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Summons.

THE STATE OF NEW JERSEY TO HARRY WEINSTEIN,
(L. S.)

YOU ARE SUMMONED to answer the annexed complaint of Walter Kastner, an infant, by Evelyn Kastner, his next friend, and Evelyn Kastner, individually in an action at law in the Essex County Circuit Court. And take notice that unless you file your answer to said complaint with the Clerk of the said Essex County Circuit Court, at Newark within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

WITNESS Hon. William A. Smith, Judge of the Essex County Circuit Court, at Newark, this 27 day of April nineteen hundred and twenty-seven. 20

JOHN H. SCOTT,
Clerk.

JOHN W. MCGEEHAN, JR.,
Attorney.

30

40

Complaint.

ESSEX COUNTY CIRCUIT COURT.

10	WALTER KASTNER, an infant, by EVELYN KASTNER, his next friend, and EVELYN KASTNER individ- ually, <div style="text-align: right; padding-right: 20px;">Plaintiffs,</div>	} Action at Law.
	<div style="text-align: center; padding: 5px 0 5px 40px;">vs.</div> HARRY WEINSTEIN, <div style="text-align: right; padding-right: 20px;">Defendant.</div>	

20 The plaintiffs, Walter Kastner, an infant, by Evelyn Kastner, his next friend, and Evelyn Kastner individually, residing in the Town of Irvington, County of Essex and State of New Jersey, say:

FIRST COUNT.

30 1. On May 10th, 1925, the plaintiff, Walter Kastner, an infant of the age of eleven (11) years, was lawfully riding a bicycle upon and along Berkshire Place, a public street and thoroughfare in and of the Town of Irvington, County of Essex and State of New Jersey, in a westerly direction, and at or near the intersection of the same with Union Avenue, another public street and thoroughfare in the Town of Irvington, Essex County, New Jersey.

40 2. On that day the defendant, Harry Weinstein, was leading a certain horse upon and along Berkshire Place, a public street and thoroughfare in the Town of Irvington, Essex County, New Jersey, in a westerly direction, at or near the intersection of the said Union Avenue as aforesaid.

Complaint.

3. It thereby became and was the duty of the defendant to exercise reasonable care to so guide, lead and control the said horse, so as to prevent him from injuring others including the plaintiff, Walter Kastner, then and there lawfully upon and using said public streets and thoroughfares as aforesaid.

4. The defendant, notwithstanding and disregarding his duty as aforesaid, so negligently, carelessly and improperly led, guided and controlled the said horse, that as a proximate result of his said negligence, the said horse, ran into, against, upon and kicked the said plaintiff, thereby causing him serious bodily injuries, hereinafter more particularly described. 10

5. The negligence of the defendant consisted in this; That he led, and guided the said horse upon and along the aforesaid street without having him under proper control; That he led and guided the said horse upon and along the aforementioned street by means of a piece of rope with which he was unable to control the said horse; That he failed to provide and use a bit or bridle rein so as to keep the said horse under restraint and control while walking upon the said street as aforesaid; That he failed to so lead, guide and control the said horse as the circumstances then and there existing in the exercise of reasonable care required; and generally, in so negligently, carelessly and improperly, leading, guiding and controlling the said horse, so as to cause the injuries herein described to the plaintiff, Walter Kastner. 20 30

6. As the proximate result of said accident to the plaintiff, Walter Kastner, and as the result of 40

Complaint.

the negligence of the defendant, as aforesaid, said plaintiff, Walter Kastner, was injured upon and about the head, body and limbs and suffered a fractured skull, severe laceration on the face and body, and he suffered from concussions; and he was rendered sick, sore and lame and disordered; his mind and body were affected and impaired and will in the future continue to be affected and impaired; he suffered great pain and inconvenience and will in the future suffer great pain and inconvenience and he will be deprived of the ability to obtain an education and employment and perform work and earn a living that he otherwise would be able to do and perform had not said injuries been sustained by him as result of the defendant's negligence as aforesaid; and he will suffer in the future loss of earnings and profits that he would otherwise have been able to earn, all of which is to his damage.

Plaintiff, Walter Kastner, by his next friend, Evelyn Kastner, demands as damages of the defendant the sum of Twenty Thousand Dollars (\$20,000.00), on the first count.

SECOND COUNT.

1. Plaintiff, Evelyn Kastner, is the mother and custodian of the plaintiff, Walter Kastner, and as such has the control and custody of the plaintiff, Walter Kastner, and as such is and will be obliged to care for and furnish medical aid and education to her said son, and is entitled to his earnings and services during his minority.

2. Plaintiff repeats paragraphs 1, 2, 3, 4, 5 and 6 of the first count, and makes them paragraph 2 of the second count.

Complaint.

3. As the result of the defendant's negligence as aforesaid, plaintiff, Evelyn Kastner, has been, and will in the future be deprived of the services and earnings of her said son, and has been and will be obliged in the future to expend and incur obligation for large sums of money in the necessary and proper medical treatment of his said injuries, as a result of the defendant's negligence. 10

Plaintiff, Evelyn Kastner, demands as damages of the defendant, on the Second Count, the sum of Ten Thousand Dollars (\$10,000.00).

JOHN W. MCGEEHAN, JR.,
Attorney of Plaintiffs.

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Answer.**ESSEX COUNTY CIRCUIT COURT.**

10	WALTER KASTNER, an infant, by EVELYN KASTNER, his next friend, and EVELYN KASTNER individ- ually, <div style="text-align: right; padding-right: 20px;">Plaintiffs,</div>	} Action at Law.
	vs.	
	HARRY WEINSTEIN, Defendant.	

20 The defendant Harry Weinstein residing in the City of Irvington, County of Essex and State of New Jersey, by way of answer to the plaintiffs' complaint, says that:

ANSWER TO FIRST COUNT:

1. He denies each and every allegation contained in paragraph 1.
2. He admits each and every allegation contained in paragraph 2.
- 30 3. He denies that Walter Kastner was then and there lawfully upon and using said public streets and thoroughfares, but refuses to plead to the other allegations contained in paragraph 3 which are allegations of law.
4. Defendant denies each and every allegation contained in paragraphs 4, 5 and 6 of the First Count.

40

Answer.

ANSWER TO SECOND COUNT.

1. Defendant has no knowledge or information sufficient to form a belief that Evelyn Kastner is the mother and custodian of the plaintiff Walter Kastner and as such has the control and custody of the plaintiff Walter Kastner, but denies each and every other allegation contained in paragraph 1. 10

2. Defendant repeats his answers to paragraphs 1, 2, 3, 4, 5 and 6 of the First Count.

3. Defendant denies each and every allegation contained in paragraph 3 of the Second Count.

FIRST SEPARATE DEFENSE TO BOTH COUNTS:

The defendant was not guilty of any negligence. 20

SECOND SEPARATE DEFENSE TO BOTH COUNTS:

The plaintiff Walter Kastner was guilty of negligence which contributed to the happening of the accident set forth in the complaint.

MCDERMOTT, ENRIGHT & CARPENTER,
Attorneys of Defendant.

30

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Reply.**ESSEX COUNTY CIRCUIT COURT.**

10	WALTER KASTNER, an infant, by EVELYN KASTNER, his next friend, and EVELYN KASTNER individ- ually, <div style="text-align: right; padding-right: 10px;">Plaintiffs,</div>	}	Action at Law.
	vs.		
	HARRY WEINSTEIN, Defendant.		

20 THE REPLY OF THE PLAINTIFFS, Walter Kastner, an infant, by Evelyn Kastner, his next friend, and Evelyn Kastner, individually.

The plaintiffs, replying to the Answer filed by the defendant in the above entitled action, say:

They deny each and every allegation contained in the First and Second separate defenses to both counts.

30 JOHN W. MCGEEHAN, JR.,
Attorney of Plaintiffs.

Case.*John F. Lovell. Called by Plaintiffs. Direct.*

ESSEX COUNTY CIRCUIT COURT.

WALTER KASTNER, an infant, by
EVELYN KASTNER, his next friend,
and EVELYN KASTNER individ-
ually,

vs.

HARRY WEINSTEIN.

Action
at Law.

10

Tuesday, March 4, 1930.

Before—Hon. NELSON Y. DUNGAN, *J.*, and a Jury.For Plaintiffs appears JOHN W. MCGEEHAN, 20
JR.For Defendant appears McDERMOTT, ENRIGHT
& CARPENTER (by CARL S. KUEBLER).

(A Jury is called and sworn.)

Mr. McGeehan opens for plaintiffs.

Mr. Kuebler opens for defendant.

30

JOHN F. LOVELL, sworn in behalf of plaintiffs.

DIRECT EXAMINATION BY MR. MCGEEHAN:

Q. Dr. Lovell, you are a practicing physician and
surgeon of this State? A. Yes, sir.Q. And do you specialize in any branch of medi-
cal science? A. I do the X-ray work at the Irving- 40

John F. Lovell. Called by Plaintiffs. Direct.

ton General and at the Hospital for Women and Children, beside doing it in my own office.

Q. That is, you specialize in roentgenology or in the taking of X-rays? A. Yes, sir.

Q. Particularly on bone injuries, is that right? A. Yes, sir.

10 Q. And did you take certain pictures at the Irvington General Hospital of the plaintiff in this case, Walter Kastner? A. Yes, sir.

Q. And when were those pictures taken, Doctor? A. Frankly, I don't remember. I took them out of the file and never noticed the date.

Q. Well, what is this that I hand you? A. That is my report.

Q. Will that help you? A. It was taken on June 6, 1925.

20 Q. And would you examine— A. (Interposing) And there is one on May 12th.

Q. One on May 12, 1925?

The Court: Is the date on each of the X-rays?

The Witness: Here is three on May 12, 1925; one on May 11, 1925.

30 Q. Two on the 11th of May? A. One on July 6, 1925, and another one on the 12th of May, and another one on the 11th of May.

Q. Now, were these X-rays all taken under your supervision or by you and used in the treatment of this young man? A. Yes, sir.

Mr. McGeehan: I offer them in evidence.

The Court: Let the two of May 11th be marked together.

John F. Lovell. Called by Plaintiffs. Direct.

(Two X-rays taken on May 11, 1925, are received in evidence and marked, as one exhibit, Exhibit P-1.)

(Two X-rays taken on May 12, 1925, are received in evidence and marked, as one exhibit, Exhibit P-2.)

(One X-ray taken on July 6, 1925, is received in evidence and marked Exhibit P-3.) 10

(Two X-rays, undated, are received in evidence and marked, respectively, Exhibits P-4 and P-5.)

BY THE COURT:

Q. Do you know they are the pictures of this boy? A. They were taken the first day.

Q. You mean May 10th? A. The day he had this accident? 20

The Court: I think the complaint says that the accident happened on May 10th.

Mr. McGeehan: May 10th.

The Witness: I probably did not get it that day, on May 11th; they probably were taken the same date as the other picture, to verify something else, and I didn't put the date on it.

The Court: The same date as P-1? 30

The Witness: Yes.

BY MR. MCGEEHAN:

Q. Now, Doctor, referring to P-1, the two plates taken on the 11th of May, will you examine them and tell us what they show as to any abnormal condition of the boy? What do they show, Doctor, if

40

John F. Lovell. Called by Plaintiffs. Direct.

anything, abnormal? A. They are not identified individually; they are both marked P-1.

Q. They are both May 11th, you said. A. You want to know which one I am talking about.

BY THE COURT:

10 Q. One is an anterior and posterior? A. Yes, sir.

Q. And the other is a lateral? A. Yes, in the antero-posterior there shows a fracture of the skull on the right side in the parietal region.

BY THE COURT:

20 Q. Show that on your own head, Doctor? A. Right here (indicating).

BY MR. MCGEEGAN:

Q. That is on the inside of the head, above one ear, practically? A. Practically. This lateral view shows a similar fracture, very indistinctly.

BY THE COURT:

30 Q. By a "similar" one you mean the same one, do you not? A. The same one.

Q. What kind of a fracture is that? Will you use this light box now and point it out, please, still referring to P-1? A. This is very plainly seen; and you notice here a spicular bone sticking out and a rather deep notch, simply a piece of bone movement, raised up and out of alignment. Some depression probably at the top here (indicating). In this lateral view on that, Judge, you can see this dark shadow here, but this film is not of good quality,

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John F. Lovell. Called by Plaintiffs. Direct.

and I have others which I took later, I think it is the next day, to show it more clearly.

BY MR. MCGEEHAN:

Q. Does that show anything, Doctor? A. It shows this indistinct fracture, but you cannot see it very clearly.

10

Q. You have other pictures that show that still better? A. Yes.

Q. Suppose you leave that one for the moment.

The Court: Have you some there that you say were taken the same day, which were undated?

The Witness: Yes, sir. That is another lateral view, taken on the same day. You can see where the fracture comes in there.

20

Q. Now, on that plate can you determine the approximate length of the line of fracture?

The Court: Suppose you take P-1 so that Dr. Lovell can see that antero-posterior view.

Q. Can you determine the length of the line of fracture from an examination of that plate?

30

The Court: That is P-4, laterally?

Mr. McGeehan: Yes, sir.

A. I wouldn't say that, because the distance of the object to the plate, well, from the plate, distorts it, so that you cannot say how long it is.

Q. Well, can you say approximately how long it is or what portion of the skull it covers? In other words, I would like to have you state whether it is

40

John F. Lovell. Called by Plaintiffs. Direct.

a short fracture line or a long one, and approximately how much of the head is involved in the fracture. A. I could only—

Q. Where does the fracture begin and where does it run to and where does it end? A. It begins at the vertex and runs along about midway to the middle of the ear.

10 Q. In other words, it runs from the top of the head practically to the location of the ear? A. Practically to the suture line, between the parietal bone and the squamous portion of the brain bone.

Q. Now, Doctor, is that the only line of fracture shown here, the one you have indicated there, or are there other lines of fracture? A. I think these are the sutures, the frontal parietal sutures.

Q. They are not then fractures? A. No, sir.

20 Q. Now, in your first— A. (Interposing) That is not the first; this is the first and that is the second one.

Q. Will you refer to the first one that you had? That indicates, does it, a what do you call that, a spicule bone? A. Spicular bone.

Q. Now, that has separated from the contour of the skull, hasn't it? A. Yes.

30 Q. Can you tell us how wide that piece of bone is that is separated from the outline of the skull there? In other words, the length is visible in that Exhibit P-1, is it not? A. Yes.

Q. Now, can you tell us approximately the width of that piece of bone? A. No, you cannot. You turn it around to this lateral view, it acts as a flat base and you cannot see how wide it is or whether it is raised or not. It must be in the other position.

40 The Court: Could you feel it to determine that?

John F. Lovell. Called by Plaintiffs. Direct.

The Witness: Yes, sir; I think you might. I didn't feel it but clinically one could do that.

Q. Now, you said there is probably depression at the top of that spicule, I mean inside the top of that? Just where is that depression? A. Well, if it were not fractured this thing would be even and smooth along here (indicating). This is probably depressed here. If it were not, this would not be raised. If this were depressed it would be on the other side of that. 10

Q. In other words, is it a fact that the spicule in question is partially in position, and the bone next to it is indented, is that what it is, is that what you mean by depression? A. Yes, it amounts to that.

Q. Now, suppose you show us your other plates. Can you tell the amount of the depression from them, the extent of the depression? A. I would not venture an opinion of them. That (indicating) is a similar plate, with the head turned slightly, trying to make this thing stand up to see how much movement there was in it. 20

BY THE COURT:

Q. You haven't those two plates in the same side—the other plate showed on the right side, and this shows on the other side now? A. Yes, sir; and this is not marked. I have identified the side on this plate. 30

Q. Is that the way it ought to be? A. Yes.

Q. And so it is on the right side there, is it? A. Yes; and the head is marked.

BY MR. MCGEEHAN:

Q. Just one more question before you leave those views. Looking toward the front of it, on Exhibit 40

John F. Lovell. Called by Plaintiffs. Direct.

P-4, antero-posterior view, there appears to be at the left side a rounded contour to that skull, while on the other side it appears almost straight up and down. Is that due to the position of the head in any part, or is it due to a misshapen skull? A. Probably due to position of the head.

10 Q. In other words, that which protrudes there is not present actually in the skull? A. It is very difficult to take a child and get him absolutely straight and take the back of his head. For some reason or other, these were taken the next day. We still see that spicular bone, very similar to the one of yesterday.

20 Q. Has there been any change in the position of that, Doctor? A. The head is probably turned a little bit, so that you don't see the point quite up as straight.

Q. So that, as far as the X-ray shows, it is still in the same position as it was the day before? A. Yes.

The Court: Is that the result of bandaging?

The Witness: I think that might be, but I rather think that this result in a radiograph is more due to the twisting of the head.

30 Q. In other words, your opinion is that that is the same, in the same place as it was the day before, but it shows differently on the picture in that position? A. Yes. The child, in the moment that the exposure was made, may have slightly moved his head in one direction, and it gives you a rather distorted appearance. That (indicating) is a lateral view, taken the next day. That is a better view than the other one.

John F. Lovell. Called by Plaintiffs. Direct.

The Court: That is a lateral view, P-2?

The Witness: That shows the fracture coming down here (indicating).

Q. Does that fracture extend into what is commonly known as the base of the skull there? A. That question was asked me and I could not find it, so I would not say. This last picture, P-3 (indicating), was taken in an attempt to show the base of the skull, and I could not prove that that fracture did run into the base of the skull. 10

Q. What does that plate show, if anything, Doctor, I mean this exhibit? A. P-3.

Q. Does that show anything additional to what the others show? A. No, sir.

Q. Now, will you return the one that was removed? Is that the one that you say shows best the lateral view? A. Yes, sir. 20

Q. Now, will you point on that again, Doctor, the line of fracture? A. (Witness indicates.)

Q. Would you mark a cross on there? Will a pencil mark that film? A. I think so.

Q. At the point where the both ends of that appear in the picture. A. What do you mean by both ends?

Q. Well, there is an upper end and a lower end of that line, is there not? A. Yes. 30

Q. Well, then, there is another, you have marked two lines? A. Yes.

Q. Well, then, there appears in addition to the line on the one side another fracture line to the right of it, looking at it, is that right? A. Yes; it is probably a continuation of the same thing.

Q. Well, now, Doctor, referring now to these two lines that you have marked, can you tell us whether or not there is a continuation of the line of fracture 40

John F. Lovell. Called by Plaintiffs. Direct.

around to the point looking at P-2, the point to the right where you have marked an "X"? A. Yes, I would say there was.

