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Notice and Grounds of Appeal.

NOTICE AND GROUNDS OF APPEAL.

Filed July 6, 1925.

Hudson County Circuit Court

ELIZABETH BERGLUND, adminis-
tratrix *ad prosequendum* of
the estate of RUTH BERGLUND,
deceased,

Plaintiff,

vs.

HENRY HILD and ALBERT HILD,
Defendants.

*Action
at Law.*

*Notice
of Appeal.*

10

To Messrs. Margolies & Manetti, attorneys for
plaintiff.

20

TAKE NOTICE that the defendants above-named
hereby appeal from the whole and every part
of the final judgment entered in the above-en-
titled cause the 26th day of June, 1925, for \$4,-
975 damages, and costs of suit, to the New Jer-
sey Supreme Court.

The defendants hereby assign the following as
their grounds of appeal:

30

(1) Because the learned Judge of the Circuit
Court erroneously refused to grant defendants'
motion to non-suit the plaintiff.

(2) Because the learned Judge of the Cir-
cuit Court refused to grant defendants' motion
for the direction of a verdict in favor of the de-
fendants.

Respectfully yours,

McDERMOTT, ENRIGHT
& CARPENTER,

Attorneys of Defendants.

40

Summons.

Service acknowledged July 2, 1925.

MARGOLIES & MANETTI,
Attorneys of Plaintiff.

10

SUMMONS.

The State of New Jersey to Henry
Hild and Albert Hild, GREETING:

(SEAL) You are summoned to answer the
annexed complaint of Elizabeth Berg-
lund, administratrix *ad prosequendum*

20

of the estate of Ruth Berglund, deceased, in an
action at law in the Hudson County Circuit
Court, and take notice, that unless you file your
answer to said complaint with the Clerk of the
said Court, within twenty days after the serv-
ice upon you of this writ and the annexed com-
plaint, the plaintiff may proceed in the suit and
judgment may be entered against you.

WITNESS, Willard W. Cutler, Esq., Judge of
the Hudson County Circuit Court, at Jersey City,
this 8th day of August, 1923.

JOHN J. McGOVERN,
Clerk.

30

MARGOLIES & MANETTI,
Attorneys.

40

Complaint.

COMPLAINT.

HUDSON COUNTY CIRCUIT COURT.

ELIZABETH BERGLUND, adminis-
tratrix *ad prosequendum* of
the estate of RUTH BERGLUND,
deceased,

Plaintiff,

vs.

HENRY HILD and ALBERT HILD,
Defendants.

*Action
at Law.*

Complaint.

10

The plaintiff, administratrix *ad prosequendum*
of the estate of Ruth Berglund, deceased, resid-
ing in the Township of North Bergen, Hudson
County, New Jersey, complains of the defend-
ants and alleges:

20

COUNT ONE.

1. On or about the 12th day of November,
1922, and for a long time prior thereto, the de-
fendant, Albert Hild, was the owner of a cer-
tain automobile.

2. On or about said time, the defendant, Al-
bert Hild, by his agent and servant did operate
and drive his said automobile in which Ruth
Berglund, plaintiff's intestate, was riding, along
a branch of the Airmount Road, in the Town-
ship of Hohokus, Bergen County, New Jersey,
in a southerly direction, and the said defendant,
by his agent and servant, at said time, did drive
the said automobile recklessly, wilfully, care-
lessly, negligently and unskillfully and at a high,
unlawful, and excessive rate of speed, thereby

30

40

Complaint.

causing said automobile to get beyond control of the said agent or servant, causing it to leave the road and fall into a ditch, whereby said Ruth Berglund was greatly hurt, cut, wounded, bruised and injured, and her collar bone broken.

10 3. That as a result of her injuries, Ruth Berglund died on May 11, 1923.

4. Said Ruth Berglund was not guilty of negligence that in any way contributed to her aforesaid injuries.

5. That the said Ruth Berglund left her surviving her mother, the plaintiff herein, a brother, thirty-three years of age, and a sister twenty-eight years of age.

20 6. That on June 18, 1923, the plaintiff herein was appointed administratrix *ad prosequendum* of the estate of the said Ruth Berglund by the Surrogate of Hudson County.

7. Plaintiff further says that this action was instituted within twenty-four calender months from the decease of the said Ruth Berglund.

30 8. That as a result of the wilfullness, negligence and carelessness of the defendant, Albert Hild, his agent and servant, the next of kin of the said Ruth Berglund sustained percuniary damage.

COUNT TWO.

1. On the 12th day of November, 1922, the defendant, Henry Hild, did invite the said Ruth Berglund for a ride in a certain automobile which he was driving and operating at the time.

40 2. While on a branch of the Airmount Road, in the Township of Hohokus, Bergen County,

Complaint.

New Jersey, and going in a southerly direction, the said defendant did wilfully, recklessly, carelessly, negligently and unskillfully operate the said automobile so that it left the road and fell into a ditch, thereby causing Ruth Berglund, plaintiff's intestate, to be greatly hurt, cut, bruised, wounded and injured, and her collar bone broken. 10

3. That as a result of said injuries, Ruth Berglund died on May 11, 1923.

4. Said Ruth Berglund was not guilty of negligence that in any way contributed to her aforesaid injuries.

5. That the said Ruth Berglund left her surviving her mother, the plaintiff herein, a brother thirty-three years of age, and a sister, twenty-eight years of age. 20

6. That on June 18, 1923, the plaintiff herein was appointed administratrix *ad prosequendum* of the estate of the said Ruth Berglund by the Surrogate of Hudson County.

7. Plaintiff further says that this action was instituted within twenty-four calendar months from the decease of the said Ruth Berglund.

8. That as a result of the wilfullness, negligence and carelessness of the defendant, Albert Hild, his agent and servant, the next of kin of the said Ruth Berglund sustained pecuniary damage. 30

Plaintiff demands as damages \$2,500 on first count.

Plaintiff demands as damages \$2,500 on second count.

MARGOLIES & MANETTI,
Attorneys for Plaintiff.

Answer.

ANSWER.

HUDSON COUNTY CIRCUIT COURT.

10	ELIZABETH BERGLUND, adminis- tratrix <i>ad prosequendum</i> of the estate of RUTH BERGLUND, deceased, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div>	} <i>Action at Law.</i> <i>Answer.</i>
	<i>vs.</i>	
	HENRY HILD and ALBERT HILD, <div style="text-align: right; padding-right: 20px;"><i>Defendants.</i></div>	

20 The defendants residing in the City of Jersey
 City, County of Hudson and State of New Jer-
 sey, answering the plaintiff's complaint say that:

ANSWER TO FIRST COUNT.

1. Defendant, Albert Hild, admits the allega-
 tions contained in paragraph 1 of the First Count
 of said complaint.
- 30 2. Defendants deny the allegations contained
 in paragraphs 2, 3, 4 and 8 of the First Count of
 the plaintiff's complaint.
3. Defendants have no knowledge or informa-
 tion sufficient to form a belief as to the facts al-
 leged in paragraphs 5 and 6 of the First Count
 of plaintiff's complaint.
4. Plaintiffs admit the allegations contained
 in paragraph 7 of the First Count of the plain-
 tiff's complaint.

Answer.

ANSWER TO SECOND COUNT.

5. Defendants deny the allegations contained in paragraphs 1, 2, 3, 4 and 8 of the Second Count of the plaintiff's complaint.

6. Defendants have no knowledge or information sufficient to form a belief as to the facts alleged in paragraphs 5 and 6 of the Second Count of plaintiff's complaint. 10

7. Defendants admit the allegations contained in paragraph 7 of the Second Count of the plaintiff's complaint.

FIRST SEPARATE DEFENSE TO FIRST AND SECOND COUNTS.

Defendants were not guilty of any negligence which was the proximate cause of the accident complained of. 20

SECOND SEPARATE DEFENSE TO FIRST AND SECOND COUNTS.

Ruth Berglund and defendants were at the time of the accident mentioned in the complaint on a joint adventure and if these defendants were guilty of negligence, Ruth Berglund was guilty of contributory negligence, moreover the defendants are not liable to the plaintiff because of the accident mentioned in the complaint. 30

THIRD SEPARATE DEFENSE TO FIRST AND SECOND COUNTS.

Ruth Berglund was merely a licensee in the automobile and the defendants violated no duty which they owed to her as a licensee.

McDERMOTT, ENRIGHT
& CARPENTER,

Attorneys for Defendants. 40

*Reply.***REPLY.**

HUDSON COUNTY CIRCUIT COURT.

10	ELIZABETH BERGLUND, adminis- tratrix <i>ad prosequendum</i> of the estate of RUTH BERGLUND, deceased, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div>	} <i>Action at Law. Reply.</i>
	<i>vs.</i>	
	HENRY HILD and ALBERT HILD, <div style="text-align: right; padding-right: 20px;"><i>Defendants.</i></div>	

The plaintiff, replying to the defendants' answer, says that:

20 REPLY TO FIRST SEPARATE DEFENSE TO FIRST AND SECOND COUNTS.

The plaintiff denies that the defendants were not guilty of any negligence, which was the approximate cause of the accident complained of.

REPLY TO SECOND SEPARATE DEFENSE TO FIRST AND SECOND COUNTS.

30 The plaintiff denies that she was on a joint adventure with the defendants, and also denies that she was guilty of contributory negligence and further states that the defendants are liable to the plaintiff because of the accident mentioned in the complaint.

REPLY TO THIRD SEPARATE DEFENSE TO FIRST AND SECOND COUNTS.

The plaintiff denies the allegations contained in the defendants' Third Separate Defense to First and Second Counts.

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MARGOLIES & MANETTI.
 Attorneys for Plaintiff.

Bill of Particulars.

BILL OF PARTICULARS.

HUDSON COUNTY CIRCUIT COURT.

ELIZABETH BERGLUND, adminis-
tratrix *ad prosequendum* of
the estate of RUTH BERGLUND,
deceased,

Plaintiff,

vs.

HENRY HILD and ALBERT HILD,
Defendants.

*Action
at Law.*

*Bill of
Particulars.*

10

The plaintiff herewith furnishes a bill of particulars in compliance with demand for same by the defendants.

20

1. In answer to Paragraph One: Ruth Berglund was twenty years old on March 19, 1922.

2. In answer to Paragraph Two: She sustained a broken collar bone, dislocated shoulder, crushed hip, crushed ribs, large hole in knee, pieces of glass in body for several months after accident, bruises and contusions all over body, and a nervous breakdown.

30

3. In answer to Paragraph Three: Ruth Berglund was employed since she was sixteen years of age. Prior to November 12, 1922, she was employed by the American Ink Company, at Hoboken, New Jersey, beginning February 21, 1921, at a salary of \$30 per week.

4. In answer to Paragraph Five: The amount of moneys expended for doctors, which amounted to approximately \$200, for medicines, \$200; for funeral expenses, \$300. All money

40

Bill of Particulars.

10 earned by Ruth Berglund was given to her mother, Elizabeth Berglund, with whom she resided. Also all moneys which could have been earned by said Ruth Berglund if she had not died. Also for the mother's nursing of said Ruth Berglund from May 12, 1922, to May 11, 1923, in the place of a hired nurse, and also as a result thereof, for injuries received by said mother, which were strained kidneys, and as a result of these she has been under the doctor's care ever since. Also for any other reason whatsoever, that the said Ruth Berglund of her estate, may be entitled to as a result of her said injuries and death.

MARGOLIES & MANETTI,
Attorneys for Plaintiff.

20

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40

Adolph Janitschek, direct.

HUDSON COUNTY CIRCUIT COURT.

ELIZABETH BERGLUND, admr.,
etc.,

vs.

HENRY HILD, *et al.*

10

Before: Ackerson, J., and a Jury.

Jersey City, N. J., June 25, 1925.

Appearances:

Margolies & Manetti, Esqs., for the plaintiff.

McDermott & Enright, Esqs., for the defendant.

20

A jury having been impanelled and found satisfactory, they were sworn.

Mr. Margolies opened the plaintiff's case to the jury.

Mr. Carpenter opened the defendant's case to the jury.

ADOLPH JANITSCHKEK, sworn.

30

Direct examination by Mr. Margolies.

Q Where to do you live? A 59 Lake street, Jersey City.

Q Do you know the defendant in this suit, Henry Hild? A Yes, sir.

Q And Albert Hild, his father? A Yes, sir.

Q How long have you know the Hilds? A About eight years; possibly more, I don't remember.

40

Adolph Janitschek, direct.

Q Are you related to the Berglunds in any way? A No, sir.

Q Have you any interest at all in this matter? A No, sir.

Q Getting back to the 12th day of November, 1922, were you out with Mr. Hild on that day?

10 A Yes, sir.

Q In an automobile? A Yes, sir.

Q What kind of a car was it? A A Cadillac coupe.

Q After leaving Jersey City with Mr. Hild in the car, where did you go? A We went up through Pearl River Road, and from Pearl River we turned off and came through Saddle River Road.

Q Before you went to the Pearl River Road, did you make any stops? A Not that I remember.

Q Who was in the car with you at the time? A Henry Hild, Miss Berglund, and Miss Salderine.

Q Where did you meet them? A In West New York or West Hoboken, I don't know which it is.

Q Did you make any stop before you went to Pearl River? A Not that I remember.

30 Q What time of day was it? A Why, it was at night time.

Q When you went to Pearl River, was there any stop made there? A Yes—not at Pearl River, at Saddle River.

Q What was the stop you made? A At my uncle's bungalow at Saddle River.

Q Did you all get out of the car? A Yes, we all got out of the car.

Q What did you do when you got out of the car? A Why, we stayed there for a little

40 while.

Adolph Janitschek, direct.

Q Stayed where? A At Saddle River.

Q Where did you stay? A Right in the bungalow there.

Q Who was there? A Just our party, nobody else.

Q Then what did you do? A Well, after that, after staying there for a while, we got back in the car and drove on over the Airmount Road, on our way back home. 10

Q Was there anybody else there in the bungalow at the time? A No.

Q Did anyone while there indulge in intoxicating liquor? A Well, we had one bottle of wine at the time; that was all.

Q Now, when you got on the Airmount Road, in what direction were you going? A Going south. 20

Q And were there any lights along the road? A No, sir.

Q Where were you sitting in the car? A In the back seat.

Q With whom? A With Miss Berglund.

Q Who was driving the car? A Mr. Hild.

Q Who was sitting with him? A Miss Salderine.

Q While riding in the car, had you noticed anything unusual with the car? A No, just that he was going a trifle too fast for a dark road. 30

Q Did you say anything to Hild regarding the rate? A I did warn him about the speed he was going.

Q You warned him about the speed? A Yes, sir.

Q Were there any lights along the road? A No, sir. 40

Adolph Janitschek, direct.

Mr. Carpenter: Objected to. Counsel followed the witness' answer by asking, "Did you warn him about speeding?"

10 Q Well, at any rate, you spoke to him and said he should not go so fast? A Why, he was going fast and I warned him not to go so fast.

Q Do you know at what rate of speed he was going? A I could not see the speedometer from where I was sitting, but I judge thirty miles an hour; probably faster.

Q In your estimation, for how long a stretch of road did the car continue at that rate of speed? A About half a mile, I should judge.

20 Q Well, can you state now at what rate of speed was the car going throughout the evening while you were not in Bergen County? A About twenty-five miles.

Q Now, getting back to the Airmount Road, were there any lights on the car, headlights? A Yes, the car had headlights.

Q And how long did you continue along this Airmount Road? A I don't know just how long this Airmount Road is, where it starts or where it ends.

30 Q However, did you continue along it, and what happened when you didn't continue along it? A Well, that is where the turn was, that was still on the Airmount Road where that right angle turn is where we went off.

40 Q What happened there? What did Mr. Hild say, and what took place; explain to the jury. A Just before we got to the turn, I should judge about thirty or forty feet before we got to the turn, we were going pretty fast, and Mr. Hild happened to notice the turn and he said, "Oh, my God! I can't make it," and he put on his brakes.

Adolph Janitschek, direct.

Mr. Carpenter: I object to that, how can he tell what Mr. Hild noticed?

The Court: Sustain the objection.

Q Go ahead. A He said, "Oh, my God! I can't make it." That is what Mr. Hild said.

Q Did anybody else say anything at that time? A No. 10

Q Now, after he said that, what took place? A Well, the car skidded, and when it got to the turn Mr. Hild tried to make the turn, the left turn, and the car was still going at such a speed that it left the road and went over.

Q On which side? A The right side.

The Court: Went over—turned over?

The Witness: Went over on its right side. 20

Q While Mr. Hild was driving, just before the accident, did you notice the position of his hands in respect to the wheel? A No, I did not.

Q Do you know whether he had both hands on the wheel? A I do not know.

Q After the car fell on its side, what took place? A We climbed out of the car, between the windshield and the top of the car, which had opened up. 30

Q Who climbed out? A We all climbed out.

The Court: Was it a closed car?

The Witness: Yes, it was a closed car.

Q Did you climb out by yourself? A Yes, sir.

Q Did Mr. Hild climb out by himself? A Yes, sir.

Q Did Miss Salderine climb out by herself? A Yes, sir. 40

Adolph Janitschek, direct.

Q Did Miss Berglund climb out by herself?

A Yes, sir.

Q What did you do after that? A We went a little ways from the road; we walked over to the road, sat down for a minute, then got up and I remember Mr. Hild said we should try to
10 right the car. Probably in his excitement he said that. Of course, with such a heavy car, it would be impossible for us to right it. That is all happened just at that time.

Q What took place after that? A We were all standing there and a farmer came along in a Ford car and we hailed the farmer and he saw the plight we were in and volunteered to take us to his house.

Q And who did he take? Continue with your
20 story, exactly what happened. A We put the two girls in the car and I myself got in the Ford with the farmer, leaving Mr. Hild there to watch the car.

Q Mr. Hild alone? A Yes; we drove over to the farmer's house and we called up a doctor, and also at the same time I called up a friend of mine, Mr. Pfeiffer, and asked him if he would not drive out and bring us home. He was in
30 at the time I called him and he drove out and took the party home. After calling Mr. Pfeiffer, we went back and called for Mr. Hild, and then went back to the farmhouse.

Q Who called for Mr. Hild? A The farmer and myself.

Q Was Mr. Pfeiffer there at the time? A No, not at that time.

Q Did the doctor come in response to your call? A Yes.

Q What did he do? A Why, he dressed the
40 girls up as well as he could, treated them.

Adolph Janitschek, direct.

The Court: How did the girls come to be in the automobile that night?

The Witness: We met them on New York avenue.

The Court: Did you know them before?

The Witness: No, sir.

The Court: Who invited them to ride? 10

The Witness: Mr. Hild did.

The Court: Did he say any particular place you were going?

The Witness: No.

The Court: Just taking a ride?

The Witness: Just taking a ride.

Q Now, what time of the night was it that Mr. Pfeiffer got there? A I don't remember exactly, but I should judge it was half past eleven or twelve. 20

Q Did he go directly to the farmhouse or did he call for Mr. Hild first, and then did Mr. Hild and he come to the farmhouse? A He came directly to the farmhouse.

Q And you and the two girls got into the car? A Yes, sir.

Q And what did you do after that? A Why, we started to drive home very slowly. 30

Q Did you call for Mr. Hild? A No, sir, he was at the farmhouse at that time.

Q So that you all got into the car together? A Yes, sir.

Q What did you do? A We drove home very slowly, talking about the accident and how it happened.

Q Four of you were in the car beside Mr. Pfeiffer at the time you were talking about the accident? A Yes, sir, we were all in the car. 40

Adolph Janitschek, direct.

Q Well, what was said? A In regard to the accident?

Q Yes, in regard to the accident.

The Court: Better be careful about that. By Mr. Hild, do you mean?

10

Mr. Margolies: Yes.

A I remember him saying that he would not tell his father just how this occurred because he had the car out and his father didn't have knowledge of it, and we all agreed we would say we were hit by another car instead of saying it was negligence on Mr. Hild's part.

Q Is that what he said said about it? A Yes, we agreed to tell that story.

20

The Court: Let's clear up something right here. I understand that ownership of this car by Mr. Hild, Sr., is admitted?

Mr. Carpenter: Yes.

The Court: And what about its being driven by his son as his agent?

Mr. Carpenter: They have to prove that. This man is telling a story, and if he wants to stand on it, let him tell it.

30

Q Then what happened, did you say anything in response to that? A No, we just agreed we would tell that story, and drove home to Miss Berglund's house.

Q Did you see any other car? A No, sir.

Q At the time of the accident? A No.

Q Did you take the girls home? A Yes, sir.

Q After you took the girls home, what did you do? A We went home.

40

Adolph Janitschek, direct.

Q Did Mr. Hild have anything further to say in your presence or in the presence of Mr. Pfeiffer regarding the accident? A Just what I have said before, he would tell his father we were hit by another car.

Q Did he give any reason for it? A Not that I remember.

10

Q Did you see Ruth after the accident? A Yes, sir.

Q How soon after the accident did you see her? A The next day.

Q Was there anyone with you? A I think Mr. Hild was with me the following day.

Q Was there any conversation then between you and Mr. Hild at that time regarding the accident? A No, nothing more was said.

Q When was the next time you went to the house of the Berglunds? A Why, I think I was there almost every day right after the accident.

20

Q Was Mr. Hild at that house after that first visit in your presence? A I believe once or twice after that.

Q And who else was there on these occasions? A Miss Berlund's mother and her sister-in-law, that is all.

Q This was in the presence of Ruth? A Yes.

20

Q Was there any statement made by Mr. Hild on either of these two occasions with respect to the happening of the accident while you were all there? A Yes, he said, "We were hit by another car."

Mr. Carpenter: I object unless a time is fixed. When was that?

The Court: When was that? How long after the accident?

40

Adolph Janitschek, direct.

The Witness: Probably three or four days.

Mr. Carpenter: No objection, go ahead.

Q What was said? A The story was told that we were hit by another car.

10 Q Who said that? A Mr. Hild.

Q What did you say? A Nothing in regard to that.

Q Did Miss Berglund say anything? A No.

Q Was there another time that you were all together and conversation had between you with respect to the accident? A Not that I remember.

Q In the presence of Mr. Hild did Mrs. Berglund make mention of the accident?

20

Mr. Carpenter: I object. Please don't lead. He said there was no conversation.

The Court: He is asking him now to test his recollection.

Q In the presence of Mr. Hild, did Mrs. Berglund make mention of the accident? A Yes.

30 Q What did she say in your presence and the presence of Mr. Hild? A If I remember, she said it was very strange that an accident like that should happen at such a turn as we described, and being hit by another car.

Mr. Carpenter: One minute. The question was, "What did she say?" I think he is giving us his version.

40

The Witness: She said, she could not understand how the other car ever got away, being that the accident was at such a right angle as we described.

Adolph Janitschek, direct.

Q Did she state in your presence and the presence of Mr. Hild anything that Hild had said respecting the accident? A Yes.

The Court: Did Mr. Hild say anything about it?

The Witness: He just asked one question as to whether Miss Berglund said anything about the accident to her mother. 10

Q Did Mrs. Berglund state in your presence and in the presence of Mr. Hild what Ruth had said to her with respect to the accident? A Yes.

Q What were the exact words that Mrs. Berglund said? A She told me that Ruth told her the truth about the accident. 20

The Court: Did she say that to Mr. Hild?

The Witness: Yes, sir.

Q And what did Mr. Hild say in response to that? A I don't recall what he said at the time.

Q Did Mrs. Berglund say anything further respecting the truth of the accident, that is, what Ruth had told her? A I can just remember Mrs. Berglund told us Ruth had confessed to her and told her the truth about the whole accident, how it occurred. 30

Q Did she say how it occurred or what Ruth had said to her? A Yes.

Q What did she say? A What Ruth said to her mother?

Q Yes. A Ruth told her mother that we were not hit by another car on this turn, that it 40

Adolph Janitschek, direct.

was through the negligence of Henry Hild, the driver, going at such a fast rate of speed that we got to the turn and could not make the turn, and the car turned over, and there was no other car in sight.

10 The Court: What did Hild say?

The Witness: I don't remember what he said to that.

