rule.

You may send me an order accordingly.

Yours very truly,

NEWTON H. PORTER,
Judge, Circuit Court.

Copy to Hudspeth & Harris,
Jersey City, N. J."

Upon receipt of the foregoing letter counsel for the defendants wrote to Judge PORTER on June 13, 1930, as follows (p. 22):

"Dear Judge Porter:

After the argument of the Rule to Show Cause in the above matter, *we informed our clients that your Honor stated in open court that the verdict of the jury 'shocked the Court.'* After receiving your letter of May 29th, we informed our clients as to your Honor's decision in the matter and of the contents of your letter. We have advised them that you had signed an order in the above matter setting aside the Rule to Show Cause.

In view of the expression of opinion by your Honor that the verdict is high and that it 'shocked the Court' our clients feel that the verdict should have been set aside or materially reduced. They have, therefore, instructed us to proceed to take an appeal from the order of the Court.

In view thereof, we believe that it would be *in order for your Honor to file an opinion in the matter stating in your opinion what your Honor said in open court on the argument of the Rule to Show Cause as to the verdict being shocking and also the opinion expressed by your Honor in your letter of May 29th.*

Will you please advise us what your Honor is inclined to do in the matter.

We thank you for any courtesy extended to us in this matter.

Very truly yours,

HUDSPETH & HARRIS."

HHH/I.

On June 16, 1930, Judge PORTER wrote to counsel for the defendants as follows (italics ours) (pp. 23-24):

"June 16, 1930.

Messrs. Hudspeth & Harris,
15 Exchange Place,
Jersey City, N. J.

Gee v. Moss

Gentlemen:

I have your letter of the 13th inst. in which you suggest that in view of my letter of May 29th and my remarks made at the time of the argument on the rule to show cause in the above matter that I write an opinion giving my reasons for my decision.

I think it unnecessary that I do so. I considered the matter very carefully from every standpoint and concluded that it was not a case under the decisions that justified my set-

ting it aside and granting a new trial. I was not convinced that the jury decided the case because of mistake, passion or prejudice. *It is true that in my opinion on the testimony the verdict was too high and shockingly so but that is not the reason in itself why I should set aside the verdict. If I set aside every verdict where it did not coincide with my views I would be more than busy retrying cases. It is not my function to decide the facts and just because the jury believes things that I do not believe is not, I repeat, sufficient for me to interfere.*

There was testimony in this case which fully justified the verdict, *but feeling however, that the verdict was too high I considered very carefully and was quite willing to reduce it somewhat as a purely practical matter but I could not reduce it below the amount of your policy and, therefore my reducing it to the extent that I may have done so would have served no useful purpose and it was for that reason that I decided to leave it alone.*

Yours very truly,

NEWTON H. PORTER
Circuit Court Judge.

Copy to
Meyer M. Semel, Esq.,
60 Park Pl., Newark, N. J."

On June 17, 1930, counsel for the defendants replied as follows (pp. 24-25):

"Dear Judge Porter:

I am thankful to you for your letter of June 16th and am communicating the contents thereof to our client. There is one thing, however, which I believe your Honor overlooked and that is that the defendants, whose interests we represent, are seriously affected by your Honor's dismissal of the rule, because of the fact that they are personally liable for the amount of the judgment and especially so, for the amount over and above the extent of the policy coverage, which your Honor seemed to

have taken into consideration in deciding to dismiss the Rule to Show Cause. It seems that the defendants should not be prejudiced by the fact that they carry insurance.

From your letter it looks as if you would have reduced the amount of the verdict if there were no policy of insurance in existence, but being that the reduction would not be below the amount of coverage, you are inclined not to reduce the verdict even though it is too high and shockingly so according to the weight of the evidence in the case.

It seems to me that if the weight of the testimony was ignored by the jury and your Honor is satisfied that according to the testimony the verdict was too high and apparently a result of the disregard by the jury of the weight of the testimony, that your Honor should not hesitate to reduce the verdict, irrespective of whether it would be reduced below the amount of the policy or not.