BY THE COURT:

10 Q. From your marking it would seem to indicate that the lower part of the fracture runs into the cavity of the ear, is that correct? A. Yes, sir; I said before about midway.

Q. Midway of the ear? A. Midway of the ear, yes.

BY MR. MCGEEHAN:

20 Q. Now, is it the upper part of this fragment that sticks out and makes a spicule? A. Yes, sir.

Q. Now, can you tell us approximately what the length of that fracture line is, tell us approximately? A. You might say about two and one-half inches, although it looks bigger than that there.

The Court: That is the longer line.

The Witness: What do you mean—how it looks here or how long the fracture was?

30 Q. No. You say it runs from the top of the head down to the ear cavity, about the middle, and in addition runs down some distance. Would you say that was about two and one-half inches? A. I think that would be about the length, or a reasonable length.

The Court: You mean the entire length of the fracture appears from the X-ray to be how long?

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John F. Lovell. Called by Plaintiffs. Direct.

The Witness: That was not his question, your Honor.

Q. Yes, it was. You may have misunderstood it.

A. I assume that as it appears there?

Q. I am asking you not what appears there, but what you can tell us, as an expert, is the probable approximate length of the line of fracture in this boy's head, as revealed to you as an expert by the X-ray, not what it looks to us on the picture. A. It looks there about eight inches long. 10

Q. No, can you tell us—you made a picture of this boy, didn't you? A. Yes.

Q. To see what his head condition was? A. Yes.

Mr. Kuebler: I would like to strike out what it looks like there.

Mr. McGeehan: I consent to its being stricken out. 20

Q. We are not asking you what it looks like there, Doctor. The question is this—you pictured this boy's head—

The Court: Is the picture you have there, Doctor, larger or smaller than the boy's head?

The Witness: I cannot tell you that, sir. I have forgotten the age of the boy. 30

Q. Eleven years he was. Doctor, this is the question: From one end of that fracture to the other, what is the total length of the crack in the head, or the break in the head, or the fracture line, in actuality? (addressing Walter Kastner) Young man, will you step up here, please? Would it help you, Doctor, to look at this boy's head, in conjunction with the picture, the X-ray picture? 40

John F. Lovell. Called by Plaintiffs. Direct.

The Court: You must remember he is five years older now.

Mr. McGeehan: I know, but I am asking the doctor if it will help him. Maybe it won't help him.

(The witness examines Walter Kastner.)

10 Q. Now, Doctor, can you tell us approximately how long that fracture line is? A. I would say probably four inches and a half.

Q. About four and one-half inches. Now, is that from the lowest "X" that you have marked on the picture? A. Yes, sir.

Q. Around to the lowest "X" on the other side? A. Yes, sir.

20 Q. Now, can you tell us approximately how wide that spicule was from this picture, looking at it laterally here? A. Perhaps an inch and a half.

Q. Now, that spicule that you speak of, was there an entirely complete fracture all the way through the skull—that is, when that spicule was up in the air, was there a complete opening into the brain cavity? A. Yes, from this picture.

Q. That is what I mean, from the picture. A. And you mean by "brain cavity", through both tables of the skull?

30 Q. Yes. A. That is true, that was.

Q. It was? A. Yes.

Q. Now, Doctor, what is the inner table of the skull called, that is, the innermost one that was fractured and which formed part of this spicule, what is that called, that innermost table? Is there any medical name? A. You mean the dura mater? I don't know what you are driving at.

40 Q. The skull was fractured all the way through? A. Yes, sir.

John F. Lovell. Called by Plaintiffs. Direct.

Q. Now, there is an inside to that skull, is there not, you call that the innermost table of the skull, do you not? A. Yes, sir.

Q. Now do you know what I am driving at? I mean, do you understand my question now? A. There is two layers of bone there.

Q. One is outside and one inside? A. Yes.

Q. I am talking of the inside one. A. Yes.

Q. Do you understand what I mean? A. Yes.

Q. What is that called, that inside one? A. That is called the inner table.

Q. Is there any medical term for it? A. No, not that I know of.

Q. Well, then, that inner table has attached to it what?

The Court: You mean inside?

Mr. McGeehan: Yes, sir; inside.

Q. Is there anything attached to the bony inside of the skull, the inner table of it, any membrane, Doctor, covering it inside? A. There is, but not that you can see in an X-ray picture.

Q. I am not asking you whether this X-ray shows it. I am putting my question as accurately as possible. I didn't ask you anything about an X-ray. I say, is there a membrane on the inside of a person's skull, on the inner table line? A. There is, yes.

Q. Now, what is that membrane composed of, or what is it called? A. The dura mater.

Q. And what kind of a membrane is that, I mean with respect to its thickness and what function does it perform? A. It covers the brain.

Q. And has it blood vessels in it? A. Yes, sir.

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John F. Lovell. Called by Plaintiffs. Direct.

Q. And where do those blood vessels run to from the dura mater? A. I don't know.

Q. Do they run into the brain at all? A. I don't know that.

Q. You could not tell then, as an X-ray expert, whether there was a tearing of any of those blood vessels in this spicule? A. No, sir.

10 Q. Can you tell how much the depression amounted to, from your X-ray? A. No, sir.

BY THE COURT:

Q. Do I understand you to say that the depression occurred on the other side of the head? A. No.

Mr. McGeehan: Above it, sir.

20 Q. Where do you say the depression was? A. If you consider both edges of this fracture as fragments, it was the upper fragment that was pressed in.

BY MR. MCGEEHAN:

Q. That is above the spicule? A. Above the spicule.

30 Q. In other words, you doctors usually call the two separate parts "fragments", is that right? A. Fragments.

Q. And at the top of the fracture—the lower fragment would be the spicule and the edge above it would be the upper one? A. Yes; and if the upper one were pressed out it would shove the lower one out.

Q. This spicule—how do you spell that, Doctor?
A. S-p-i-c-u-l-e, I think.

40

John F. Lovell. Called by Plaintiffs. Direct.

Q. This spicule is more the result of the upper part being pressed in then than of it extending out, is that right? A. It looks like a spicule. I will have to draw some pictures here. If this fracture is shaped like a horseshoe and you turn it infra-
end, its appearance is going to look like this (indi-
cating) because you are looking at it not toward
the flat side but from edge to edge. For instance, 10
if you look at this card-case like that (indicating)
you see it as a flat surface, but if you look at it like
that (indicating) you see just the edge, and that is
what appears to be the spicule; it is the anterior-
posterior view of a bone which, in the lateral view,
would be flat.

Q. The spicule is sticking out from the rest of it
in actuality—I mean it is separated, it is further
out than the other surface of the skull, isn't it?
The spicule extends out further than the rest of the
surface of the skull? A. Yes, sir. 20

Q. Contiguous to it? A. Yes, sir.

Q. Now, is that due to this displacement of the
outward or to the displacement inward of the sur-
rounding skull area? Do you understand that ques-
tion? A. I don't know as you can say whether the
top part was pushed in or just the break, a frac-
ture, allowed that part, when it was broken, allowed
the lower part to come out slightly, and along with
the depression at the top, you see this line of frac-
ture (indicating). 30

Q. Well, is it a combination of both then? A.
Yes, sir; I would say so.

Q. Does the X-ray indicate whether or not
hemorrhage accompanied the fracture? A. No, sir.

Q. Can you tell us from your experience and
knowledge of the human head whether or not
hemorrhage attended this fracture? 40

John F. Lovell. Called by Plaintiffs. Direct.

Mr. Kuebler: I object to that as immaterial.

The Court: He may answer yes or no, whether or not he knows.

Q. (Question read) I mean your knowledge as a physician and surgeon, whether or not this fracture would, in your opinion, result in hemorrhage. A. I would say that it would.

10 Q. And, in your opinion, where would that hemorrhage occur, Doctor? A. I would not express an opinion on it.

Q. I mean, when you say there would be a hemorrhage, can you tell us not necessarily what organs bleed, but whether it is the inside or outside of the head where the hemorrhage is occurring, or the inside or outside of the skull? A. I would not even place it there.

20 Q. Well, where, in your opinion? A. The reason I would say there would probably be hemorrhage is because I believe the fracture is extensive enough, it would hardly be able to occur without some hemorrhage—that is why I would say yes.

Q. Without some hemorrhage where? A. At the site of fracture or directly beneath it.

Q. Now, Doctor, you took a plate on July 6th? A. Yes, sir.

30 Q. Was that the one to determine whether it extended into the base? A. Yes, sir.

Q. Does that show whether or not there is a union of the fragments that had been shown separated in the earlier pictures? A. No, sir.

Q. Was there any X-ray taken, that you know of, to determine the permanent condition of the skull? A. No, sir.

John F. Lovell. Called by Plaintiffs. Cross.

CROSS EXAMINATION BY MR. KUEBLER :

Q. X-rays were taken on July 6th, or one was taken? A. Yes, sir.

Q. Is that one which you took to show the base of the skull, the only one that was taken on that day? A. That was all, sir.

Q. And the last picture which you actually took of this fracture itself was taken the 12th of May, or two days after the accident occurred? A. Yes, sir. 10

Q. That picture was taken, was it not, after the fracture had been reduced? A. I cannot tell you that, sir. I don't know the treatment under which this boy was treated by; I don't know anything about that.

Q. That picture, however, did show a better, much better position of the spicule, or the piece of bone which you described as a spicule, than was shown by the previous picture, did it not? A. No, I don't think it did; I don't think it changed at all, sir. 20

Q. Isn't it a fact that that spicule in that second picture did not protrude as far and is not as pronounced as in the other? A. Yes, sir.

Q. And is it not probable that that was due to the fact that the fracture had been reduced between the time you took the first X-ray and the time you took the second X-ray? A. No, sir. 30

Q. At the time you took the first X-ray you knew where the fracture was, didn't you? A. Yes, sir.

Q. And you took the X-ray, having in mind just where the point of the fracture was? A. That may be.

Q. At the time you took the second X-ray you endeavored to get the same focus, and to get approximately the same position, did you not? A. Yes, sir. 40

John F. Lovell. Called by Plaintiffs. Redirect.
John F. Lovell. Called by Plaintiffs. Recross.

Q. Now, both of these pictures which show the spicule are pictures taken of the front of the head or looking toward the face, are they not? A. Face up.

Q. The spicule would not show taken from a side or lateral view, would it? A. No, sir.

10 Q. Doctor, you referred to depression and you simply mean by your testimony, I believe, that there is a probability that there was a depression there? A. A probability?

Q. Yes. A. There is no probability about it; I guess there was, there was a depression.

Q. I beg your pardon? A. There was a depression.

20 Q. You said in your examination by Mr. McGeehan that there was a probability of depression there. A. Well, there is a depression.

Q. You cannot in any way estimate, though, how much that depression is, can you? A. No, sir; I don't know.

Q. You don't know of your own knowledge whether there was a hemorrhage or not, do you? A. No, sir.

REDIRECT EXAMINATION BY MR. MCGEEHAN:

30 Q. Doctor, what is such a condition due to? I mean is it due to an illness or due to trauma? A. What condition are you talking about?

Q. The one we are talking about, the fracture of the skull? A. Why, the trauma.

RECROSS EXAMINATION BY MR. KUEBLER:

40 Q. Doctor, that line of fracture was practically a straight line, wasn't it? A. No, it was a curved line.

Raymond J. O'Toole. Called by Plaintiffs. Direct.

Q. Well, can you just indicate by your finger on your head again how that line ran? A. That is on the right side of the head (indicating). It runs up like this and goes around in a semi-circle, more or less perfect, and that leaves this flat surface of the parietal bone raised as you break it through, and there is pressure; for instance, if I struck you a blow on the side of the head, the curve will probably be in the form of a semi-circle, with where I strike the blow depressed, which leaves the bottom part sticking up. That does not mean it is two or three inches out, it may be only a fraction of an inch; but you can see the break in continuity, not the clean outline of the circle when you take it in the position to show that piece coming out. 10

Q. Well, then, the fracture extended up from the ear and then curved toward the front of the head? A. Yes, sir. 20

RAYMOND JOSEPH O'TOOLE, sworn in behalf of plaintiff.

DIRECT EXAMINATION BY MR. MCGEEHAN:

Q. Where do you live, please? A. At present I reside 133 Hillside avenue, Newark, New Jersey. 30

Q. And how long have you lived in this city?

A. I have been living at present there about three years.

Q. How long have you lived in Newark? A. Off and on about fourteen years.

Q. What is your business, Mr. O'Toole? A. I am an optician, manufacturing optician.

Q. In business for yourself? A. I am employed by a corporation, manager of the Newark branch. 40

Raymond J. O'Toole. Called by Plaintiffs. Direct.

Q. What corporation is that? A. Bohling & Gibbs, Inc., of New York.

Q. And you are manager of the Newark branch of it? A. Yes, sir.

Q. Now, Mr. O'Toole, on the 10th of May, 1925, were you up on Berkshire Place in Irvington? A. Is that the day in question of this accident?

10 Q. Well, I do not suppose I can tell the witness. I will withdraw that question and ask you whether or not you saw anything happen to the Kastner boy sometime in 1925? A. Yes, sir, on a Sunday morning.

Q. Well, now—and without describing what the details were, which I will bring out by questions to you—what happened to him? Was he hit with an automobile or what? A. No, he was kicked by a horse.

20

Mr. McGeehan: I think you will agree that that was the 10th of May, 1925?

Mr. Kuebler: I won't agree that he was kicked by a horse on that day. I will agree that that is the day an accident occurred.

Q. Now, Mr. O'Toole, just where were you upon that street when you saw whatever you did see? A. Why, I was on about—I was going east on the north side of Berkshire Place and I was approximately between 35 and 50 feet from the corner of Union Avenue and Berkshire Place, Irvington, New Jersey.

30

Q. You say you were walking easterly? A. On the north side.

Q. And on the sidewalk or in the street? A. No, sir, on the sidewalk.

40

Q. On the sidewalk? A. Yes, sir.

Raymond J. O'Toole. Called by Plaintiffs. Direct.

Q. What kind of a street is that with respect to the pavement of it, I mean, is it smooth? A. It is a smooth, concrete pavement.

Q. And has it a curbstone? A. It has a concrete, reinforced curbstone, reinforced with steel.

BY THE COURT:

10

Q. That is, it is the sidewalk that is concrete or the street? A. Sidewalk and street and curbing.

Q. All concrete? A. All concrete; yes, sir.

BY MR. MCGEEHAN:

Q. Now, at that time, as you came along, you were walking away from Union avenue then in an easterly direction? A. Yes, sir.

Q. Now, you said before that you saw this boy kicked by a horse. Where did you first see that horse? A. When I turned the corner of Union Avenue into Berkshire Place I noticed a horse prancing along Berkshire Place, almost in the middle of the street, about 200 feet from where I was standing or walking at the time.

20

Q. Now, when you say he was "prancing along", just describe his actions. A. Why, he was dancing and shying, which a horse will naturally do.

30

Q. You cannot tell us what a horse will naturally do, but you can tell us what he was doing. You say he was shying and prancing? A. Shying and prancing.

Q. And did you see how that horse was secured, I mean what kind of harness, if anything, was about his head or body? A. Well, he just had a halter-shank, and a lead rope onto the halter-shank.

Q. Did he have any bit in his mouth? A. No.

40

Raymond J. O'Toole. Called by Plaintiffs. Direct.

Q. When you saw that horse going along that way, did you see where the end of the rein or rope was? Was there a rein or rope, do you remember?

A. It was a rope, a lead rope.

Q. And about how long was that rope? A. I should judge approximately two and one-half to three feet.

10 Q. Now, did you see where that was as he went along, the horse? A. Just in what respect?

Q. I mean did the man have a hold of it or not? A. He had it in his hand, leading.

Q. And as he went along, how far did you see that horse when he was prancing and shying? How long did he go along that way before something happened? A. Why, I judge about between 100 feet and 150 feet.

20 Q. 100 to 150 feet? A. Approximately.

Q. You said a man had a lead rope in his hand. Where was that man, on the horse or off the horse? A. No, he was leading the horse.

Q. And he was walking along? A. Yes, sir.

Q. Now, after you had seen it come 100 to 150 feet, prancing and shying, what did you see this man do with that rope? A. He put it in the crook of his elbow, the crook of his arm, and made a cigarette in this manner (indicating).

30 Q. Now, what did he light that cigarette with? A. A match.

Q. And when he lit that cigarette with a match, did he have that rope in his hands or not? A. No, he had it on the crook of his arm.

40 Q. Now, what did that horse do when he lit that match? A. Why, it shied up and kicked out its hind feet, and this young lad was coming in the same direction that the horse was, and when he got approximately five feet away he swerved to his

Raymond J. O'Toole. Called by Plaintiffs. Direct.

left to go around, and at the time the man leading the horse was lighting the cigarette, he shied up and kicked the boy.

Q. When he kicked the boy, what was the boy on, on foot or on a vehicle? A. He was on a bicycle.

Q. And at that time which side did the boy pass that horse on, do you remember? A. He started to pass to the left of the horse. 10

Q. And where was that horse riding about then, with regard to the curb, I mean? A. I should judge it was about three feet, more or less.

Q. From what? A. From the curb.

Q. That is on his right or left side? A. On the right side of the road.

Q. Now, do you know whether or not the man kept hold of that horse or not, I mean whether he regained hold of the reins or the rope? A. When I seen the accident and the horse kick him, the horse started shying, and when I seen the man he had his hands like this (indicating) trying to keep the horse down. 20

Q. Well, that was after the occurrence? A. After the occurrence. As to whether he had it in his hand when the horse kicked him—

The Court: You are indicating both hands?

The Witness: Well, that is after the horse did the kicking and was kicking and shying; he tried to get it down by holding onto the horse. 30

Q. Do you know who that man was that— A. (Interposing) At the time I did not, no; but later on I found out that he was a milk dealer that lived a few—about 100 feet on the other side of the block away from me. 40

Raymond J. O'Toole. Called by Plaintiffs. Direct.

Q. And do you know that man now? Do you see him in court? A. I see him in court now; yes, sir.

Q. Will you point him out? A. This is the fellow (indicating); that gentleman right there with the black mustache.

10 Q. Which one? A. The man with the brown tie on, he is sitting behind him; he has got a little mustache and a black tie.