Q You say that was several days after the accident? A Yes, sir.

Q Did Mrs. Berglund tell you why it was mentioned several days after the accident, and after Mr. Hild was there once or twice before?

A Yes, she told me.

20 Q What was the reason for it? A She said something about Henry Hild being insured.

Q Did Mrs. Berglund at the same time, in your presence and in the presence of Mr. Hild, say anything about Ruth telling her anything with respect to the ride home in the car respecting the accident at the time? A I don't quite understand the question.

30 Q (Repeated by stenographer). A Yes, I remember that very well. She told her mother about the story we had planned to tell Mr. Hild in respect to being hit by this other car.

Q Did you see Ruth herself while you paid these visits to her home there? A Yes.

Q Where was she then? A In bed.

Q Did you have a look at her body at all? A At her body?

Q Yes. A No.

Q Did you notice any of the injuries? A No, I did not, no, sir.

40 Mr. Margolies: That is all.

Adolph Janitschek, cross.

Cross examination by Mr. Carpenter.

Q How soon after the accident did Mrs. Berglund, in your presence and in the presence of Mr. Hild, tell the truth of the accident that Ruth was supposed to have told? A I don't know just how many days after it was.

10

Q Well, how many times were you to see Ruth after the accident? A Quite often, I don't remember exactly.

Q How many times, about? A Probably two dozen times.

Q Over what period of time? A Six months, I guess; until her death.

The Court: Was this toward the latter part or the early part?

20

The Witness: The early part.

Q Would you say it was within the first week after the accident? A Yes, the first week.

Q And Mr. Hild was there? A Yes.

Q What did you say when Mrs. Berglund told you that Ruth had told her the truth? A I didn't say anything to her.

Q You were in the car, weren't you? A Yes.

30

Q And you did not say anything? A Well, I admitted it.

Q Well, what did you say? A I said, "That is true."

Q Your exact words were, "That is the truth?" A Yes.

Q And what did Mr. Hild say? A I don't think he said anything to that, outside of that he admitted it was true.

40

Adolph Janitschek, cross.

Q On your direct examination you said you did not know what he said in respect to that? A Well, I recall now he did say it was true.

Q You recall now on cross-examination that he admitted it was true? A Yes.

10 Q How wide is this Airmount Road? A I don't know the exact width of it.

Q Could you help us out by picking out some object in the courtroom? A Say about fifteen or eighteen feet wide.

Q What part of the road were you riding on? A The right-hand side of the road.

Q Did you observe that yourself? A Yes.

Q When did you observe it? A I know Mr. Hild always drives on the right-hand side.

20 Q You just told us you were riding on the right-hand side of the road? A Yes.

Q Now, you say that because you knew Mr. Hild prior to that had always ridden on the right-hand side? A No, I knew we were on the right-hand side of the road, from the skid marks of the tires after he applied the brakes.

Q Then why do you say now in reply to the question that you knew Mr. Hild always rides on the right side of the road? A I know that because I have driven with him quite often.

30 Q Well, do you know it because you saw the skid marks, or because you knew— A I saw the skid marks to prove it.

Q How far away from the place where the car turned over did the skid marks begin? A About thirty feet.

Q Had you ever ridden with Mr. Hild prior to this accident? A Yes, sir.

Q About how many times? A Very often.

40 The Court: Mr. Carpenter, before he left the courtroom a few minutes ago, asked the

Elizabeth Berglund, direct.

privilege of cross examining this witness.
Do you want to go on with this?

Mr. Duner: Not if the Court will excuse this witness.

The Court: We will excuse the witness until Mr. Carpenter returns.

10

ELIZABETH BERGLUND, sworn.

Mr. Margolies: I offer in evidence letters of administration *ad prosequendum*.

The Court: They may be received.

(Marked Exhibit P. 1.)

Q You are the mother of Ruth? A Yes, sir. 20

Q And the plaintiff in this suit? A Yes, sir.

Q Are you a widow? A Yes, sir.

Q Who did Ruth leave surviving her? A I have one son and one daughter.

Q What is the son's name? A Walter Berglund.

The Court: How old is he?

The Witness: He is thirty-one.

30

Q And your daughter? A My daughter is twenty-seven, Ethel Froman.

Q She is married? A Yes, both married.

Q And yourself? A Yes.

Q Your husband was dead at the time of her death? A No, he died two months after.

Q After her death or after the accident? A After her accident.

The Court: Did he die before your daughter? 40

Elizabeth Berglund, direct.

The Witness: Yes, sir.

Q How many months before? A Four months.

The Court: How old are you?

10 The Witness: Fifty-one.

Q Was Ruth employed at the time of the accident? A Yes, sir.

Q And do you know where she was employed? A Yes.

Q Where? A American Ink Company.

Q Where is that? A Hoboken.

Q Do you know how long she was employed there? A I have not just got the right record on that.

20

The Court: About how long?

The Witness: A year and a half.

Q Was Ruth working before that position? A Yes.

The Court: How old was Ruth at the time of the accident?

30

The Witness: Twenty.

The Court: What was she making at the time of her death?

The Witness: \$30 a week.

Q What did she do with her salary? A She gave it to me.

Q All of it? A Every week, yes; except what she needed she got back in clothes.

Q How much would you say that amounted to? A And so much for carfare and lunch
40 money.

Elizabeth Berglund, direct.

The Court: Well, what did it amount to, five dollars, ten dollars or fifteen dollars?

The Witness: Oh, no; I clothed her, but she did not need clothes all the time.

The Court: You clothed her?

The Witness: Yes, sir.

The Court: How much was the net average return from her employment to you? 10

The Witness: She got about between four and five dollars a week.

The Court: You say she made \$30 a week and you say you got \$25 of it?

The Witness: Yes.

The Court: On an average?

The Witness: Yes, I got it all except what she needed for clothes, which I bought off and on. 20

The Court: What did you do with the money, how did you use it?

The Witness: For the house.

The Court: For household expenses?

The Witness: Yes.

The Court: Were your other two children living there then?

The Witness: They were both married. 30

Q Now, with respect to November, 1922, do you remember Ruth being brought home by Mr. Pfeiffer and Mr. Hild? A Yes.

Q Do you know what time of night it was?

A Three o'clock in the morning.

Q And what was the condition of Ruth? A When she got home she was all bandaged up from head to foot, and her head was hanging down, she could not lift it, and she could hardly 40

Elizabeth Berglund, direct.

10 speak, but she said, "Mother," the first thing she said, "Mother, forgive me for what I did." After that I helped her take the glass off her body.

Q Did you examine her body that night? A Not that night; I stripped a sheet and I covered her whole body more than what she was covered before. She was bleeding all over; she had big gashes on the neck and arms and on the side and back, and on the knee, a very big scar on her knee, and her head was hanging. She could not get up; she was sitting up for six months. She was never lying down.

The Court: In bed?

The Witness: In a chair, and half the time in bed.

20 Q Did you call in a doctor? A Mr. Janitscheck went—

Q I asked you if you called in the doctor.

A I called in my own doctor.

Q Who was that? A Dr. Piender.

Q Hoboken? A Hoboken, yes, sir.

Q Did he treat her for her injuries? A Yes.

Q And did he render you a bill for his services? A Yes.

30 Q Do you know how much that amounted to?

A I think it was \$165.

Q Did you call in any other doctor? A Not after Dr. Piender was with us.

Q Did you buy the medicine for Ruth? A Yes.

Q All the necessary dressings? A Yes, we did.

Q How much did you expend for the care of Ruth, on medicines and dressings? A Well, my
40 married daughter will know—

Elizabeth Berglund, direct.

Mr. Carpenter: I object to that, what she paid for those things is not material in this case.

The Witness: It amounted to quite a lot.

The Court: The objection is sustained. Those things can only be recovered by a general administrator.

10

Q Who was the undertaker who had charge of the burial?

Mr. Carpenter: I object as immaterial.

The Court: Sustain the objection.

Q How soon after the accident was it that you saw Mr. Hild and Mr. Janitscheck? A Well, the second day Mr. Hild came up and it was the same day that both came up.

20

Q And were you present when Mr. Hild and Mr. Janitschek were there? A Yes, sir.

Q Who else was present? A My daughter that is married.

Q Who else? A Myself and my daughter and Ruth.

Q And on that occasion did Mr. Hild say anything to you with respect to the accident itself? A Mr. Hild said—I said first that “Ruth has confessed about the truth, Mr. Hild, and that you were not hit by a car; that you were speeding and the car fell over”; he said he was sorry, “but don’t tell my father about it.” That is about all that was said at the time.

30

Q And after that visit did Mr. Hild come to visit at your house again? A Yes, quite often.

Q At any of these other visits was anything said between you and Mr. Hild with respect to the accident? A Well, he wanted to know how

40

Elizabeth Berglund, cross.

soon Ruth would get better; he kept on asking every time he came how soon Ruth would get better.

Q He was friendly at the time? A Yes, very friendly.

Q Did you take care of Ruth in her illness?

10 A Yes, sir.

Q Did you have a nurse there? A No, sir.

Q During the time that you took care of Ruth, did you notice anything unusual about her body?

A Well, she was full of cuts and bruises on her body, and I found glass from her body for many weeks after; a couple of months after.

Q What do you mean by that, you found glass from her body? A The glass that was in her cuts came off in the bed all the time when she
20 was sitting there. She was not lying there, she was sitting in bed and glass came out of her elbow, her back, her side and different other places.

Mr. Margolies: Cross examine.

Cross examination by Mr. Carpenter.

Q Now, Mrs. Berglund, I want you to answer
30 a couple of questions for me. For how many weeks would you say glass continued to come out of her body? A About six weeks—a couple of months after, and she died even with one piece in her elbow which never came out. That was overgrown with skin. We could feel it on her elbow.

Q The skin had all grown over it? A Yes, sir.

Q Did you see the glass that came out on
40 the bed? A Yes, on the bed.

Elizabeth Berglund, cross.

Q How much of it did you find there? A Small pieces and one large piece.

Q Every morning? A Well, I won't say every morning, but off and on they came out.

Q How often did you find those pieces of glass on the bed, how many times a week? A I couldn't just say, but every time I made the bed I found bits of glass lying there. 10

Q How many pieces would you find there in the morning? A Sometimes a couple of them.

Q Did you ever find as many as a dozen pieces of glass in bed in the morning? A Not a dozen, but quite a lot of small pieces.

Q And you say they all came out of her body? A Out of her body, yes.

Q For how long, six weeks after the accident? A As long as that, yes. 20

Q Didn't she wear any bandages? A Bandages?

Q Yes. A She had bandages on her body, but the doctor exposed the sores on other parts of her body; he said they would heal quicker.

Q Do you mean to say the glass came out of those sores? A Off the sores, yes.

Q Now, your daughter was engaged to be married, wasn't she? A No, sir. 30

Q Wasn't she going with a young man? A No, sir.

Q Are you sure of that? A Quite sure.

Q This accident was on the 12th of November? A Yes.

Q What was the first day your daughter went out after that; about six weeks afterwards, wasn't it? A No, sir; oh, no. Mr. Hild gave her crutches about two and one-half months after that; he brought crutches for her but she walked around for, I think, three weeks with crutches. 40

Elizabeth Berglund, cross.

Q How long after the accident before she walked around the house? A Oh, I think two and a half months before she could start to walk with crutches.

10 Q Then how long was it before she first went downstairs and went out? A She went with me, but she could not stand it; she insisted upon going down, she thought she was strong enough.

Q When was that? A Three months after.

Q She first went downtown three months after the accident? A Yes, sir, but never alone; always with me.

Q Did she go down on crutches those times when she first went with you? A No, she just started then to lean on me and could walk along.

20 Q Walk with you? A Yes, after three months.

Q And she got better after that, didn't she? A No, she never got better, I mean when she walked she was stooped over and always complained of her back hurting her, and pressing her through the chest.

Q Something hurt her in her chest? A It came from her back; that is why she could not lie down. It was always her back hurting her.

30 Q You say that Ruth confessed to you that she had not told you the truth the first time? A She said, "Mother, I cannot keep it longer; I have not told you all I should. We were not hit with a car."

Q Then the first explanation that she gave you was that their car had been hit by another car? A No, she never told me anything—yes, she told me that when she came in.

40 Q So that as soon as they came home after the accident and you asked her where she had

Elizabeth Berglund, cross.

been, she said they had been in an accident? A Yes.

Q And you asked her what happened and she said the car she was in was hit by another car?

A Yes.

Q Then you say several days after that she told you that was not so? A She said, 10
 "Mother, I had to repeat about a half a dozen times on our way home, 'We were hit with a car, we were hit with a car,' and I cannot keep on telling you that lie, Mother, I am going to tell you the truth."

Q After your daughter got those crutches she fell downstairs one day, didn't she? A No, sir, but a crutch slipped.

Q She fell, didn't she? A No, sir, she didn't fall. 20

Q Are you sure? A Yes, she didn't fall.

Q Did she tell you she did fall? A Oh, no, she was never out of my sight.

Q Did you see her fall? A No, sir, she didn't fall.

Q She didn't fall any place? A No, sir, she never fell.

Q Didn't you say your daughter paid all of her expenses out of the money she made herself? 30

A No, sir.

Q She paid all of her own expenses, didn't she? A Her medicines and things? No, sir.

Q I mean, before the accident; you said she was working? A Yes.

Q She supported herself, didn't she? A Yes, she supported herself; she gave me the money.

Q She was twenty-one just before the accident, wasn't she? A No, sir, she was twenty. 40

Adolph Janitschek, further cross.

The Court: This accident was on November 12, 1922; when was her twentieth birthday prior to that?

The Witness: She had just been twenty the nineteenth of March.

Mr. Carpenter: That is all.

10

Re-direct examination by Mr. Margolies.

Q Explain to the jury what you meant in answer to the question by Mr. Carpenter, when you said she supported herself; what do you mean by that? A I told Mr. Carpenter she could support herself with the money she earned.

Q Well, what did she do with the money she earned? A She gave me the money.

20

Q Is that what you meant when you said in answer to a question that she supported herself? A Yes.

Mr. Margolies: That is all.

(Witness excused.)

30

ADOLPH JANITSCHEK, recalled for

Further cross examination by Mr. Carpenter.

Q You were quite a friend of Mr. Hild? A I was.

Q Up to what time? A Up to the time of the death of Ruth Berglund.

Q And you have not been friendly with him since? A No.

Q You were out on this ride that night as his
40 friend? A Yes.

Adolph Janitschek, further cross.

Q And you came back his friend? A Yes.

Q And you ceased to be friendly with him after this story developed that you were not hit by another car, is that so? A Yes.

Q And you were the only person who was there of your own knowledge, that says that you were not hit by another car? A Yes.

10

Q All the others still insist that you were hit by another car and always have insisted that, haven't they? A Yes, to my knowledge.

Q The car, when it overturned, overturned of its own free will or because of what? A Because of the speed the car was going at the time Mr. Hild tried to make the turn.

Q And it landed on its right side? A Yes.

Q Nothing hit in on its left side? A No.

Q No doubt about that either, is there, to your mind? A To my mind there is no doubt.

20

Q Did you examine the left rear mudguard after the accident? A Yes.

Q Did you examine the left hub cap after the accident, the left rear hub cap? A Yes.

Q How long after the accident did you examine it? A I don't know how long after it was, but a short time.

The Court: The same night?

30

The Witness: Yes, probably half an hour or so.

Q Did you help to pry the left rear mudguard off the wheel? A No.

Q Did you see that it was down on to the wheel? A Yes.

Q It was a very heavy mudguard, wasn't it? A Quite heavy.

Q Now, how fast do you say now that the car was going at the moment it overturned? A

40

Adolph Janitschek, further cross.

The moment it overturned, I don't know how fast it was going.

Q Can you give us your best idea? A Probably ten or fifteen miles an hour.

Q And you overturned right on the turn, didn't you, right at the curve? A Yes.

10 Q You say Mr. Hild had been driving the car twenty-five or thirty miles along the road? A Yes.

Q And as he approached this corner he slowed down to ten or fifteen miles an hour, didn't he? A Yes.

Q Yet you mean to say he told you he could not make the turn to the left? A Yes.

Q At ten or fifteen miles an hour? A Yes.

20 Q There was nothing else there to keep him from making the turn, was there? A Just a sharp-angle turn.

Q And a Cadillac car going ten or fifteen miles an hour, you say, is not able to make that turn? A He was not able to make it.

Q You did not know there was a turn there, did you? A No, not at that time.

Q The first thing you knew was when you upset, wasn't it? A Yes.

30 Q Nothing up to the instant you upset caused your attention to be distracted from the young lady sitting beside you? A Yes, Henry Hild applying the brake.

Q You did not pay any particular attention to that, did you? A Yes, I knew then that he must be coming to a very sharp turn or that something was ahead of him, and he was trying to stop.

Q And he got his car down to ten or fifteen miles an hour? A Yes.

40 Q And was making the turn, wasn't he? A Yes.

Adolph Janitschek, further cross.

Q And suddenly he upset? A Yes.

Q Right there on the curve of the road? A Yes.

Q Did you look behind you? A No.

Q As you upset did you look behind you? A I don't know where I looked.

Q You sat on the back seat next to Miss Berglund, the girl who finally died, didn't you? 10

A Yes.

Q Pretty close to her? A There was just room for two and you are pretty close.

Q That was all right? A Yes, that was perfectly all right.

Q And you were not paying any attention to what was going on around you outside of that?

A No.

Q Now, the next thing you knew, your car upset? A Yes. 20

Q When you upset you were all still in the car, weren't you? A Yes.

Q Nobody was thrown out? A No, nobody was thrown out.

Q Anybody cut? A Yes, all cut.

Q From flying glass? A Yes, all the glass was broken.

Q All the glass was broken when you hit the ground? A Yes. 30

Q Now, you say that this left rear fender was down on the left rear wheel after the accident? A Yes.

The Court: What about the hub cap?

Q What happened to the hub cap on the left rear wheel? A I believe that it was damaged slightly, but I don't recall how it looked.

Q The left rear hub cap was damaged? A Yes. 40

Adolph Janitschek, further cross.

Q You could not turn the wheel around because the left rear fender touched down on it; is that so? A I don't think the wheel could turn.

Q The left rear fender was jammed down on the wheel so that you could not turn the wheel; 10 that is so, isn't it? A Yes.

The Court: Where were these skid marks you told us about? Were they on the right or the left side, or the center of the road?

The Witness: On the right side of the road.

The Court: So he kept to the right?

The Witness: Yes, sir.

20 Q I didn't hear anything about these skid marks, I presume you told that while I was out. Where were these skid marks, and when did you see them? A I noticed the skid marks after the accident.

Q How did you see them; did you have a light? A Yes, we had the farmer's light.

30 Q Whereabouts were those skid marks? A To the right of the center of the road, just before reaching the turn.

Q And did they go off to the right, as though the car was hit at the left rear wheel and pushed over? A No, sir, it was a straight skid mark.

Q Did you look for any side skid marks from the left? A That was the only skid mark on the road.

Q Did you look for it? A Yes.

Q Did you look where your car turned? A Yes, sir.

40 Q And it was pretty dark? A Yes, sir.

Adolph Janitschek, further cross.

Q You had the farmer's oil lantern? A Yes, after a while.

Q Didn't you go to Mrs. Salderine's home that night, the mother of the other girl? A Yes, sir.

Q And didn't you tell Mrs. Salderine when you took her daughter home that another car hit you and upset you? A Yes, I made that statement. 10

Q You told that to Mrs. Salderine the same night? A Yes, sir, I told her the same night.

Q When did you tell Mrs. Berglund that? A I don't think I ever told her just how it happened.

Q I didn't ask you that. I asked you when it was you told her that another car hit you and upset you. I withdraw that.

Q Right after this accident, this farmer came along with his Ford, didn't he? A Yes, sir. 20

Q And he is the one had the lantern? A Yes.

Q And it was to his house you went after the accident? A Yes, sir.

Q What became of the car? A That night?

Q Yes. A The car remained there.

Q By the way, you just testified that this night when you got to Mrs. Salderine's house, you told Mrs. Salderine, the mother of Miss Salderine who was in the car, that another car had hit you? A Yes. 30

Q Do you remember testifying that way at the last trial of this case, which took place in this court room before his Honor and another jury, on the 21st of May, 1924,

"Q Didn't you say to Mrs. Salderine this night, in the presence of Miss Salderine, that another car had hit Mr. Hild's car and turned it over?" and your answer: 40

Adolph Janitschek, further cross.

“I made no statement that night in regard to the accident.”

Did you so testify? A Probably Mr. Hild made a statement; I know it was said.

Q Just answer the question. Did you so testify at the last trial of this case? A Yes, I
10 think I did.

Q Then why do you say today that after the accident you did tell Mrs. Salderine that you were hit by another car, and a year ago you said to the contrary? A I don't really remember what I did say; I know the statement was made.

Q Which is the truth? A I think I did make a statement that night.

Q Why did you say a year ago you did not make such a statement? A I do not recall
20 that I said that.

Q Isn't it because Mrs. Salderine at the last trial came here and swore that you did make such a statement, isn't that the reason you change your story? A I do not recall what she said.

Q Isn't that the reason that today you admit you told her after the accident? A No, I didn't say that.

Q Your car, when it turned over, simply hit
30 on its right side and stayed there, didn't it? A Yes.

Q Now you say today that all you people agreed on your way home to make up a story to the effect that another car had hit you? A Yes.

Q And you agreed to that? A Yes.

Q Why did you agree to that? A For the simple reason that, to protect Mr. Hild as far as
40 his father was concerned.

Adolph Janitschek, further cross.

Q Mr. Hild is a man of full age, isn't he?

A Yes, but he was afraid of his father getting knowledge of how it happened.

Q His father is only about half his size, isn't he? A He is twice as old.

Q You think he was afraid of his age? A Most likely. 10

Q Now, you agreed to that, did you? A Yes.

Q Did you think that was an honest thing to do, or did you do it just to help your friend out? A Just to help him out.

Q And did you change that story in order to help somebody else out? A No, to protect myself.

Q When was it you first changed that story of yours? A I don't know the exact time; I believe it was after I found out that the case was going to come up to court. 20

Q Then you changed it? A Then I changed it.

Q You knew perfectly well that if you told the story that your car had been hit on the left rear side, that there would not be anybody to show any negligence in the driving of it, didn't you know that? A Yes.

Q There is no doubt about the fact that after the accident the left rear fender was jammed down on the wheel and the hub cap was damaged? A Yes, it was damaged. 30

Q And your car hit the ground on its right side and not on the left? A Yes, sir, on their right side.

Q And you could not turn the left rear wheel after the accident because the fender was jammed down on it? A I didn't try to turn the wheel; I knew it was jammed down. 40

Adolph Janitschek, re-direct.

Q Jammed down very severely, wasn't it?
A Yes, quite severely.

Q I wish you would just explain to this jury how you agreed among yourselves that you would get away from this physical fact? A Which physical fact?

10 Q That the left rear fender was jammed down on the wheel and the left hub cap was smashed? A We tried to figure out how it happened; it was sort of a miracle.

Mr. Carpenter: That is all.

Re-direct examination by Mr. Margolies.

Q Why is it you are not friendly with Mr. Hild now? A Because I don't think he is doing
20 the right thing.

Q What do you mean by that? A He is not telling the truth about the accident.

Q You said something about examining the car, in answer to a question by Mr. Carpenter. Did you examine the car before you went to the farmer's house or after you left the farmer's house? A After we left the farmer's house, about a half hour after.

30 Q And what was the lapse of time between leaving the car, going to the farmer's house, and going back again to the car? A Oh, about an hour, I should judge.

Q And was Mr. Hild there all the time? A He was all alone for a time, how long I could not say.

Q Well, how long a time was it, a half hour or an hour? A Probably a half hour.

Q Did he say anything to you about the left fender at all when he met you at the farmhouse?

40 A No, sir.

Adolph Janitschek, re-cross.

The Court: Did you see it before you went away?

The Witness: No, sir, I did not notice that,

Q Now, had you any idea that Ruth was going to die at the time you made up the story between you? A No.