I do not believe that the question of policy should have entered into the discussion at all nor should it have been a basis of your conclusion in the matter.

I respectfully submit that in view of my client's insistence that an appeal be taken from the order, that in all fairness to the parties involved and especially these defendants, an opinion ought to be filed in the matter setting forth what you say in your letters.

I trust that your Honor will not look upon my writing to you a second time in this matter as an affront, especially in view of the fact that I feel that I am only doing my duty as the agent of my own clients.

Very respectfully yours,

HHH/I.

HUDSPETH & HARRIS."

In response to the foregoing letter Judge PORTER wrote the letter of June 23, 1930, quoted at the beginning wherein he said that the foregoing correspondence might be used as his opinion.

From a reading of the trial court's opinion it is plain that the trial court concluded that the verdict was "too high" and that it was so high that it was "shockingly so," but the trial court refused to disturb it because the Court concluded that any reduction that might be made would not be more than the policy limit of \$5,000 which the trial court surmised the defendants had for the purpose of covering an accident of this kind.

There is no evidence in the case as to what insurance the defendants carried, or the amount thereof, or what company it was carried in, or whether the defendants were financially responsible, or any of the other facts which would have to be considered in determining whether a reduction to \$5,000 (which the trial court admittedly conceded the defendants were entitled to), would "as a practical matter" serve "a useful purpose or not."

In short, the trial court concluded not to reduce the verdict for reasons that are clearly untenable, and because of alleged facts which are not in the evidence. If we reflect for a few moments upon the reasons which actuated the trial court in discharging the rule to show cause, it will be plain that a clear abuse of discretion was committed. For instance, if the defendant did have a policy of insurance covering the accident of \$5,000 (of which there was no evidence) that would be no legal reason for refusing to reduce the verdict. The defendants would be personally liable for any verdict in excess of the policy limit, and there was no evidence that the defendants were not financially responsible. Even if there were, there was no evidence that they might not be financially responsible and some day be compelled to pay the excess.

Finally, this action was a suit to recover damages for personal injuries sustained by the plaintiffs, and it was brought directly against the de-

defendants. This is not an action against the insurance company on the policy. If the plaintiff had offered any evidence as to the alleged fact that the defendant was insured, or as to the amount of the insurance, or as to the financial responsibility of the defendants, the trial court would have been compelled to overrule such an offer as incompetent, immaterial and irrelevant to the issues. Not only was such testimony not receivable but it was not offered.

The trial court had no right to determine whether or not the verdict should be reduced (where the verdict was clearly excessive and shockingly so) upon matters which were without the record and not competent even if offered on the trial.

As shown, *supra*, in the quotation from *Gaffney v. Illingsworth*, 90 N. J. L. 490, 492, the Court on appeal is not concerned with the amount but merely with the abuse of the discretion. That case plainly holds that where there is an abuse of discretion this Court on appeal will review the lower court's action and reverse it. Here as shown, there is a plain abuse of discretion and therefore we respectfully submit that the judgment below should be reversed and a new trial ordered.

II.

We respectfully submit that the judgment below should be reversed and a *venire de novo* ordered.

Submitted, October Term, 1930.

HUDSPETH & HARRIS,
Attorneys of Defendants-Appellants.

EDWARD A. MARKLEY,
Of Counsel.

*Counsel for Appellants did not
abandon grounds of appeal re abuse of
discretion by trial court as stated at p 2
of respondent's brief. Those grounds were*

SUPPLEMENT TO BRIEF

This Court on October 20, 1930 decided the cases of Patterson vs. Surpless and Patterson vs. Miller, 151 Atl. 754 (not yet officially reported) wherein the trial court was reversed for an abuse of discretion. At page 756, this Court, speaking through Lloyd, J. said (*italics ours*):

"Courts exist for the judicial determination of the rights of litigants and for the administration of justice, and it is the duty of those presiding, as far as humanly possible, to see that the setting of each individual case shall be such that an impartial and just deliverance shall be had between the parties, and, when counsel deliberately seeks to inject into a cause an element which has, and is designed to have, the effect of prejudicing the rights of one or the other of the litigants, it is the duty of the judge to guard against such effect, either by arresting the trial in limine, as was requested in the present case, or by guarding against the pernicious results through proper instruction to the jury, as was clearly indicated in the opinion cited above. In the present case neither was done, and, to aggravate the situation, the effort of the defendant Miller to relieve himself of the injurious effect of the query addressed to the jurors was nullified by the striking out of that portion of his evidence. We think on the whole case the refusal to declare a mistrial was an abuse of discretion requiring reversal."