Q. Which seat is he in? A. He is in the third seat.

Q. Will you stand up, please (addressing person indicated by the witness)?

(Person indicated stands up in the court room.)

20 Q. Is that Mr. Weinstein? A. Yes, that is Mr. Weinstein.

Mr. McGeehan: Is it admitted that that is the defendant, Mr. Weinstein?

Mr. Kuebler: That is the defendant.

30 Q. Now, from the time that you saw him light the match and the horse rear, until after the boy had been kicked, did you see the rope in the man's hands at all? A. No.

Q. Did you go to the boy who had been hurt? A. No, I ran and called the police, telephoned for the police.

Q. And were there many people in that street at that time or not? A. No. There was three women sitting on a stoop about three or four houses away from where it happened.

40 Q. About how far away were you from the point where the boy was kicked, at the time he was

Raymond J. O'Toole. Called by Plaintiffs. Direct.

kicked? A. About three feet, almost diagonally across from him.

Q. You mean you were on the sidewalk alongside there? A. On the sidewalk, walking along.

Q. Now, after this was over, did you have any conversation with Mr. Weinstein? A. Not that I recall.

Q. Did you hear him say anything to someone else around there? A. I overheard that he just was contemplating buying the horse. 10

Q. Well, did he say this? A. I don't just recollect if he did or not, now.

Mr. Kuebler: I object to it.

The Court: It will be stricken out.

Q. Just tell us what, if anything, you heard Mr. Weinstein say. A. Why, I don't just recall that, what he did say; that is a little bit too far to remember. I was kind of excited and I was nauseated myself, and I had to go and lay down a couple of hours afterward. 20

Q. Where was the boy kicked, where was he hurt? A. He was kicked on the side of the head, and then when the horse came down he kicked him again with his hoof, on the return with his hoof.

Q. And afterward—if you cannot remember of course say so—but now can you remember anything that Weinstein said about the horse or about anything there after the occurrence of it? 30

Mr. Kuebler: I object, because he says he does not remember, your Honor.

The Court: Well, the witness said before he just cannot recollect. If he knows that, he may answer. 40

Raymond J. O'Toole. Called by Plaintiffs. Cross.

A. I do recall a statement being made that he was contemplating the purchase of the horse from a dairy on Chancellor avenue, that he did not own the horse at that time, and he was taking it to his stable to try it out on the milk route that afternoon.

10 Q. Did he say anything about the horse? A. Why, let me see now. I will have to stop and think to that effect. He said something similar to the effect that the horse had not been exercised or out of the barn for about a week.

Q. He said that, did he? A. Yes, sir.

Q. He had not been exercised or out of the barn for about a week? A. About a week.

CROSS EXAMINATION BY MR. KUEBLER:

20 Q. Now, Mr. O'Toole, where were you going that day? A. In just what respect?

Q. Where were you going that morning as you were walking along Berkshire Place? A. No place in particular; just looking the neighborhood over.

Q. And you say it was Sunday morning that this happened? A. Yes, sir.

30 Q. About what time? A. Now, that is a hard-put question. I couldn't say exactly what time. I would say around 9:30.

Q. Did you have your breakfast that morning? A. I certainly had.

Q. And you had not had your dinner yet? A. No, sir; not that I recall.

Q. You are positive about that? A. I am not.

Q. You are not positive? A. Four years is a long time to remember an incident like this.

40 Q. But you say it was about 9:30 in the morning? A. I would say approximately, I wouldn't

Raymond J. O'Toole. Called by Plaintiffs. Cross.

say positively. It could have been around noon-time. I am not sure of the exact time when it happened.

Q. Sometime then between 9:30 and noontime?

A. I will say approximately; I wouldn't say positively.

Q. Well, it was not ten o'clock at night, was it?

A. No, it was not. The sun was pretty high in the clouds. 10

Q. Would you say it was in the forenoon? A. I don't just say one way or the other. I told you before I couldn't exactly remember the exact time of the thing.

Q. You do not know then what time it was. A. In other words, you are trying to get me to say a positive time?

Q. You say you saw this. Did you see it? A. Certainly I seen it. 20

Q. What time of the day did you see it? A. Why, it was between midnight of Saturday and midnight of Monday.

Q. That is the best opinion that you can give as to the time that you saw this accident? A. No, it is not the best opinion.

Q. Is that the best opinion that you can give? A. No, it is not the best opinion.

Q. Then what is the best opinion that you can give as to the time of this accident? A. I will say that it happened between 9:30 in the morning and 3:30 in the afternoon. 30

Q. You cannot give any better opinion than for a space of six hours? A. If I wrote down the exact time and dates I could give it to you accurate, but four years is a long time to remember.

Q. Where were you going that day? A. I just told you I was walking around the neighborhood. I wasn't going any place. 40

Raymond J. O'Toole. Called by Plaintiffs. Cross.

Q. And do you live far from there? A. Just up the corner, on 314 Union avenue. There is two houses from there to the corner.

Q. And the Kastner family lived at 172 Berkshire Place? A. I couldn't tell you where the Kastner family or anybody else in the neighborhood lived. I wasn't acquainted with anybody in the neighborhood.

Q. How long had you lived in that neighborhood? A. I just had moved in.

Q. How long did you live there afterward? A. I lived there for almost two years.

Q. You know now where the Kastner family lived, don't you? A. I was told yesterday. Where the exact location is I don't know—Linden avenue, wherever Linden avenue is, in Irvington; I don't know.

Q. You knew they lived on Berkshire Place, didn't you? A. I did afterwards, yes.

Q. And how close was that to Union Avenue? A. How close was what to Union avenue?

Q. Their house. A. How close is it to Union avenue there?

Q. Yes. A. Well, I don't know the exact house that they lived in on Berkshire Place; it might have been the fourth or it might have been the fifteenth house.

Q. Well, now, you were walking along when this occurred? A. Yes, sir.

Q. Where were you when you first saw this horse? A. I just turned the corner off Union avenue into Berkshire Place.

Q. Then you were in— A. (Interposing) I was on Berkshire Place.

Q. And you had crossed Union avenue? A. I didn't cross Union avenue; I turned off Union avenue into Berkshire Place.

Raymond J. O'Toole. Called by Plaintiffs. Cross.

Q. You didn't have to cross Union avenue? A. No, I didn't have to cross it.

Q. Then when you saw this horse and the man who was leading him, at that time you were at the corner and the horse was 150 to 200 feet down the road? A. Approximately, yes.

Q. Had you noticed Mr. Weinstein then? A. I noticed a man leading a horse. 10

Q. He was on the opposite side of the road from you, wasn't he? A. On the what?

Q. On the opposite side of Berkshire Place? A. Absolutely not, no.

BY THE COURT:

Q. Was he going in the same direction as you or in the opposite direction? A. He was coming towards me, and I am going—he was going west and I am going east on Berkshire Place. 20

Q. And on which side of the street was he? A. Well, on the north side, that would be the right hand side. I was on the north side going east, and he was on the north side going west.

BY MR. KUEBLER:

Q. Now, which side of the horse was he on? A. What was that? 30

Q. Which side of the horse was he on? A. I wouldn't say he was on any side of the horse. He was leading the horse.

Q. In front of the horse? A. Absolutely.

Q. And you say the horse had a halter on? A. A halter, yes.

Q. There was no other harness on the horse, was there? A. There wasn't any harness on him. A halter is not considered harness. 40

Raymond J. O'Toole. Called by Plaintiffs. Cross.

Q. Just a halter and a rope? A. A halter and a lead-rope.

Q. And Mr. Weinstein was walking, wasn't he?
A. Yes.

Q. And you were walking? A. Absolutely.

Q. Where was Mr. Weinstein when the accident occurred? A. You will have to put that a little
10 bit more explicit for me.

Q. How close to Union avenue was Mr. Weinstein when the accident occurred? A. I said approximately 35 to 50 feet, it might have been 75 feet. There is a house and a two-car garage on the corner, and there is about three or four feet intervening between the back of the house to the start of the garage. Now, if you want exact measurements you will have to figure it out.

Q. And there is a driveway that goes up to that
20 garage? A. There is a driveway right from the street. It is built right on the line.

Q. On Berkshire Place? A. On Berkshire Place.

Q. And are there other driveways along there, too? A. Leading to the various houses, but there hasn't been just in this particular spot.

Q. Then when Mr. Weinstein and the horse were about in that position, where were you? How far had you gone from the corner? A. I had almost
30 met Mr. Weinstein.

Q. And you had gone about 35 or 40 feet from the corner, you say? A. Approximately, yes.

Q. When did you first see this boy? A. When did I first see him?

Q. Yes. A. I seen him on Union avenue. He
40 passed me and he turned into Berkshire Place, and he turned around and came back on Berkshire Place and was coming along in the same direction the horse was going. I had seen him when I first stepped out of my house, riding the bicycle.

Raymond J. O'Toole. Called by Plaintiffs. Cross.

Q. And how far had you walked on Union avenue to get to Berkshire Place? A. I walked approximately 35 or 50 feet.

Q. And your house is right next to Berkshire Place? A. It is the third house from the corner.

Q. Now, when you first saw Mr. Weinstein and the horse, you say Mr. Weinstein was leading the horse by the rope? A. Yes, sir. 10

Q. You are sure of that? A. Positively.

Q. And how far did he have hold of the rope from the halter? A. I didn't take particular notice to that.

Q. You took particular notice of the fact that he was leading the horse? A. Naturally.

Q. And the fact that he was walking before the horse? A. Naturally.

Q. And the horse was walking behind him? A. He was prancing behind him, yes. 20

Q. Prancing behind him? A. Yes, prancing, not walking.

BY THE COURT:

Q. Did you see how far down the boy had gone with his bicycle? A. Well, I didn't take particular notice to that; no sir, I did not.

Q. I have a map here showing that location. A. This is about approximately where the accident occurred (indicating on map), and this is about approximately where the boy turned around (again indicating). 30

The Court: He is indicating a bend in Berkshire avenue, where he says he first saw the boy. As the witness was going, there is a bend slightly to the west, to his left.

Raymond J. O'Toole. Called by Plaintiffs. Cross.

The Witness: It goes like that, about 300 feet, maybe; I wouldn't exactly say (indicating).

The Court: You may use this map if you want to indicate the location.

Mr. Kuebler: I have no objection.

10 Mr. McGeehan: I have no objection. I don't know that it would help much, either; less so than in an automobile accident.

The Court: Perhaps that is so, but if it becomes of any use, you are welcome to it.

BY MR. KUEBLER:

20 Q. Well, when you got to the corner of Union avenue and Berkshire Place, where was the boy on the bicycle? A. He was riding down Berkshire Place.

Q. Still going down Berkshire Place? A. Yes.

The Court: In the same direction you were going?

The Witness: Yes.

30 Q. And how far was he down Berkshire Place then? A. I wouldn't want to say, because I didn't take particular notice to that.

Q. Was he past the horse and Mr. Weinstein? A. He must have been past the horse, because the horse preceded him back.

Q. How far was he past the horse? A. I didn't take particular notice to that, either.

Q. Did you see him turn around? A. I did.

Q. How far was he behind the horse when he turned around? A. I would say about 100 feet.

40 Q. And when the boy turned around, what side of Berkshire Place was he on? A. Just what do

Raymond J. O'Toole. Called by Plaintiffs. Cross.

you mean, going down to turn or after he turned around, coming back?

Q. When he was going away from the horse. A. What side of the street was he on?

Q. Yes. A. When he was going away from the horse?

Q. Yes. A. He was on the south side of the street.

10

The Court: Then he was going west?

The Witness: No, going east.

Q. Going the same direction you were? A. On the south side of the street.

Q. And you were on the north side of the street? A. Yes.

Q. How far was he from the curb as he was going east on the south side of the street? A. How far from the curb?

20

Q. Yes. A. I don't know; I wouldn't venture to say.

Q. Was he out toward the middle of the road? A. No, he was not; he was more toward the curbing.

Q. Now, when he turned around where was he? A. He pulled into the curb and he made a complete circle.

30

Q. A complete circle? A. Yes.

Q. And that brought him over on the other side of the road? A. He didn't make a complete circle; a semi-circle. He didn't make a complete circle; if he did it would bring him about to where he started from.

Q. If he made a semi-circle it brought him over on the north side of the road, didn't it? A. North side, and was going west then.

40

Raymond J. O'Toole. Called by Plaintiffs. Cross.

Q. And did he continue west on the north side of the road then? A. Yes.

Q. And he continued west until he got about five feet in back of the horse? A. Yes.

Q. Was the horse prancing then? A. He was.

Q. Was the horse shying then? A. He was.

10 Q. Then what did the boy do? A. The boy proceeded to pass him by, going to the left of the horse.

Q. Was the horse prancing then? A. He was.

Q. Was he shying then? A. He was.

Q. What do you mean when you say "The horse was prancing"? A. Well, kittenish.

Q. What do you mean when you say he was "shying"? A. Why, his south end was north and his north end was south.

20 Q. He didn't stand on his hind legs, did he? A. No, I don't think he would be capable of that. He was too heavy a horse to do a stunt like that.

Q. It was a heavy horse, wasn't it? A. Yes.

Q. He looked like an old farm horse, didn't he?

A. No, he looked like a darn fine draft horse to me.

Q. What color was the horse? A. I would say a dark chestnut.

Q. Shaggy hair? A. Just what do you call "shaggy hair"?

30 Q. Well, did he have long hair? A. He had a long mane and a long tail.

The Court: He means the hair on the horse. Was it long or shaggy?

Mr. Kuebler: You mean the coat?

The Court: The coat of the horse.

The Witness: I wouldn't call that the hair. I would call the mane and the tail the hair.

40 Q. What was his coat? A. I didn't take particular notice of that.

Raymond J. O'Toole. Called by Plaintiffs. Cross.

Q. You did not take particular notice? A. No.

Q. When the boy turned around from the direction in which you were walking to the direction in which the horse was going, was the horse shying then? A. Yes.

Q. Was the horse prancing then? A. Yes.

Q. And as the boy turned to his left from a point five feet behind that horse, to pass that horse on the left side, how far was the boy from the horse then? A. How far? 10

Q. Yes. How far was the boy from the horse? A. He cut out like this (indicating); and just as he went to go around the horse, the horse up and kicked him.

Mr. McGeehan: I think we ought to have the answer stricken out.

The Court: That answer will be stricken out. It is not responsive. (Addressing witness) When he started to turn out, how far was he from the horse? 20

The Witness: I would say a full bicycle length from the horse, the full length of his bicycle.

By MR. KUEBLER:

Q. Did you say on direct examination that as he turned to his left to pass the horse he turned to his left a few feet? A. I said between three and five feet. It would be about the normal length of a bicycle. 30

Q. About three or five feet? A. Yes.

Q. And at that time the horse was prancing and was shying? A. And was shying.

Q. Now, when did you see Mr. Weinstein put this rope under his arm? A. When he lit his cigarette. 40

Raymond J. O'Toole. Called by Plaintiffs: Cross.

Q. When was that? A. Just about when the boy was to pass him, he lit a cigarette, and the reflection either scared the horse and he shied up—

Q. You say the horse was shying and prancing all the time, wasn't he? A. Yes.

Q. The horse was shying and prancing when you first saw him? A. Yes, sir.

10 Q. And he was shying and prancing the whole 150 feet or more that he came up that street, while you were walking up from the corner? A. I didn't say he shied 150 feet from the corner.

Q. When did he start to shy? A. You asked me was he shying the whole 150 feet, and I said I didn't see he was shying the whole 150 feet.

The Court: Whether you said it or not, was he shying?

20 The Witness: Not the whole 150 feet, no; he was shying at intervals.

Q. He was shying before Mr. Weinstein started to light this cigarette, though, wasn't he? A. At intervals, yes.

Q. He was shying before he put this rope down under his arm? A. At intervals.

30 Q. You did not see him at very long intervals over that 150 feet, did you? A. I had occasion to observe him coming down the street until he got opposite the point that I had reached in the block.

Q. Where was the boy on the bicycle when Mr. Weinstein put this rope under his arm? A. He was just about to come up around past the horse.

Q. He didn't have the cigarette in his mouth then, did he? A. Yes, sir.

Q. You are sure it was a cigarette? A. Positive.

40 Q. Did he have a match in his hand then? A. No, he went into his pocket to get a match.

Raymond J. O'Toole. Called by Plaintiffs. Cross.

Q. And had he lit his cigarette when this accident occurred? A. Absolutely.

Q. He had? A. Yes, sir.

Q. In other words, from the time this boy came in back of the horse and started to pass the horse, Mr. Weinstein put this rope down under his arm, took out a match and lit his cigarette? A. Yes, sir.

Q. Now, after this accident occurred, you said you notified the police? A. Yes, sir. 10

Q. Where did you go to get the police? A. My home, telephone.

Q. You called them on the telephone? A. Yes, sir.

Q. And then you came back to the scene of the accident? A. I came back to see that the boy was taken to the hospital, which he had been.

Q. And the boy had been taken to the hospital? A. Some passerby picked him up in their car and took him up there. 20

Q. Was Weinstein there then when you came back? A. Yes.

Q. Was the horse there then when you came back? A. He was with the horse.

Q. And is that when you observed these women on the front porch? A. No, I observed them when the thing happened.

Q. When did you observe the women sitting on the front porch? 30

Mr. McGeehan: He just stated that.

Q. You observed that when the accident happened? A. Yes.

Q. Just as the accident happened? A. No, just a little before.

Q. As you were walking down Berkshire Place? A. There was three women on the porch. 40

Raymond J. O'Toole. Called by Plaintiffs. Cross.

Q. Which side of the street were they seated on the porch? A. The same side as I was walking on.

Q. Were you out there when the police came up? A. I don't recall that. I think I had went in the house, as it nauseated me, and I went in the house and laid down.

10 Q. Was that before the child was taken to the hospital? A. That was after.

Q. Was that after you telephoned or before? A. Absolutely after the telephone call.

Q. Now, when you went back, after you had telephoned, how long did you stay there? A. I didn't take and particular notice as to how long I stayed there.

20 Q. Did you go over to the boy? A. The boy had been taken to the hospital, by the time I had gotten back, by the passerby.

Q. I didn't finish the question. Did you go over to the boy when you saw the accident happen?

The Court: He said he did not. He said he went right away to get the police.

Q. The boy then was across the street from you? A. No, he was not across the street.

30 Q. Where was the boy? A. The boy was lying on the same side of the street that I was, in the street.

Q. How far from you? A. About five feet.

Q. And where was the horse? A. The horse was over on the south side of the street with Mr. Weinstein, trying to quiet him down, after the thing occurred.