10

Q Regarding a question asked you by Mr. Carpenter and which you answered, about the change of the story. Did you understand that question fully? A Well, he asked me why—

Q The question as to when the story was changed with respect to the accident. A When I changed my story?

Q Yes. A Yes.

Q When was the story changed by you with respect to what we may call the little secret between all of you? A Well, after Ruth confessed to her mother.

20

Q That is what you meant when you answered Mr. Carpenter, was it? A Yes.

Q How far from the curve was it that Mr. Hild applied his brakes? A About twenty-five feet or something like that.

Q Did you measure it? A No, sir, I didn't; just judging.

30

Mr. Margolies: That is all.

Re-cross examination by Mr. Carpenter.

Q Were you present when Miss Berglund confessed to her mother that she had not told the truth about how the accident happened? A I was there when Mrs. Berglund—

Q Just answer the question. A No, I don't think I was.

40

Adolph Janitschek, re-cross.

Q Then how do you know she did confess, except from what her mother said? A She was there when her mother told us she had confessed, in the bedroom.

Q And you were there at the time? A I was present with Miss Berglund when Mrs. Berglund told of the confession.

10 Q This took place in the presence of the mother and the injured girl and you? A Yes.

Q You made it up then to make a case, didn't you? A To make a case?

Mr. Margolies: Just a minute; he testified before in answer to that question that Mr. Hild was there too.

The Witness: Yes, Mr. Hild was there, too.

20 Q When I asked you about it, you said nothing about Mr. Hild. A Well, he was there at the time.

Q Do you recall that, or did counsel just suggest it to you? A No, sir, he was there at the time.

Q And did Hild agree too? A He admitted it.

30 The Court: That was all gone over by your associate.

Mr. Carpenter: That is all.

(Witness excused.)

(Recess until two P. M.)

Dr. David B. Pindar, direct.

DR. DAVID B. PINDAR, sworn.

Direct examination by Mr. Margolies.

Q Are you a practicing physician of the State of New Jersey? A I am.

Q Where is your office? A 1100 Bloomfield street, Hoboken. 10

Q How long have you been practicing? A Since 1889.

Q From what college are you graduated? A Columbia University, College of Physicians and Surgeons.

Q Do you know Mrs. Berglund, the plaintiff in this case? A I do.

Q Do you know her daughter Ruth, the deceased? A Yes, I attended Mrs. Berglund when Ruth was born. 20

Q Do you remember attending Ruth sometime in November, 1922? A Yes, I saw her on November 22, 1922.

Q Now, you saw her after that also, didn't you? A Yes, I saw her up to the time of her death, the 11th of May.

Q And did you keep a record of the visits and times you saw her? A I did.

Q And was that record made each time when you saw the patient? A It was. 30

Q Have you that record with you? A I have.

Q Now, according to that record, how many times had you seen Ruth from the time you were first called in on November 22nd, to the time of her death? A It shows twenty-six visits.

Q Can you give me your charge for those visits? A \$5 a visit.

Q Is this your card index of the case? A Yes. 40

Dr. David B. Pindar, cross.

Mr. Margolies: I offer this in evidence.

Mr. Carpenter: There are some things on the back of the card. May I cross examine on that?

The Court: Yes.

10 *Cross examination by Mr. Carpenter.*

Q When did you write this? A During the interval I treated her.

Q This card is dated March 28th. A That is the date of her birth.

Q When did you write that year? A This date of her birth?

Q No, the history? A During the time of her sickness. Most of this was written as a memorandum of her case.

Q It was written all at one time, wasn't it? A Probably this was written about the same time.

Q All this? A Yes.

Q You sat down and wrote it down? A I probably did.

Q When did you do it, before she died or after she died? A At the time of her last sickness.

Q Before or after she died? A After she died, I think.

Mr. Carpenter: I will ask that this part on the back be stricken out.

The Court: The card is not admissible anyhow.

Mr. Carpenter: I do not object to what it shows, but I do object to what is on the back.

Dr. David B. Pindar, direct.

The Court: It may be received then; the jury will disregard what is on the back of this card as though it were not there.

(Marked in evidence Exhibit P. 2.)

Direct examination by Mr. Margolies (continued).

10

Q On your first visit to Ruth, were you called to her home? A I was.

Q Who called you? A Mrs. Berglund—I was called by telephone.

Q And you went to her home? A I did.

Q And attended Ruth? A I did.

Q And what did you find to be the trouble with Ruth? A I found she suffered a fracture of her right clavicle, collarbone. She had a lacerated wound of her right leg and contusions of the left hip and thigh, with several abrasions. There were several minor injuries, slight lacerations caused by glass. She had extensive discolorations and there was an infiltration of blood in the thigh and hip on the left side. She complained of pain upon pressure and she was in an excited condition. She complained of headaches, restlessness and disturbed sleep. She was in quite an excited nervous condition, somewhat hysterical at times. I do not say that all these incidents I discovered at the same first visit. The injuries were noted at the first visit.

20

30

Q Well, she complained to you of pain; did you try to ascertain the cause of that pain? A That was the result of the accident.

Q Well, what pain was it that she stated to you hurt her very severely? A She complained of headache, pain in the back, hip and thigh, and of course pain at the site of the fracture of the

40

Dr. David B. Pindar, direct.

collarbone and the lacerated wound of the right thigh.

Q And how long did you treat her altogether?

A I treated her at that time until the date of her death, May 11, 1923. There was an interval that she apparently was improving somewhat, and my calls were not so frequent. I left then
10 and I was away from the city for twelve days on a trip to Bermuda, and when I came back I found a call to go there, and I found that there had been a decided change in her condition.

Q What was the change you noticed?

Mr. Carpenter: What was the date of that, doctor?

The Witness: That was the 12th of May—no. I left the 12th of April, 1923, and I
20 returned home, and the same day I returned home I made a visit—there was a call to make a visit at her home. Then she showed decided nervous symptoms. She had exaggerated reflexes.

Q What do you mean by that? A The knee jerk was exaggerated and pressure against the heel—

Q The spine, you say? A No, but those
30 are symptoms of a spinal lesion.

Q Would you say in your opinion, from your experience and study and reading and examination of the record, that that was the result of the accident?

Mr. Carpenter: I object, that is for the jury to decide.

The Court: You may make a hypothetical question, whether that resulted from the
40 injury sustained in the accident.

Dr. David B. Pindar, direct.

The Witness: I think the spinal lesion was the direct result of the accident.

The Court: From trauma?

The Witness: Trauma, yes, sir.

The Court: You say there was a spinal injury?

The Witness: There was a contusion of the spine. There was considerable discoloration and tenderness over the lower part of the spinal column. 10

Q Did this condition continue down to the time of her death? A Yes, sir, it was progressive from that time.

Q What do you mean by progressive? A The symptoms were increasingly more severe.

Q You attended her at her death? A I did. 20

The Court: Did you notice anything about her locomotion?

The Witness: Yes. She could not stand without dizziness. She had to be held. In fact, I used to encourage her to stand until I found that she could not.

The Court: What time was that?

The Witness: On my return from my trip. 30

The Court: When was that?

The Witness: Around the 12th of April. From that time up to the time she died.

The Court: Had you attended her before this? Did you know her before the accident?

The Witness: Yes.

The Court: You were the family physician? 40

Dr. David B. Pindar, cross.

The Witness: Yes.

The Court: What was her condition immediately before the accident?

The Witness: Well, I had not treated her for years previous to the accident.

10 Q Had you seen her at all, although you had not attended her? A I treated members of the family and I had seen her, but I didn't treat her for years. I think the last time I gave her treatment she was about twelve years old.

Mr. Margolies: That is all.

Cross examination by Mr. Carpenter.

20 Q Doctor, you certified the cause of this girl's death to the public authorities, didn't you? A I did.

Q You have not told this jury what she died of yet, have you? A No, sir; the question has not been asked.

Q You certified, did you not, that she died as the result of chronic endocarditis? A Not directly.

Q Answer the question. A Not alone, no.

30 Q I show you a certified copy of the record of the Board of Health, and Vital Statistics of this County, dated June 26th, 1923, and ask if that is what you signed? A Chronic endocarditis was put down here.

Q Listen to my questions and we will get along better. Is that what you signed? A That is one of the things put in here.

40 Q You still don't answer my question: Is that what you signed? A Yes, but I can say I put that as the real cause of her death.

Dr. David B. Pindar, cross.

Q This was the certificate you made out? A
A copy of the certificate.

Q You put down her age as twenty-one years,
one month and twenty-two days? A I do not
recall that now; that may have been told me at
the time; I don't know.

The Court: What date did she die? 10

The Witness: The 11th of May.

The Court: The 11th of May, 1923?

The Witness: Yes, sir.

Q You put down here age, twenty-one years,
one month and twenty-two days? A I think
that part was filled in by the undertaker, and I
simply put in the death. I assume the under-
taker filled that in. 20

Q The cause of death appears on this cer-
tificate to be chronic endocarditis, accidental in-
juries from automobile? A Yes.

Q Were you asked by anybody to put those
words in, "accidental injuries from automobile"
or not?

Mr. Margolies: I object.

A I was not. 30

The Court: Objection overruled.

Q Did anybody ask you to put those words
down? A No.

Q Now, may I see the day you called and
treated this young lady? A (Paper handed to
counsel.)

Q You were not called in to treat this girl
until ten days after the accident, were you? A 40

Dr. David B. Pindar, cross.

I don't recall the date of the accident, but that was the first date I treated her.

Q You treated her first on November 22nd?

A Yes.

Q Did she have endocarditis at that time?

A She had, yes. She had endocarditis—

10 Q I mean, had she had cronic endocarditis?

A Yes.

Q For how long? A Since she was about twelve years of age.

Q What is chronic endocarditis? A It is a condition of the valves of the heart due to a rheumatic attack which she had when she was twelve years old.

20 Q In other words, it is heart disease following an attack of rheumatism? A Yes, but we have what we call a compensating hypertrophy, so that she showed no symptoms of it. I had not treated her from the time of the development of this.

Q At any rate, when you first called on her on November 22, 1922, this girl had chronic endocarditis, didn't she? A She had, yes.

Q And she had had that for some time, for a number of years before? A She had, yes, following an attack of rheumatism.

30 Q The word "chronic" means that it was not a sudden thing; it was something she had for a long period of time? A Yes, of course. It was not acute. The acute symptoms had all passed off and she had compensating hypertrophy.

Q You treated this girl on November 22nd, 24th and 26th and 30th, four days in November, 1922, that is all? A I presume that is all.

40 Q Then you treated her December 3rd, 7th, 9th, 11th, 16th, 18th and 23rd, that is all, isn't

Dr. David B. Pindar, cross.

it? A If that is the way it is recorded there, yes.

Q Just follow me. In January you only saw her on the fourth of January, didn't you, no other day in January? A Right.

Q You did not see her at all in February, did you? A No. 10

Q In March you only saw her twice on the sixteenth and seventeenth? A Yes.

Q What did she have, a cold, at that time? A No.

Q What did she have at the time? A Following the injury—

Q Have you any recollection of what she had those two days? A Nervous symptoms that she called me for. No, I do not recall.

Q Have you got any independent recollection at this late date as to what was the matter with this girl on March 16th and 17th, 1923? A I have nothing further than the symptoms following the injuries. 20

Q Do you remember, for instance, what her pulse was on the 16th and 17th of March? A I could not recall that, no.

Q Do you remember what her temperature was? A No.

Q Do you remember whether she had a sore throat? A There is no record of any sore throat, no. I don't think I was called for anything of the kind. 30

Q Have you got any recollection of it at all? A I could not swear either one way or the other.

Q Did you give her a prescription that day or anything? A I have no record to that effect.

Q In April you did not see her until the twelfth, did you? A No. I was away until the twelfth of April. 40

Dr. David B. Pindar, cross.

Q You were not away from the fourth of January to the sixteenth of March, were you? A No, I was away from the latter part of March until the twelfth of April.

Q The only days you saw her in April were the 12th, 13th, 15th, 18th, 24th, 26th and 30th, seven days in April? A Yes.

Q Beginning April twelfth, isn't that right? A Yes.

Q And in May you only saw her May 2nd, 6th, 9th, 10th and 11th; is that right? A Yes.

Q Those were the only days you treated her? A I was consulted over the telephone many times about the case.

Q You did not put them down? A No, I had no record of them.

Q When you first visited her on November twenty-second, you found, did you not, that Ruth had had a fracture of the collarbone and that had been set? A Yes.

Q Was it properly set? A Yes; there was a proper bandage on it.

Q You did not take off the bandage? A I didn't remove the bandage, no.

Q How long was it before the bone healed? A Oh, probably the usual time, I do not recall now.

Q When did you take off the bandage? A I have not the exact time.

Q Probably six weeks following the injury? A Probably.

Q After the fourth of January, you did not see her again until the sixteenth of March? A Probably had her arm in a sling, but I have no data to that effect.

Q What is the normal time for a broken collarbone to unite? A It depends upon dif-

Dr. David B. Pindar, cross.

ferent things, the age of the person and so on; usually six to eight weeks.

Q How long was it before this collarbone healed up? A I think probably it was six or eight weeks.

Q Was there anything unusual about the break of this collarbone? A No. 10

Q Within what time did the bruises disappear? A Well, those bruises, the discoloration, about six weeks. The hematoma of the thigh and hip took somewhat longer.

Q By hematoma you mean a black and blue spot? A It means an extravasation of blood, a hemorrhage in the tissue.

Q A layman calls that a very bad bruise? A Yes.

Q When did the evidence of that disappear? 20
A I should judge within two months.

Q On ~~June~~^{Jan} fourth, when you discontinued your visits, all the evidences of that accident had disappeared? A Outside of the thickening of the collarbone.

Q You call that callus? A Callus.

Q Callus that is thrown out around the bone? A Yes.

Q But at that time all the bruises on her 30
back and side had disappeared? A The visible evidences?

Q Yes. A Practically, but she still complained of pain on pressure, tenderness.

Q Isn't it fair to say that the record here that you kept of your visits indicates that the last visit that was made necessary by any objective symptoms, anything you could see of her condition, was the fourth of January? A I would not say that. 40

Dr. David B. Pindar, cross.

Q Well, you have not any record of any treatment to her between January 4th and March 16th, 1923, have you? A Those are all the visits I have. I was consulted on the telephone.

10 Q In treating a case of this kind, what do you do, take off the bandages when you get through with it? A Yes, or tell the person who is looking after her treatment.

Q And isn't it fair for you to say that you took off the bandages and discharged her from further physical evidence of her injuries on the fourth of January? A As to the necessity for bandages, yes.

20 Q By the way, when you first saw her on the twenty-second of November, did you find any glass sticking in her anywhereas? A There was little pieces of glass.

Q Where? A There were little cuts which had glass in them, and there was a piece of glass still in the arm, which I did not remove because it would require an incision. It is still there.

Q It was there at the time she died? A Yes.

Q Under the skin? A Yes.

30 Q There was nothing serious about that, was there? A I didn't think it necessary at the time to cut her to remove it.

Q How big a piece was it? A I should judge probably a half inch.

Q Right under the skin? A Under the skin, in the tissues of the arm.

Q Well, was there any glass that was in her body that you know of? A They showed me several pieces of glass—

40 Q Listen to the question: Was there any glass that you know of in her body when you first

Dr. David B. Pindar, cross.

saw her on November twenty-second? A There were little splinters of glass, which were removed at the time.

Q How many? A I cannot remember; very little pieces of glass.

Q Why didn't you pick them out? A They were removed.

10

Q The doctor who treated her before you had not removed them? A They told us they found several pieces of glass.

Q Now, when you called back to see this girl on the twelfth of April, she had heart trouble, didn't she? A Yes, she had heart trouble, but it produced no symptoms.

Q What did you prescribe for her on the twelfth of April? A I could not swear to that; I think at that time I gave her a bromide preparation; I am not sure. I have no copy of my prescription.

20

Q You might have given her a heart stimulant? A It is possible.

Q You treated her for a heart condition from the twelfth of April down to the day she died? A No, I treated her for her injuries.

Q What was the immediate, proximate cause of her death? A Due to malnutrition. She gradually lost weight and she developed a weak general condition of the system; she died of anemia.

30

Q What was the thing that caused her heart to stop beating?

Mr. Margolies: I object to that, that has been answered once.

The Court: This is cross examination. The objection is overruled.

Mr. Margolies: Exception.

40

Dr. David B. Pindar, cross.

A The spinal condition; edema of the lungs.

Q What is that? A A filling-in of the lung with serum.

Q What is the cause of edema of the lung?

A It happens when the heart action weakens and the lungs fill up, or from any disease, kidney trouble or what-not.

10 Q Would the chronic endocarditis cause the heart to weaken and thus cause the lungs to fill up, without enough strength to carry away the fluid from the lungs? A Well, I would have to modify that by saying that if she had not had these injuries to the spine she would not have had that condition.

Mr. Carpenter: I move to strike that out.

20 Q Would the chronic endocarditis cause the heart to weaken and thus cause the lungs to fill up, without enough strength to carry away the fluid from the lungs? A I really cannot answer that.

The Court: Well, that answers it.

Q See if you can answer this question: What was the direct cause of the edema of the lungs?

30 A A weak condition of the system, weak heart action.

Q What part of the system was weak that caused edema of the lungs? A The heart action, the heart gave way at the last.

The Court: Doctor, aside from all that, what do you say was the superinducing cause of her death?

40 Mr. Carpenter: May I put in an objection to that question?

Dr. David B. Pindar, cross.

The Court: All right, strike it out. I cannot understand the attitude of counsel in this thing, and I think I will take it right in hand. Doctor, what was the cause of death?

The Witness: Why, I think the cause of death was due to her spinal lesion. 10

The Court: And what was that due to?

The Witness: Due to an injury to the nerve filaments, undoubtedly a slight hemorrhage, capillary hemorrhage. I did not realize that condition until I saw her after I returned from the country because she was so weak and she did not show bad symptoms. Then I examined her and saw she was not getting along, and she developed this irritation of the spine. 20

The Court: Could you say what was the probable cause of the condition of the spine?

The Witness: Yes, trauma at the time of the accident.

Q If you honestly thought that, doctor, why didn't you put it in the death certificate? A Well, in filling in a death certificate we usually put several things together. It was not necessary that I should have said anything about it, but I put it in; I said, "Following a recent injury." 30

Q Was an autopsy performed on her? A No, not to my knowledge.

Q Heart trouble follows chronic endocarditis whether there is an accident or not, isn't that so? A Not necessarily, I have treated cases for many years. 40

Dr. David B. Pindar, cross.

Q Do you know of any disease that follows directly and proximately endocarditis, and causes death, whether there is an accident or not? A Well, it depends upon the severity of the case, the acuteness of the case.

10 Q Go ahead with your explanation. A If a person is in a weakened condition, it depends upon the severity of the heart lesion, a person may die of endocarditis in a few weeks or a few months.

Q Now, do you know what happened to this girl between the fourth of January and the twelfth of April, whether anything else happened to her that may have affected her heart? A I do not know, no.

Q There is no way of your knowing, is there? A No.

20 Q Your bill has not been paid, has it? A No.

Q You do not specialize in diseases of the heart, do you? A I am in general practice.

Q Always have been in general practice, haven't you? A Always have been in general practice.

30 Q Was there any evidence on this girl's back on the fourth of January when you discontinued your treatment, of any spine injury? A No visible evidence.

Q Was there any other evidence at the time, that she had a spine injury? A Then I didn't realize that she had, or was, developing a spinal condition.

Q On the sixteenth of March when you went there, was there any evidence of a spine injury? A I don't recall any, no.

40 Q The first you noticed of a spine injury was when you found she had exaggerated knee jerks

Dr. David B. Pindar, cross.

on the twelfth of April? A The twelfth of April, yes.

Q Exaggerated knee jerks are simply signs of nervousness? A No. The ankle clonus test showed a lesion of the spine.

Q A lot of things cause spinal trouble besides automobile accidents; isn't that so? A 10
Oh, yes.

Q If the girl had fallen downstairs and bumped her spine, that would have caused it?

A Any trauma would have caused it.

Q If she fell out a chair it would have caused it? A Possibly.

Q You did not see anything that made you suspicious of it around January fourth or the sixteenth of March, did you? A No.

Q Did she have chronic endocarditis on the 20
fourth of January? A As I said before, this condition followed an attack of rheumatism when she was twelve years old.

Q And it persisted and continued? A She had no symptoms. She had compensating hypertrophy, which produced no symptoms.

Q What do you mean by that? A She had no active condition at all.

Q Was there any active condition on the 30
fourth of January in her heart? A No.

Q Therefore the accident had not affected her heart, had it? A Not at that time, no condition about the heart.

Q Tell us in as simple language as possible, so that the jury will understand you, what caused the heart to weaken and fill the lungs, as a result of which Ruth died? A It was a generally weakened condition. She had a digestive disturbance, she lost weight and she developed a generally weak condition. 40

Dr. David B. Pindar, re-direct—re-cross.

Q What caused that? A In my opinion, it was due to the spinal injury.

Q And from your examination of Ruth can you tell us what caused the spinal injury?

Mr. Margolies: I object to that.

10 The Court: I suppose he might say it was caused by trauma or something like that.

Re-direct examination by Mr. Margolies.

Q Did you ever treat Ruth for endocarditis? A No; she required no treatments since her attack of rheumatism.

Q You just treated her for the attack of rheumatism and had not treated her until 1922? A
20 1923.

Q Would you say that the endocarditis would have been sufficient to produce the physical decline which resulted in death? A No, I think Ruth would be alive today if it had not been for the injuries she received.

Q From your experience as a doctor and also from your reading and study, can you form an opinion as to the effect of this endocarditis on Ruth? A Well, it had produced no symptoms.
30 She was actively engaged in her occupation and I had never had occasion to treat her for the heart condition.

Mr. Margolies: That is all.

Re-cross examination by Mr. Carpenter.

Q Doctor, didn't you tell her mother not to let her have any excitement, not to excite herself in any way because it would be dangerous?
40

Dr. David B. Pindar, re-cross.

A At the time of the acute symptoms, the acute trouble, yes.

Q When was that? A I think when she was twelve years old; that must have been about 1912.

Q Why did you advise her not to have any excitement or to excite herself? A Until the compensation was complete. 10

Q Chronic endocarditis means that she had a disease of the heart and it was continuous right along, isn't that so? A Yes, but sometimes the patient goes along without any symptoms, the pulse is normal and they live for many, many years. We have treated patients with endocarditis for over thirty years.

Q You are not a specialist who makes a study of these things? A No. 20

Q You have not made any particular study of endocarditis, have you? A Not in particular; I think I have had quite an experience.

Q When you testified a year ago you said she died of a complication of diseases, didn't you? A I did.

Q I cannot get your exact words, but I think that is it.

The Court: Were you in a position to say what was the probable producing cause? 30

The Witness: Well, I meant the spinal lesion, the loss of sleep, the weakened condition of the system with the weakened heart action.

(Witness excused.)

Arthur E. Pfrommer, direct—cross.

ARTHUR E. PFROMMER, sworn.

Direct examination by Mr. Margolies.

Q By whom are you employed? A American Ink Company, Hoboken.

10 Q How long have you been employed there?
A About five years.

The Court: In what capacity?

The Witness: Auditor.

The Court: You keep account of the wages paid employees?

The Witness: Yes, sir.

The Court: Do you know what was being paid to this young woman, Ruth Berglund, in November, 1922?

20 The Witness: Yes, sir, I have all the salaries.

The Court: Well, take the week prior to November 12, 1922; what did she get?

The Witness: She was getting \$30 a week.

The Court: Was that her stated salary?

The Witness: Yes, sir.

The Court: How long had she been getting that?

30 The Witness: From March 4, 1922.

Mr. Margolies: That is all.

Cross examination by Mr. Carpenter.

Q You married Ruth's sister, didn't you?

A Yes.

Q So that you are the brother-in-law of the deceased girl? A Correct.

40 Q Her wages were paid right along after the accident, weren't they? A Correct.

Arthur E. Pfrommer, cross.