New Jersey Court of Errors and Appeals

ETHEL GEE and JAMES GEE, Plaintiffs-Respondents, vs. SARAH MOSS and SIGMUND MOSS, Defendants-Appellants.	}	Action at Law. On Appeal.
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BRIEF IN BEHALF OF RESPONDENTS.

I.

Statement of the Case.

The statement of the case as set forth by the appellants is substantially correct, except that in the second trial there was evidence from which the jury could find that the plaintiff Ethel Gee sustained a curvature of the spine and other injuries as a result of the accident and which evidence had not been offered in the first trial.

II.

Grounds of Appeal.

The grounds of appeal as set forth on pages two, three and four of the state of case are seven in number.

This Honorable Court's attention is called to the

fact that the within appeal was noticed for argument for the October term (1930) at which time a motion was made by respondents to dismiss the appeal. This motion was argued. The basis of the motion was the fact that the grounds of appeal were not proper grounds of appeal as they were based upon the trial court's refusal to grant a new trial, direct a verdict for defendant, errors in the courts' charge and abuse of discretion. The motion to dismiss was based upon the fact that all of the grounds of the appeal, except that of the abuse of discretion had been disposed of upon application for a new trial which had been denied, and upon the further basis that abuse of discretion in refusal to grant a new trial was not error and therefore not reviewable on appeal.

At the argument of the motion to dismiss, counsel for appellants abandoned grounds five, six and seven, pertaining to the alleged abuse of discretion, and the argument was confined to grounds one, two, three and four pertaining to the trial courts' refusal to non-suit, direct a verdict for the defendants and the alleged errors in the court's charge. In the brief, appellants abandon grounds one, two, three and four, and are arguing grounds five, six and seven pertaining to the trial court's abuse of discretion.

Under the circumstances, it is respectfully submitted that there is nothing at this time from which to take an appeal, as all of the grounds of appeal set forth in the state of case, and upon which the appeal was originally taken have been abandoned, and counsel for respondents respectfully renews his application for a dismissal of the appeal, for the reasons herein set forth.

Should this Honorable Court permit counsel to argue the appeal on the grounds set forth in the brief of appellants, it is respectfully submitted

that the alleged abuse of discretion arising from the trial court's refusal to grant a new trial is not reviewable, and cannot be made a basis for an appeal.

Counsel for appellants relies upon the case of *Gaffney v. Illingsworth*, 90 N. J. L. 490, decided by this Honorable Court on the 18th of June, 1917, in which Chancellor Walker says as follows:

"It would seem to follow by parity of reasoning that when a new trial is granted because the damages are inadequate, the court may impose like terms, that is, terms to the effect that if the defeated party will pay a certain sum greater than that awarded by the verdict, the rule will be discharged subject, doubtless, to the power of the appellant court to vacate any such terms when they appeal to be an abuse of discretion."

A reading of the entire opinion will make it very evident that the Chancellor in mentioning an abuse of discretion, did not mean an abuse of discretion on the *refusal* or *in the granting of a new trial*, but an abuse of discretion *in the terms which might be imposed*. The above case is authority for respondent's contention that no appeal can lie from the refusal of the trial court under any circumstances to grant a new trial. The Chancellor in his opinion in the *Illingsworth* matter, *supra*, says as follows:

"Besides, as stated, the question of granting a new trial is a matter of sound discretion, 3 Bl. Comm. 392. That the granting of a new trial rests in the discretion of the court is fully established by all authorities. Hilliard on New Trials, par. 6, citing *Gray vs. Bridge*, 11 Pick. (Mass) 189 wherein, at page 191, it is held that the decision of that question is not appealable. And our Su-

preme Court in *Mitchell vs. Erie R. R. Co.*, 70 N. J. Law 181, at page 183, 56 Atl. 236 held that in the circuit courts the matter of granting a new trial is discretionary and not reviewable upon error".