Q. And the horse was away over on the other side of the street? A. Away on the other side of the street after it all was over.

40 Q. And Weinstein was where? A. Weinstein was there trying to quiet the horse down.

Raymond J. O'Toole. Called by Plaintiffs. Cross.

Q. And he was holding the horse with both hands? A. Trying to keep the horse from running away from him.

Q. You were the nearest one to the boy then? A. Outside of Mr. Weinstein, I suppose I was, yes.

Q. Well, was Mr. Weinstein nearer than you were? A. Well, he was supposed to be holding to the horse. 10

Q. Well, now, was Mr. Weinstein nearer than you were after the accident occurred? A. I cannot answer that.

Q. You won't answer that?

Mr. McGeehan: He said he cannot answer that.

The Court: The answer was "I cannot answer that." 20

Q. Was anybody with the boy when you left to call the police? A. There was a couple of people came running down the street.

Q. And you started away before they got there, didn't you, to get the police? A. I don't recollect that thing thoroughly enough to commit myself on that.

Q. When you say the horse kicked the boy, where was the boy, on the bicycle? A. Yes. He knocked him down off the bicycle with the force of the kick. 30

Q. What part of the horse came in contact with the boy's head? A. The hind hoofs.

Q. And that was while the boy was riding on the bicycle? A. That was while the boy was riding on the bicycle.

At one o'clock p. m. the Court takes a recess until two o'clock p. m. 40

Gertrude Rabke. Called by Plaintiffs. Direct.

AFTER RECESS.

GERTRUDE RABKE, sworn in behalf of plaintiffs.

DIRECT EXAMINATION BY MR. MCGEEHAN:

10 Q. You are connected with the Irvington General Hospital? A. Yes.

Q. And in what capacity? A. Historian.

Q. And, as such, have you charge of the records of that institution? A. Yes, sir; I have.

Q. And were you such in 1925? A. Not at that time, no.

Q. When did you come there? A. I have been a year and a half, and left and came back.

20 Q. And have you charge of the older records as well as the records that have been kept since your arrival at the hospital? A. Yes, I have charge of their records.

Q. I show you what purports to be a hospital record, and ask you if that is the record of the case of Walter Kastner (handing witness document)? A. (Examining) Yes, that is it.

Mr. McGeehan: I ask that that be marked for identification.

30 (File of papers referred to is marked Exhibit P-6 for Identification.)

Q. I show you what purports to be a bill of the hospital, dated May 17, 1927, for \$154, containing the items: May 10, 1925, emergency, \$2; May 10th to May 17th, ward, \$28; May 18th to June 17th, ward, \$124; total, \$154—and ask you if that is the usual rate charged at the hospital? A. Yes, it is.

40 Q. And is that a reasonable rate of charge? A. That is the regular ward rate.

Gertrude Rabke. Called by Plaintiffs. Cross.
Albion C. Christian. Called by Plaintiffs. Direct.

Mr. McGeehan: I offer the bill in evidence, by consent.

The Court: It may be admitted.

(The same is received in evidence and marked Exhibit P-7.)

CROSS EXAMINATION BY MR. KUEBLER: 10

Q. Has the bill been paid? A. I am not sure, but I don't think so.

ALBION C. CHRISTIAN, sworn in behalf of plaintiffs.

DIRECT EXAMINATION BY MR. MCGEEHAN: 20

Q. Dr. Christian, you are a practicing physician and surgeon of this State? A. I am.

Q. How long have you been so practicing in this State? A. 35 years nearly.

Q. And you are a graduate of what medical college? A. Medical College of the Western Reserve University.

Mr. Kuebler: I admit the doctor's qualifications. 30

Q. Doctor, were you connected with the Irvington General Hospital in May, 1925? A. I was.

Q. And were you also engaged in private practice? A. Yes.

Q. Were you the family physician, by the way, of the Kastners? A. No, sir.

Albion C. Christian. Called by Plaintiffs. Direct.

Q. Did you treat the boy, Walter Kastner, at the hospital and after his discharge from the hospital?

A. I did.

Q. Do you recollect when you first saw him there? A. The 10th of May, 1925.

Q. And at that time where did you see him? A. In the Irvington General Hospital.

10 Q. How long after he had been admitted did you see him, do you know? A. I don't know, and the record does not show; that is, my part of the record does not show.

Q. You have examined the hospital record, I presume, that I have just had marked for identification? A. I have.

Q. And you did not have very long to look at it, did you? A. I did not need long.

20 Q. Were you able to refresh your recollection from it? A. I think so, yes.

Q. Now, when you saw this young man, what was his condition? Just describe his physical condition. A. Let me have the chart. (Consulting Exhibit P-6 for Identification.) He had a cut in front of his right ear and a cut on the left side of his head, and marked contusions on both sides of his head in the temporal region. He was in a condition of shock at the time I saw him.

30 Q. What do you mean by "a condition of shock"? A. Well, shock as the result of his accident.

Q. Yes, but I mean what is medical shock? Will you describe it to us? A. Low blood pressure, rapid pulse and a general depressed condition.

Q. Was he conscious or unconscious? A. That I cannot answer. For some reason, my record does not show it, my part of the record.

40 Q. It does not appear from your part of the record? A. It does not.

Albion C. Christian. Called by Plaintiffs. Direct.

Q. Do you recollect without the record, one way or the other? A. No, I cannot remember. I am not sure.

Q. Now, in addition to the shock and the cuts and contusions upon the head that you spoke of, what other objective symptoms of injury were there? A. It developed later from the x-rays, well, from the original examination, too, but more definitely from the X-ray, that he had a large fracture on the right side of his skull, a piece broken, a quadrilateral piece broken out of the skull, about three inches high and two and one-half inches from front to back, and that piece was displaced about an inch upward and outward at the top, and some inward at the bottom edge of the piece. 10

Q. Now, when you say "inward at the bottom edge of the piece", was that an inward displacement of a loose portion of the bone? A. A piece that was broken right out of the skull, a quadrilateral piece broken right out. 20

Q. Now, how far was that pushed inward, Doctor, if you know? A. Apparently, from the X-ray, about a third of an inch.

Q. And was that a third of an inch deeper than the normal surface of the skull? A. Yes.

Q. And what is a fracture where there is a displacement inward called, Doctor, what kind of a fracture? A. A depressed fracture. 30

Q. What important feature is there of a depressed fracture of the skull as distinguished from a fracture which is not depressed, so far as the effect upon the patient is concerned? A. I did not get your question.

Q. (Question read.) A. The depressed bone impinges on the space which is normally occupied by the brain, and it makes pressure on the brain. 40

Albion C. Christian. Called by Plaintiffs. Direct.

Q. Now, Doctor, when there is such a depressed fracture that impinges on the space normally occupied by the brain, and causes pressure on the brain, what effect does such a condition have on the tissues of the brain? A. It may cause some destruction of the surface of the brain and necrosis, and may produce convulsions later on.

10 Q. How much later on, Doctor? A. Well, that is rather indefinite. They may go right away or within a few days, or it may be postponed for a year or two. I don't know of any case where they have developed later than that, but I am not sure that they cannot develop later than that.

20 Q. Now, in this case, Doctor, was there any indication, objectively, of any destruction of any of the tissues of the brain, I mean any injury to the brain itself? from your examination or observation? A. No.

Q. Was he tested for intracranial pressure, do you know? A. Yes; that would develop in his routine examinations from day to day.

Q. Was there any special puncture, do you know? A. I think not, in this case.

The Court: Were there any symptomatic evidences of intracranial pressure?

30 The Witness: No, and there were no eye symptoms. The day-to-day examination should show a pressure in his eye examinations, and it did not develop.

40 Q. What did he complain of during the period of your treatment of him at the hospital? What was his condition from a subjective standpoint then? A. The lad had some pain, of course, but he did not develop much symptoms of anything. He did not have

Albion C. Christian. Called by Plaintiffs. Direct.

a great deal of discomfort, considering the amount of the injury.

Q. Was this a severe or not severe fracture, Doctor? A. Oh, very severe, no; it would be rated, yes.

Q. And what was done with that fragment of bone, Doctor? A. Nothing.

Q. Was the position that you have described it as having occupied, changed by reduction in any way? A. No. 10

Q. Did it remain in the same position that you have described? A. It did.

Q. Did union occur in that position? A. Oh, it undoubtedly has, although there is no particular evidence to show that it has.

Q. You continued to treat the boy subsequent to his discharge? A. Until the 1st of December I saw him from time to time in my office. 20

Q. Now, is there a depression in his skull now, do you know? A. That is hard to say. In the development of his skull it is hard to say, without X-rays now, what the condition is there at the present time.

Q. Could it be felt by palpation whether or not there is any depression? A. That depression could not have been felt at any time. It was too low down, under, under the floor of the skull. 30

Q. What do you mean by the "floor" of the skull? A. The lower surface of the skull, the surface on which the brain rests in the erect position of the brain.

The Court: You are not referring then to that portion of the skull which covers the brain, but upon which the brain rests, is that what you mean? I do not quite understand your answer. 40

Albion C. Christian. Called by Plaintiffs. Direct.

10 The Witness: There is a piece broken out of the skull and displaced upwards, and this lower end jumped up onto the floor of the anterior of the skull, the floor of the skull jumped up to onto it, carrying the whole piece two and one-half inches wide and three inches high, approximately, in a third of an inch, more or less, at the lower edge of the fragment. But the upper edge of the fragment is placed outward and upward.

Q. By the "floor" of the skull, is or is not that the base of the skull? A. Yes.

20 Q. And from your examination or physical examination of him, together with the X-rays, could you determine whether or not there was involved in the fracture the base of the skull? A. The base of the skull was involved, yes.

Q. Now, Doctor, is a fracture that involves the base of the skull more severe in its effects on a patient than one that involves other parts of the skull. A. Fractures at the base of the skull are the most dangerous fractures that there are.

30 Q. Why is it, Doctor? A. Because of the blood vessels and nerves and things, they are likely to be injured, and the increased likelihood of hemorrhage from a fracture in that position.

Q. Was there any evidence of a hemorrhage in this case, that is, a brain hemorrhage? A. No.

40 Q. Have you seen the boy recently, Doctor? A. I haven't seen him since the 1st of December, 1925 —no, I saw him once five months after that. He was brought to my office for an eye examination for the fitting of a pair of glasses, and was not brought back to me. He refused to come, I understand; I don't know.

Albion C. Christian. Called by Plaintiffs. Direct.

Q. Did you make the eye examination? A. No. That was postponed for three days for necessary preparation for that examination.

Q. Doctor, what is the usual result in cases such as this from the standpoint of headaches? What is your experience in cases where there is a fracture of this sort with regard to headaches continuing thereafter? A. That he may have a great deal of headaches; that is persistent; that is permanent. 10

Q. For a period of years? A. Yes.

Q. And do I understand you to say that is permanent? A. It may be permanent.

Q. You mean it may continue all their lives? A. Yes, possibly.

Q. Now, in this case, assuming that this young man suffers with headaches since the time he was at the hospital, I mean ever since the time you last saw him, and still suffers with headaches, what, in your opinion, would they be caused by if he did not have such headaches before? 20

Mr. Kuebler: Of course, there is no testimony to that effect.

The Court: I know there is not and you can move to strike it out if it is not shown. The question may be answered. 30

A. Why, it would be quite a complicated process to determine what his headaches would be from. There are so many things that it might be from.

Q. Well, you said it is a common thing, in cases of fractures of this sort, to have headaches? A. Yes.

Q. And when those headaches follow an injury of this sort and continue for years, in the case of a boy, in the absence of prior headaches before the 40

Albion C. Christian. Called by Plaintiffs. Direct.

accident, what, in your opinion, would those headaches be due to in this case?

Mr. Kuebler: Same objection.

The Court: It will be noted, and it is received subject to a motion to strike out if those conditions are not shown.

10

A. It might be due to many things.

20

Q. Well, assume, Doctor, in this case, that this young man had not suffered from headaches and that on the 10th of May, 1925, he was kicked and stepped upon by a horse, that he sustained a fracture of the skull, causing a loose fragment of the skull two and one-half or three inches by two and one-half inches to be separated from the rest of the skull and displaced, and going into the base of the skull, and assuming that, following that, in the hospital, the boy suffered with headaches, and he continued to suffer with them intermittently ever since, can you give us your opinion, as a doctor, under these circumstances, and assuming that history or that hypothesis to be correct for the purpose of your answer, can you give us your opinion as to what causes these headaches? A. If he did not have headaches before his injury, and if his headaches came on immediately after his injury and persisted, I should say there was quite a considerable probability that it would be the result of that injury.

30

Q. Well, is it your opinion that it would be, is it your opinion? A. There are other things to eliminate. The boy has an error in his vision which could produce a great deal of headache.

Q. And had he had that error before this accident, do you know? A. I don't know.

40

Albion C. Christian. Called by Plaintiffs. Direct.

Q. Was that error in vision caused by the accident, in your opinion? A. No, I don't think so.

Q. Now, what is the error in vision, Doctor? A. That I don't know, whether he is far-sighted or whether he is near-sighted. His vision is much below normal; well considerably below normal.

Q. Did you examine his eyes? A. I tested his vision. I examined his eyes many times in the hospital, every day, and every time he came to the office. 10

Q. Now, what was his complaint as to his vision, I mean, what was his expression of complaint? A. I don't remember that he had any, and I have no record of ever having any.

Q. But you tested him and found that his eyes did not see the distances as a normal person should, is that correct? A. That is correct. 20

Q. Or a boy at his age. And did he complain of anything when he read or tried to study? A. I don't know. I have no record of anything. I haven't a final record in the case to begin with. He did not come for his last appointment. 20

Q. Now, if his eyes did not bother him before this accident, and if they were in the condition that you found them after the accident, can you give us your opinion as to whether or not the accident had anything to do with that condition of the eyes? A. I think not with that condition of his eyes. I think that probably was an old condition with his eyes. 30

Q. You think that was probably an old condition? A. I think so, yes.

Q. Now, you testified you usually find complaints of headaches following an injury of this sort? A. A. I don't think I said that.

Q. What did you say then? That is what I am trying to get at. Would you find headaches com- 40

Albion C. Christian. Called by Plaintiffs. Direct.

plained of by persons having a fracture of the skull of this sort? A. I said, I think, that they may have very severe headaches that persist and that may be permanent. I said they may have.

10 Q. And in this case, if the boy had no headaches before this accident and had them beginning at the time of the accident, and continually ever since, but with periods of a few days in between—at times I think his head does not ache—and when the pain is localized, partly on the place where the fracture was and in the front of his head, what would your opinion be as to whether or not they were caused by his fracture of the skull? A. There isn't enough in the question to base an opinion. I would want his vision corrected and I would want the condition of his kidneys determined, and many other things before determining that.

20 Q. Well, you were his attending doctor, were you? A. Yes.

Q. Did you notice anything wrong in your treatment of him about his kidneys? A. No.

Q. Did he have headaches while you were treating him? A. I think not enough so that there was complaint of it. I haven't a record of any headaches anywhere in my record of him.

30 Q. Well, were you the only doctor attending him there? A. Until the 1st of December, yes, and probably until five months after the 1st of December.

Q. Now, have you any recollection of this case beyond what you wrote down? I mean, do you remember anything except what you see in your notes there? A. I don't remember much about the case, excepting that he was a pretty stubborn kid and got his own way pretty well about things.

40 Q. I am speaking from a medical standpoint. A. That is from a medical standpoint.

Albion C. Christian. Called by Plaintiffs. Direct.

Q. Do you remember what his complaints were outside of what you have written down there? A. He had very little complaint.

Q. Do you remember what his complaints were or anything about the case, except what you have written down? Excepting as I answered before, that he was a very stubborn kid and that he got his own way—and that is a medical answer, perhaps. 10

Q. Do you remember of your own recollection, regardless of your notes, whether or not he complained of headaches? A. He never complained of headaches to any great extent during the time that I was treating him, or my records that I have looked over would show it.

Q. Did you see him after December at all? A. Once, five months after the 1st of December, about the 11th of May. 20

Q. Now, Doctor, this fragment of bone, did it mend, did callus come around it and form a continuous portion with the rest of the skull ultimately? A. That was only determined—more X-rays would be required to determine that.

Q. Did you have any X-ray taken of the boy afterward? A. No.

Q. You did not X-ray to see what position that was in? A. No; I knew what the position was. 30

Q. Sir? A. I knew what the position was; it stayed where it was originally.

Q. Well, then it is depressed still? A. The lower edge of it is depressed, yes.

Q. Does that press upon the brain? A. That I don't know. In the development of the skull itself, that has been taken care of.

Q. Do you know whether callus was thrown out at the lower end of it where the original depression was? A. No, I don't know. 40

Albion C. Christian. Called by Plaintiffs. Direct.

Q. I suppose only an X-ray would show you that? A. It would not now; it might have at the time, possibly, and might not.

Q. Well, wouldn't an X-ray now show that? A. No, it would not show anything about the callus that was formed at the time.

10 Q. It would show the depression, I suppose, though, if it exists? A. Well, I don't know.

The Court: Would it show whether there had been bony union?

The Witness: If you got a good enough X-ray, it probably would.

Q. Did he vomit, Doctor? Did the boy vomit? A. I have no record of any vomiting in the case.

20 Q. Is this your handwriting, Doctor, or someone else's? A. That is not mine. That is a nurse's record.

Q. Well, in treating him did you get the history from the nurse that he vomited a quantity of dark fluid at times after drinking some water? A. I don't remember any such. I would expect him to be vomiting with this condition.

30 Q. Did you get a history from the nurse that the patient complains of pains in the head on being moved? A. I don't remember of such information. I would expect it would be natural for him to complain.

Q. Well, look at that page, at the bottom, please, Doctor. A. (Consulting document) That is not my part of the record.

Q. I am asking you to look at it.

Mr. Kuebler: I object to it, your Honor. It is not in evidence.

40 The Court: I sustain the objection.

Albion C. Christian. Called by Plaintiffs. Direct.

Q. Doctor, did you look at the chart of the nurses who were in charge of the boy and read their reports rendered upon the chart while you were treating the boy? A. Possibly, possibly. The nurses' charts are so very undependable that we don't always.