Q Have you got any record there to show whether or not she returned to work between the 1st of January, 1923, and the 1st of May, 1923? A I have no written record, but I have a recollection of her trying to come to work and being physically unable to do so on one or two occasions. I think it was about the fourth month after the accident. 10

Q She went down to the plant? A She did, but I can assure you she was more dead than alive when she got there.

Q Well, she worked a half a day at a time now and then? A She worked a few hours and she had to be sent home before noon, I believe.

Q Did she work in January? A No, I am sure she didn't work in January.

Q When I asked you that question last year didn't you say, "Q She did work in January? A She may have worked a half a day one or two times, but never a full day. Q Did she work in February, 1923? A She may have worked a half a day at a time." Is that right? A I may have said that. 20

Q What was the first day she came back to work after the accident? A That I could not tell you.

Q Did she come back in January? A I don't believe so. 30

Q You did not keep a record as to when she did come back? A No, sir, I was too busy to do it.

Q What work did she do? A She was book-keeper and stenographer.

Q Did she work right along until the first part of May, do you remember? A She didn't work at all. As I previously stated, she may have come in for an hour or two on one or two 40

John F. Cassidy, direct.

occasions, but she got so bad she could not do that even.

Q You were asked this question last year: "Q Did she work right along until the first part of May, 1923?" and your answer, "I don't think she ever put in more than half a day at any time that she ever came to work, and I know she did not put in any time in May. Q Is that true? A She did not work regularly." Did you give that answer last year? A If it is in the record, I may have.

Q And did you answer this question: "Q When do you think was the last day she worked for you?" and your answer, "Probably the middle of April." Did you so answer? A That may be so, I don't know.

20 Mr. Carpenter: That is all.
(Witness excused.)

Mr. Margolies: We rest.

Mr. Carpenter: I move for a non-suit on the ground that no negligence has been shown on the part of the defendant.

The Court: I will deny the motion and allow you an exception.

30

DEFENSE

JOHN F. CASSIDY, sworn.

Direct examination by Mr. Carpenter.

Q Where do you live? A 1913 Boulevard, Jersey City.

Q Your profession is what? A I am a physician.

40

John F. Cassidy, direct.

Q And how many years have you been practicing, doctor? A I have been practicing thirteen years.

Q Specializing in any particular branch? A At the present time I am a specialist in diseases of the heart.

Q Do you lecture anywhere? A I am Instructor of Medicine in Bellevue Hospital Medical College, New York City. 10

Q How many years have you made a specialty of diseases of the heart? A I have been specializing in that work for the last five years.

Q You were here in court when Dr. Pindar testified? A Yes, sir.

Q Are you familiar with the disease called chronic endocarditis? A Yes, sir.

Q What is that, doctor? A Chronic endocarditis is a condition in which the lining membrane of the heart becomes inflamed and is usually brought on by some condition such as rheumatism. 20

Q Now, then, assuming that a child twelve years old has an attack of rheumatism which brings on chronic endocarditis and that thereafter when she was twenty-one years old she had an automobile accident in which her collarbone was broken and had some bruises; this collarbone united within eight weeks and the bruises disappeared within eight weeks and the chronic endocarditis by that time had not flared up or become aggravated, and the girl died some six months less a day after the accident of chronic endocarditis, would, in your opinion, the cause of death be endocarditis or the cause of death be in any way affected by the accident six months before? A In my experience I would say that such an accident, six months previous to the 30 40

John F. Cassidy, cross.

death, would not have produced or aggravated the outcome.

10 Q Why not, doctor? A Because the majority of young people affected with chronic endocarditis die between the ages of eighteen and twenty. A few do live to the age of thirty, but they are few and far between. That is the one of the things we seldom see.

Q Why is that, doctor? A It is a disease that grows progressively worse.

Q Does endocarditis sometimes develop into another heart trouble? A Very often when these people have rheumatism endocarditis runs into a second disease which is almost invariably fatal.

20 Mr. Carpenter: I would like to offer in evidence now the certificate of death.

The Court: It may be received.

(Marked Exhibit D. 1.)

Cross examination by Mr. Margolies.

Q Did you ever treat a patient for endocarditis? A That is one of the most common diseases I have to treat in my everyday practice.

30 Q How many do you treat every day? A I should judge I treat anywhere from twenty-five to fifty patients.

Q And out of the twenty-five to fifty how many have died before they reached the age of twenty years? A I should say ninety per cent.

40 Q Do you want this jury to believe that in the last five years you have been practicing you have been treating twenty-five to fifty young people for endocarditis every day in the year, and ninety per cent. of them have died before

John F. Cassidy, re-direct.

they reached the age of twenty? Is that right?

A I do, because that is the truth.

Q Doctor, do you represent any insurance company? A I do no insurance work.

Q Do you know of your own knowledge that the insurance companies take risks, male and female, even if they have endocarditis? A They do not take cases of rheumatic endocarditis. 10

Q In this case, doctor, do you know what kind of endocarditis this girl had? A I have no knowledge of the type of endocarditis she had.

Q And it may be she died as stated on the certificate, chronic endocarditis? A When a man states "Chronic endocarditis" without qualifying it, he does not know what he is talking about, because there are different types, therefore he simply puts it in one group. 20

Q How many types of endocarditis are there? A There are several types.

Mr. Margolies: That is all.

Re-direct examination by Mr. Carpenter.

Q A lot of your work is done for other doctors? A Yes, a good deal of it is consulting work. 30

Q How many years have you been practicing altogether? A Thirteen years.

Q The last five years specializing in heart work? A Yes, sir.

Henry Hild, direct.

HENRY HILD, sworn.

Direct examination by Mr. Carpenter.

Q How old are you? A Twenty-seven.

Q Were you the owner of this automobile you
10 were driving on the night of November 12, 1922?

A No, sir.

Q Who was? A My dad.

The Court: Albert Hild?

The Witness: Yes, sir.

Q What time did you start out? A About
7:30.

Q What kind of a car was it? A A Cadil-
20 lac.

Q A coupe? A A coupe type.

Q Who was with you when you started out?
A Mr. Janitschek.

The Court: Is it admitted that at this
time the car was being driven with the per-
mission and consent of the father?

Mr. Carpenter: Yes.

30 The Court: Within the scope of agency?

Mr. Carpenter: If you call it agency, yes.

Q How many years before that had you
driven cars? A Before 1922?

Q Yes. A I had driven four and one-half
years.

Q Did you ever have any other accident but
this one? A No, sir.

Q Now, you and Janitschek were friendly be-
40 fore this? A We were, great friends.

Henry Hild, direct.

Q Did you know either of these young ladies when you met them that evening? A Yes, sir.

Q Which one? A Miss Salderine.

Q Did you know Miss Berglund before that?

A No.

Q Where did you meet them? A Met them up in Union Hill.

10

Q Do you remember around ten o'clock when you were driving down this country road? A Yes.

Q You had the lights on? A Yes.

Q Any houses around there? A Why, not that you could see from the roadside, no.

Q You had your lights on when you approached this corner? A Yes.

Q About how fast were you going? A As I approached the corner?

Q Yes. A I imagine about 15 or 20 miles an hour at the most; I didn't look at the speedometer.

20

Q When you came to the curve what did you do? A I applied my brakes. I saw the light from another automobile and I edged to the right and sort of got off the road to give this other car room to go by, and as I did, he struck the rear left wheel.

Q Now, then, why did you apply the brakes as you approached this corner? A It is a sharp corner. The road made a turn to the left and I felt anybody would apply their brakes when they approach a corner of that sort.

30

Q It was the right thing to do under the circumstances? A Yes, sir.

Q Now, whereabouts did you first see this other car? A Just as we came to the corner.

Q Which way was he going? A He was going, I would say, north.

40

Henry Hild, direct.

Q Do you not know the directions there? A I was going west and he was going north.

Q In other words, at right angles? A A right-angle turn, yes.

Q And he was coming to approach you? A Approaching.

10 Q And you both had to make the same turn on the road? A Had to make the turn, yes.

Q What happened then? A I got hit, that is all.

Q Where did he hit you? A The left rear wheel, on the mudguard.

Q About how fast were you going at the time you were actually hit, if you know? A I could not just tell you, but I slowed up enough to make the turn.

20 The Court: Did you say you were going fifteen or twenty miles an hour just before that?

The Witness: Yes; and I slowed down.

Q Did Janitschek, by the way, say anything to you about your speed? A He did, away up the line, yes.

30 Q How fast were you going then? A About thirty miles an hour at the time.

Q Now, when this car hit you, what happened to your car? A It swung over to the side of the road, the gravel, and hit some stones, and upset.

Q When you upset, what part of the car did you land on, what part of the car struck the ground? A The right-hand side.

Q When it did that, what happened? A The four of us got out of the car.

40 Q Did the car stay right there? A Yes.

Henry Hild, direct.

Q Did it roll over at all? A No, absolutely not.

Q And what happened to the other car? A It just kept on going.

Q What kind of a car was it? A I could not tell you what kind of a car it was.

Q When he came around the turn what part of the car did you see? A I just saw his headlights, that is about all. It must have been a massive car or he would not have been able to do the damage he did. 10

Q Can you tell anything about the speed of this other car? A No, I know it was going fast, that was all.

Q What damage did he do to your car? A Damaged the rear left hub-cap and the rear left fender, and bent it down on top of the wheel. 20

Q Can you state to the jury just how that was done? A Yes, I can. The wheel is like this and the fender is just over it, and the fender was bent down on it in this fashion.

Q Could you turn the wheel? A Why, I don't know if you could turn the wheel, I didn't try.

Q What part of the road were you on when he hit you? A The right side of the road. 30

Q On the road? A Yes, sir.

Q Well, how far over on the right were you with reference to the center line of the road? A I was on my own half of the road. I tried to get out of this fellow's way and that is the reason I pulled over further to the side.

Q Now, then, after you upset what happened? A The four of us got out of the car.

Q How did you get out? A Through the windshield and door. 40

Henry Hild, direct.

Q What happened after that? A The farmer came along in his Ford.

Q How soon was he there after? A In about five or ten seconds, I don't believe more than that.

10 Q What did he do? A He asked what he could do for us, and we asked him to take care of the girls.

Q What did he do? A He took the girls and Mr. Janitschek over to his father's home.

Q Now, then, this night after the thing was all over, did you come back to Jersey City in a car? A Yes, but not in the Cadillac.

Q In what car? A Mr. Janitschek telephoned and a friend came out for us.

20 Q Mr. Janitschek says that on this night in this car the lot of you agreed to say that this happened because another car hit you, because you didn't want to get in trouble with your father; did anything like that take place? A No, sir.

Q Did you say anything to Mrs. Salderine after you got home that night? A Absolutely did not, no, sir.

Q Who did? A Mr. Janitscheck did.

30 Q Did you ever say to Mrs. Berglund two or three days after the accident that you admitted that another car did not hit you? A I do not quite understand the question.

Q Mrs. Berglund testified that you told her in her house, in the presence of Miss Berglund and Mr. Janitschek that you were not hit by another car; did you tell her anything like that? A No.

40 Q Now, then, was any effort made to right your car after this accident that night? A Not that night, no.

Henry Hild, direct.

Q Did you go up there the next day? A The following morning.

Q Who went up? A Mr. Janitschek, Mr. Berglund, and myself.

Q Mr. Berglund? A Yes, sir.

Q When you got up there the next morning, where was your car? A It was over at the farmer's home. 10

Q Was the fender straightened out at the time? A It was. Not when we got there; we straightened it out while we were there.

Q Who straightened up the fender? A The farmer and his son.

Q How did they straighten it up? A They took a crowbar and a sledgehammer.

Mr. Margolies: Were you there at the time? 20

The Witness: Yes, I was.

Q You and Janitschek were both there? A Yes.

Q They took a crowbar and a sledgehammer to straighten it out? A They bent the fender over straight enough so that we could ride the car home.

Q Could you have driven the car without the fender being straightened out? A That I could not tell you—it would have worn the tire down, I imagine. 30

Q Was it down on the tire? A Down on the tire, yes.

Q Did you see how they got the car into the farmer's yard? A No, sir.

Q Janitschek was not there either? A No, sir.

Mr. Carpenter: Cross examine. 40

Henry Hild, cross.

Cross examination by Mr. Margolies.

Q This night you took your father's car, he did not know you took it, but you took it because he gave you permission to generally use the car as a family car, isn't that so?

10

The Court: That has been admitted, so that if this young man was liable, and the other elements appear to make him responsible, the father would be, so that there is no use going into that. That is not disputed.

Q You said on direct examination that while you were going from fifteen to twenty miles an hour, getting near the curve, you saw another
20 car coming from your left? A Yes.

Q And in that instant you turned to the right so that this car should not hit you; is that right?
A Right near the corner.

Q Now, how far were you from the side of the road when this took place? A By that what do you mean?

Q How far were you from the side of the road on which you were traveling when that
30 took place? A How far from the center of the road?

Q From the right-hand side of the road? A We were half on the road and half off the road.

Q When this took place, when you were hit, you mean? A When we were hit.

Q I didn't ask that question. You testified on direct examination that you were going between fifteen and twenty miles an hour, that
40 when you came to the turn in the road you saw an automobile coming from your left and in

Henry Hild, cross.

that instant you turned to your right so that he would not hit you? A That is right.

Q Now, I am asking you, in that instant or second before, how far were you from the right-hand side of the road? A Before the accident?

10

The Court: Yes.

The Witness: I was practically right on the proper side of the road.

Q Fully on the right side of the road? A Fully on the right side of the road.

Q Provided you had your headlights on, how many feet were you from the furthest side of the road? A From one side to the other?

20

The Court: How wide would you say the traveled portion of the road is?

The Witness: Well, the traveled portion of the roadbed, I imagine, is fifteen or seventeen feet wide.

Q How much of a swerve did you make to the right in that instant that you pulled over to avoid being hit in the number of feet, when you reached the edge of the road on the right? A Is that your complete question?

30

Q Yes, that is the complete question. A I could not make any proper statement on that, with regard to how many feet.

Q Was that a cross road or what you call an arm? A A regular arm.

Q And how many houses were there on your left at that intersection or turn? A No houses there at all.

40

Henry Hild, cross.

Q Open country there? A It was in that place, yes.

Q All farm land around there? A A farm about two or three hundred feet away.

Q And this was a macadamized road; is that right? A A macadamized road, right.

10 Q What was the exact position of your car after it fell on the ground with respect to the road; was it pointing in the direction where the car came from; was it pointing away from the road on which you were traveling? A Why, pointing midway between the two; almost facing right to the corner of the road.

Q Isn't it a matter of fact that part of your car was on the road and part off the road? A Why, the front part might have been right on the road from what we could see at night.

20 Q You could not see much at night, could you? A Not very much.

Q The reason being you did not have any light? A I had lights on the car.

Q The reason being you did not have any light to examine the car? A I didn't no.

Q Were the lights burning after the accident? A Yes, we could light them.

30 Q Well, then, was part of your car on the road? A I didn't notice.

Q In fact, you were so excited that you really did not notice what took place with the car at the time, did you? Be honest and tell the truth. A By that, what do you mean?

Q You were so excited at the time, it was not in your mind to see what damage was done, was it? A No.

40 Q You wanted to see to the safety of the others? A Naturally.

Henry Hild, cross.

Q And you wanted to see what happened to you yourself? A I knew what happened to myself.

Q So that at that time you did not examine the car and you didn't think to see how many feet it was away from the road; you did not even contemplate a lawsuit or anything? A No. 10

Q And it was in that field, as you testified, that the farmer came down? A That is right.

Q Did you go away with him at the time? A No, I did not.

Q You stayed there? A I stayed right there.

Q Why did you stay there? A Because I thought it my place to stay with the car, being the other men took care of the girls. 20

Q And while you were staying there, what did you do, did you sit down at the car or simply walk around? A I simply sat there, that is all.

Q Now, you did not see in what direction the other car went, did you? A There was only one way for him to go.

Q What way was that? A The way he was heading.

Q By the way, was that at right angles, the way he was going? A Right angles to the way he was going, opposite direction to the way we were going. 30

Q You were going this way and he was going that way? A Yes.

Q Well, if he hit you he must have kept on going that way? A He did, yes.

Q But you did not see him? A I didn't see the car—I felt something hit me and that is all I know. 40

Henry Hild, re-direct.

Q But you did not see afterward where the car went to or whether he went straight ahead, or what? A I didn't see anything.

Q You did not hear any glass break from his car or anything else? A No, I didn't; there was too much noise from our car.

10 Q You say you were going west on this road, that is the Airmount Road; doesn't the Airmount Road run north and south? A Coming back to Jersey City, it runs west and then turns south right at the turn where the elbow was.

Mr. Margolies: That is all.

Re-direct examination by Mr. Carpenter.

20 Q By the way, how did you get your car home? A I drove it home.

Q After what? A After prying out the fender with a crowbar.

Q Now, then, I want to ask you again how your car faced after the accident? Where was the rear of it? You were asked where the front was, and you said that was partly on the road. Where was the rear? A The rear was off, sort of in the direction of the field, I would call it.

30 Q Were the fields flat up there? A There were some stones, little stones and field stones alongside the road.

Q And you were turned over on your right side? A Yes, sir.

Q Left side up in the air? A Directly up in the air?

Q Front on the road and the tail off the road? A Yes, sir.

Mr. Carpenter: That is all.

40 (Witness excused.)

Mrs. Ida Salderine, direct—cross.

MRS. IDA SALDERINE, sworn.

Direct examination by Mr. Carpenter.

Q You are the mother of the young lady who was in the car with Mr. Hild that night? A Yes.

Q Did Mr. Janitschek come and see you or call on you that night with your daughter? A Yes.

10

Q Bring her home? A Yes.

Q Speak to you about the accident? A Yes.

Q Did he tell you what was the cause of the accident? A Yes. He told us that this car had struck their left hind wheel and upset them.

Q Did he ever tell you anything to the contrary; any different story than this? A No, sir.

20

Q You were here in the court room and heard him testify? A Yes.

Q Did you know Ruth Berglund? A Yes.

Q Did you ever see her about after this accident? A After the accident?

Q Yes. A No.

Q Did she ever call at your house afterward? A No, sir.

Q Never saw her about the streets? A No, sir.

30

Mr. Carpenter: That is all.

Cross examination by Mr. Margolies.

Q What makes you say that Mr. Janitschek made a remark to you on this night pretty nearly three years ago that another car hit them on the left rear wheel? A What makes me say that?

40

Lulu Salderine, direct.

Q Yes. A Because he told me so. My husband was very angry when they came home, and that is when they told me how it happened.

Q And when he told you how it happened, what did he say as to how it happened? A He told us that this car had hit their left rear
10 wheel and knocked them right over.

Q Are you sure it was the left hind wheel?
A Positively.

Q Didn't he tell you just that an automobile ran into them? A No, sir, because I asked him how it happened.

Mr. Margolies: That is all.
(Witness excused.)

20

LULU SALDERINE, sworn.

Direct examination by Mr. Carpenter.

Q Where do you live? A 108 Twenty-third street, West New York.

Q Do you know Mr. Hild? A Yes, sir.

Q The young man, I mean? A Yes, sir.

30 Q How long had you known him? A Two years before the accident.

Q And how long had you known Miss Berglund before the accident? A Oh, about six years before the accident.

Q Mr. Hild did not know Miss Berglund, did he? A No, sir.

Q Just come right up to the time immediately before the accident. Do you remember going down the road approaching this turn in
40 the road? A Yes.

Lulu Salderine, direct.

Q Do you remember how the car was going?

A I had my head turned.

Q What part of the car were you in? A I was in the front part.

Q You were in the front seat? A Yes.

Q There were two seats? A Yes.

Q Who was sitting alongside of you? A Mr. Hild. 10

Q And who was driving? A Mr. Hild.

Q And who were in the back seat? A Mr. Janitschek and Miss Berglund.

Q Who was directly back of you? A Mr. Janitschek.

Q And back of Mr. Hild was who? A Ruth.

Q You said your head was turned—you were talking to the people in the back seat? A Yes.

Q And what was said, or what did you do? 20

A Well, there was really nothing said, they were joking.

Q In the back seat? A Yes, and when I turned around facing the front part of the car I saw two headlights approaching us, and just when I looked out I buried my face in my coat.

Q Why did you do that? A Because my mother always said if I saw any danger in an automobile, I should protect my face and my glasses. 30

Q Did you have your glasses on? A Yes, sir.

Q Well, why did you do that when you saw these bright lights—whereabouts were these bright headlights? A Right in front of us.

Q What did you think when you saw those bright headlights? A I didn't think anything; I just thought I was in danger, that is all.

Q What happened after you buried your eyes? A I don't remember after that until they pulled me out from underneath the car. 40

Lulu Salderine, direct.

Q Did you hear or feel any impact between the two cars? A No, sir.

Q What did your car do? A Turned turtle, I remember.

Q On which side? A On its right side.

Q And when it turned over, what happened?
10 Did it stay there, or did it roll? A Why, it stayed there.

Q Just turned over and stayed there? A Yes, sir.

Q Just turned over and stayed there? A Yes, sir.

Q Did your car roll at all? A I don't remember.

Q Did you look at the left rear wheel and fender? A No.

Q Did you see this other car? A Yes, I
20 saw the other car.

Q What kind of a car was it? A I could not say what kind of a car it was.

Q Not what make, but what sort of a car was it? A I could not say that, I know it was a big car, that is all I remember.

Q Do you know whereabouts on the road you were when you turned around and saw those lights? A No.

Q What happened to you girls after the car
30 upset? A The farmer boy took us to his house.

Q He was the one came along in what? A In a Ford car.

Q Who did he take up to the house? A Miss Berglund, myself and Janitschek.

Q You went up to the farmer's house? A Yes.

Q Did you hear Mr. Janitschek or Miss Berglund say anything to the farmer as to what happened? A I don't remember. All I remember,
40

Lulu Salderine, cross.

I think Ruth said up in the house that another car hit us.

Q When did you go back home? A That same night.

Q With whom? In somebody else's car? A Yes, sir.

Q Was there any agreement made in this car on the way home as to what you should say or anything of the kind? A No, sir. 10

Q That you people should stick together and say that another car hit you? A No, sir.

Q Did that ever take place? A No, sir.

Q Was there ever any agreement that you young people would stick together and make up a story that is not so as to this accident? A No, sir.

Q Now, then, after this accident, did you see Ruth? A No, sir. 20

Q After the thing happened? A No.

Q Did you ever visit her at her home? A No.

Q She came around to see you? A I saw her about four months after the accident. I was in an ice cream parlor and she came in with a young gentleman and she never noticed me.

Q That was about how long after? A About four months after. 30

Q Where was this ice cream parlor? A On Fourth street.

Q West New York? A Union Hill.

Q Did you see her after that? A No, sir.

Mr. Carpenter: Cross examine.

Cross examination by Mr. Margolies.

Q Were you angry at her at that time? A No, sir. 40

Lulu Salderine, cross.

Q Well, why didn't you talk to her; weren't you glad to see her? A I was not able to get out.

Q Able to get out of what? A Out of the house.

Q Do you mean you saw her from your window? A No, sir.

10

The Court: You were down in this ice cream place when she came in?

The Witness: Yes, sir.

The Court: That is what he is talking about; why didn't you speak to her?

The Witness: I wanted to recognize her, but she turned her head.

Q Where were you at that time? A I was sitting at a table.

20

Q And even though she turned her head you did not greet her? A No.

Q Did you know this young man she was with? A I did not.

Q Now, you just stated on direct examination that after talking with those in the rear, the first thing you knew some blinding lights seemed to glare in your face and you did not know what to do, and you put your arm up; you did not notice the bright light before that time? A I had my head turned.

30

Q And that is why you did not notice them? A Yes.

Q Sitting on the right-hand seat, naturally, you turned your hand to the left when you spoke to those in the back; isn't that so? A Yes.

Q And when you turned front again those headlights were right directly in front of you? A Yes.

40

LIN
Dr. Louis Franket, direct.

Q Now, do you know whether Mr. Hild swerved to the right? A I could not say that.