The Supreme Court of New Jersey in the matter of *Sanzogni v. Sansevere*, 142 Atlantic 417 (not reported in the State Reports) in June of 1928 in its per curiam opinion, says as follows:

"In other words the Prosecutor applies for a writ of certiorari to review the order granting a new trial as to damages only. The writ of certiorari cannot be allowed for two substantial reasons: first because the granting or refusing to grant a rule to show cause is a matter addressed to the discretion of the trial court. It is not reviewable upon appeal".

Hickman v. Powell, 99 N. J. Law 274;
Albert v. Hart, 44 N. J. L. 366.

Counsel for the appellants relies upon the case of *Paterson vs. Surpluss*, decided by this Honorable Court on October 20th, 1930, (151 A. 754) Vol. 8 No. 45, N. J. Advance Reports, page 589 issued November 8, 1930. In that case the court found that there was *an abuse of discretion because of improper conduct at the trial itself*; there was no application for a new trial in that case, and the appeal was based upon the abuse of discretion on the part of the trial court *in refusing to declare a mis-trial and instructing the jury on the mention of an insurance company*, not a party to the action, but by which the defendant was insured.

It is respectfully submitted that that decision does not in any manner apply to the case at bar.

Counsel for the appellants stresses the fact that Judge Porter should have granted a new trial be-

cause he found the verdict shockingly high. Judge Porter explains the reason for refusing to grant a new trial in his letter set forth on page 23 of the state of case, in which he says as follows:

"I considered the matter very carefully from every standpoint and concluded that it was not a case under the decisions that justified my setting it aside and granting a new trial. I was not convinced that the jury decided the case, because of mistake, passion or prejudice. It is true that in my opinion on the testimony, the verdict was too high and shockingly so, but that is not the reason in itself why I should set aside the verdict * * *. It is not my function to decide the facts and just because the jury believes things that I do not believe is not, I repeat, sufficient for me to interfere. There was testimony in this case which fully justified the verdict * * *".

In arriving at the above conclusion, Judge Porter was evidently guided by the decision of our Supreme Court rendered on the 14th day of January, 1930, and reported in New Jersey Advanced Reports, Vol. 8 No. 4 issued Saturday January 25th, 1930, in which that court in the case of *Noteboom vs. Texas Company*, discharged the rule to show cause, obtained for a new trial on the ground among others, that the award was excessive. In that case the court said as follows:

"After hearing the testimony on both sides, it was their function to determine what the truth of the matter in issue was, and the fact that they believed the plaintiff and not the witnesses of the defendant, affords no ground for setting aside the verdict as against the weight of the evidence."

"As to the award, our examination of the proofs relating to the character of the plain-

tiff's injuries, and his loss of earnings, satisfied us that instead of being excessive it was a very reasonable allowance that the jury made to him".

Judge Porter's refusal to grant a new trial in spite of his own opinion as to the amount of the verdict is concurred in by the later decision of the Supreme Court in the case of *Brasch vs. Long Branch Railroad Company*, decided September 17th, 1930, and reported in 152 Atlantic 187, where a rule was obtained on the ground that the verdict was excessive. In that case, the court said as follows:

"We think it was fairly within the proofs, and does not indicate that it is the result of passion, prejudice or mistake; consequently, it should not be disturbed."

Counsel for the appellant has in no manner indicated that the jury's verdict was the result of passion, prejudice or mistake, and as Judge Porter indicates in his letter aforementioned, "I was not convinced that the jury decided the case because of mistake, passion or prejudice".