Q. Well, you look at them when you are treating a patient. A. Not necessarily, no; my own findings are what I am interested in. 10

Q. You see the patient how long each day, as a rule? A. Oh, maybe five minutes, maybe a quarter of an hour.

Q. Isn't it important for you to know whether or not, during many of the hours of the rest of the day, the child was complaining of pains in the head or not? A. Yes.

Q. Now, will you tell us whether or not you read the chart that the nurses made up—were there internes in that hospital, too? A. I don't know whether there was a resident physician at that time or not. 20

Q. Now, Doctor, you looked at the chart sometime in your treatment of this boy, didn't you? A. Not necessarily the nurses' notes, no.

Q. So you don't know whether or not this boy suffered, all the time that you did not see him, or not, from headaches and pains in the head, do you? A. I don't know that he did or did not suffer. 30

Q. You mean that in the five minutes or so that you saw him he did not complain to you of headaches, when you said a minute ago he had no pains or pains in the head? A. No, there is more than that from which I get reports on nurses of patients' conditions during the day.

Q. The reports that you would get from nurses would also be contained in that hospital record, wouldn't they? A. No. 40

Albion C. Christian. Called by Plaintiffs. Direct.

Q. Well, sometimes? A. Sometimes it would, yes; sometimes it would. It is so very meagre that it is not worth reading, as a general thing.

Q. I ask you whether, if you look at this, whether this will refresh your recollection, this page at the bottom, as to whether or not this child complained of headaches, and whether such history was used by you in treating the child.

Mr. Kuebler: I object your Honor.

BY THE COURT:

Q. I understand you to say that is not your record? A. No, it is not.

Q. Is it a memorandum which you know whether or not you saw at the time? A. I don't ordinarily read the nurses' notes.

Q. You mean that it is not or that you do not know? A. Probably not.

The Court: I will sustain the objection.

BY MR. MCGEEHAN:

Q. Did the nurses tell you, verbally, while you were treating this boy, that during your absence, did they tell you whether or not he was complaining of pains in the head when being moved? A. I don't remember any such report. It would be a surprise if he did not have pains in his head, I presume.

Q. Then you think he did have pains in his head? A. He probably did, as I have said.

Q. I understood you to say he made no complaints of pains in the head previously. A. We were talking then, I think, of when he was coming to my office.

Albion C. Christian. Called by Plaintiffs. Direct.

Q. Oh, no. You misunderstood me then. A. All right.

Q. The boy complained of pains in the head at the hospital? A. It would be strange if he did not.

Q. Yes, I thought so, too. That is why I am asking you this question. It would be equally strange if he did not complain of them at your office, too, wouldn't it? A. Not necessarily, no. He may not have had any. 10

BY THE COURT:

Q. When did he begin to come to your office, doctor, as soon as he was discharged from the hospital? A. Well, within a few days after.

Q. And when did you discharge him? A. He was discharged on the 17th of June, and he came to my office. 20

Mr. McGeehan: I have a bill that might assist the doctor.

The Witness: He came to my office on the 26th of June, nine days after he was discharged from the hospital.

BY MR. MCGEEHAN:

Q. Doctor, I show you a bill, made out to Mr. Edward F. Kastner, for \$150. Is that a reasonable charge for the services rendered by you? A. Yes, a very reasonable charge. 30

Q. And you made 19 visits in May, is that right? A. I don't know; I presume that is right.

Q. I mean would this refresh your recollection as to the number of visits, and so forth? A. 19 visits in May, and 14 visits in June, and one office call in June; three office calls in July; and I visited him 40

Albion C. Christian. Called by Plaintiffs. Direct.

twice in July, apparently—yes, I remember going to him—and in August, one office call; and September, two office calls; October, one office call; November, one office call; December, one office call; and then one in April.

Q. 1926? A. 1926, yes.

10 Q. That was the time of the eye examination, is that right? A. That was the time.

Q. Now, on these numerous visits and office calls, what were you doing for him, doctor? A. Nothing, probably. Nothing, unless there was some incidental things turning up. The boy was in good condition and he was under observation.

Q. In July there were three office calls and each month thereafter. Do you know what he complained of on those occasions when he complained to you? A. He was not complaining when he came to the office at all. He was undergoing treatment.

Q. Did you question him about his head, whether it hurt him? A. I cannot remember the details of all the questions I asked him and all the answers he gave me.

Q. Well, this was a skull case, wasn't it? A. Yes.

Q. Would you examine him on an office visit without asking him whether his head hurt him, do you think? A. Not likely.

Q. Now, if it is not likely that you would fail to ask him that, can you tell us whether you did ask him that or not? A. I cannot tell you, no.

Q. You don't know? A. No, I have no record of any headaches, so I judge he didn't have any. He didn't have any headache he was complaining of during the time he was coming to my office.

Albion C. Christian. Called by Plaintiffs. Direct.

BY THE COURT:

Q. You said that at sometime he was in good condition, he was under observation. When did that period begin? A. The period of observation?

Q. Yes. A. From the time he was discharged until the 1st of December.

Q. That is from June 17th? A. Yes. That was my intention, to keep track of what his condition continued to be, and it continued to be satisfactory. 10

BY MR. MCGEEHAN:

Q. Now, Doctor, have you any record of those office visits with you? A. Dates, do you mean?

Q. No, any record of what took place at them? A. No, I haven't any records with me. His record was a clear record, that he was in good condition. 20

Q. Did you look at your record at home, at your office? A. I had it looked up.

Q. You haven't looked it up recently yourself? A. I had that looked up.

Q. Did you look at it yourself, Doctor, recently? A. I had it looked up for me.

Q. Have you such a record at your office? I understood you to say that you could not remember, of your own memory, the hospital condition of the boy except by referring to the records; and I am wondering if you can remember your office treatment of him and his complaints, without looking at your records. A. I had his record looked up for me, and his record was clear, that he was continually in good condition. 30

Q. You have that record, have you? Now, does your record show, Doctor, whether or not he com- 40

Albion C. Christian. Called by Plaintiffs. Direct.

plained of headaches on the occasions that he went to your office? A. It does not.

Q. It does not refer, one way or the other, to that? A. No.

Q. Do you have a recollection— A. (Interposing) Excepting the record that he was in good condition.

10 Q. Has your bill been paid? A. No.

Q. Now, Doctor, if this boy complains of headaches, and if he has complained of them continuously since he was hurt to the nurses at the hospital and to his mother, and to persons coming in contact with him at his home and at the school where he attends, if he has been complaining continuously of headaches from the time he was hurt up to the present time, and if he had no headaches before
20 he was hurt, at school or elsewhere, what would your opinion be as to whether or not his injury causes those headaches?

Mr. Kuebler: I make the same objection, your Honor—subject to being connected up.

The Court: Well, as that question is put, I do not quite see how you can furnish those facts, his complaints to his teachers as a basis for this hypothetical question. I believe a hypothetical question must embrace not complaints but proven facts.
30

Mr. McGeehan: I shall withdraw the question. I acknowledge the incorrectness of it upon that basis.

Q. Assuming, Doctor, that he suffered with headaches continuously from the time he was injured, with lapses only of a day or two now and then, and had no headaches before he was hurt, what would be your opinion as to whether or not this
40 fracture of the skull caused those headaches?

Albion C. Christian. Called by Plaintiffs. Cross.
Albion C. Christian. Called by Plaintiffs. Redirect.

Mr. Kuebler: I make the same objection.

The Court: Well, I think this is subject to the further objection that I think that twice before you asked the doctor this precise question. Is there any difference between this and the question that you asked before?

Mr. McGeehan: I do not think I got a responsive answer to my other question. That was the only reason for reasking it. It is the same question I asked previously. 10

The Court: I understood the doctor to say that he could not answer that question, there were too many other things to be taken into consideration. (Addressing the witness.) Is that correct, Doctor?

The Witness: I believe so. 20

Q. You haven't seen this boy recently, have you, Doctor? A. Not since April, 1926.

CROSS EXAMINATION BY MR. KUEBLER:

Q. Doctor, if, while this boy attended your office, he had complained of headaches, would you have had a record of it? A. I would have had, if he complained of any headaches that were of any consequence. 30

The Court: And you have no such record, I understand you to say.

The Witness: No, I have not.

REDIRECT EXAMINATION BY MR. MCGEEHAN:

Q. Are your records available, Doctor, the records that you say you referred to or someone referred to for you? A. Yes. 40

Albion C. Christian. Called by Plaintiffs. Redirect.

Q. Which is your handwriting in this, Doctor (handing witness document)? A. This (indicating); and there is some more (indicating); and this (indicating).

Q. That is, you signed each sheet that you wrote? A. Well, there is one there that I wrote on that I did not sign, that history sheet; I don't know why
10 I was writing on it.

Q. This is not your handwriting, is it, at the bottom (indicating)? A. No.

Q. Do you know whose handwriting it is? A. No; it is some nurse's record.

The Court: I suppose they are all student nurses, are they, Doctor?

The Witness: No, there are no student
20 nurses in that hospital. It is not a training school.

Q. Did he moan a good deal, Doctor, do you know, when he was in the hospital? A. I don't know.

Q. Did he complain of headaches at night, do you know? A. I would be surprised if he did not, but I do not have any direct recollection of it. That would be a routine thing that would be expected.

30 Q. Are you a head specialist, Doctor? A. I have been paying special attention to injuries of the head for the last six, seven years.

Q. I mean, do you specialize in that work or not? A. Insofar as I have said in that answer, I have been paying special attention to head injuries for the past six or seven years.

40 Q. Are you connected with any institutions, for instance, as head or brain doctor? A. The Irvington General Hospital, yes.

Evelyn Kastner. Called by Plaintiffs. Direct.

Q. What is your connection with the Irvington General Hospital? A. I am on the visiting staff, and part of my appointments include head injuries.

Q. But you also do general work? A. Yes. I do special work on eye, ear, nose and throat, more particularly, and brain injuries.

Q. And have a general practice? A. I am doing some general practice still, yes. 10

EVELYN KASTNER, one of the plaintiffs, sworn in her own behalf.

DIRECT EXAMINATION BY MR. MCGEEHAN:

Q. Mrs. Kastner, you are one of the plaintiffs in this suit? A. Yes. 20

Q. You are the mother of Walter Kastner, are you? A. Yes.

Q. And who has been supporting him in 1925 and since? A. The State Board.

Q. You receive some money from the State Board? A. Yes.

Q. And who has been taking care of Walter, whom has he been living with? A. Myself.

Q. Who buys him his food and clothing? A. I do. 30

Q. And you do get some help from the State Board, do you? A. Yes, I do.

Q. Now, who pays his doctors' bills, when they are paid? A. The hospital and doctor has not been paid.

Q. They haven't been paid? A. They have not.

Q. Now, Mrs. Kastner, on the day that your boy was hurt, just where were you? A. Sitting on the porch. 40

Evelyn Kastner. Called by Plaintiffs. Direct.

Q. Whereabouts is your house, Mrs. Kastner? Whereabouts on the block is your house? A. My house is about the fifth house in from Berkshire and Union Avenue.

Q. The fifth house in from the corner of Union on Berkshire? A. Yes.

10 Q. What part of the porch were you sitting on, on the steps or up on the platform part of it? A. The platform part.

Q. And did you see the injury to your boy as it was being caused? Did you see the accident itself? A. Not exactly.

Q. Now, did you see anything of any horse in that street? A. Yes.

20 Q. When was that, before or after your boy was hurt? A. Before he was hurt Mr. Weinstein was leading the horse, and as he was he couldn't but pass me.

Q. Do you know Mr. Weinstein? A. No, I don't know him.

BY THE COURT:

Q. What was the number of your house? A. 172 Berkshire Place.

30 Q. Is that nearer Union Avenue from where the accident happened, or nearer to Mt. Vernon Avenue? A. Nearer to Union.

Q. Nearer to Union Avenue? A. Yes.

BY MR. MCGEEHAN:

Q. Did you hear anything or see anything of the accident? A. I heard a screaming and, as I looked down, I seen the horse rearing and kicking, and he had his hind legs drawn up ready to kick again.

Evelyn Kastner. Called by Plaintiffs. Direct.

Q. Did you see your boy actually kicked or not?

A. No, I did not.

Q. Did you see your boy anywhere in the street then? A. He was riding on his righthand side, going west.

Q. Well, that was before or after he was hurt?

A. Before he was hurt.

Q. I am not asking you about before he was hurt.

10

Did you see your boy after he was hurt? A. No.

Q. You never saw him again after he was hurt?

A. Oh, yes.

Q. Now, you heard a scream, did you? A. Yes.

Q. And did you look? A. I did.

Q. Where was your boy then when you looked?

A. He was lying—his body was on the sidewalk and his head was in the curb.

Q. Now, in front of what house or what place was it that you saw him lying in that position? A. Well, now, I couldn't say definitely where it was—well, it was the fourth house from where I live, down, going west.

20

Q. Now, do you know east and west, and north and south well? A. Well, if I am on a street I don't remember, no, what I am about.

Q. Well, it was four houses away from where you lived? A. Yes.

Q. Then you had to look up the street to see, just a few houses up the street? A. Yes.

30

Q. After the screaming? A. Yes.

Q. Now, when you were looking toward where he was hurt, were you looking toward Union Avenue or away from Union Avenue? A. After Mr. Weinstein passed—

Q. No, I did not even mention "Mr. Weinstein". You saw your boy lying somewhere? A. Yes.

Q. Four houses away from you? A. Yes.

40

Evelyn Kastner. Called by Plaintiffs. Direct.

Q. Now, the only thing I am asking you now is: When you looked towards your boy as he lay there, were you looking toward Union Avenue or away from Union Avenue? A. Towards Union Avenue.

Q. Then your house was further away from Union Avenue? A. Yes.

Q. Than where he was hurt? A. Yes.

10 Q. Is that right? A. Yes.

Q. Now, when you saw the horse—you said something about seeing the horse before your boy was hurt? A. Yes.

Q. Where was it passing when you saw the horse first? Where was the horse when you saw it first, before your boy was hurt? A. At Berkshire Place

Q. Yes, but what was it passing? A. Passing to go to Union Avenue.

20 Q. Toward Union Avenue? A. Towards Union Avenue.

Q. Well, where was it when you saw it? You said you saw it before you heard the scream. Now, just where was the horse? You said it was on Berkshire Place, going toward Union Avenue. Where was it with regard to where you sat? A. I couldn't say.

Q. Well, tell us in your own language. Did you see the horse go along that street? A. Yes.

30 Q. Where did you see it first? A. On Berkshire Place.

Q. Where?

The Court: Where were you when you saw it?

The Witness: I was sitting on the porch.

Q. Well, where was it with regard to where you were sitting, anywhere near where your house was?

40

Evelyn Kastner. Called by Plaintiffs. Direct.

A. He has to pass me in order to get to Union Avenue.

Q. We know that, but when did you see him? Did you see him as he was passing your house?

A. Yes.

Q. Now, when you saw that horse going by, was any man with it? A. Mr. Weinstein.

Q. Did you know him at that time as Mr. Weinstein? A. I did not. 10

Q. Then there was a man with it, was there? A. Yes.

Q. Now, what did you see—anything about the way the horse was going along? A. Well, he was rearing.

Q. Was he rearing much or not? A. I couldn't say.

Q. When you say he was "rearing", now, just describe what you mean by that. What did the horse do? Use some other word. A. Well, he was not like an ordinary horse on a walk and you would lead it; he was kind of frisky. 20

Q. He was kind of frisky, not walking like an ordinary horse? A. That is right.

Q. Now, when you heard the scream and saw your boy, as you say, on the sidewalk, with his head over the gutter, where was the horse then when you saw him prancing? A. Opposite the boy. 30

Q. Opposite the boy? A. Yes.

Q. Do you know how far he was from the boy or not? A. No, I am not a good judge. I will judge fifteen feet away from the boy.

Q. And do you know where the man was at that time, the man who had been leading the horse? A. He was standing across the street.

Q. Across the street? A. Yes.

Q. Was he with the horse or not at that time? A. No. 40

Evelyn Kastner. Called by Plaintiffs. Cross.

Q. Was anyone holding the horse at that time?
A. Not at that present.

CROSS EXAMINATION BY MR. KUEBLER:

Q. Mrs. Kastner, you live at 172 Berkshire Place? A. Yes.

10 Q. And is that on the north or the south side of the street, if you remember? A. Well, I don't know.

BY THE COURT:

Q. Is it on the side toward Chancellor Avenue or on the other side? A. It is on this side of Chancellor Avenue.

20 Q. Is it on the side of Berkshire Place, on the side toward Chancellor Avenue or the side toward Lyons Avenue? A. The side toward Lyons Avenue.

The Court: That would be the north side of the street.

BY MR. KUEBLER:

Q. And is that the side of the street that your boy was on after this accident occurred? A. Yes.

30 Q. You said there were about five houses between your house and Union Avenue? A. Yes.

Q. How many houses were there between your house and the other end of the block? A. I don't know.

Q. Approximately how many? A. I couldn't say.

Q. Are there a half a dozen houses, would you say? A. I don't know.

40

Evelyn Kastner. Called by Plaintiffs. Cross.

Q. You have no idea at all how many houses there are? A. I have no idea, none whatsoever.

Q. That is not an exceptionally long block, is it?
A. Well, it is a continuation; it starts at Coit Street and it continues—I don't know, there is a sort of circle—I don't know the name of that street, and then it continues.

Q. Well, could you see the other corner, not the Union Avenue corner, but the corner in the other direction, when you sit on your porch? A. I don't know. 10

Q. Well, the block you live on, is that block straight? A. No, it isn't straight; it curves off.

Q. Well, when you look down at Union Avenue, is it straight down Union Avenue? A. Yes.

Q. From your house? A. Yes.

Q. Do you know how many houses from your house to the point where the avenue makes a turn? A. No, I do not. 20

Q. When you saw this horse going down the street, where was the horse with reference to the curblines of Berkshire Place? A. I couldn't say.

Q. You have no idea what side of the street the horse was on? A. I didn't take that much notice.

Q. You did not look at the horse from the time he passed your place then until after this accident occurred, did you? A. I don't know. 30

Q. Now, isn't it a fact that you did not observe this horse again from the time it passed your house until after the accident occurred? A. No, not until after the boy was hurt.

Q. There was nothing unusual about this horse, was there? A. Yes, there was.

Q. Well, what was unusual about the horse? A. Why, he didn't walk like a regular horse; he was in a rear. 40

Evelyn Kastner. Called by Plaintiffs. Cross.