Mr. Margolies: That is all.
(Witness excused.)

10

LIN
DR. LOUIS FRANKET, sworn.

Direct examination by Mr. Carpenter.

Q Do you practice medicine in Jersey City?
A Yes, I practice medicine in Jersey City.

Q Were you called on to treat Miss Ruth Berglund on the night of November 12, 1922, or early the next morning? A Yes.

20

Q Just tell the jury what her condition was that you found. A I found the young lady in bed, and on examination I found a fracture of the collarbone, bruises and contusions on her legs, her back and a few on her arm, but the serious injury or what she was particularly concerned about was the fractured clavicle, the fractured collarbone.

Q Did you set that bone? A Yes.

30

Q Did you continue to treat her? A I saw this young lady about three or four times and then they wanted to have her own doctor treat her, so I withdrew from the case.

Q Who called you in? A I went at the request of Mr. Janitschek.

Q Within what time, doctor, would you say that it would take these injuries to heal up in an ordinary, normal woman, if there were no complications? A Perhaps five or six weeks.

40

LIN
Dr. Louis Frankel, cross.

Q Did you, when you first went there, examine this lady's heart? A I did.

Q What did you find? A I found that the girl was a victim or sufferer of chronic heart disease.

10 Q What type of disease was it, what type of heart disease? A A form of valvular disease of the heart.

Q That has another scientific name, hasn't it? A That is the technical name; leaky heart is the common name.

Q And is that the same thing as endocarditis? A Practically the same thing; it is the same thing.

Q Was it a type called chronic endocarditis? A Yes.

20 Q That is what she had at the time? A Yes.

Q Did she have any injury to her spine? A She complained of her back and I examined her back, but could not find anything wrong.

Mr. Carpenter: That is all.

Cross examination by Mr. Margolies.

30 Q What made you look for heart trouble, doctor? A In the course of the usual physical examination of any person.

Q You did not, however, report that to Mrs. Berglund? A I don't remember whether I reported to her or not.

Q And in taking care of the collarbone, what did you do for that? A I reduced the fracture and set it up in the position we ordinarily use for a fractured clavicle.

40 Q Was there any bandage or other thing that is used with a broken collarbone? A Why, yes, I bandaged it and dressed it.

William H. Derbyshire, direct.

Q Did you put any dressings on? A Yes.

Q Was there any dressings on Ruth after you withdrew from the case? A I don't know.

Mr. Margolies: That is all.

(Witness excused.)

Mr. Carpenter: Mr. Margolies has consented to have the testimony of William H. Derbyshire given at the last trial read to the jury as his testimony in the present case. We have been unable to locate him. 10

The Court: Let it appear that this is read by consent in lieu of the production of the witness.

Mr. Carpenter: "William H. Derbyshire, Jr., sworn. Direct examination by Mr. Carpenter. 20

"Q Where do you live? A East Crescent avenue, three miles outside of Ramsey.

"Q Where this corner is where an accident happened on the night of the 12th of November, 1922? A Yes.

"Q How long have you lived there? A I should judge since I have been about eight years old.

"Q How old are you now? A Twenty-four. 30

"Q What is your business? A Farming, automobile driving and other odd jobbing.

"Q Do you live with your father and folks? A No, sir, I live in the house with my grandfather.

"Q The night of this accident were you at home that night? A No, sir, I was down at my mother-in-law's, driving home with the Ford.

"Q Which way were you driving? A I was heading north. 40

William H. Derbyshire, direct.

“Q Do you know the direction that Mr.—
A Yes; that road is not quite drawn correctly there.

“Q Do you know the corner where this accident happened? A Yes.

10 “Q How does the road run at that point, which direction, north or south? A The road of the accident, south. I was going north.

“Q Which is north here? This is the way Mr. Janitschek says Mr. Hild’s car was going, in this direction. A If you want to call it this way, yes. This road runs south, this way, and she swings around here and comes this way. Here is where I was at the time the car turned over here.

20 “Q What is the distance— A About a thousand feet from here to here.

“Q From where you were to where this car turned over? A Yes.

“Q Was your car going in the direction toward the scene of the accident? A Yes.

“Q I wish you would tell the jury what you saw. A Driving at the rate of about thirty miles an hour, there was a car ahead of me going just a slight bit faster.

30 “Mr. Margolies: What time of the night was that?

“A About half-past nine. And when I was at that point that red tail light was at the opposite corner where the accident was, and as the red light made the swing the two bright lights were there and just swerved around like this, right over on the right-hand side.

40 “Q Did you know what happened then? A I heard nothing but a crash, just one crash, that

William H. Derbyshire, direct.

was all there was. It was just as quick as you could snap your finger. I should judge it was a Buick by the description of the body and the fenders.

“The Court: By the description?”

“The Witness: What I saw of them, the shape of them. 10

“Q Had that same car passed you? A No, sir; that car came out of one of the crossroads below. I saw it pull out of one of the crossroads below.

“Q Was it ahead of you then? A Ahead of me.

“Q You got a good look at it? A I got a fair look at it because I got within about five hundred feet of him and my light shown on him. He opened up. A Ford can't go much more than forty miles an hour, and I had her rolling about thirty. 20

“Q What do you mean by when you got within about five hundred feet of him he opened up? A He started to open her up, to speed away from me, as we do up there. He speeded away from me, right on ahead of me.

“Q Did you see that fellow with the car you thought was a Buick turn that corner ahead of you? A I saw him turn, I did not hear him hit or see him hit, but I saw him turn the corner and saw the other car turn over. 30

“Q As the car turned over, as you have described, where was this Buick? A Out of sight at the time.

“Q Where was the tail light of the Buick when you saw this other car swing and upset?

A The tail light just disappeared out of sight. There is an apple tree right on the corner that 40

William H. Derbyshire, direct.

loops to the ground, and just as she made this swing the tail light went out of sight and the two lights came in and swerved right around in the road.

“Q That happened right at that corner? A Right on the very bend.

10 “Q Did you go right up to where this car was upset? A Yes; I never slackened up a bit.

“Q When you got there what did you see? A I saw one of the girls crawling out and the other following and the boys were in such a mess I couldn't tell which one was coming out head first.

“Q This car that was upset was a Cadillac? A Yes.

20 “Q Did you look at the Cadillac to see where it had been hit? A The first thing I did was pick up the girls and took them to my father's home.

“Q After that what happened? A After that Janitschek went—I think I came back and got Janitschek after; I took the girls, I think I took the two girls alone and then came and got Janitschek and Henry, walked up to my father's home; we went up and telephoned for the doctor; Janitschek went with the girls.

30 “Q Did either of the girls say anything at your house that night about the accident? A All they said was it wasn't the boys' fault.

“Q Who said that? A Both of them. That was the first thing I asked them, whose fault it was.

40 “Q Did you look the Cadillac car over that night? A I looked the Cadillac car over after we got the doctor. Me and Mr. Janitschek went down and looked for a silver mesh bag and a key the girl had lost and we examined the car and

William H. Derbyshire, direct.

saw the rear left fender was drove in back of the door and the hub cap hurt on the left rear wheel of the car.

“Q You saw that that night? A I saw that that night myself, after we had taken first aid to the girls.

“Q You say that Janitschek was with you?
A Yes. 10

“Q What side of the car was on the ground?
A The right side on the wall—a rough old wall there.

“Q Was there a pile of sand there on the ground? A There was a five-ton truck load that had been dumped there. Half of it had been used up with the tar on the road.

“Q Where was that pile of sand? A Just on the very bend of the road. There is a lane that leads up there where that little diagram shows, and she laid just the other side of that. 20

“Q Where did this car lie with reference to the pile of sand? A The Cadillac?

“Q Yes. A Where she had dragged herself over on the right-hand side, she was about ten feet from that pile of sand.

“Q Had that Cadillac gone through that pile of sand? A Yes, sir, through one part as she was turning over. 30

“Q You could tell— A I could tell by the way she was dragging that she went through there. That was the first place the glass started to drop out.

“Mr. Margolies: You did not see that yourself, did you? You were a thousand feet away?”

“A I was there after the car turned over. 40

William H. Derbyshire, direct.

“Mr. Margolies: You did not see it go through the sand?”

“A No, sir.

10 “Mr. Margolies: I ask that it be stricken out.

“The Court: Why? He said he saw where it dragged through the sand. I will not strike it out. He saw it.

“Mr. Margolies: He saw some tracks there; he did not see the car itself go through the sand. You did not see the car itself go through there?”

20 “A No, but I could plainly see where the body and fenders had dug that night, with the lantern.

“Mr. Margolies: You do not know who made those tracks?”

“A No, sir.

“Mr. Carpenter: Am I examined? You will get a chance to cross examine.

30 “Mr. Margolies: I am objecting to the question.

“The Court: You say this car went through the sand? Why do you say it?”

“A From where he started putting on his brakes, from that time on the grass was tore. She lay right there on the wall.

“The Court: Did these tracks follow back—

40 “A Right from where he started rolling.

William H. Derbyshire, direct.

“Q Any other marks there? A Absolutely none.

“Q How were the wheels going as they dragged through this pile of sand? A Side-ways.

“Mr. Margolies: How does he know. He was not there. 10

“Q Tell the jury how you know that was the way they went. A When they came down the road by the looks of this other car, it must have sideswiped him with his fender; that is the only way he could have hit him.

“Mr. Margolies: You were a thousand feet away? 20

“A A thousand feet away on a straight look across the fields. When I got there that night after we picked the girls up we could see where Henry released the brakes at that point, and from there on you could see where the car had dug across the green grass through the sand bank, on top of the stone wall, where she stopped.

“Q Could you tell from the marks on the road how the car had gone? A Yes; she was directly on her right-hand side on the macadam road before she was hit. The marks were on the road where the tires slid. 30

“Q After that, from the point where it was hit, could you tell how the car swung, from the course on the road and on the grass? A Only on the right-hand side, the fender—she dug herself on the ground.

“Q Were those marks made with the front or rear wheels? A Rear wheels. 40

William H. Derbyshire, direct.

“Q Could you trace them? A Right to where they stopped.

“Q Where was the front of the car with reference to the side of the road? A Pointing directly to the direction she had come from, pointing north.

10 “Q Is that where it is shown on that diagram? A No, sir, just a little bit further. She pointed almost directly up.

“Q Suppose you put there where you say it lay. Don't disturb that other mark. Show where you say it was. A Right in that direction. There is a road here. Right in that direction, about eight feet from here is where the car stood.

“Q About eight feet from what? A From the shoulder of the road.

20 “Q What is that mark there? A The automobile.

“Q The next morning what did you do? A I went out there and took a crowbar and pried the fender over a bit and took the tractor and put a rope over her right-hand side and over the top and turned her over on her wheels, hooked the tractor on ahead of her, put the power on that she had of her own, and drove her into the yard with her fender dragging on the wheel.

30 “Q How was that fender against the wheel? A The outer edge, the flange edge of the fender, was drove in tight on top of the middle door. It was so tight when you started her up she went b-r-r-r-r. We had to take crowbars and a sledge hammer to drive it out.

“Q How about the hub cap? A That was smashed in.

40 “Q You did not know any of these parties before that night? A Not a single thing, and I

William H. Derbyshire, cross.

have not seen any of them except Henry and Cooper about a week ago.

Mr. Margolies: "Q At my office? A Yes."

"Cross examination by Mr. Margolies.

10

"Q How often have you seen them since the accident? A Today is the first, outside of a week ago that he and Mr. Cooper were up there at the house.

"Q They subpoenaed you there? A No, sir; just asked me to come and tell what I knew.

"Q What kind of a car did you own at the time? A Ford car.

"Q Strong lights on? A Yes.

"Q How many feet did they throw? About 20
150 to 200 feet.

"Q What make were they? A They were magneto lights.

"Q Is that the title of them? When you go to purchase a light do you ask for a magneto light? A I don't know that you ask for a magneto light; but you can't get anything else if you haven't a battery.

"Q And they throw 200 feet?

30

"The Court: Those are the bright kind.

"Q The first time you noticed this fellow with the Buick was when you were beyond this point a thousand feet away from where the accident happened? A Yes; where I was was a thousand feet.

"Q And this fellow in the Buick was five hundred feet away from you and you were following him up and you were five hundred feet in the
40

William H. Derbyshire, cross.

rear of him? A I was a thousand feet in the rear of him.

“Q Did your lights frighten him, that made him go ahead? A No, sir.

10 “Q How do you know he put on more speed if you were a thousand feet in back of him with lights only throwing two hundred feet, on a dark night; how do you know he was going forty? A I was driving twenty-five or thirty and he was still traveling faster.

“Q How do you know he was traveling faster? A If he was not traveling faster I would have caught him.

“Q How about if he were traveling as fast as you were and no faster? A He was getting away from me all the while. That is how I know he was going faster.

20 “Q Do you know anything about lineal measure; anything about feet, when it comes to measuring off an ordinary block? A I don't know anything about ordinary block. We have a sign post up there that says two hundred feet.

“Q So you know what that means. Would you say a thousand feet was five blocks long? A No; I should judge from the distance there it would run over two city blocks.

30 “Q Two city blocks is about a thousand feet? A According to those sign posts the State puts up, it is about five hundred feet from there to the other corner.

“Q Why did you testify on direct examination it was a thousand feet? A Because I was beyond that corner.

“Q Then you were five hundred feet beyond that corner when you saw the accident? A Yes.

40 “Q Is this a straight road five hundred feet beyond that point? A No, sir; it is straight across the fields.

William H. Derbyshire, cross.

“Q Is that road a straight road? A Straight road coming to that turn.

“Q And it was five hundred feet beyond that?

A Yes.

“Q Any farm houses around there? A One, on the corner.

“Q On this corner? A Yes, on the lower edge; that is mine. 10

“Q Were there any fruit trees in the yard?

A No, sir; two maple trees.

“Q Weren't those two maple trees between you and where the accident happened? A No, sir; they were on the opposite side.

“Q You looked across the field and this man was going forty miles an hour and you were going thirty, and the first thing you saw was the two headlights skidding around? A Yes. 20

“Q What happened to the red light you testified to? A Disappeared.

“Q Disappeared where? A I do not know whether it was knocked out or went up the road.

“Q You do not know where it went to? A No.

“Q You first saw the two lights and then the red light? A No, sir; I saw the red light first and then the two bright lights.

“Q Isn't it possible they could come from one car? A No, sir. How can a tail light be on the headlight of a Cadillac? 30

“Q Isn't it possible if a car is turning around, one light will show after another? A Not until after the red light disappeared did I see the two lights swing.

“Q Which direction did it disappear? A North.

“The Court: The red light had disappeared before you saw the bright lights? 40

William H. Derbyshire, cross.

“The Witness: Yes, before I saw them turn, the red light had disappeared.

10 “Q The red light coming north had disappeared and the next you saw was two white lights? A Two white lights turn just as the red light disappeared.

“Mr. Carpenter: What do you mean by that? You say you saw the two white lights turn just as the red light disappeared. What do you mean by that?

“The Witness: When this red light went dead these two white lights turned around.

“Mr. Margolies: This is cross examination.

20 “The Court: Yes. You will have your turn. Go on.

“Q You first testified you were a thousand feet away, then that you were two blocks. Now, how long did it take you, in minutes and seconds, to get to the spot where the car lay on the ground until you first saw those two lights? A I did not pull my watch out to time myself. I just drove on at thirty miles an hour.

30 “Q And it was a thousand feet or a couple of blocks away? A About a thousand feet, as near as I can judge.

“Q Would it take one minute? A I do not think it would.

40 “Q You heard Mr. Janitschek say your car came along three or four minutes later, and you heard Mr. Hild say it came along three or four minutes later. Would you say they were both mistaken? A I would say they were both mistaken. My car was there before they had time to really get out of the car.

William H. Derbyshire, cross.

“Q When you reached the place you took a lantern? A No, sir; I first picked the girls up and took the girls to my father’s home.

“Q Then what did you do? A Came back again and met Mr. Janitschek and told—

“Q You got Mr. Janitschek and rode him back to the house? A No, sir; I told Henry 10 the direction to walk, and he went and telephoned for Doctor Myers.

“Q You went back to the spot where the accident happened after you went to the house? A Yes.

“Q How long were you gone? A I do not think more than fifteen minutes.

“Q Was it less than five minutes? A I cannot tell you.

“Q How far was the house from where the 20 accident happened? A About a block.

“Q How long were you around the spot there helping the girls get out of the car? A The girls were practically out of the car when I stopped and backed up, and we just lifted them in and drove them to my father’s home.

“Q Didn’t you help get them first aid in the house? A Mother took care of them, and we went to get the doctor. That was the best we could do. 30

“Q You went for the doctor before you went back for Hild? A No, sir, I went back and got Mr. Janitschek and told Mr. Hild the way to walk.

“Q Didn’t Mr. Janitschek go with you in the car, with the two girls? A Absolutely not.

“Q Oh, he walked up afterward? A No, sir; I went back and got the boys.

“Q Which boys? A Janitschek, and told Hild which way to walk. 40

William H. Derbyshire, cross.

“Q You took them to your mother’s house?

A No, sir, I took them to telephone.

“Q Where is that? A About a mile up the road.

“Q Then you came back and got Henry? A Henry was already to the house.

10 “Q Did you see Henry before you sent Janitschek to see the doctor? A We saw Henry as we started out.

“Q From where? A From the accident, where the car laid.

“Q Didn’t you see Henry and Janitschek and the girls there and you took the girls and Janitschek to the house? A No, sir, I took the girls alone to the house.

20 “Q What was Janitschek doing then? A He stayed there with Henry.

“Q How long were you at the house? A No more than five minutes.

“Q Then you came back for whom? A For Janitschek.

“Q Why didn’t you come back for Hild? A We told Hild the way to walk for the girls.

30 “Q And he started to walk for the girls, and Janitschek— A Went with me to telephone for Doctor Myers.

“Q How far was that from where the accident happened that you went to telephone? A One mile.

“Q Then you came back with the doctor? A We came back and waited for the doctor about half an hour, at the house with the girls.

“Q In all that time you were not anywhere near the accident? A No, sir.

40 “Q Then what did you do? A We took the Ford again and went to the grocery store and

William H. Derbyshire, cross.

woke the man up and telephoned for the automobile, to Jersey City.

“Q Who went with you? A Janitschek.

“Q Was Hild in the house or by the car? A In the house.

“Q Then what did you do? A Before the car came, one girl lost her silver mesh bag and the key, and we went to look for it. 10

“Q Then you went back to the house again? A No, sir; I said we came from telephoning for the automobile, to Jersey City, and then we went from the house with Mr. Janitschek to look for the silver mesh bag and key.

“Q That was after you had telephoned? A Yes.

“Q You went to the house and then you went to look for the silver mesh bag and key? A Yes. 20

“Q It may have been an hour? A Yes; not more.

“Q Then what did you do? A Found the key and looked at the damaged fender on one side.

“Q What did you use to look for the key? A A lantern.

“Q Where did you get the lantern? A In my father's place. 30

“Q Were the lights still on the car? A The lights were on the car. We turned them out before we left.

“Q What did you do then? A We found the silver mesh bag and key, and Janitschek and I went back to the house and waited for the car from Jersey City to come and take them home.

“Q Next morning when you went to get the Cadillac car you noticed the tracks there? A Yes, I saw them that night of the accident, with the lantern. 40

Charles Derbyshire, direct.

“Q While you were looking for the mesh bag?

A Yes.

“Q It is possible some other cars had passed there in the meantime? A Since we saw the tracks?

10 “Q From the time of the accident, the hour or more that elapsed until you got back to look for the mesh bag, some other cars might have passed there? A Yes.

“Q And the track you saw was just the track of the Cadillac car? A Where she had slid over the ground.

“Q Where was the first line of the slide, in the center of the road, the left-hand side of the road or by the sand? A The slide came down the right-hand side of the road and stopped
20 sliding a little bit at the side of the sandbank.

“Q How many feet along the right-hand side of the road had it been sliding? A I judge about fifteen to twenty feet.

“Q So after sliding fifteen to twenty feet, whatever it was, whether the car was struck or not, the car was just at its final landing, right on the bend? A On the bend, yes.

“Q Did you see any tracks of another automobile? A No, sir.

30 “Q You did not look for them either, did you? A No, sir.”

CHARLES DERBYSHIRE, sworn.

Direct examination by Mr. Carpenter.

Q Where do you live? A Mahwah.

40 Q Bergen County? A Yes.

Charles Derbyshire, direct.

Q You live somewhere near the corner where this accident happened? A Right near the corner.

Q Where were you on the night of the accident, the 12th of November, 1922? A Home in bed.

Q What time did you first hear about it? A 10
Well, I could not just tell you, around half-past nine or ten o'clock.

Q They go to bed early up there? A
Yes, in the summertime.

Q Did you go out to the scene of the accident? A No, sir.

Q Did you hear anybody talking about it that night? A No, sir.

Q What did you do next morning? A Went
out there to get a look at it. 20

Q When you got out there, tell the jury what you saw. A The first thing I saw was the bend in the fender over the left rear wheel.

Q The first thing you saw was the car? A
I seen the car, certainly.

Q What fender was bent and how was it bent?
A The left rear fender was bent in behind right down on the tire.

Q What sort of a fender was it, a heavy or
a light fender? A It was a heavy fender. 30

Q Did you look at the hub cap of the left rear wheel? A The hub cap was bent.

Q Could you tell from looking at the left rear fender and the hub cap of the wheel what sort of a blow had been received by the car? A
No doubt it had been struck by a car and nothing else.

Q Why do you say that? A How could it?
There was nothing else to hit it. 40

Charles Derbyshire, direct.

Q Did you take hold of it and try to bend the fender? A Yes, in the morning.

Q Could you bend it with your hands? A No, sir, could not touch it.

Q Whereabouts did the car lie with reference to the corner formed by the turn in the road? A
10 The car laid over on its side with its front toward the road.

Q With reference to the road whereabouts was the front end? A The road turned around to the right and the car laid that way, with its head toward the road.

Q Just assume that this is the turn of the road here. A The other way.

Q Assume that this is the turn in the road; the car was going that way? A That way, yes.

Q Which way did the car lie after the acci-
20 dent? A (Indicating).

Q How far around the curve? A Right around the curve, right about here.

Q Did you see the car raised and put on its four wheels? A Yes, I helped raise it myself.

Q How did you raise it? A With a tractor.

Q Who raised it? A I did.

Q Did anybody help you? A My son.

Q What did you do with it after you turned
30 it over? A We ran it up the road with the tractor.

Q How did it pull? A Pulled heavy.

Q Did you try to drive it without pulling it?
A It couldn't be done.

Q Why not? A Because the fender was dragging on the tire.

Q What did you do after that? A Took it in the yard.

Q Later on did Mr. Hild and Mr. Janitschek
40 come up there? A Yes.

Charles Derbyshire, cross.

Q And when they arrived there what was done? A We took a look at the car and later they ran it home.

Q Was the fender straightened out in your presence? A Yes; I helped straighten it out.

Q How was it straightened out? A With a crowbar.

10

Q After that they drove the car under its own power, did they? A Yes.

Q Was that fender bent down in such a manner that any one man could have done it himself? A No, sir.

Q Why not? A I don't believe any man could do that unless with a twenty-pound sledge.

Q Did it show any evidence of having had a sledge used on it? A No, sir.

Mr. Carpenter: Cross examine.

20

Cross examination by Mr. Margolies.

Q Did your son bring the occupants of the car to your house that night? A Yes.

Q He woke you up, did he? A Yes.

Q How long did you stay with them? A Stayed with them until they got through.

Q How long was that? A I should judge about an hour and a half or two hours.

30

Q Quite a bit of conversation there, wasn't there; excitement and everything? A Certainly.

Q Did the doctor come to your home when he treated the girls? A Yes.

Q And still you say on cross examination that there was not any conversation about the accident; is that so? A Yes.

Q You didn't discuss among you the accident? A I suppose they did, but I didn't listen to it.

40

Charles Derbyshire, cross.

Q Were you there the whole time? A No.

Q Then, how do you know how long they stayed? A Well, I guess I ought to know how long they stayed there.