It is to be borne in mind that the appeal is now taken from the second verdict rendered in the same case. This matter was tried twice and in the first trial the jury brought in a verdict of \$2200.00. Application was made for a new trial and Judge Dungan allowed it on terms. Those terms were embraced in the order of January 23rd, 1930 and set forth in the state of the case on page 11. In that order, the court permitted the following amendments to be made to the complaint.

"Lacerations and swelling of the left side of chin, contusions over left clavicle, contusions and ecchymosis of left thigh, contusions of left scapula, contusions of left wrist,

loss of two upper teeth, miscarriage causing permanent uterine hemorrhage and sterility which may be cured by a surgical operation, separation of right sacroilliac joint and traumatic neurasthenia."

The court also permitted at the same time, the answers to question #2 of the bill of particulars to be amended to include the same injuries set forth in the amended paragraph.

In the first trial evidence of the miscarriage causing permanent uterine hemorrhage and sterility and separation of the right sacro illiac joint were not allowed in evidence.

At the second trial they were allowed in evidence because they were set up in the complaint and also in the answer to the bill of particulars, and in addition thereto, there was evidence at the second trial to show that by reason of the injuries there was a curvature of the spine.

The testimony of Dr. Samuel B. Greenwood, as set forth on page 213 of the state of case, shows that an X-ray plate was offered and received in evidence and that the X-ray plate showed (lines 32 and 33) that there was "a curvature of the spine, and a slight rotation of the spine." On Page 214, the Doctor testified as follows:

Q. What does that mean in layman's language?

A. The vertebral column is turned.

Q. In which direction?

A. To the right, probably due to muscular spasm, because there is no defect in the bone structures themselves.

Q. We didn't hear you.

A. This condition is probably due to muscular spasm.

Q. What does that mean?

A. The muscles on one side drawing the spine offside, because there is no physical defect in the bony structures themselves.

Q. What in your opinion, might be the cause of muscular spasm?

A. An injury to the back would cause that.

On Page 215:

Q. Assuming that she was struck on the left side and thrown a distance from where you are sitting to this railing (indicating) would you say that the muscular spasms which are the cause of this curvature are the probable and proximate or direct result of the injury which she received on that day, yes or no.

A. I would say it was.

On Page 223:

Q. This spinal condition you were able to observe from your X-rays, can you tell whether that will be temporary or permanent? A. From the history of the accident, presumably this condition is permanent.

On Page 194 of the State of Case, Dr. Singer was asked and answered the following questions:

Q. So in your opinion, the sacroiliac condition, the retroversion of the uterus and the nervous condition can all be ascribed to this accident, if she did not have it before the accident?

By the Court:

Q. Is it probable the condition you found when you examined her is the result of this accident?

A. The first and third and probably the second one.

Q. What is the first?

A. Right sacroiliac strain. Second, the retroversion and third the neurosis.

Q. In reference to the sacroiliac condition, can you tell us whether that condition is temporary or a permanent one?

A. At the time I last examined her, it was still slightly active.

Page 195:

Q. Would you say, if she has that limitation which is permanent in its scope, it will always be there when she overworks herself?

A. Yes, I say that the same condition she had on my examination persisting for the long time of a year and a half since the accident, then it is safe to assume that she will have a certain amount of permanent disability, which is not much, because at the time I examined her it was not a very severe case.

Under the circumstances and in view of the nature of the injuries, the jury was justified in increasing the verdict to \$5300.00 for Ethel Gee and \$1560.00 for her husband, and Judge Porter as the trial court, wisely exercised his discretion and refused to disturb that award, even though he was of the opinion that it was too high, and under the circumstances, the court, in keeping with the decision of the Supreme Court of New Jersey in the matter of Scharwath vs. Brooks, 150 Atlantic, page 211, will not disturb a second verdict, unless it is clearly improper and shown to be the result of prejudice, passion or mistake, all of which appellants failed to show on its application for a new trial. Wherefore respondents pray that the appeal be dismissed.

Respectfully submitted,

MEYER M. SEMEL,
Of Counsel with Ethel Gee
and James Gee, Respondents.