Q. You just glanced at this horse and looked away again, didn't you? A. I glanced at him as the man passed down, he put a cigarette to his mouth.

Q. Is that when he passed your house? A. Yes, and that is all I seen.

10 The Court: As he passed your house?
The Witness: As he passed my house.

Q. Then what did you see? A. I looked east.

Q. Was anyone else on the porch with you at the time? A. No.

Q. By "east" you mean you looked in the opposite direction? A. I looked in the opposite direction.

20 Q. You did not see whether he lit the cigarette then or not, did you? A. No.

Q. What attracted your attention in the opposite direction? A. The screaming.

Q. I mean why did you look in the opposite direction after you saw this horse pass your house? A. I don't know.

Q. There was nothing to attract your attention, was there? A. I don't know.

30 Q. Where was your boy when you saw this horse pass your house? A. He was riding down the street.

Q. Was he going the way the horse was going or another way? A. No.

Q. What way was he going? A. Going west.

Q. The way the horse was going? A. Yes.

Q. And where was he then? A. I couldn't see after that.

40 Q. How far was he from your house? A. I don't know.

Evelyn Kastner. Called by Plaintiffs. Cross.

Q. Did you see your boy at that time? A. No.

Q. When you looked away from the horse, after you said you saw Mr. Weinstein put a cigarette in his mouth, did you see your boy then? A. I said he was riding down the street.

Q. Well, then, how far was he in back of the horse? A. I couldn't say.

Q. Can't you give us any idea how far he was in back of the horse? A. No, I cannot. 10

Mr. McGeehan: I object. That question assumes that she said he was in back of the horse. I do not think she said that. She said he was riding around the street.

Mr. Kuebler: I thought she said he was riding in back of the horse.

The Court: I understand Mrs. Kastner now to say that she did not see the horse because she was looking east. 20

BY THE COURT:

Q. I assume, if you did not see the horse, you did not see your boy either, until after he was hurt, did you? A. When the man passed me?

Q. No. Now, did you see your boy after your boy passed your house? A. No.

Q. Did you see him until he was hurt? A. I seen him when he was hurt. 30

Q. Did you see him only after he was hurt? A. Not until after he was hurt.

Q. So that after the horse and boy passed your house, you looked the other way? A. I looked east.

Q. And you did not see either the horse or the boy until after you had heard the screaming? A. That is right.

Q. Is that right? A. That is right. 40

Evelyn Kastner. Called by Plaintiffs. Cross.

BY MR. KUEBLER:

Q. And when you looked up you said the boy's body was on the sidewalk and his head was in the street?

The Court: On the curb.

10

A. His head leaned over the curb; I didn't say in the street.

Q. Was there any portion of him on the sidewalk? A. His body.

Q. And where was the bicycle? A. On top of him.

Q. And you said the horse was about fifteen feet from him? A. From the boy.

20

Q. Further toward the corner? A. I don't know.

Q. Was the horse further toward the corner or not? A. I don't know.

Q. How far was the horse from the curb? A. I have just told you, it was fifteen feet, I judge.

Q. And where was Mr. Weinstein then? A. On the opposite side.

Q. Clear across the street? A. Yes.

Q. Did you look up immediately after you had heard this scream? A. I did.

30

Q. And did you go down then? A. I did.

Q. You went to the hospital with the boy, of course? A. I did.

Q. He was taken to the hospital in an automobile, was he not, that passed? A. Yes.

Q. How long after the accident occurred was it before the boy went to the hospital? A. What is that?

Q. How long was it before the boy went to the hospital? A. I couldn't say.

40

Q. A very short time? A. Very shortly.

Evelyn Kastner. Called by Plaintiffs. Redirect.

BY THE COURT:

Q. Well, he was not brought home, was he? A. No.

Q. He was picked up from the street and taken to the hospital, was he not? A. There wasn't anybody to pick him up.

Q. No—the boy was not brought into the house at all? A. No. 10

Q. He was taken right from the street to the hospital? A. From the street to the hospital.

REDIRECT EXAMINATION BY MR. MCGEEHAN:

Q. I asked you about your knowledge of the accident, but I want you to clear us up about the condition of the boy. Mrs. Kastner, before this accident what was the condition of health of your boy? A. He was always normal, to my estimation. 20

Q. Did he have any complaints about pain anywhere? A. No.

Q. Did you visit him at the hospital? A. I did.

Q. How often did you visit him? A. I stayed a whole week there with him.

Q. Both day and night? A. Yes.

Q. And after that how often did you see him? A. Every day. 30

Q. Until he left the hospital? A. Yes.

Q. And when he left the hospital where did he go? A. Home.

Q. And were you there, home with him, when he was confined to the house? A. Yes.

Q. How long was he confined to bed? A. He was not confined to bed; he was just sitting there.

Q. How long was he confined to the house then after he got home? A. Until November, as far as I recollect. 40

Evelyn Kastner. Called by Plaintiffs. Redirect.

Q. And when he was in the hospital and you spent day and night with him, when he was there in the hospital during the period that you were there each day, what did he complain of? A. His head.

10 Q. How did he complain of his head? What did he say was the matter with his head? A. He didn't know what ailed him.

Q. What did he say about his head? A. It hurted him.

Q. And how often did he complain of his head? A. He complained quite a lot. I couldn't just say how often, but all throughout he complained of his head; very often he complained of his head.

Q. And do you know if he complained of his head while the doctor was there? A. I couldn't say.

20 Q. When he got home what was his complaint, if any? What did he complain of, if anything, when he got home from the hospital? A. Just his head.

Q. And how has he been since then? A. He has been complaining of headaches.

Q. When does he complain of headaches, how often? A. Well, I couldn't say how often.

30 Q. Well, approximately—just describe it so the jury will know, about when he says his head hurts him. I mean, tell us, give us some idea of that, just when he complains. He does not complain every five minutes, does he? A. Oh, no.

Q. Well, does he, and about how often?

The Court: Once a week or once a month?

The Witness: Yes, he had been home last week with a headache.

Q. How long was he home last week? A. A day.

40 Q. How often does he miss school on complaints of headaches—has he missed before that? A. Never.

Evelyn Kastner. Called by Plaintiffs. Redirect.

Q. Never before on a complaint of headache? A. No.

Q. How often does he complain of those headaches? A. Well, say, about every couple of months he complains of his head.

Q. And how long does he continue to complain of his head? A. About a week at a time.

Q. About a week at a time? A. Yes. 10

Q. And during that week how often does he say it hurts? I mean, does it hurt all the time during that week or only once in a while? Just tell us. A. Yes, he complains; he says it hurts him across his forehead.

Q. And where does he show you that it hurts him? A. Right across there where the scar is, right across.

Q. And did he ever complain of headaches there before? A. No. 20

Q. What school does he go to? A. He goes to the West Clinton Avenue now.

Q. And how old is he? A. Fifteen.

Q. What grade is he in? A. Five-A.

Q. That is a public school, grammar school, is that right? A. Yes.

Q. And what grade was he in when he was hurt? A. Three-A.

Q. Now, when did he go back to school after being injured? A. He went back the latter part of November. 30

Q. The latter part of November of the same year that he was hurt? A. Yes.

Q. Now, when he went back to school, how old was he? A. Eleven.

Q. And that was in November, 1925, is that right? A. He was eleven the 13th of November.

Q. And he went back to school in November? A. Yes. 40

Evelyn Kastner. Called by Plaintiffs. Redirect.

Q. And that was November, 1925, is that right?

A. I guess it is.

Q. I mean the same year that he was hurt? A. Yes.

Q. Now, what grade did he go into when he went back? A. Three-A.

Q. And he is in five-A now? A. Yes.

10 Q. And that is a public school? A. Yes.

Q. Now, during the four years or more since he went back to school, has he attended school regularly? A. Yes.

Q. And do you know how many times he was not promoted during that period? A. I do not.

Q. Well, he has advanced two whole grades in the four years, is that right? A. That is all.

20 Q. And he is still going to grammar school? A. Yes.

Q. Do you notice any difference in his conduct or manner, or appearance, from the way it was, except that he has grown, I mean, any difference in his manner or conduct or way of speaking, any difference or change in him that you have noticed since this accident? A. Yes, he is.

Q. What changes have you noticed? A. At times he sits and he cries.

30 Q. How often does he sit and cry? A. If you talk real harsh to him he sits and he cries.

Q. Well, is that the only time that he sits and cries? A. Yes.

Q. What else have you noticed? A. And he is tempered, very tempered at times.

Q. Is he easy to manage or not? A. Well, yes, I can manage him.

Q. Does he play? A. Not of any account.

Q. Does he run? A. No.

Evelyn Kastner. Called by Plaintiffs. Recross.

Q. After school does he go out or stay in the house? A. He goes out sometimes, and sometimes he stays in.

Q. Now, tell us if there is anything that you have noticed besides his complaint of headaches that makes him appear different than he did before this accident. A. He does not act the way he should for a boy of his age. 10

Q. Well, how? What does he do or fail to do? That is what we would like to know. A. You see, other boys will play and he will sit there and he will sulk at times, and you cannot do anything with him. You just have to leave him alone.

RE-CROSS EXAMINATION BY MR. KUEBLER:

Q. When was this boy born? A. 1913, I am not sure. 20

Q. What was the date? A. November 13th.

Q. How old was he at the time this accident occurred? A. Ten.

Q. Going on eleven? A. Yes.

Q. He would have been eleven the following November? A. November.

Q. What school was he attending at the time the accident occurred? A. Mt. Vernon.

Q. How long had he been going there? A. I would say four years. 30

Q. At the Mt. Vernon School? A. Yes.

Q. Four years before that? A. Before—well, he went four years to Mt. Vernon; he had been going to St. James before that.

Q. He went to Mt. Vernon four years altogether? A. Yes.

Q. Is he still going to Mt. Vernon School? A. He goes to West Clinton avenue. 40

Evelyn Kastner. Called by Plaintiffs. Recross

Q. What grade is he in there? A. Five-A.

Q. Now, before he went to the Mt. Vernon school, what school did he go to? A. St. James.

Q. Is that a parochial school? A. Parochial school.

Q. And when did he start to go there, what age? A. Six.

10 Q. Did he start in kindergarten? A. No, they have no kindergarten.

Q. He started in the first grade? A. Yes.

The Court: Do you know what grade he entered?

The Witness: First grade.

Q. When did he start, in the fall? A. Yes.

20 Q. So that the fall of the year before, he was six years of age? A. No, he was past six.

Q. He was past six?

BY THE COURT:

Q. That was then in September? A. Yes.

Q. That is, he would have been seven in November? A. Yes.

30 BY MR. KUEBLER:

Q. How long was he in that school? A. He was in that school until we moved to Irvington.

Q. And how long did you move to Irvington before this accident happened? A. Five years ago.

Q. That was the same year that the accident happened? A. Yes.

Q. 1925? A. Yes.

Walter Kastner. Called by Plaintiffs. Direct.

BY MR. MCGEEHAN:

Q. Did he lose a half a grade when he changed from the parochial to the public school? A. Yes, he did.

Q. Was that before the accident? A. Yes.

10

WALTER KASTNER, one of the plaintiffs, sworn in his own behalf.

DIRECT EXAMINATION BY MR. MCGEEHAN:

Q. Walter, how old are you? A. Fifteen.

Q. What year were you born? A. I think in 1915.

20

The Court: Do you play baseball?

The Witness: Yes, sir.

Q. And what school do you go to now? A. West Clinton avenue school.

Q. Now, since the time you were hurt, how do you feel physically? How does your body and arms and legs and all feel? Do you have any pain or trouble with them? A. Not my legs or arms.

Q. Where do you have any pain? A. Across my head.

30

Q. Just your head? A. Yes, sir.

Q. Where does your head hurt you? A. Right from here, from this side.

The Court: Indicating both sides of the head.

Mr. McGeehan: And the front, the forehead.

40

Walter Kastner. Called by Plaintiffs. Direct.

Q. How often does your head hurt you? A. Sometimes about once a week; sometimes not at all.

Q. Now, do you sometimes go more than a week without headaches? A. Yes, sir.

Q. How long do you go sometimes without having headaches? A. About three weeks.

10 Q. And sometimes do you have them more than once in a week? A. Yes, sir.

Q. How long do they last sometimes? How close together do they occur at times? A. About a day apart, a day together.

Q. Now, when does your head hurt you mostly, in the daytime or at night, or when you are doing what? Just tell us. A. When I am studying, at study.

Q. When you study? A. Yes.

20 Q. And by "study," what kind of study do you mean, study involving reading? A. Yes, sir.

Q. And is that in the daytime or in the nighttime, or both? A. Both.

Q. Before you were hurt did you study and do your homework and go to school? A. Yes.

Q. Did you? A. Yes, sir.

Q. Did your eyes hurt you before you had your accident, or your head hurt you when you studied? A. No.

30 Q. Do you sometimes study now without your head hurting you? A. Yes.

Q. Now, what grade are you in at school now? A. Fifth grade.

Q. Five-A or five-B? A. Five-A.

Q. That is higher than five-B, isn't it? A. Yes.

Q. And what grade did you go into when you went back to school after you were hurt? A. Three-A.

40 Q. When were you promoted to five-A? A. Last year.

Walter Kastner. Called by Plaintiffs. Direct.

Q. 1929? A. Yes, sir.

Q. And how long have you been in five-A? A. Three months.

Q. How many times have you been held back—that is what they call it, isn't it? A. Yes.

Q. Since you went to school, after your accident? A. I don't remember.

10

BY THE COURT:

Q. Well, have you ever failed to be promoted? A. Yes.

Q. At the time of promotion? A. Yes.

BY MR. MCGEEHAN:

Q. How many times have you failed to be promoted—they call that being held back, don't they? A. Yes, sir. 20

Q. Well, how many times did that happen? A. Four or five times.

Q. In the last four years, is that right? A. Yes, sir.

Q. Now, were you held back before you were hurt, ever, in school—think carefully—and, if so, how many times? A. Once.

Q. In what school? A. I think it was in Mt. Vernon school. 30

Q. And were you put back half a grade when you were transferred from parochial to public school? A. Yes, sir.

Q. Is that the time or was there another time that you failed? A. It was another time.

Q. It was another time that you were not promoted? A. Yes.

Q. Now, do you remember being hurt? A. No, sir. 40

Walter Kastner. Called by Plaintiffs. Cross.

Q. Well, were you hurt? A. Yes, sir.

Q. How were you hurt? Do you know what hurt you? A. Yes, sir.

Q. What? A. A horse.

Q. And do you know what street you were on when you were hurt by the horse? A. Yes, sir.

Q. Do you? A. Yes, sir.

10 Q. Now, have you a clear recollection of this accident or not? A. No, sir.

Q. No? A. No, sir.

Q. Which side do you think you were passing that horse on, son? A. On the righthand side.

Q. Do you remember what happened to you as you were passing that horse? A. No, sir.

Q. What were you riding on at the time? A. A bicycle.

20 Q. And that is about all you remember of that accident, is it? A. Yes, sir.

CROSS EXAMINATION BY MR. KUEBLER:

Q. Well, just before this accident occurred you had been riding a bicycle for some time, hadn't you? A. Yes, sir.

Q. Did you see the horse? A. Yes, sir.

30 Q. And where was the horse when you saw it? A. It was about in the middle of the street.

Q. And going where? A. Going down towards Union avenue.

Q. Where were you riding the bicycle? A. In the street.

Q. In the middle of the street, too? A. Yes, sir.

Q. And did you notice the horse, what the horse was doing? A. No, sir.

40 Q. Did you ride your bicycle up toward the horse? A. I can't remember.

Walter Kastner. Called by Plaintiffs. Cross.

Q. You were riding quite faster than the horse, weren't you? A. No, I was going slow.

The Court: Which was, you or the horse?

The Witness: Me.

Q. Do you remember coming close to the horse on your bicycle? A. Yes. 10

Q. And how close to the horse did you come? Can you indicate some object in the court room? A. No. I was about five feet away from the horse—it was not five. It was against the gutter. I was against the gutter, about three feet away from the gutter.

Q. You were about three feet away from the gutter? A. Yes, sir.

Q. Do you remember coming to that point where you were about three feet from the gutter? A. Yes. 20

Q. And how far away were you from the horse then? A. About five feet.

Q. And then you were between the gutter and the horse? A. Yes.

Q. And did you notice the horse in particular at that time? A. No, sir.

Q. The horse was just walking along there at the time? A. When I seen him he did.

Q. When you saw him? A. Yes, sir. 30

Q. The horse was not doing anything unusual at that time? A. I can't remember.

Q. Did you see Mr. Weinstein, the man who was leading the horse? A. Yes, sir.

Q. Where was he? A. He was in front of the horse.

Q. And toward the side of the horse? A. What is that? 40

Walter Kastner. Called by Plaintiffs. Cross.

Q. Toward the side of the horse—in front and toward one side? A. No, he was right in front of the horse, coming straight down Union avenue.

Q. Now, is that all you remember? A. Yes, sir.

Q. You were riding the bicycle? A. Yes, sir.

Q. What was it, a small bicycle or a large full-sized bicycle? A. A small one.

10 Q. And you were about five feet from the horse? A. Yes, sir.

Q. Now, do you remember how old you were when you started to school, Walter? A. I was going about seven years old.

Q. And you went to the first grade then? A. Yes, sir.

Q. Where were you held back, in the parochial school? A. Where was I held back?

20 Q. Yes. A. In Mt. Vernon school.

Q. You said you skipped a grade or were held back one class in St. James school, I believe? A. No; in Mt. Vernon school.

Q. When you started in at seven years of age—that is, just before you got to seven, I suppose? A. Yes, sir.

Q. You started in the first grade? A. Yes, sir.

Q. And how long were you in that? A. A year.

30 Q. And the next fall you were almost eight and you went into the second grade, didn't you? A. Yes, sir.

Q. And the next fall you were almost nine and you went into the third grade? A. Yes, sir.

Q. And then when you were nine years old, you moved and went in the Mt. Vernon school, did you? A. Yes, sir.

40 Q. Didn't you go in the Mt. Vernon school about the first of the year, the first of 1925? A. I think we moved there in December, and then I went to that school the second of January.

Russell O. Routh. Called by Plaintiffs. Direct.

Q. And what grade were you in then? A. Three-B.

Q. Then you went to three-B when you went to school after this accident occurred? A. No, I was promoted from three-B to three-A.