10 Q I am asking you how you know if you were not there. A I was there, but I didn't listen to the conversation.

Q You were among them but you did not listen to them? A Yes, sir.

Q How far is your house from the turn of that road? A About a block and a half.

Q In feet, how many feet? A I could not tell you how many feet it is.

Q Well, how do you know it is a block and a half? A I judge about that from that corner.

Q You have lived there quite a while? A Yes.

20 Q What kind of a road is it? A It is an amacite road.

Q Explain to the jury what you mean by that; what is it covered with? A Covered with concrete.

Q You have a car of your own? A Yes.

Q And you have ridden over that road, haven't you? A Yes.

30 Q What did you say is the width of the road; would you say it was about fifteen or seventeen feet or eighteen feet? A The width of the road is eighteen feet, shoulders and all.

Q Now, were you here when the other witnesses testified? A No.

Q Do you know of your own knowledge whether there was a sand pile at the turn in the road? A Yes, sir.

40 Q Now, with respect to the bend, where was the sand pile? A Just about that point (indicating).

Henry Hild, recalled.

Q Would you say if the left-hand side of the road upon which Hild and the rest of the folks were traveling had continued, the continuation of that road would strike the sand pile? A You could not go that way; you would be away on the outside if you did that.

Q You mean because of the curve? A He had to make a curve there. 10

Q Then, the sand pile would be more to the center of the road, if the road had continued straight ahead? A Yes, about the middle of the road as you come down.

Q If the road were extended? A The middle of the road. It is an eighteen-foot road and it laid about the middle; that is, nine feet.

Q Many houses around there? A No, sir.

Q It is open country there? A All country. 20

Mr. Margolies: That is all.

(Witness excused.)

HENRY HILD, JR., recalled.

Examination by Mr. Carpenter.

Q Was the left rear hub cap and the left rear fender of your car damaged before this accident? A No, sir. 30

(Witness excused.)

Motion for Direction of a Verdict.

REBUTTAL.

ELIZABETH BERGLUND, recalled.

Direct examination by Mr. Margolies.

10 Q Your girl lived with you every day of her life? A Yes.

Q Did she ever suffer from heart trouble? A No, sir.

Q Was she athletically inclined? A She was a very active girl.

Q Did she go swimming? A Yes.

Q Dance? A Yes.

Q All sorts of activities? A Yes.

Q Did you know she had heart trouble? A No, sir.

20 Q When she was ten or twelve years old? A No, sir; the doctor never said she had heart trouble.

Q During the time that Ruth may have been treated, did any doctor ever tell you that she had heart trouble? A No, sir.

Mr. Margolies: That is all.

Mr. Carpenter: No questions.

30 (Witness excused.)

Mr. Carpenter: I now, as a matter of law, move for direction of a verdict in favor of this defendant.

First, that it now appears conclusively that the cause of upsetting this car was the blow that it received on the left rear wheel and the fender from another car.

40 Second, we have further proved that the deceased girl recovered from the injury she received in this accident and that her death

Charge to Jury.

was not due to the accident but to chronic endocarditis, as shown by the official death certificate filed pursuant to the statutes of this State.

For these reasons I move for a direction of a verdict for the defendant.

The Court: It is a jury question. Motion 10
denied. You may have an exception.

CHARGE TO JURY.

The Court then charged the jury as follows:

The Court: Gentlemen of the Jury: The plaintiff, Elizabeth Berglund, the administratrix *ad prosequendum* of her deceased daughter, Ruth Berglund, brings this suit under what we call 20
in this State the death act, to recover the pecuniary loss resulting to the next of kin of this Ruth Berglund, from her death, alleging it to have been caused from injuries sustained from the overturning of an automobile of the defendant, Albert Hild, driven by his son, Henry Hild, who are the two defendants here, on November 12, 1922, and it is in this automobile it is alleged 30
that the deceased girl was riding with her companions, including Henry Hild, on the Airmont Road, in the Township of Hohokus, Bergen County, New Jersey.

Now, you will notice that this suit is brought by the mother as administratrix *ad prosequendum*; that meaning nothing more than a person appointed to bring this suit, and I have referred to the death act as being the statute under which the suit is brought for the reason that prior to its enactment there could be no recovery for 40

Charge to Jury.

death resulting from the negligent act of another person. I shall have more to say about this statute when we come to consider the question of the admeasurement of damages, if you should find that it was necessary for you to go into that question at all.

10 The plaintiff claims that on November 12, 1922, the defendant, Henry Hild, son of the other defendant, Albert Hild, was driving the latter's car in company with a young gentleman friend, who was a witness here on the stand, and that they invited—I think the evidence is young Hild invited Ruth Berglund, the deceased girl, and a friend of hers to take a ride with them, without designating any particular place where they were to go, and after riding around a while they
20 found themselves on this Airmont Road; that they were riding in a Cadillac car on the public highway at a rate of speed somewhere around thirty miles an hour, according to one of their witnesses, and that the attention of Henry Hild, who was driving, was called to the fact that they were going at that rate of speed, and that as they came to a turn in this road Hild put on his brakes and slackened his speed. It is claimed, however, that the car by reason of the manner
30 in which it was being propelled and managed, turned over on its right side. The witness to whom I have just referred stated that the car had been slackened to a rate of speed of from ten to fifteen miles an hour just prior to the turning over of the car, as I recall his testimony. You will remember, however, gentlemen, that throughout the case you must use your own recollection of the testimony if it varies from a statement concerning it, made by the Court.

Charge to Jury.

It is claimed that because of the negligent operation of this car, because the defendant, Henry Hild, did not drive it at a proper rate of speed, did not have it under proper control, and so forth, that it turned over and caused the death of Ruth Berglund, which occurred on May 11, 1922, about six months after the accident.

10

The defendants, while admitting that young Hild invited these girls to have this ride, and that they were in the location mentioned, nevertheless say that as the Hild car approached the turn in the road where the accident happened, there was another car coming in the opposite direction and about to make this turn, and coming at an excessive rate of speed, operated in a careless and negligent manner, and that this car struck the Hild car while the Hild car was on its right side of the road while making the turn, and where it had a right to be, and that it was the negligence of the driver of this other car in propelling that car against the Hild car which was the proximate cause of this accident, and that, consequently, neither of these defendants are responsible.

20

In their formal answer filed in this case, the defendants deny all negligence. They further say that the accident and injury to this girl and her death were not proximately caused by the negligence of these defendants; also that the girl was guilty of contributory negligence and that she was a mere licensee in the car and therefore only entitled to demand that the driver of the car refrain from acts of wanton and wilful injury. They further claim that all these persons in this car, including the deceased girl, were engaged together in a joint or common enterprise.

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Charge to Jury.

Those are the formal defenses which are set up in their answer.

10 The mere fact that Ruth Berglund was injured in this accident and later died, of itself, standing alone, of course does not entitle this plaintiff as her administratrix to recover a verdict against these defendants or either of them. She has the burden of satisfying you by a fair preponderance of the evidence that the accident was the result of negligence, and that such negligence was the proximate cause of the accident and also of the death of this young girl. It will, therefore, be your duty to determine just how this accident happened. That is very material.

20 It is admitted by the defendant, Albert Hild, the father, that he was the owner of the car in which the deceased girl was riding, and it is conceded that at the time of the accident it was being driven by his son, Henry Hild, as we say in the law, as his agent, or with his permission and consent, and within the scope of the so-called agency which was given. In other words, it is conceded for the purpose of this suit that if Henry Hild, the driver, was negligent in the operation and control of this automobile, that such negligence would be attributable to the father, Albert Hild.

30 The action is, therefore, based upon negligence. What is negligence? The Courts have said that negligence is either the omission to do something which a reasonably prudent person guided by the circumstances which ordinarily regulate the conduct of human affairs would do, or, the doing of something which a prudent and reasonable man would not do under the circumstances.

40 It is not disputed that this girl was invited to take a ride in the Hild car and that no particular trip was planned or suggested, and, under

Charge to Jury.

such circumstances she became what we call in law, an invitee. A person who is merely invited to take a ride, where the automobile or the driver are in no way under the control of such person, cannot be said to be engaged in a joint or common enterprise so that the negligence of the driver would be imputable to the person thus riding. 10

In this case there is no evidence that would warrant the Court in saying that these persons, that is, the deceased girl and the driver of this car, were engaged at the time in a joint venture or a common enterprise.

The duty which the driver of an automobile owes to one invited to ride with him is the duty of exercising reasonable care in the operation, control and management of the automobile; and reasonable care is such care as a reasonably prudent person would, or should, exercise, under the conditions and circumstances. 20

The driver of this automobile had a right to drive his car upon this public highway, but he was required not to drive in a reckless and careless manner. He was required to exercise reasonable care to avoid injury to others on the highway and to have his automobile under such control and operate it at such a rate of speed and in such manner as a reasonably prudent person would do under the circumstances, having in mind that he was driving at night and about to make a turn in the roadway upon which he was driving. 30

And, in considering the question of negligence as applied to the conduct of the driver of this automobile you have the right to take into consideration also the following provision of the Motor Vehicle Act, wherein it says: 40

Charge to Jury.

10 "The following rates of speed may be maintained, and shall not be exceeded upon any public street, road, etc. A speed of one mile in seven minutes upon the sharp curves of a street or highway or when turning a corner, and a speed of one mile in four minutes at the junction or intersection of a prominent cross road, where such a street, road or highway passes through the open country; the term 'open country' meaning where houses are an average of more than one hundred feet apart."

20 That seems to be the situation here, although in this case there is no evidence, as I recall it, that there was an intersecting highway. The rate of speed which might be maintained and which should not be exceeded, according to the provisions of this act, at a place other than a turn or corner, would be thirty miles an hour.

The act goes on to say, however, that nothing therein contained shall permit any person to drive a motor vehicle recklessly or at any speed greater than is reasonable, having regard for the traffic or use of the highways, or so as to endanger the life or the limb, or to injure the property of any person.

30 You see, it very naturally gets back, after all, to the question of whether or not the defendant exercised such care with respect to speed as a reasonable person would have used under the same circumstances.

40 Now, if you should find that the driver of this automobile violated the provisions of this Motor Vehicle Act, you may take that fact into consideration in determining whether he was negligent, but you must remember that this action is not based upon the provisions of the Motor Vehicle Act to recover a penalty for its violation;

Charge to Jury.

it is brought to recover damages growing out of the alleged negligent operation of an automobile, and that presupposes that there has been a violation of the duty to exercise reasonable care. So that proof of the failure of the driver of an automobile to observe a traffic regulation would not be negligence *per se*, of itself, but it would be evidence of negligence which should be taken into consideration by you in determining whether or not under all the circumstances of the case the driver exercised reasonable care. 10

If the plaintiff has not satisfied you by a fair preponderance of the evidence in this case that the driver of the Hild automobile, that is, the car which Miss Berglund was riding, was negligent, then you need go no further with this case; your verdict would be in favor of the defendants and against the plaintiff. 20

If, however, you find by a preponderance of the evidence that the driver of the Hild automobile was negligent, then it will be necessary for you to determine whether or not, in addition thereto, such negligence was the proximate cause of the accident, and still the burden rests upon the plaintiff to establish that fact by a preponderance of the evidence. That does not mean, gentlemen, necessarily, the greater number of witnesses on one side or on the other, but it does mean the greater weight of the testimony in reference to quality rather than to the quantity. 30

Now, what do we mean by proximate cause? It has been said to be the efficient cause, the one that necessarily sets the other causes in operation. The causes that are merely incidental, or instruments of a superior or controlling agency are not proximate causes or responsible ones, though they may be nearer in time to the result. 40

Charge to Jury.

What was the cause of this accident? Was it the manner in which the defendant Henry Hild drove the car as he attempted to make this turn, so that by reason of his operation and management of this car it turned over and caused the injury to this girl and her death? Or was it due to the negligence of the operator of the other car attempting to turn that corner at the same time? Or yet, again, was it the concurrent negligence of both? The defendants contend that there was another car which attempted to turn this corner at the same time that the Hild car did, and that the proximate cause of the accident was the negligent driving of this other car. The plaintiff contends that there was no other car and that the proximate cause of the accident was the negligence of the driver of the Hild car. You will have to decide whether there was another car which turned the corner at the time that the Hild car was turning it. The evidence is in sharp conflict on that. You will have to have in mind the opportunity which these witnesses who have testified here had to observe the things concerning which they attempt to tell you, the manner in which they have testified and their interest or lack of interest in the cause.

But even if you should find that there was another car, that would not absolve the defendants in this case from liability unless the negligent operation of this other car, if you find there was one, was the proximate cause of the accident; that is to say, the efficient cause, the one which set all other causes in operation. If, however, you should find that there was another automobile and that the driver was negligent, and you should also find that the driver of the Hild car was negligent and that the negligence of both

Charge to Jury.

produced the accident, so that both causes were proximate and both causes acting contemporaneously, together, caused the accident, which accident would not have resulted in the absence of either, then the causes would be concurrent and the accident could be attributed to both or either one of the causes.

10

As has been said, it is sufficient if the negligence of the party sought to be charged is an efficient or proximate cause without which the injury would not have resulted and that such other cause is not attributable to the person injured.

If, on the other hand, you should find that the negligence of the driver of the other car, if any such existed, was the proximate cause of this accident, then the plaintiff in this case could not recover, no matter how unfortunate the result of this accident may have been, and, again, your verdict would be in favor of the defendants and against the plaintiff, no cause of action.

20

Now, gentlemen, you must not lose sight of the fact that we are not trying the liability of the driver of another car to this plaintiff, because he is not a party to this suit. The question for you to decide is whether the driver of the Hild car was negligent, and whether such negligence was the proximate cause of the accident and of Ruth Berglund's death.

30

If you find that the driver of the Hild car was negligent, but you also find that such negligence was not the proximate cause of the accident, then that would be the end of the case and your verdict would be for the defendants. Before the plaintiff can recover, she must not only satisfy you by a preponderance of the evidence that the driver of the Hild car was negligent, and that

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Charge to Jury.

such negligence was the proximate cause of the accident, but she must also satisfy you by a preponderance of the evidence that such negligence was the proximate cause of her daughter's death.

I have already defined proximate cause. The same definition applies here when you come to
 10 the question of the cause of this girl's death. The Court of Errors and Appeals has said that proximate cause is the efficient cause, the one that necessarily sets all other causes in operation. Any act, neglect or default is the proximate cause of death within the rule where it inflicts the fatal injury, although the death which would have resulted therefrom is hastened by some other cause, such as improper treatment or when the injury only hastens death from prior
 20 disease, or when death resulted from disease which disease was caused by the injury. But where death is the result of two concurrent causes, each must be a proximate efficient cause, for if one of the causes operates only slightly with the other which is the proximate and efficient cause, then the proximate cause of death should be addressed to the latter cause. You see, on this question, gentlemen, the rules are somewhat complicated and you must have them
 30 firmly in mind in order that no injustice may be done to either party.

In this case, if you find that the driver of the Hild car was negligent and that such negligence was the proximate cause of Ruth Berglund's death, that is, that it was the efficient cause, the cause which set all other causes in operation, so that there was an unbroken causal connection between such negligence and her death, then the defendants would be liable, even though the death
 40 which resulted therefrom may have been has-

Charge to Jury.

tened by some other cause, such as a prior disease.

If, however, you should find that the proximate cause of Ruth Berglund's death was a heart condition, or lung condition, which was not superinduced by the injuries alleged to have been received in this accident, so that the injuries thus received could not be said to be the proximate cause of her death, then the plaintiff could not recover, even though the driver of the Hild car was negligent. 10

If you should find that Ruth Berglund died of chronic endocarditis or heart disease originating prior to this accident, and that such disease was the proximate cause of her death, then the rule that I have stated to you would apply and your verdict should be for the defendants and against the plaintiff. 20

The defendants have set up in their pleading that the deceased girl was guilty of contributory negligence, but there is no evidence that she was negligent. As I recall it, she was on the rear seat of this car and it was a dark night, and it was not shown that she did anything or failed to do anything; there is no testimony as to what she did. Furthermore, she was not engaged in a joint enterprise whereby any negligence on the part of Henry Hild could be imputed to her. 30

So that you get down in this case to this proposition:

Was the driver of the defendant's car negligent? If not, then no recovery.

If he was negligent, then the next question is; Was that negligence the proximate cause of the accident? If not, then no recovery.

Then, if you find that the driver of the defendant's car was negligent and his negligence 40

Charge to Jury.

was the proximate cause of the accident, and you find that such negligence was not the proximate cause of death, then, again, there can be no recovery.

10 But if, after considering all this evidence, and it is your duty to weigh it carefully, without prejudice, without sympathy (because that has no part in your deliberations whatsoever)—if, after weighing it all, you find by a preponderance of that evidence that the defendants were negligent and that their negligence was the proximate cause of the accident, and also that such negligence was the proximate cause of the girl's death, then the plaintiff would be entitled to a verdict, and then you would have to consider the admeasurement of damages.

20 Now, on this question of damages, gentlemen, I have already stated to you that the action is brought under the Death Act, and that act itself gives you the rule for admeasurement of damages. The act says that in every such case (that is, in an accident such as this) the jury may give such damages as they shall deem fair and just with reference to the pecuniary injury resulting from such death to the wife, husband, or next of kin of such deceased person. Of course, in this
30 case the girl was not married, and the next of kin would be her mother and two adult children, her brother and sister.

Our Court of Errors and Appeals has amplified the rule of damages laid down in the statute by using this language:

40 "What the plaintiff is entitled to recover is a capital fund which shall represent the present value of all the pecuniary loss which will fall upon the next of kin by the premature taking off of the deceased."

Charge to Jury.

What is meant by "capital fund"? Well, gentlemen, if you should sit down and say that a deceased person was contributing so many dollars a week to the next of kin, or one of the next of kin, and you should then add all those amounts up for the time which you might say that person would probably have lived, and then returned that amount as your verdict, it would be wrong, and the reason it would be wrong is that you would be giving to the next of kin now, in a lump sum, what if the deceased person had lived would have been contributed in installments during the course of that person's probable life, or during the period of that person's ability to make such contributions. So, you see, you would be giving the next of kin the benefit of a lump sum now which would have been distributed in installments over a period of years. So that by capital fund is meant the present value of all these installments, if I may use that term, right down to the present day value.

This capital fund is to be ascertained by taking into account all of the probabilities of the case. The intestate might have died in the course of nature shortly after the time of this accident, even if there had been no accident; she might, had she lived, have suffered financial reverses; her next of kin might have predeceased her. Nothing is to be added for loss of society, wounded feelings or anything else which cannot be measured by money and satisfied by pecuniary recompense. Something was intimated here, for example, about the expense of sickness, about funeral expense; they are not proper items in such a suit as this. The damages are to be determined exclusively by reference to the pecuniary injury resulting to the next of kin of the

Charge to Jury.

deceased by her death. Compensation for such deprivation of pecuniary advantage to these next of kin, therefore, is the sole measure of damages in such a case as this. As I recall it, the only evidence of pecuniary contributions in this case was to the effect that this girl had a position from which she derived an income of thirty dollars per week, and that she contributed part of this to her mother, who used it for household expenses. Of course, you have to remember that the girl herself had her living out of that. That contribution is now stopped by her death. You must remember also that the mother turned back or allowed this girl to keep a certain portion of this thirty dollars, so that you could not say that the pecuniary loss for any given week of that girl's probable life would have been thirty dollars.

You must confine yourselves to the rule of damages laid down in the statute, no matter whether you think it a wise rule or not. You are not concerned with that; you must follow the rule as I gave it to you if you find that the plaintiff is entitled to recover.

During the course of the trial motions were made, first for a non-suit and then for the direction of a verdict, both of which were denied by the Court. You have sat here long enough, gentlemen, to realize that the Court's action with respect to those motions is no concern of yours; that is merely a decision of the Court that in the case there is conflicting evidence which must be submitted to you for your determination, as you are the tryers of the facts. The Court's function is to give you the law to apply to the facts as you find them; the Court merely decided that this was a case which should be turned over to you for

Charge to Jury.

you to decide the facts and then apply the law which the Court has given you.

The defendant has waived all requests to charge with the exception of number six, which I will now proceed to charge:

If the jury finds from the evidence that Ruth Berglund, before her death, recovered from the injuries which she sustained in the automobile accident which happened on November 12th, 1922, then your verdict must be for the defendant, even though you should find that the accident was caused by the negligence of the defendant. I so charge you. 10

(The jury then retired.)

(After deliberating, the jury requested further instructions.) 20

The Court: I do not see counsel present, so I will give them the benefit of an exception to whatever I may say. What is your question, gentlemen of the jury?

The Foreman: We wish to know, your Honor, whether, if Mr. Hild's car was struck by another car, he is guilty of contributory negligence, or whether both drivers were?

The Court: If you find that there was another car which hit Hild's car and you find that it was the negligence of that other car which was the proximate cause, the producing cause, the efficient cause, the cause that brought about this accident, and that it was not the negligence of the driver of the Hild car, then, of course, neither of the Hilds could be held responsible. 30

If, on the other hand, you find there was another car and that the driver of that car was negligent and that the driver of the Hild car 40

Charge to Jury.

10 was also negligent within the specification of negligence set forth in the complaint, of which I have told you, that is, that he drove recklessly, carelessly and at an excessive rate of speed, and turned the corner at an excessive rate of speed—if you find that both drivers were negligent and it was the concurrent negligence of both which constituted the proximate cause of the accident, then this plaintiff had a right to pick out either one of them, and in that event the driver of Hild's car would be liable and the driver of this other car, if there was another car, would be liable.

20 You come back, after all, to what was the proximate cause, the producing cause, the efficient cause of the accident. You see, gentlemen, there may be two causes bringing about an accident, at least, two circumstances of negligence entering into an accident, but the accident might never have happened but for the negligence of one. If the circumstances were so that it could be said that only the negligence of one was the producing, efficient, proximate cause of this accident, then that one would be the one that should be held and the other discharged; but of course, if you find that there was negligence on both sides and that acting concurrently and together
30: they were the producing, proximate cause of this accident, then the driver of the Hild car, and consequently the owner of the Hild car, would be liable. But it is only in the event that you can say that the driver of the Hild car was negligent and that it was his negligence which was the proximate cause of this accident, that you can find a verdict against the defendant.

(The jury then retired.)

Rule for Judgment.

DEFENDANT'S SIXTH REQUEST TO CHARGE.

If the jury find from the evidence that Ruth Berglund before her death recovered from the injuries which she sustained in the automobile accident, which happened on November 12, 1922, then your verdict must be for the defendant, even though you should find that the accident was caused by the negligence of the defendant. 10

RULE FOR JUDGMENT.

HUDSON COUNTY CIRCUIT COURT.

ELIZABETH BERGLUND, administratrix *ad prosequendum* of the estate of Ruth Berglund, deceased,

Plaintiff,

vs.

HENRY HILD and ALBERT HILD, Defendants.

Action
at Law.

Rule for
Judgment.

20.

This action having been tried before Judge Henry E. Ackerson, Jr., with a jury, in the presence of counsel of the respective parties, on June 25, 1925, and June 26, 1925; and the jury having heard and considered the facts and having retired and considered the same, and having returned a verdict in favor of the plaintiff, for four thousand nine hundred and seventy-five (\$4,975) dollars damages; 30.

It is ORDERED that judgment final be entered in favor of Elizabeth Berglund, administratrix *ad prosequendum* of the estate of Ruth Berglund, 40

Rule for Judgment.

deceased, the plaintiff herein and against the defendants Henry Hild and Albert Hild, for the sum of four thousand nine hundred and seventy-five (\$4,975) dollars and the plaintiff's costs to be taxed.

10 HENRY E. ACKERSON, JR.,
Judge.

On motion of

MARGOLIES & MANETTI,
Attorneys for Plaintiff.

Rule actually entered this
27th day of June, 1925.

Filed Clerk's Office, June 27, 1925, Hudson
County, N. J.

20 JOHN J. McGOVERN,
Clerk.

30

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*Exhibit D. 1.***EXHIBIT D. 1.****BOARD OF HEALTH AND VITAL
STATISTICS**

—OF THE—

COUNTY OF HUDSON, N. J.**10**

Court House

Jersey City, June 26, 1923.