Q. When were you promoted to three-A? A. Before the accident.

10

BY THE COURT:

Q. Are you a good student or would you rather play baseball, which?

Mr. McGeehan: I guess he is no exception.

Q. Do you think you are a good student? A. No.

Q. I do not mean get along, but do you study like the other boys do, put in your time studying?

20

A. Yes, sir.

BY MR. KUEBLER:

Q. Did you say you were promoted in the Mt. Vernon school before the accident? A. Yes, sir.

Q. You went into the three-B? A. Yes, sir.

Q. And you were promoted to the three-A? A. Yes, sir.

30

Q. You are sure about that? A. Yes.

RUSSELL O. ROUTH, sworn in behalf of plaintiffs.

DIRECT EXAMINATION BY MR. MCGEEHAN:

Q. What is your business, Mr. Routh? A. Sheet metal worker.

40

Russell O. Routh. Called by Plaintiffs. Direct.

Q. And have you in your experience had any contact with horses and experience with horses? A. Yes, sir; I have.

Q. What experience have you had with horses?

A. I have had four years with the artillery.

Q. And is the artillery a branch of service in which numerous horses are used for the drawing of caissons and guns? A. Yes, sir.

Q. And for the mounting of officers? A. That is right?

BY THE COURT:

Q. And men as well? A. Yes, sir.

Q. Nobody goes on foot in the artillery, do they?

A. Only in the heavy artillery.

20 Mr. McGeehan: They ride the caissons sometimes when it is very dusty.

BY MR. MCGEEHAN:

Q. The horses are ridden by the artillery men, aren't they, to the lefthand of the other horses?

A. Yes.

30 The Court: Were you in the heavy artillery?
The Witness: Both light and heavy.

Q. What was your position in the artillery, and with particular regard to the contact that you would have in the care and handling of horses? A. Veterinary assistant at one time.

Q. And what duties did that position entail? A. The doctoring of horses.

40 Q. Did you handle a good many horses during that four-year period? A. Yes, sir.

Russell O. Routh. Called by Plaintiffs. Direct.

Q. And would you work around them? A. Yes, sir.

Q. How many horses would you say you handled in that period of time? A. A good many thousand.

Q. Now, were they horses that had been broken and drawn to harness? A. Not all of them; no, sir.

Q. But were there many, though, a good many, which were drawn to harness regular horses? A. Yes, sir. 10

Q. Now, I would like to ask you, first, what effect upon a horse, even though he be otherwise gentle, does a keeping of a horse in a stable and confined for about a week, and without exercise, have upon the disposition and actions of that horse?

Mr. Kuebler: I object, your Honor. There is no basis for that question except some statement probably. 20

The Court: Is it to be shown that this horse was?

Mr. McGeehan: The testimony of one witness was that the defendant admitted that the horse had not been out for a week or more before the occurrence of the accident. He heard him say that. That was the witness O'Toole, toward the end of his testimony. He said it had not been out for a week or more before the accident. 30

The Court: The question may be answered.

Q. Can you tell us what effect—

The Court: Read the question.

Q. (Read.) A. I would say that a horse that was kept in the stable at least a week, without exercise, would be only too glad to get a chance to run, act a whole lot different that he had ordinarily. 40

Russell O. Routh. Called by Plaintiffs. Direct.

Q. Well, in what way? What effect would it have on the horse? Would it be the same gentle horse? A. No, sir; it would not.

Q. Well, what would it be inclined to do? A. It would be liable to kick and rear and try to run, and be a whole lot different than he ever was before he was kept in the stable for at least a week.

10

The Court: I suppose his feeding would have something to do with that?

The Witness: Yes, his feeding would have something to do with that.

Q. Would the feeding have something to do with that? A. Yes, sir.

Q. Would the change from stable to open air have an effect upon him of itself? A. Yes, it would.

20

Q. Assuming that a horse is being led by a halter without a bit, and is acting skittish and is prancing and shying, what effect would the lighting of a match alongside of him or in front of him have, in your opinion?

Mr. Kuebler: I think it is entirely speculative as to what effect it would have.

30

The Court: I suppose his opinion would be valueless unless he has noticed the effect of that upon a horse. If he has ever noticed the effect of a horse in that condition, I think he is competent to testify.

Q. Have you ever noticed the effect of any sudden action at or near a horse's head when a horse is acting skittish or shy?

Mr. Kuebler: I object.

The Court: I will overrule the objection.

40

A. I have.

Russell O. Routh. Called by Plaintiffs. Direct.

Q. What have you noticed about the effect of any sudden action or move near a horse when he has shied?

Mr. Kuebler: I object to that on the ground that we are dealing with a particular horse here and with a particular type of horse. There may be a great deal of difference between types of horses. There are very high-strung horses and there are ordinary truck horses, and farm horses. 10

The Court: I am just wondering if your observations have been such that it produces a similar effect upon all high-strung horses.

The Witness: I would say any horse.

The Court: The question may be answered.

Q. That is, when he is acting skittish and shy, or at any time? A. At any time. 20

Q. Now, what will be the effect of a sudden action at or near the head of a horse?

Mr. Kuebler: I make the same objection.

The Court: Overruled and an exception.

Mr. McGeehan: I will withdraw that question.

Q. What would be the effect of the striking of a match by a person walking just in front of or alongside of the head of a horse? A. For one thing, the horse would become frightened and try to pull away and, if it could not, it might start to rear or kick. 30

Q. And is that something that is commonly known among men experienced with horses? A. I would say yes.

Q. What is a halter, as distinguished from a bit? A. A halter is a series of straps passing around a horse's head, without a bit through it. 40

Russell O. Routh. Called by Plaintiffs. Cross.

Q. There is no metal through the mouth? A. Nothing through the jaws at all.

Q. Or on the tongue or tooth of a horse? A. No, sir.

BY THE COURT:

10 Q. What difference would that make in a horse being led? A. A lot of difference. You cannot control a horse as good without something through its mouth at any time.

Q. Not even for leading? A. Not even for leading.

BY MR. MCGEEHAN:

20 Q. If a horse pulled, would there be a greater checking effect upon him if there were a bit in his mouth? A. Yes, sir.

Q. And a rein attached to it? A. Yes, sir.

Q. Than if there were a halter? A. Yes, sir.

CROSS EXAMINATION BY MR. KUEBLER:

Q. Your experience has been with army horses largely, has it not? A. Yes, sir.

30 Q. And what type of horses do you usually have in the army? A. Every known kind.

Q. High-strung horses? A. Yes, sir.

Q. Worn-out horses? A. Yes, sir; everything.

Q. And horses that are in between those two types? A. Yes, sir.

Mr. McGeehan: No race horses?

The Witness: If they were we didn't know it.

40 Q. And your experience has been, then, that any horse, whether it is a horse that is almost worn out,

Russell O. Routh. Called by Plaintiffs. Cross.

a high-strung horse or a horse in between those two types, if placed in a barn and shut up for about a week, and then let out, will begin to show some signs of life? A. Yes, sir.

Q. And more than usual? A. Yes, sir.

Q. It is likely to prance around and be skittish? A. Yes, sir.

Q. Now, your observation is also that, regardless of whether a horse is high-strung or whether he is an old worn-out horse, attached to a junk wagon, out in front of the building here, or whether it is in between those two types, when you strike a match alongside of him he is apt to be skittish? A. Yes, sir; he is. 10

Q. And he is apt to prance? A. That is quite possible.

Q. And jump around? A. Yes, sir. 20

Q. Now, how many years were you connected with horses? A. Four years.

Q. And during that period of time you have led many a horse by a halter, haven't you? A. Yes, sir.

Q. It is perfectly proper to lead a horse by a halter, isn't it?

Mr. McGeehan: I object to that as improper and calling for a conclusion.

The Court: You can ask him whether it is the usual thing to do, I suppose. 30

Mr. Kuebler: I will cross the question out.

Q. Isn't it a usual thing to lead a horse by a halter?

The Court: Without a bit, I suppose you mean.

Q. Without a bit. 40

Russell O. Routh. Called by Plaintiffs. Cross.

Mr. McGeehan: I think the circumstances under which this horse was being led may be included. As through a public street, and such things as that, the condition of the horse, assuming that he was laid up for a week in the stable.

10 The Court: It is cross examination and the question may be answered.

Q. (Read). A. I would say it was usual, but I would not think in a public highway.

Q. Now, a bit is put in a bridle and is there for the purpose of guiding a horse, isn't it? A. That only?

Q. That is the main purpose, isn't it? A. I wouldn't say so.

20 Q. What else is the bit for? A. To check a horse in case of trouble.

Q. And the use of a bit in a bridle can only be properly accomplished, can it not, when you are in back of the horse, on the horse or in a wagon in back of the horse? A. No, sir.

Q. You are sure about that? A. Positive.

30 Q. Isn't it a fact that you can control an ordinary work-horse better by leading him with a halter and a rope than you can without bit and bridle? A. No, sir; you can handle him better with a bit.

Adjourned until tomorrow, Wednesday,
March 5, 1930, at ten o'clock A. M.

Motion for Non-Suit.

SECOND DAY.

Wednesday, March 5, 1930.

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

 10

Mr. McGeehan: Plaintiff rests, your Honor.

Mr. Kuebler: I would like to move, your Honor, for a nonsuit, on the following grounds:

First, that there is no evidence that the horse was vicious or mischievous or had any vicious or mischievous propensities.

Second, that there is no evidence that the defendant had knowledge of any vicious or mischievous propensities of the horse. 20

Third, that there is no evidence of any negligence on the part of the defendant.

Fourth, that the testimony shows contributory negligence of the plaintiff, Walter Kastner.

Fifth, because there is no evidence that the proximate cause of the accident was ~~not~~ negligence of the defendant. 30

Mr. McGeehan: I do not think that this case or any case known to our law presents a situation where a man can be guilty of active negligence and not be responsible for the results of that negligence. I do not think the rule is any different with respect to horses than it is with respect to automobiles, so far as the fundamental duty of every man to exercise reason- 40

Ethel Barth... Called by Defendant. Direct.

able care is concerned, and the cases seem to support that reasonable idea.

The Court: The motion for a nonsuit will be denied.

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

Exception noted as ground of appeal.

10

ETHEL BARTH, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. KUEBLER:

Q. Miss Barth, you are a teacher? A. Yes, sir.

Q. And teaching in Irvington? A. Yes.

20 Q. What school are you teaching in? A. Mt. Vernon Avenue.

Q. And were you teaching in that school in January, 1925? A. Yes, sir.

Q. And have you taught in that school from January, 1925, to the present time? A. Yes, sir.

Q. In January, 1925, was the plaintiff in this case, Walter Kastner, in your class? A. Yes, sir.

Q. What class was that? A. That was three-B grade, the lower third.

30 Q. And did he come to your class in that month? A. Yes, sir.

Q. Do you have the date that he came? A. I believe it was the second or third, I am not sure; it was right after school reopened.

Q. Was that the beginning of the term or not? A. The end of the term.

The Court: And did you commence about the 1st of February?

40

The Witness: The 1st of February.

Ethel Barth. Called by Defendant. Direct.

Q. And do you know whether he had been in that school before? A. I do not believe so, no.

Q. How long did you have him at that time? A. I had him 19 days.

Q. What kind of a student was he during that time? A. His work was very poor during that time.

Q. Did the term end at the end of the 19 days? 10
A. Yes, sir.

Q. Did you continue in that grade? A. No, I took the next grade higher.

Q. Was Walter Kastner promoted then? A. No, sir.

Q. And whose class did he go in then? A. He went into Miss Sage's three-B grade.

Q. He stayed in the same grade? A. The same grade.

Q. Did he come back to you again after that? A. 20
Yes, he came back to me two years later.

Q. Do you know approximately the date he came back to you? A. (Consulting card) He came back to me in 1927, I believe, so the term began in September, 1926.

Q. What grade was he in then? A. And then he came to me in three-A.

Q. Did you have him through that entire grade? A. Yes, I had him, and he stayed back, and he was 30
in my class the next term.

Q. He was in three-A with you two terms? A. Two terms, yes.

Q. What kind of a student was he during that period of time? A. Well, the first term his average was a "P", and the second term it was a "G"; "P", poor work. When he was promoted the second time it was "G".

Q. And then at the end of the second term he was promoted to four-B? A. Four-B. 40

Ethel Barth. Called by Defendant. Cross.

Q. Did you have him in four-B? A. No.

Q. Did you have him again after that? A. No, I never had him after that.

Q. Then you had him for 19 days in January or prior to this accident, which happened on May 10, 1925? A. Yes, sir.

10 Q. And you had him again in September, 1927, for two terms? A. 1926, I believe that was.

Q. September, 1926? A. Yes.

Q. How long did that September term last in 1926? A. Five months.

Q. And the second term, how long did that last? A. Five months.

Q. During that period of time did Walter Kastner complain to you about headaches at any time? A. Not that I remember.

20 Q. Did you notice any difference in September, 1926, for the two terms you had him at that time between his attitude to his work than January, 1925? A. No; no particular difference.

Q. During the time he was with you was he out for any long period of time? A. No; perhaps a day or two, but not very much.

Q. Was he a regular student or not? A. Yes.

CROSS EXAMINATION BY MR. MCGEEHAN:

30 Q. He had just come into the Mt. Vernon school in January, 1925, from the parochial school, had he not? A. Yes, sir.

Q. And you would not promote a boy who had just spent 19 days in your class, would you, to the next grade? A. Provided he could do the work and pass the examinations.

40 Q. Well, you have your examinations not at the end of the term but every week you have examina-

Ethel Barth. Called by Defendant. Cross.

tions, don't you? A. No, sir; we have final examinations at the end of the year.

Q. The boy had only been in your school 19 days when the time for promotion came, hadn't he? A. Yes, sir.

Q. And he had not taken the entire course, of course? You had not gone over it with him and tutored him with it, had you? A. No. 10

Q. Do you have many children come into your class 19 days before the term ends, or a few weeks before it ends? A. Quite frequently.

Q. That would be 19 calendar days or about over some part of a period of three weeks, wouldn't it? A. Yes.

Q. Is that right? A. Yes, sir.

Q. That would mean that he would have about not more than 15 school days? A. No, they were 19 school days. 20

Q. 19 school days? A. Yes, sir.

Q. Now, the term is five months, isn't it? A. Yes, sir.

Q. And the examinations that you have are based upon the entire five months' work in that class, are they not? A. Yes, sir.

Q. And you did not familiarize this boy at that time with the work of that entire term, did you? A. I did, the entire class. 30

Q. The entire class, but he was not in your class the first four months and a fraction of that time, was he? A. No, he was not; but we have to review the whole last month before examinations.

Q. Yes, but that review is of work that you— you give a general review of work that you have gone into during the term? A. Yes.

Q. And in detail, don't you? A. Yes.

Q. It would take a very bright boy to be able to come in 19 days before the end of the term and! 40

Ethel Barth. Called by Defendant. Cross.

pass examinations based upon that whole term's work, wouldn't it? A. Not necessarily.

The Court: You mean if he never had it before?

Mr. McGeehan: Yes.

10 The Witness: Well, if he had been going to school some place else, he certainly had something.

Q. Well, the curriculum of the parochial school for the particular year is not the same as the equivalent grade in the public school, is it? A. Well, pretty much the same.

Q. Somewhat the same? A. Yes.

Q. But different text books are used? A. Yes.

20 Q. And there are sometimes different methods of teaching? A. Yes.

Q. Are you familiar with the parochial school courses? A. I am not familiar with it, but I have had enough children from those schools to know.

Q. Now, frankly, it would take a pretty bright child to be able to pass the examinations with only 19 days of a term of five months, wouldn't it? A. Well, not particularly; not if the children had it before.

30 Q. But the majority of them are not able to do so if they come so late? A. Well, that all depends on what their work was before they came. If they were good students before, you usually carry them through.

Q. Now, isn't it a fact that, as a general rule, there is a demotion of a child coming from a parochial school to a public school of half a grade? A. No, not necessarily. We try them out, and he came just one month, and that is the trial we give them.

40

Ethel Barth. Called by Defendant. Cross.

Q. Well, isn't this the fact—I do not mean a demotion—I mean that a child who has not had the entire term, isn't he put in at the beginning of the term of the same grade that he left in parochial school? A. Yes.

Q. Do you know what this boy came from in the parochial school? A. He came from the third grade of the parochial school. 10

Q. Do you know whether it was the first half or the second half? A. I think they consider it all one; I don't know.

Q. You don't know whether he had been in the third grade long or not, then, do you? A. No.

Q. How many children did you have in your class? A. About forty.

Q. Forty children. And you were not able in those 19 days to determine the individual characteristics of this boy as well as if you had him in all your term, were you? A. Naturally not. 20

Q. And when you did see him two years later, in September, 1926, he was in your three-A class? A. Yes, sir.

Q. And even then he was kept back, is that right? A. Yes, sir.

Q. He was not in your class in May, 1925, when he was hurt, was he? A. No.

Q. He had advanced only one-half a grade in those two years, hadn't he? A. Yes, sir. 30

The Court: Two years.

Mr. McGeehan: Well, approximately a year and three-quarters. He was injured in May, 1925.

Q. Do you know what grade he was in then? A. He was in three-B grade. 40

Ethel Barth: Called by Defendant. Cross.

Q. So that he had progressed only a half a grade in the intervening year and a half—approximately?

A. Yes, sir.

Q. Now, he was not bright then, was he? A. No, sir.

10 Q. Now, what was there about him that makes you say he was not bright? A. Well, he could not spell very well, and he could not read at all well; so, of course, that hindered him in any geography or history.

Q. Did his mind seem sluggish? A. Well, he was a slow thinker.

Q. And you could see that he was a slow thinker, couldn't you? A. Yes.

Q. And did he appear listless at times? A. No, not particularly.

20 Mr. Kuebler: What time are you referring to now, Mr. McGeehan?

Mr. McGeehan: When he came back, in 1926.

Q. Did he appear listless? A. Well, just about the same as he had been.

Q. Did he complain of his eyes? A. No, not that I know of.

Q. Did he wear glasses? A. No.

30 Q. Your children in your class of forty pupils or so, they did not ordinarily come up to you and tell you that they had a headache, did they? A. If they feel sick enough to come to me, sometimes they do, and I would ask them to rest a minute.

Q. Did he come to you on one occasion and tell you that he had a headache? A. Not that I recall; he might have; I am not sure.

BY THE COURT:

40 Q. What is the average age of children in class three-B? A. Between seven and eight.

Ethel Barth. Called by Defendant. Redirect.