A Transcript from the Record of Deaths

IN THE COUNTY OF HUDSON

Vol. 12 Page 69 No. 3447 of Transit Burials

Date of Death—May 11, 1923.

Full Name of Deceased—Ruth M. Berglund.

Age—21 Y, 1 M, 22 D.

Single, Married, Widow, Widower—Single.

20

Color—White.

Occupation—Book-keeper.

Birthplace—New Jersey.

How Long Resident in this State—

Father's Name—Gustave.

Father's Birthplace—Sweden.

Mother's Name—Elizabeth Johnson.

Mother's Birthplace—Norway.

Place of Death—305 33rd St North Bergen N J. **30**Cause of Death—Chronic Endocarditis acci-
dental injuries from automobile.

Length of Sickness—

Place of Burial—Fairview Cem.

Undertaker—J L Burk

Medical Attendant—D B Pindar.

I, HUGH H. MARA, Registrar of Vital Statis-
tics of the County of Hudson, State of New Jer-
sey, do hereby certify that the transcript of the
record of the death of Ruth M. Berglund hereto**40**

Exhibit D. 1.

attached, is a true and correct transcript of the record of the return originally made according to law.

HUGH H. MARA,
Registrar of Vital Statistics.

(SEAL)

10

BOARD

OF

HEALTH AND VITAL
STATISTICS

OF THE

COUNTY OF HUDSON

Office in Court House

Transcript of the Record
of the Death of

20

.....

N.B.—If for any reason this transcript is unsatisfactory, have it compared with original on file either in this office or in State Bureau, Vital Statistics, Trenton, N. J.

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Opinion of Supreme Court.

OPINION OF SUPREME COURT.

Filed November 30, 1926.

NEW JERSEY SUPREME COURT.

No. 82, October Term, 1925.

10

ELIZABETH BERGLUND, admin-
istratrix *ad prosequendum* of
the Estate of Ruth Berglund,
deceased,

Plaintiff-Respondent,

vs.

HENRY HILD and ARTHUR HILD,
Defendants-Appellants.

*On Appeal
from
Hudson
County
Circuit
Court.*

20

Before Gummere, Chief Justice, and Justices
Kalisch and Campbell.

For the appellant, McDermott, Enright & Car-
penter.

For the respondent, Margolies & Manetti;
William E. Decker, of counsel.

PER CURIAM:

There was a verdict in favor of the plaintiff 30
below against the defendants below for the sum
of \$4,975.00 in the Hudson County Circuit Court,
and judgment having been entered on the verdict
the defendants appeal from such judgment upon
two grounds:

1. That the Court erred in refusing to grant
defendants' motion for non-suit.

2. Refusal of the Court to grant defendants'
motion for a direction of a verdict in favor of
the defendants. The action was brought under 40

Opinion of Supreme Court.

the Death Act and resulted in the judgment as above stated.

10 The refusal of the motion to direct a verdict for the defendants is the only ground of appeal argued in the brief of counsel of appellants, and we gather from the brief that the ground of appeal based upon the refusal of the Court to grant a non-suit, is abandoned. It is considered in appellants' brief that Janitschek's testimony standing alone might have been sufficient to take the case to the jury. This concession is further emphasized by the grounds advanced by the defendants for a direction of a verdict in their favor, which grounds are set forth in appellants' brief and are made the basis of the appellants' contention, that the Court committed legal error in refusing to direct a verdict for the defend-
20 ants. The grounds urged for such direction and repeated here are: First: That it now appears conclusively that the cause of the upsetting of appellants' car was the blow that it received on the left rear wheel and fender from another car; Second: That Ruth Berglund recovered from the injuries she received in the accident and that her death was not due to the accident but to chronic endocarditis. It appears that the trial judge at the time he denied the motion
30 stated to counsel that it was a jury question and that he may have an exception. The record does not show that an exception was taken to the ruling. But be that as it may, the attempt is made to argue the case as if it were before us on a rule to show cause. The questions argued related to matters of fact which were for the jury's determination.

40 A brief summary of the facts is, that the deceased was an invitee, riding in the appellants' car; that Henry Hild, one of the appellants, was

Opinion of Supreme Court.

driving the car; the night was dark; the headlights of the automobile were lit; Janitschek, who was a passenger in the car, says that the car was being driven very fast; that he spoke to Hild not to drive so fast; that the latter paid no heed to the request. Janitschek then says: "Just before we got to the turn, I should judge about thirty or forty feet before we got to the turn, we were going pretty fast, and Mr. Hild happened to notice the turn and he said, 'Oh, my God, I can't make it,' and he put on his brakes. * * * Well, the car skidded, and when it got to the turn Mr. Hild tried to make the turn, the left turn, and the car was still going at such a speed that it left the road and it went over." The defense was, testimony of Hild, the driver of the car, that when he came to the curve he saw the light of another automobile coming in the opposite direction and he applied his brakes "and edged to the right and sort of got off the road to give the other car room to go by and as I did so he struck the rear left wheel" and this caused the car to upset. This alleged fact appears from the testimony of other witnesses to have been in dispute.

Whether the plaintiff's decedent died as a result of the injury she received in the accident was also a jury question. The decedent had been a sufferer before the accident, from endocarditis, and the physicians who attended her was asked: "Would you say that the endocarditis would have been sufficient to produce the physical decline which resulted in death?" A "No. I think Ruth would have been alive today if it had not been for the injuries received."

The views herein expressed lead to the conclusion that the judgment should be affirmed, with costs.

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Rule on Affirmance.

**RULE ON AFFIRMANCE OF JUDGMENT
AND REMITTITUR.**

Filed November 30, 1920.

NEW JERSEY SUPREME COURT.

No. 82, October Term, 1925.

10

ELIZABETH BERGLUND, admin-
istratrix *ad prosequendum* of
the Estate of Ruth Berglund,
deceased,

Plaintiff-Respondent,

vs.

HENRY HILD and ARTHUR HILD,
Defendants-Appellants.

20

*On Appeal to
Supreme
Court.*

*Rule
Affirmance,
etc.*

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This cause having been duly argued and presented at the October Term by McDermott, Enright & Carpenter, counsel for defendant-appellants, and Margolies & Manetti, William Decker, of counsel for plaintiff-respondent, and the Court having considered the same, and finding no error in the record, proceedings or judgment in the Hudson County Circuit Court, and being of the opinion that said judgment should be affirmed in all things;

It is thereupon ORDERED and ADJUDGED that the judgment of the Hudson County Circuit Court removed by an appeal in this cause be affirmed with costs, and that the record be remitted to the Hudson County Circuit Court, to be proceeded with in accordance with this judgment and the practice of said Court.

Entered November 30, 1926.

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On motion of

MARGOLIES & MANETTI,
Attorneys of Plaintiff-Respondent.

Notice and Grounds of Appeal.

NOTICE AND GROUNDS OF APPEAL.

NEW JERSEY SUPREME COURT.

ELIZABETH BERGLUND, admin-
istratrix *ad prosequendum* of
the Estate of Ruth Berglund,
deceased,

Plaintiff-Appellee,

vs.

HENRY HILD and ALBERT HILD,
Defendants-Appellants.

10

*Notice of
Appeal.*

To Messrs. Margolies & Manetti, attorneys of
plaintiff-appellee:

20

TAKE NOTICE that the defendants, Henry Hild
and Albert Hild, do hereby appeal to the New
Jersey Court of Errors and Appeals from the
judgment of the New Jersey Supreme Court
affirming the judgment of the Hudson County
Circuit Court.

FURTHER TAKE NOTICE that the ground of ap-
peal upon which the said appellants will rely is
the following:

Because the New Jersey Supreme Court af- 30
firmed the judgment of the Hudson County Cir-
cuit Court.

Dated, December 7, 1926.

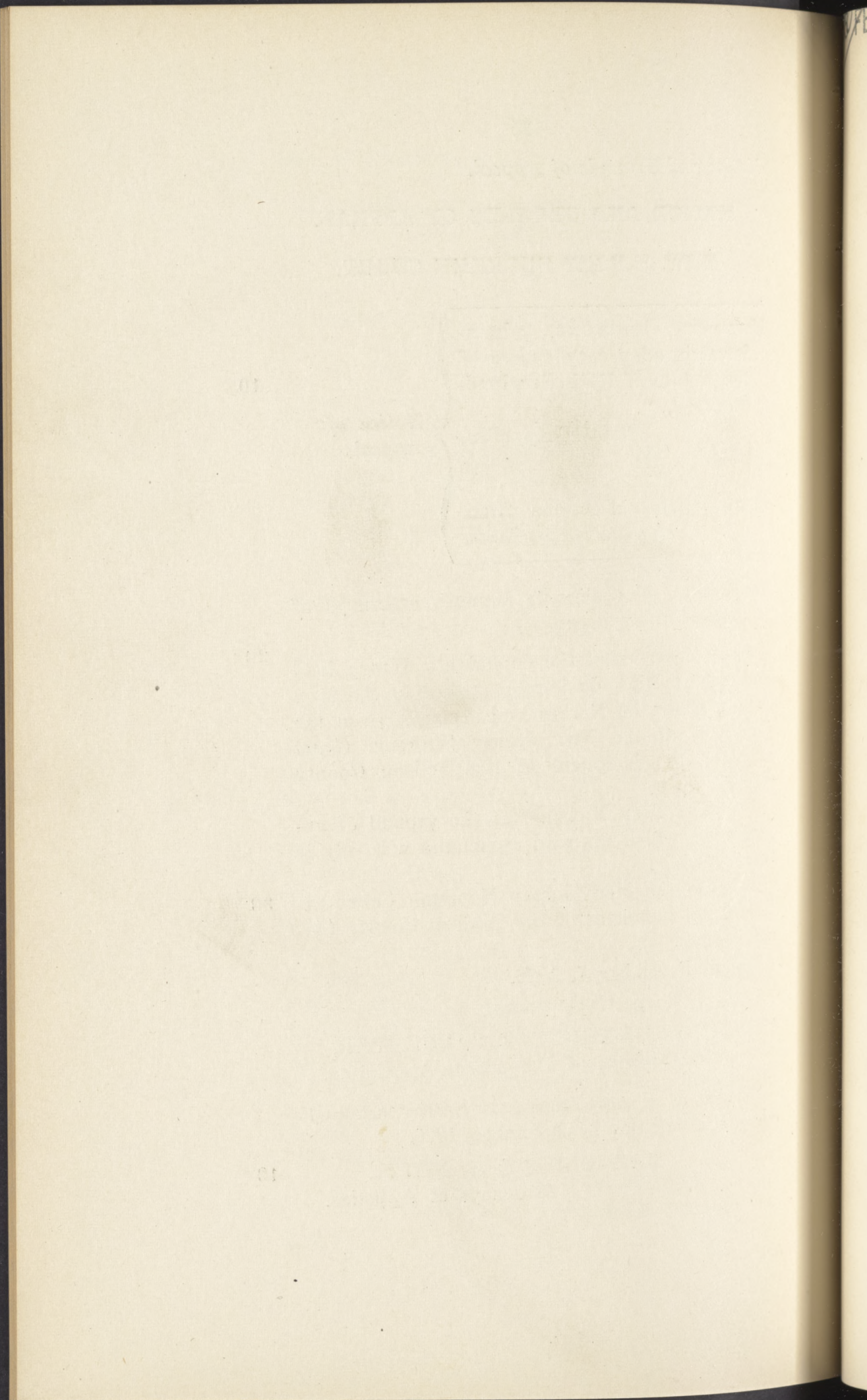
Respectfully yours,

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys of Defendants-Appellants.

Service of a copy hereof is hereby acknowl-
edged this 8th day of December, 1926.

MARGOLIES & MANETTI,
Attorneys of Appellee.

40



New Jersey Court of Errors and Appeals

ELIZABETH BERGLUND, admini-
stratrix *ad prosequendum* of
the Estate of Ruth Berglund,
deceased,

Plaintiff-Appellee,

vs.

HENRY HILD AND ALBERT HILD,
Defendants-Appellants.

*On Appeal
from Su-
preme Court.*

BRIEF OF McDERMOTT, ENRIGHT & CARPENTER, FOR APPELLANTS.

Defendants appeal from a judgment of the Supreme Court, affirming a judgment of the Hudson County Circuit Court in favor of the plaintiff and against defendants for \$4,975 damages.

The action was founded on the Death Act, for alleged negligence.

Defendants alleged below that the Circuit Court erred in refusing to grant their motions for non-suit and for the direction of a verdict in their favor.

Ruth Berglund, plaintiff's intestate, died of heart disease six months after receiving injuries in an automobile accident, and three months after all evidence of the injuries received in the accident had disappeared.

Appellants contend that the automobile accident was proximately caused by the driver of another automobile, which at night on a right-angle turn in the road, struck appellants' car and upset it and then drove off; that neither

the collision nor upset was due to any negligence on the part of the appellants.

The motion for the direction of a verdict was on the ground—

First: That it now appears conclusively that the cause of the upsetting of appellants' car was the blow that it received on the left rear wheel and fender from another car;

Second: That Ruth Berglund recovered from the injuries she received in the accident and that her death was not due to the accident but to chronic endocarditis.

To the ruling denying the motion for direction, an exception was taken. (P. 110-111; see notice and grounds of appeal, Record p. 1.)

POINT ONE.

Appellants' car while properly driven was upset at a turn in the road by another car negligently driven at a high rate of speed.

Henry Hild on the night of November 12, 1922, invited Adolph Janitschek, Miss Berglund and Miss Salderine, to take a ride in a two-seater Cadillac automobile, coupe type, owned by his father.

They were driving on the Airmount Road in Bergen County approaching a right angle turn to their left. There was an apple tree with branches that came down to the ground at the left of this corner of the road (p. 91, line 40).

It was dark and appellants' lights were lit. Appellants' car admittedly was at all times on its right side of the road. On the straight road, some time before reaching the turn, the car had been running at about thirty miles an hour, but

it was slowed down and was actually going around the turn on its right side of the road between ten and fifteen miles an hour. This is admitted by Janitschek, the only witness for the plaintiff, and is corroborated by Mr. Hild. (Janitschek, p. 36, line 15; Hild, p. 71, line 21.)

The road at this point was fifteen or eighteen feet wide. (Janitschek p. 24, line 12.) Hild judged that the road was fifteen to seventeen feet wide. (P. 77, line 25.) There were no houses there at all. (P. 77, line 38.)

Just as the car was about to turn to its left another automobile coming in the opposite direction swung around the curve and struck appellants' car on the left rear wheel.

Hild says—

“Q When you came to the curve, what did you do? A I applied my brakes. I saw the light from another automobile and I edged to the right and sort of got off the road to give this other car room to go by, and as I did, he struck the rear left wheel.”
(P. 71, ll. 25 to 30.)

Appellants' car swung over to the side of the road, and hit some stones, and upset, striking the ground on its right-hand side. (P. 72, ll. 30 to 40.)

Appellants' car did not roll over at all. The other car must have been a large car or it would not have been able to do the damage it did. Hild says that all he could tell about the other car was that it was going fast. It damaged the left rear hub cap and rear left fender and bent it down on top of the wheel. (P. 73, ll. 10 to 20.)

Miss Salderine, who was also in the car, said that she sat on the front seat beside Mr. Hild

and Miss Berglund and Mr. Janitschek sat in the back seat. Miss Salderine had been turned around talking to the people in the back seat. She says she turned around—

“and when I turned around, facing the front part of the car I saw two headlights approaching us, and just when I looked out I buried my face in my coat.”

Miss Salderine said she did this because her mother told her that if she saw danger to protect her face and glasses; that the bright headlights were right in front of them; that when she saw them she thought she was in danger; that is all, and she did not remember anything else until they pulled her out of the car. (P. 83, ll. 20 to 40.) Miss Salderine also said that the car simply upset and stayed there. (P. 84, l. 12.)

The examination of Mr. Janitschek, on whose testimony the case was permitted to go to the jury, amounted to no more than this:

On his direct examination Janitschek spoke about the car going thirty miles an hour, probably faster, before coming to the turn, and he said that thirty or forty feet before the turn Hild said—

“Oh, my God! I can't make it!”
and put on his brakes. (Bottom p. 14.)

“Q Now, after he said that what took place? A Well, the car skidded, when it got to the turn Mr. Hild tried to make the turn, the left turn, and the car was still going at such a speed that it left the road and went over.”

“Q On which side? A The right side.”
(P. 15, ll. 10 to 15.)

This standing alone might have been enough to take the case to the jury.

Janitschek was asked whether at the time of the accident he saw any other car and he said he did not. (P. 18, l. 35.) Janitschek did admit saying on the way home after the accident—

“we all agreed we would say we were hit by another car, instead of saying it was negligence on Mr. Hild’s part.” (P. 18, ll. 10 to 15.)

But on cross examination Mr. Janitschek testified that although the car simply turned over on its right side and landed on its right side, nothing hit it on its left side. (P. 35, l. 18.) He said that he examined the left rear mud-guard and left hub cap after the accident and saw that the very heavy mud-guard on the Cadillac car was pressed down against the wheel. (P. 35.) He said that at the moment the car overturned it was going probably ten or fifteen miles an hour (p. 36, l. 4), which we submit is not at all fast for a Cadillac car. Janitschek also admitted that the hub cap on the left rear wheel was damaged. (P. 37, l. 40.)

Janitschek further said on cross examination that nothing attracted his attention to anything, until Hild applied the brakes as they approached the curve, rounding the curve and then suddenly upsetting. (Pp. 36 and 37.) He was not paying any attention to what was going on outside of the car. (P. 37, l. 18.)

An interesting eye-witness called by the defendant was William H. Derbyshire, a farmer boy, who lived in a nearby farm and who was approaching the scene of the accident in a Ford car, which he was driving at thirty miles per hour. He said that he was driving home approaching the corner where the accident occurred from the direction opposite to that which the Hild car was running.

He said a large car came out of a side road ahead of him and was running in the same direction he was going. It was about half-past nine at night. He ran up to within five hundred feet of the car ahead, and says—

“I should judge it was a Buick by the description of the body and the fenders—”

the description that he got in that one look. He says—

“I got a fair look at it because I got within five hundred feet of him and my lights shone on him. He opened up. A Ford can't go much more than forty miles an hour, and I had her rolling about thirty. He started to open her up, to speed away from me as we do up there. He speeded away from me, right on, ahead of me.

“Q Did you see that fellow with the car you thought was a Buick, turn that corner ahead of you? A I saw him turn. I did not hear him hit or see him hit, but I saw him turn the corner and saw the other car turn over.

Q As the car turned over, as you have described, where was this Buick? A Out of sight at the time.

Q Where was the tail light of the Buick when you saw this other car swing and upset? A The tail light just disappeared out of sight. There is an apple tree right on the corner that loops to the ground, and just as she made this swing the tail light went out of sight, and the two lights came in and swerved right around in the road.

Q That happened right at that corner?

A Right on the very bend.”

(Derbyshire, p. 91, ll. 1 to 40.)

(P. 92, ll. 1 to 10.)

Derbyshire went right on to the scene of the accident, took the girls and Janitschek to his father's home and telephoned for the doctor. He said that immediately after the accident the girls said it was not the boy's fault. (P. 92, l. 32.)

Derbyshire says that afterwards he examined the Cadillac car, and

“saw the rear left fender was drove in back of the door, and the hub cap hurt on the left rear wheel of the car.” (Top of p. 93.)

Derbyshire says—

“The next morning I went out there and took a crowbar and pried the fender over a bit, and took the tractor and put a rope over her right-hand side and over the top and turned her over on her wheels, hooked the tractor on ahead of her, put the power on that she had of her own and drove her into the yard with her fender dragging on the wheel.

Q How was that fender against the wheel?

A The outer edge, the flange edge of the fender, was drove in tight on top of the middle door. It was so tight when you started her up she went b-r-r-r. We had to take crowbars and a sledge hammer to drive it out.

Q How about the hub cap? A That was smashed in.” (P. 96, ll. 21 to 38.)

Derbyshire's father, Charles Derbyshire, said the next day he examined the Cadillac car and said that it could not be driven—

“because the fender was dragging on the tire.” (P. 106, l. 36.)

Charles Derbyshire helped to straighten out the fender with a crowbar. The fender was bent down in such a manner that no one man could have done it himself without a twenty-pound sledge. It did not bear any evidence of a sledge having been used on it. (Derbyshire, p. 107.)

It was undisputed that before the accident the left rear hub cap and the left rear fender of Hild's car were not damaged. (P. 109, l. 30.)

We respectfully submit that it being undisputed that appellants' car was in good running

condition and undamaged before it upset, and it being undisputed that the car upset on the turn of the road and landed on its right side, and it being undisputed that immediately following the accident there was this physical evidence of the car having been hit, a severe blow on its left rear fender and wheel, which facts were admitted by plaintiff's only eye-witness, there was not sufficient evidence to justify the Court in refusing defendants' motion for a direction. The testimony of Janitschek may have been sufficient to put defendants to their defense, but if so, the defendants conclusively proved the cause of the upset was the blow from the other car. Janitschek gave no reason for the car upsetting. He said the car had been running thirty miles an hour before coming to the turn, but he admitted that while making the turn the car was actually going between ten and fifteen miles per hour, when it suddenly upset. He simply said he did not see any other car.

The defendant, Miss Salderine and Mr. William Derbyshire all saw the other car, or its lights, and testified to the blow from the other car upsetting Hild's car.

Even Janitschek, plaintiff's only witness, admits that after the accident the left rear wheel and fender had the evidence of the injury above mentioned.

Every witness admits that defendants' car was all the way over on its right side of the road when hit. Not a witness disputes this.

Derbyshire, who examined the marks on the road afterward, says that the Cadillac car was on its right-hand side of the macadam road before it was hit. The marks were on the road where the tires slid to the right after the car was hit. (P. 95, l. 30.)

Derbyshire could tell where the car received the blow, because the rear wheels of the Cadillac swung to their right from the point where the car was hit to the point where the car overturned. (Derbyshire, p. 95, ll. 20 to 40.)

We submit that the efficient proximate cause of defendants' car upsetting was the blow it received from the other car which disappeared in the darkness, without which blow this accident would not have happened, and that the Court should have directed a verdict for the defendants.

Powers v. Standard Oil Co., 98 N. J. L. 730;

Kelson v. Public Service R. R. Co., 94 N. J. L. 527;

Cook v. American Smelting & Refining Co., 122 Atl. Rept. 743;

As was said by Mr. Justice Black in *McCombe v. Public Service Railway Co.*, 95 N. J. L. 188—

“Plaintiff to succeed must show by evidence, not only such circumstances as would justify the inference of the defendant's negligence, but would exclude the idea that the accident was due to a cause with which the defendant was unconnected.”

If the testimony of Mr. Janitschek was sufficient at the close of the plaintiff's case to put the defendant to his proof under the rule in *Bien v. Unger*, 64 N. J. L. 596, then we submit that the defendants' exoneration was complete when he showed, as he did, that the cause of his car upsetting was the blow it received from another car which disappeared in the darkness after striking him.

We respectfully submit that on this ground it was error for the Circuit Court not to grant defendants' motion for the direction of a verdict,

and that the Supreme Court erred in affirming the Circuit Court.

POINT TWO.

Ruth Berglund died of chronic endocarditis after having recovered from the injuries received in the accident, and therefore her representative could not lawfully recover for her death.

This accident happened November 12, 1922, (Janitschek, p. 12, l. 8). Miss Berglund died May 11, 1923, (Death Certificate, Exhibit D. 1., p. 129). The death certificate reads:

“Cause of death—chronic endocarditis accidental injuries from automobile” (p. 129, l. 31).

Doctor Pindar who made out the death certificate, was the family physician of the Berglund family.

After reaching her home the night of the accident, Mr. Janitschek called in Doctor Louis Franklin to treat Miss Berglund, and he saw her first early in the morning after the accident. Doctor Franklin found her condition as follows:

“I found the young lady in bed, and on examination I found a fracture of the collarbone, bruises and contusions on her legs, her back and a few on her arm, but the serious injury or what she was particularly concerned about was the fractured clavicle, the fractured collarbone. * * * I saw this young lady about three or four times and then they wanted to have her own doctor treat her, so I withdrew from the case.”

Doctor Franklin said that the injuries such as she had were such as would heal up in a normal person, if there were no complications, in perhaps five or six weeks (p. 87, l. 40).

When he first examined Miss Berglund, Doctor Franklin found:

“that the girl was a victim or sufferer of chronic heart disease.

Q What type of disease was it, what type of heart disease? A A form of valvular disease of the heart.

Q That has another scientific name, hasn't it? A That is the technical name; leaky heart is the common name.

Q And is that the same thing as endocarditis? A Practically the same thing; it is the same thing.

Q Was it a type called chronic endocarditis? A Yes.

Q That is what she had at the time? A Yes.

Q Did she have any injury to her spine? A She complained of her back and I examined her back, but could not find anything wrong” (p. 88).

Doctor Pindar, on whose testimony the case was ~~alleged~~ ^{allowed} to go to the jury, examined Miss Berglund twenty-six times in all, commencing November twenty-second (p. 45, l. 35). Doctor Pindar treated her on these times and no more: Nov. 22, 24, 26 and 30 (p. 52, l. 36).

Dec. 3, 7, 9, 11, 16, 18 and 23.

Jan. 4.

February—not at all.

March 16 and 17.

April 12, 13, 15, 18, 24, 26 and 30.

May 2, 6, 9, 10 and 11 (pp. 52 to 54, inclusive).

Doctor Pindar said that he found when he first examined Miss Berglund that her collarbone had been properly set and that the bone healed in the usual time, probably six weeks following the injury (p. 54, l. 33). He said there was nothing unusual about the break in this collarbone, which healed probably in from six to eight weeks (p. 55, ll. 2 to 10). The bruises and discoloration were

all gone within from six to eight weeks (Pindar, p. 55).

On January fourth when Doctor Pindar discontinued his visits, all of the evidences of the accident had disappeared, "outside of the thickening of the collarbone, called callus" (p. 55, l. 25). She still complained, however, of pain on pressure, tenderness (p. 55, l. 35).

When Doctor Pindar was shown the death certificate he signed, he was asked:

"Q You still don't answer my question; is that what you signed? A Yes, but I can say I put that as the real cause of her death" (bottom p. 50).

Doctor Pindar also testified:

"Q What was the immediate, proximate cause of her death? A Due to malnutrition. She gradually lost weight, and she developed a weak general condition of the system; she died of anemia.

Q What was the thing that caused her heart to stop beating? A The spinal condition; edema of the lungs.

Q What is that? A A filling in of the lung with serum.

Q What is the cause of edema of the lungs? A It happens when the heart action weakens, and the lungs fill up, or from any disease, kidney trouble, or what not" (bottom pp. 57 and 58, ll. 1 to 10).

"Q See if you can answer this question: what was the direct cause of the edema of the lungs? A A weak condition of the system, weak heart action.

Q What part of the system was weak that caused edema of the lungs? A The heart action, the heart gave way at the last" (p. 58, ll. 28 to 35).

After having testified on cross-examination (pp. 50 to 61 inc.) that Miss Berglund actually died of chronic endocarditis (p. 50, l. 40) which

disease of the heart commenced with an attack of rheumatism when she was 12 years old, he also said she died of anemia (p. 57, l. 31); edema of the lungs (p. 58, l. 1); a weak condition of the system, weak heart action, (p. 58, l. 31); a spinal lesion (p. 59, l. 10); a generally weakened condition—she had a digestive disturbance (p. 61, l. 38). On re-direct examination Doctor Pindar was asked, "Would you say that the endocarditis would have been sufficient to produce the physical decline which resulted in death? A No. I think Ruth would be alive today if it had not been for the injuries she received" (p. 62).

Doctor Pindar had testified (p. 61, ll. 20-40) that Miss Berglund's heart condition was of long standing and that it was not affected at all by the accident.

"Q Therefore the accident had not affected her heart, had it? A Not at that time, no condition about the heart" (p. 61, ll. 30-33).

The Supreme Court based its affirmance on Doctor Pindar's statement, on page 62, entirely disregarding his earlier testimony that she died of a condition entirely disconnected with the accident.

Should it be argued that the mere statement "I believe Ruth would have been alive today if it had not been for the injuries she received," was sufficient to take the case to the jury, how can the testimony from the same physician be regarded when he said (a) that she died of chronic endocarditis; (b) that her heart condition was not affected by the accident; (c) that her injuries were such that they would heal within 6 to 8 weeks, and that he ceased treating her for her injuries January four, or 7 weeks after the accident?

We submit that the statement on which the Supreme Court relied was not sufficient to take the case to the jury; that as a matter of fact and law that statement, coupled with Doctor Pindar's other testimony, had not sufficient probative value on which to support a verdict where no fact is given upon which his belief can be foundationed. At best this was a mere statement of Doctor Pindar's personal belief. It was not his medical opinion. That had been inserted in the death certificate and in his earlier testimony.

It must not be overlooked that the plaintiff has the burden of excluding the idea that death was due to a cause with which the defendant was unconnected.

Migliaccio v. Public Service, 130 Atl. 9
(Not reported officially);

Wiley v. W. J. R. Co., 44 N. J. L. 247;

Suburban Elec. Co. v. Nugent, 58 N. J. L. 658.

Doctor Pindar admitted furthermore that the endocarditis from which Miss Berglund suffered originated in an attack of rheumatism which she had when she was twelve years old; that persisted and continued but she had no active condition at all; that there was no active condition in her heart on January fourth, following the accident (p. 61, l. 30).

“Q Therefore, the accident had not affected her heart, had it? A Not at that time, no condition about the heart.

Q Tell us in as simple language as possible, so that the jury will understand, what caused the heart to weaken and fill the lungs as the result of which Ruth died? A It was a general weakened condition. She had a digestive disturbance, she lost weight and she developed a generally weak condition” (p. 61, ll. 20 to 40).

Doctor Pindar admitted that he was not a heart specialist (p. 63, l. 18).

Doctor Pindar admitted that he testified at a former trial of this case that Miss Berglund died of a complication of diseases (p. 63, l. 25).

Defendants called a heart expert, Doctor John F. Cassidy, who makes a specialty of diseases of the heart, and lectures on the subject in Bellevue Hospital Medical College. He testified that chronic endocarditis is a condition in which the lining membranes of the heart becomes inflamed, and is usually brought on by some condition, such as rheumatism (p. 67, l. 20).

Doctor Cassidy also testified that in his opinion an accident six months previous to the death would not have progressed or aggravated the outcome.

“Q Why not, doctor? A Because the majority of young people affected with chronic endocarditis die between the ages of eighteen and twenty. A few do live to the age of thirty, but they are few and far between. That is one of the things we seldom see.

Q Why is that, doctor? A It is a disease that grows progressively worse.

Q Does endocarditis sometimes develop into any other heart trouble? A Very often when these people have rheumatism endocarditis runs into a second disease, which is almost invariably fatal” (p. 68, ll. 1 to 18).

The defendants then offered in evidence the death certificate, Exhibit D. 1, page 129.

The statute regarding certification of births and deaths, etc., (1 Comp. Stat., p. 208) provides, Section 2, that it is the duty of the attending physician to make a certificate of death, and among other things to insert

“the cause of death, and the length of sickness.”

In this case, Doctor Pindar did not insert the length of sickness.

Section 10 of the statute provides:

“Any such original certificate, or any copy thereof, certified to be a true copy under the hand of said medical superintendent, shall be received in evidence in any Court of this State to prove the facts therein contained.” (P. L. 1909, p. 174; 1 Comp. Stat. 212, Sec. 10).

We therefore submit that the certificate in this case proves the cause of Ruth Berglund's death was chronic endocarditis, and that the words added by the doctor

“accidental injuries from automobile,” mean nothing. The doctor did not certify that Miss Berglund died of injuries received in an automobile accident, but he certified the cause of death was endocarditis. So far as all of the medical testimony goes, Miss Berglund completely recovered from her injuries within two months after the accident. Doctor Pindar ceased visiting her, as we have above described, on January fourth, and did not see her again until March sixteenth or seventeenth. There is no evidence that any doctor saw her or treated her in that interval, and Doctor Pindar did not recall for what he treated her on March sixteenth and seventeenth.

We respectfully submit that the plaintiff did not sustain the burden of proving that the plaintiff died as the natural and probable consequence of the accident she suffered; that the defendants proved that the plaintiff died of chronic endocarditis, with which the defendants were unconnected, and that it was error for the Circuit Court to refuse to direct a verdict in favor of the defendants on this ground, and that con-

sequently it was error for the Supreme Court to affirm the judgment of the Circuit Court.

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Of Counsel.

**New Jersey
Court of Errors and Appeals**

<p style="text-align: center;">ELIZABETH BERGLUND, Administra- trix, etc., Respondent (Plaintiff),</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">HENRY HILD, <i>et al.</i>, Appellants (Defendants).</p>		<p style="text-align: center;">On Appeal From the Supreme Court.</p>
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REPLY BRIEF OF RESPONDENT.

This appeal is from the judgment of the Supreme Court affirming the judgment of the Hudson County Circuit Court in a suit for damages brought under the Death Act.

Deceased was a passenger in appellants automobile at the time she received the injuries which caused her death.

At the trial appellants moved for a non-suit on the ground that no negligence had been shown on their part (Case, p. 66, line 20); this was refused and at the conclusion of the case appellants moved for a direction of a verdict on two grounds (a) that it appeared conclusively that the cause of upsetting their automobile was the blow it received on its left rear wheel and fender from another automobile and (b) that respondents intestate recovered from the injury she received in the accident and her death was not due to the accident but to other causes (Case, p. 110, line 30).

The refusal to grant a non-suit was not urged in either the Supreme Court nor is it urged in the appellants argument of this court. Consequently,

we say nothing in answer to it for we consider it abandoned under the practice.

This leaves the sole question before this court at this time whether or not as a matter of law it appears conclusively (a) that the turning over of appellants automobile was not caused by his negligence; and (b) the death of respondent's intestate was not the approximate cause of such overturning of the automobile.

We submit that there was conflicting testimony in the trial court on both of these questions and under the law the trial judge submitted both of these to the jury whose function it was to decide them. There being conflicting testimony the judgment must be affirmed for there are no errors in law in the proceedings in the trial court.

Both in the Court below and in the appellants brief and this court the matter is argued as though it is on a rule to show cause and the argument of the appellants discusses in reality the weight and sufficiency of the evidence.

What we say is said for the purpose of showing to the court that there was conflicting and disputed testimony in the trial court and it is in answer to the appellants argument.

Answer to "Point One".

At the conclusion of the trial this case was sent to the jury by the trial judge with the instructions that the verdict could be based on one of the following grounds:

1. If they found that appellants motor car had been overturned because of an impact received from another motor car passing it on the road without any negligence on appellant's part their verdict should be for appellant (defendant).

2. If the cause of the overturning was the impact from the other car caused by the joint negligence of the driver of the other car and appellant then their verdict must be for respondent (plaintiff).

3. If the cause of the overturning was due to the negligence of appellant alone there being no other car from which it received an impact then their verdict must be for respondent (plaintiff).

To the foregoing instructions was added the instruction that the injuries caused to respondent's intestate when the car overturned must be found to be the proximate cause of her death. This point we discuss later.

The jury found for the respondent (plaintiff), consequently it discarded the theory that the cause of the overturning was alone the negligence of the "other car". Which of the other two theories is adopted we do not know.

The only undisputed material fact is that the left fender and hub cap of appellant's motor car were damaged and that the car turned over on its right side. From this appellant infers that the damage must have been caused by a passing car and must have caused his car to overturn. On this fact and inferences it is argued that as a matter of law he was not negligent.

We submit that this argument is not sound. It overlooks entirely the testimony of one witness that there was no other car on the road at that time and also fails to consider the testimony of witnesses and the admissions of the appellant from which the jury could infer that the overturning was caused by either (1) the joint negligence of appellant and the driver of the other car or (2) the negligence of appellant alone if they found there was no other car.

We understand that on this appeal that the weight and sufficiency of the testimony is not subject to review but the inquiry is solely whether the verdict is supported by any testimony.

“* * * in passing upon motions to non-suit
 “and for the direction of a verdict, the court
 “cannot weigh the evidence but must take as
 “true all evidence which supports the view of
 “the party against whom the motions are made,
 “and must give him the benefit of all legitimate
 “inferences which are to be drawn therefrom in
 “his favor.”

Andre vs. Mertens, 88 N. J. L. 626 (Er.
 & Ap.).

Janitschek testified for respondent that just before the motor car overturned he noticed that the appellant Hild was driving too fast for a dark road (page 13, line 30); that he warned him not to go so fast (page 14, line 8); he judged the speed was thirty miles an hour (page 14, line 11); that they were approaching a “sharp angle” turn (page 36, line 18); thirty or forty feet before they reached the turn they were going pretty fast and Hild noticed the turn and exclaimed, “Oh, my God! I can’t make it” and put on his brakes (page 14, line 34); the car then overturned causing the injuries to respondent’s intestate. He said the car was going ten to fifteen miles an hour when it overturned (page 36, line 13). On cross examination he said the car was twenty-five feet from the turn when Hild applied the brakes (page 43, line 25). He stated that there was no other car on the road (page 18, line 35).

Hild, the appellant and driver, of the car testified that the turn in the road was a sharp turn to the left (page 71, line 31) and that as he approached

the turn his car was going fifteen to twenty miles an hour (page 71, line 20). He admitted that Janitchek called his attention to the speed of the car when he was driving thirty miles an hour (page 72, line 25).

Lulu Salderine, who was in the car, testified for appellant that after she saw the headlights of the approaching car she covered her face but she did not hear or feel any impact between the two cars (page 84, line 1).

William H. Derbyshire testified for appellant that he was riding along the road about five hundred feet in back of a car going in the opposite direction to appellant, that this car turned the corner and saw its red tail light disappear and then he saw the headlights of appellant's car appear (page 90, line 32; page 99, line 36); that he saw the other car turn the corner but did not see or hear it hit appellant's car (page 91, line 30); that appellant's car after it had overturned was pointing in the direction it came from (page 96, line 3); that a five ton truck load of sand had been dumped on the ground at the turn (page 93, line 13); there was tar on the road (page 93, line 13); that the appellant's car had gone through the sand pile before it overturned (page 93, lines 28-32); that the skid marks of appellant's car appeared on the road showing it had been sliding fifteen to twenty feet before it reached the bend (page 104, line 20).

From the foregoing it is plain that the trial judge could not take the case from the jury for there was testimony that there was no other car on the road at the time. There was other testimony that there was a car on the road but one of appellants witnesses testified its rear light disappeared around the turn before the headlights of appellant's car appeared and that he did not see or hear the cars hit

though he was but five hundred feet away. Another witness riding in appellant's car testified she did not hear or feel any impact between the cars.

In addition to the foregoing it appeared by the testimony of all the witnesses that appellants car was being driven at a high speed before reaching the turn; that he had put on his brakes fifteen or twenty feet before reaching the turn; that the road had tar on it and it must have been slippery and that the car had momentum enough to go through a sand pile after it had left the road and then went ten feet before it overturned; and after it overturned the front of the car was pointed in the direction it came from. It is a fair inference from the foregoing that appellant was driving his car at such a speed that he could not make the turn when he reached it and it went off the road through the sand pile and then overturned.

It is hardly conceivable that if another car had struck appellant's car with the violence required to do the damage testified to, it could have proceeded uninjured and without pausing. And on this point appellants car lay on its side upwards of thirty minutes before anyone noticed that the left fender and hub cap was damaged. Part of that time appellant Hild was there along with his car.

The statement in appellant's brief, page 8, paragraph 2, that Miss Salderine and Derbyshire testified to the blow from the other car upsetting appellant's car is without foundation in the testimony.

The facts in each of the cases cited by appellant on page 9 of this brief are materially different from the facts in this case.

In the case of *Powers v. Standard Oil Company*, 98 N. J. L. 730, the contention was that a standing automobile which was illegally on the street obstructed the view of a person crossing the street. The court held that whether the automobile was

legally or illegally on the street, it was not an operating efficient or proximate cause which by its position did the damage.

In *Kelson vs. Public Service Railroad Company*, 94 N. J. L. 527, the railroad company had carried the passenger past his station and then furnished him with a ticket to return to the station he was bound for and let him alight. Instead of waiting for a car to take him back he choose to walk over the private right of way of the defendant and fell and injured himself. The court said that he was not a passenger, consequently the defendant owed him no more duty than it owed a trespasser, and the fact that the defendant had carried him past the station to which he was bound did not furnish the efficient cause which caused his fall.

In *Cook vs. American Smelting & Refining Company*, 122 Atlantic Reporter, 743, the court there held that the plaintiff had failed to prove any negligence. He proved the cause of his injury but the rule, *res ipsa loquitur*, did not apply, consequently his case failed.

In *McCombe vs. Public Service Railway Company*, 95 N. J. L. 187, the mangled body of a man was found on the street car tracks. The court said that this fact alone would not justify an inference that the defendant, street car company, caused his death by their negligence, and there was no other fact or circumstances to show light on the cause of his death.

The rules of law laid down in the foregoing cases are not in dispute, but none of them have any application to the case at hand. In this case we have shown facts in the testimony from which a clear and certain inference of the defendant's negligence may be ascertained.

Answer to "Point Two".

When respondent's intestate was brought home the night of the accident she was bandaged from head to foot, she could not lift her head and could hardly speak (page 27, line 38), she was bleeding all over; she had gashes on her neck and arms, her side and back and her knee (page 28, line 8); glass was imbedded in her body which came out piece by piece for six weeks after the accident (page 30, lines 14 to 38); she remained in her home for two and a half months after the accident (page 31, line 35) and then could walk only with crutches which appellant gave to her; prior to the injuries she had been a very active girl and could and did swim and dance (page 110, line 13); whenever she went out after the accident she did not go alone but with her mother (page 32, line 14); when she walked she stooped over and always complained of her back hurting her and pressing through her chest (page 32, line 21); could never lie down (page 28, line 16).

Dr. Pindar testified for the respondent that he had been the family physician of the Berglund family from the time Ruth Berglund was born; that after the accident he had examined her and found that she had a fractured right collar bone, a lacerated wound of her right leg and contusions of her left hip and thigh with several abrasions, and that there were other minor injuries caused by glass; that she had extensive discoloration and there was an infiltration of blood in the thigh and hip on the left side. That she complained of pain upon pressure and she was in an excited condition and complained of headaches, restlessness and disturbed sleep, and was in a nervous condition and somewhat hysterical at times (page 47, line

18); that he had treated her from the time of the accident to the date of her death, and there was an interval during which she apparently improved when his calls were less frequent; that he went away on a vacation for twelve days and on his return found there had been a decided change in her condition (page 48, line 3). That on his return she had decided nervous symptoms and exaggerated reflexes which were symptoms of a spinal lesion which condition was progressive to the time of her death; when he returned she could not stand without dizziness; that he had written down the cause of her death as chronic endocarditis, accidental injuries from automobile; that when she was twelve years old he had treated her for rheumatism, and as a result of this she developed endocarditis, but that all the acute symptoms had passed off and she had compensated hypertrophy; that he never treated her for endocarditis (page 62, line 15) and did not treat her again until 1923, time of accident (page 62, line 18), that the immediate proximate cause of her death was due to malnutrition; that she had lost weight and developed a weak general condition; that the thing that caused her heart to stop beating was the edema of the lungs which is a filling in of the lung with serum (page 58, line 1), and this in turn was due to a spinal lesion caused by an injury to the nerve filaments and that the condition of the spine was due to trauma at the time of the accident. He testified that if she had not had the injuries to the spine the general condition which brought about her death would not have developed (page 62, line 21). He also testified that the endocarditis alone was not sufficient to cause her death (page 62, line 20), and that the probable producing cause was the spinal lesion, loss of sleep, weakened condition of the system with the weak-

ened heart action, page 63, line 30, and that the spinal lesion was direct result of the accident, page 49, line 1.

Mrs. Berglund, the mother of the deceased, testified that her daughter, who lived with her continuously, never knew of her having heart trouble, and that no doctor ever treated her daughter for it, nor was she ever told that her daughter had heart trouble (page 110, lines 18 to 25).

The appellant based its argument that the intestate did not die as a result of her injuries, on the testimony of Dr. Louis Frankel and on the testimony of Dr. John F. Cassidy. Dr. Frankel was called to attend the intestate immediately after the accident and attended her three or four times when she called her family physician, Dr. Pindar. The other witness Dr. Cassidy never saw her. He testified as an expert witness. Dr. Frankel's description of the condition of the intestate is substantially the same as the description given by Dr. Pindar and intestate's mother. He said that she was suffering from chronic heart disease. He also said that she complained of her back, that he had examined her back and could not find anything wrong.

Dr. Cassidy said that ninety percent of the persons suffering with chronic endocarditis died before they reached the age of 20 years. From the fact that the intestate was not dead at the age of twenty it is a fair inference that she came within the remaining ten percent who passed that age. So far as his testimony shows they may live the entire course of their natural life.

Nor is there any support in the testimony for the appellant's contention that the intestate was completely cured. It is true the collar bone healed but there is no testimony that there was a complete recovery of the intestate from the injuries

received. The testimony shows that there was not a complete recovery. According to the testimony of Mr. Pfrommer, the intestate who was a book-keeper and stenographer, made two attempts to return to her work between the time of her injury and her death and she worked a half a day, but each time she stopped in the middle of the day and returned home.

This case is entirely different from the case of *Migliacco v. Public Service Railway Company*, 130 At. Rep. 9 cited by appellant. In that case it was contended that the death of Migliacco was due to an injury which he had received fifteen months prior to his death. His death was caused by pulmonary tuberculosis. No symptoms of tuberculosis appeared for over twelve months after the injury was received by him. He died within three months after the appearance of tuberculosis. In that case it was not contended that the death of Migliacco was directly due to the accident but that the accident caused a lowering of his vitality, by reason of which he more readily contracted the tuberculosis. This court called attention to the fact that Migliacco, following the accident and up to three months prior to his death, followed his occupation, and that during that period he was seen shoveling snow and coal and standing for an hour in slushy weather with his hat off, and riding on a hearse, and that under such circumstances, it was a known fact that persons, who had never been injured, had contracted pulmonary tuberculosis, and that any one of the incidents might have caused the tuberculosis. The connection in that case, the court said, between the accident and the death was guesswork on the part of the doctors who testified.

In the present case the testimony shows that the death of the intestate followed within six months of the accident and that immediately following the

accident her physical condition became progressively weaker until death came. The testimony of Dr. Pindar is direct to this point. The testimony of Dr. Frankel is testimony of a witness who saw her three or four times immediately following the accident, and did not see her thereafter; and the testimony of Dr. Cassidy is the testimony of an expert who gave his opinion that ninety percent of the persons suffering from a certain ailment did not survive a certain age. The testimony of these witnesses presented a direct conflict and it was for the jury to say which testimony they believed, and having found the fact as the jury did, from that testimony which such finding of fact may be reasonably inferred, we submit that the verdict should not be disturbed.

Appellant argues that the statement in the death certificate (Exhibit D. 1, page 129) must be taken as conclusively showing that the intestate died of chronic endocarditis, and contends that under the statute the certificate is admissible in evidence to prove this fact alone. However, the certificate also states that the intestate died from accidental injuries from automobile, which is a fact and which went into evidence with the certificate. The testimony of Dr. Pindar reconciles these statements and shows that the injuries received when the automobile turned over were the direct and efficient causes which brought about the condition of the intestate and resulted in her death. The weight of that statement is not in question now. We must take it for granted that the jury adopted that view.

It is true as contended by appellant that respondent must show negligence. We submit that we have shown facts from which negligence on appellant's part can be inferred and upon such showing the case resolved itself into a fact case for the jury.

to decide. The jury having decided and there being testimony in the record supporting their decision we submit that the judgment below should be affirmed.

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