Q. What is the average age of children in three-A? A. Well, there is little difference; about eight, eight and one-half.

BY MR. MCGEEHAN:

Q. A child entering school, the first grade, not going into the kindergarten, who enters just before he is seven years old, what is the average length of time for that child to be in three-B? A. Well, they enter at the age of five. 10

The Court: No, this is if they do not enter until they are seven.

The Witness: Then they should be ten.

Q. They should be ten? A. Yes.

Q. So that the age of ten would be the average age in three-B for a child entering just before he is seven? A. Yes. 20

Q. And this boy was ten years old when he was going to three-B in your class, wasn't he? A. I believe so.

Q. Now, if a child is in three-B at the age of ten, what is the average age at which he would reach three-A? A. Half a year later.

Q. He was twelve years old, was he not, when he was in your three-A class? A. I believe so. 30

REDIRECT EXAMINATION BY MR. KUEBLER:

Q. In your school do you have kindergarten? A. They did not at that time; they do now, but they did not then.

Q. You say that the average boy, a boy entering at seven, generally reaches the three-B at about ten? Does that take into consideration kindergarten or 40

Ethel Barth. Called by Defendant. Recross.

not? A. Without the kindergarten they usually enter at five.

The Court: And go to kindergarten?

The Witness: No, no kindergarten. They did not have any; they do now.

10 Q. What grade would an average child be in at the age of ten? A. I should say—

Mr. McGeehan: I object to that. I believe it depends upon the time a child enters the school.

The Court: He is asking about the average age. The question may be answered.

20 A. At the age of ten, I should say the fourth or fifth.

Q. Miss Barth, did you notice any real difference between the way this boy acted or attacked his work in September, 1926, as contrasted to the time you had him?

The Court: You asked that question on your direct examination.

30 Q. Do you have his average grade in January, 1925? A. (Consulting card) Yes; it was "P".

RECROSS EXAMINATION BY MR. MCGEEHAN:

Q. That is on his examinations? A. Well, based on—his was the whole month's work, examination and his work; review.

40

Eleanor Sage. Called by Defendant. Direct.

ELEANOR SAGE, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. KUEBLER:

Q. Miss Sage, you are a teacher? A. Yes.

Q. And teach what school? A. I teach in Augustus School, Irvington.

Q. And were you teaching there in 1925? A. No, 10
I was in Mt. Vernon School.

Q. And did you teach in Mt. Vernon School the entire year of 1925? A. I did.

Q. And how long did you teach in that school? A. About five years.

Q. Did you have Walter Kastner in your class in Mt. Vernon School? A. I did.

Q. When did you first have him in your class? A. (Consulting document) February, 1925. 20

Q. What grade was he in then? A. He was in Three-B.

Q. And how long did you have him in Three-B? A. I had him for three terms.

The Court: Still in the same grade?

The Witness: In the same grade.

Q. Was he out part of that first term, the February term, 1925? A. He was. 30

Q. And up to the time he was out in that term, what was his average grade? A. His work was very poor.

Q. Was his grade poor? A. Very poor.

Q. When did you have him again? A. I had him again in September, 1926.

Q. What was his average grade then? A. Very poor for that term.

Q. What was the next term you had him? A. I had him the following term, which would take him to June, 1926. 40

Eleanor Sage.: Called by Defendant. Direct.

The Court: Is that what you call the February term?

The Witness: That is the February term.

Q. What was his grade in the February term, 1926? A. Fair.

10 Q. Did he pass that grade? A. He was promoted to Three-A.

Q. Did you have him in Three-A? A. No.

Q. Did you have him at any time again? A. No.

Q. Now, Miss Sage, when you had him prior to May 10, 1925, in that February term, 1925, what kind of a student was he? A. He was poor.

Q. What trouble did he seem to have? A. Mainly reading.

20 Q. And anything else? A. Well, generally; I think generally he was poor.

Q. When you had him in September, 1925, what trouble did he have? A. The same.

Q. In your opinion, was there any difference in the boy as to the way he attacked his studies in September, 1925, over the way he attacked them in February, 1925?

30 The Court: I wonder if this is a matter of opinion. Isn't that a matter of fact? You asked her opinion.

A. There was very little difference.

Mr. Kuebler: I will withdraw the question and put it in another way.

40 Q. How did he attack his studies in February, 1925? A. He did poor work. He did not do his work normally. He did not attack them the way children ordinarily do.

Eleanor Sage. Called by Defendant. Direct.

The Court: By that you mean when?

The Witness: In February, 1925, the first term I had him.

Q. And how did he attack his work in September, 1925? A. The same way.

Q. September, 1925, when he came in your class, did he complain to you at any time, that you recall, of any headaches? A. I don't remember of his saying he had headaches. 10

Q. Any time after that, do you recall his complaining of headaches? A. No.

Q. Do you recall at any time his complaining to you about not feeling well in any way which caused him to be unable to do his work properly? A. No.

Q. After September, 1925, was he absent more than any of the ordinary children? A. No, he was not, although I notice from these records that he entered late in that term, the term of September, 1925, he entered late, probably due to the accident. 20

BY THE COURT:

Q. What date? A. I don't know just the date. I notice he was present for 78 days, but I remember now that he did not enter at the beginning of the term; it was later in September. 30

Q. How many days are there in a term? A., Well, there are about 90, I should say, and he was present 78; and the next term he was present 84; and the next, 80—the last term he would be absent about 10 days, the term before about 6 days; and then, of course, entering late, he was present just 78 days for the first term after the accident.

40

Eleanor Sage. Called by Defendant. Cross.

CROSS EXAMINATION BY MR. MCGEEHAN:

Q. What date did he enter, have you that? A. No, I do not have it here.

Q. Well, then all you know is that he was there 78 days? A. Yes.

10 Q. Well, do you know whether he entered late or whether he was absent for a number of days throughout the term? A. He entered late.

Q. You do know that, from your record? A. No, but I remember now that he did.

Q. Do you remember about how late he entered, Miss Sage? A. I think it was toward the end of September, toward the last of the month.

20 Q. You don't know what he was absent for on those various days that he was absent, do you? A. No.

BY THE COURT:

Q. Will you tell us again the number of days he was present? A. 78 days.

Q. In September term. And in the February term? A. 84 and 80.

30 Q. 80 for what? A. Pardon me, I am wrong—the first term I had him he was present 55 days; that was from February until May. The next term, 78 days; and the next term, 84 days.

BY MR. MCGEEHAN:

Q. And the full number of days in a term is what? A. Is about 90.

40 Q. So that he was absent one term about six days, one about ten and one about twelve after the accident, that is, after he returned to school? A. Yes.

Eleanor Sage. Called by Defendant. Cross.

Q. Now, do you know what those absences were for? A. No.

The Court: She has corrected herself about the 80 days. She says she was wrong about that.

The Witness: The first term I had him, that was the term of the accident, he was present 55 days. 10

Q. He left in May, did he not? A. Yes.

Q. On the 10th of May? A. Yes; and he was present 55 days from February until May.

Q. Would that be a good attendance, from February to May? Did he attend the average number of days that you had your term, up to the time that he left for a long period? A. I would say that would be average, yes. 20

Q. Now, you have no record of any absences during that time up to the time he was hurt? A. I don't have any record of them, no.

Q. Now, do you know what his absences, whatever number they were, during the September term, 1926, and thereafter, do you know what they were caused by? A. I do not.

Q. Do you know whether he was sick or not during that time? A. I don't remember. 30

Q. Do you get excuses signed by the parents? A. Yes, for every absence.

Q. Do you remember what those excuses said? A. I don't remember the excuses.

Q. Well, now, ten days or six days—one term he was absent twelve days, wasn't he? A. Yes.

Q. Out of about nineteen school days? A. Yes.

Q. In other words, he lost about one-eighth or one-ninth of his entire required school term, didn't he? A. That is true. 40

Eleanor Sage. Called by Defendant. Cross.

Q. Well, that is a lot of time to be out, it is an unusual amount of absences, isn't it? A. Well, I wouldn't say so, because when you think of it it is really only about two days in the month, and many children are absent more than that.

Q. Well, now, the term is only about five months, isn't it? A. Yes; and if he is absent for ten days, that would be twice a month.

10

Q. Well, a little over that if it was twelve? A. Yes.

Q. One term it was twelve? A. Yes.

Q. Now, don't you remember any excuses? What report was given to you by the mother as to the reason for his staying out? A. I am sorry, but I don't—

Q. You just don't remember? A. I don't remember.

20

Q. You don't remember whether it was because he was ill? A. No, I don't remember.

Q. Or weak? A. No.

Q. Or having headaches, do you? A. No.

Q. You have a lot of children to take care of, don't you? A. Yes.

Q. And you cannot remember all these things. Of course, he was not promoted in the time that he was with you in the class in February, 1925, and he was out from May on? A. Yes.

30

Q. He was not even in school when promotion time came, was he? A. No.

Q. So he could not be promoted for that term, could he? A. Not unless he was an exceptional child.

Q. You would not promote him without examinations at all? A. Yes, without the examination, but he would have to have a pretty high record.

40

Eleanor Sage. Called by Defendant. Redirect:

Q. He would have to be a brilliant student, wouldn't he? A. Yes; for missing that length of time he would have to be.

Q. Then when he did put in full terms with you it was after his accident, wasn't it? A. Yes.

Q. Then he could not make the grade, could he? A. No, he did not.

10

REDIRECT EXAMINATION BY MR. KUEBLER:

Q. Miss Page, have you a record of his classes, his grades, from the time he left you on to the present time? A. I have records with me up through the fourth grade here, through the four-A grade.

Q. Are those the school records? A. Yes, sir.

Mr. Kuebler: Have you any objection to her testifying to the grades showing the school records? 20

Mr. McGeehan: As to what grades?

Mr. Kuebler: After he left her, up to the fourth grade.

Mr. McGeehan: As to his rating?

Mr. Kuebler: Yes.

Mr. McGeehan: No, I have no objection.

Q. Will you give us the record that you have? 30

BY THE COURT:

Q. I understand that in September he went to three-A? A. He did.

Q. Now, then, what period— A (interposing.) Miss Barth had him in three-A for two terms. The average for his first term was "P"; for the second term, "G". He was in grade four-B one term.

40

W. S. Washington. Called by Defendant. Direct.

Q. That was beginning September, 1928? A. Yes. His average was Fair. He was not detained; he went to four-A.

Q. In February? A. Yes; and his average was "G".

Q. And in 1929, September, 1929? A. I don't have any more.

10

WALTER S. WASHINGTON, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. KUEBLER:

Q. Doctor, you are a practicing physician in Newark? A. Yes.

20

Q. State of New Jersey? A. Yes.

Q. And how long have you practiced, Doctor? A. I think it is about 54 years today or yesterday or tomorrow. It is the first week in March, 1876, I graduated.

Q. And what have you engaged in during that period of time, Doctor? What has been your practice? A. The general practice of medicine.

30

Mr. McGeehan: Of course, we will admit the doctor's qualifications, but I suppose you want to qualify him?

Mr. Kuebler: Yes.

The Witness: The general practice of medicine a good part of the time, but also I took up the special study of neurology and psychiatry, nerve and mental diseases, early in my practice. I also spent ten years as assistant surgeon in the Nose and Throat Clinic in St. Michael's Hospital.

40

W. S. Washington. Called by Defendant. Direct.

Q. And how long have you approximately been specializing in neurology? A. Oh, about fifty years, maybe a little more.

Q. And are you connected with any institutions in that line of work? A. No, not now.

Q. Have you done that type of work previously for any institutions? A. Oh, yes.

Q. And what connection did you have with them? 10
A. I was County Physician in Roscommon County, in Michigan, when I first began practice, and I took it up then, but there were no hospitals, and I was up in the pine woods, and there were no hospitals there, and I had to dig it out the best I could. I was obliged to examine all the people that were supposed to be insane, all the criminals, and all that sort of thing, I did that; but after I came here, which is forty-four years ago, or forty-three years ago, I was connected with St. Michael's; I was connected with St. James; I am on the consulting staff of St. James yet. I was County Physician for eight years. 20

Q. Essex County? A. Yes; from 1894 to 1902; I was Assistant Police Surgeon under Dr. Clark. In those days, I don't know just how it is now, but in those days all of the insane that were indigent had to be examined by Dr. Clark and myself and sent away, if they were insane they were sent away. I was also connected with the Prosecutor's office, not only in the eight years I was County Physician, but I examined and testified in every murder case or otherwise where insanity was interposed as a plea, up until two or three years ago. 30

Q. Did you examine Walter Kastner, the plaintiff in this case? A. I did.

Q. And when did you examine him? A. June 6th, 1927. 40

W. S. Washington. Called by Defendant. Direct.

Q. And what objective symptoms, if any, did you find on the examination? A. I found a small scar on the right side of his forehead, a superficial one.

Q. Do you know about how long the scar was? A. I should say about an inch. He had another scar, probably two inches in length, that went down the side of his ear.

10

BY THE COURT:

Q. You are indicating the front of the ear? A. Yes, the front of the ear, right here.

20

Q. That is the right ear? A. The right ear—that was two inches long. The scar was elevated, particularly at the top, it was red, the lower part had bleached out and was getting like the ordinary skin. It all will do so in time, although it will be a white scar that is permanent. There were two scars on the left side of his head, about half an inch by a quarter of an inch, above the ears, above the temporal region. Those scars were superficial. They involved only the scalp, but showed very plainly. There was another scar on the right side of his head, at the seat of what was supposed to be a fractured skull. There was an elevation at that point, no depression of any kind, and there is an elevation still.

30

BY MR. KUEBLER:

Q. You understood, Doctor, that there had been a fractured skull? A. Yes, I was told so.

Q. Now, did you make any other objective examinations at that time? A. He had no nervous symptoms of any character. He had no paralysis or paralyse of the face or the eyes or any other part.

40

There was no indication of any injury to the brain

W. S. Washington. Called by Defendant. Direct.

tissue or the nerve tissue which left any symptoms that could be determined at the time I saw him. At that time and yesterday, when I saw him, he was a good deal the same.

Q. You saw him again yesterday? A. Yes.

Q. Now, Doctor, assuming that this boy met with an accident on May 10, 1925, in which he sustained a fracture of the skull, as shown by the X-rays which I believe you have seen, Doctor— A. I have. 10

Q. (Continuing) That there is no history of any unconsciousness in the case; that there is no history of any hemorrhage of the brain; that the doctor who took the X-rays says that he cannot say that the X-rays show any injury to the base of the skull, although there is some testimony by Dr. Christian to the effect that he thought there was injury to the base of the skull. and taking into consideration the fact that the boy was in the hospital for a period of about six weeks and returned to his home, and returned to his school in the following September, he claims to have headaches occasionally, sometimes once a week or two, and sometimes not so often, although Dr. Christian who treated him says that although he had pains in his head while in the house, he gave him no complaints while at his office of headaches, and although the teachers testify—at least two teachers who have had him since the accident—that he did not complain to them to their recollection, of headache, and judging from the examinations which you have made at these two times, what would you say as to the present condition of the boy? 20 30

Mr. McGeehan: I object to that question as being entirely not founded on any hypothesis of fact, but constant reference to what people 40

W. S. Washington. Called by Defendant. Direct.

say, assuming that they did so testify, assuming that teachers say certain things—that is not the foundation of a hypothetical question.

10 The Court: I think that a hypothetical question must not rest, as I stated when objection was made to a hypothetical question asked by Mr. McGeehan, but must depend upon proven facts in the case and not the opinion of somebody else, but must rest upon proven facts.

Mr. Kuebler: There will be a dispute as to facts, and apparently is a dispute of the facts in this case. Now, the boy was conscious, Dr. Christian, his own doctor, says after the boy came to his office from the hospital, he did not complain of the headaches—that is the fact I want to get before the doctor, and I think he is entitled to take that into consideration.

20 The Court: You have a right to assume the facts accorded to any testimony up to the present time in the case, and it is not necessary that all the facts should be stated—that is, if somebody testifies the fact was so-and-so, and somebody else testifies that it was a different fact, you have a right to assume either fact which you choose to argue; but I think for the purposes of the hypothetical question you must assume facts.

30 Mr. Kuebler: I ask to strike out the question.

Q. Doctor, assuming that this boy was injured on May 10, 1925—

40 The Court: If you want to state other facts and assume other facts which are in the testimony, they may be included in another hypothetical question.

W. S. Washington. Called by Defendant. Direct.

Q. (Continuing) And sustained a fracture of the skull, as shown by the X-rays, which I understand you have examined, and taking into consideration the testimony of Dr. Lovell, the X-ray expert—

The Court: Now, you see, you are spoiling the question, Mr. Kuebler, right there—not what somebody has testified, but what the facts are. You may assume the facts to which Dr. Lovell has testified. 10

Mr. Kuebler: I will go at it in a different manner, your Honor. I detest a long, drawn-out, endless hypothetical question, and I think it is very unsatisfactory.

Q. What would the fact that there is no history of unconsciousness in this case indicate to you, Doctor? 20

Mr. McGeehan: I object to that, because that is not a fact appearing from the testimony, that there was no history of unconsciousness. He can ask the doctor if this boy was not unconscious, what would that mean, but there is no fact appearing in this case that he was not unconscious. There is no testimony to that effect. 30

Mr. Kuebler: There is no testimony that he was unconscious.

Mr. McGeehan: None either way, I would say.

Mr. Kuebler: The hospital records do not indicate unconsciousness.

Mr. McGeehan: I ask that that be stricken out. They are not in evidence.

The Court: They are not in evidence; the hospital records are not in evidence. 40

Mr. Kuebler: Yes, I understand that.

W. S. Washington. Called by Defendant. Direct.

Q. If there was no history of unconsciousness in this case, Doctor, what does that mean? A. That means that the injury was not a severe one to the brain itself.

Q. If there was no hemorrhage of the brain—

10 The Court: Do you mean if there was no history of unconsciousness or if there was no unconsciousness?

The Witness: No unconsciousness.

20 The Court: That shows at once the defect of your question, Mr. Kuebler. Now, the doctor did not answer that question upon the hypothesis of the question itself, but upon another hypothesis entirely. Your question was, "If there was no history of unconsciousness". Now he says, "If there was no unconsciousness"—which may be entirely different.

Q. Doctor, if there was no unconsciousness in this case, what does that mean to you?

30 Mr. Kuebler: I assume, your Honor, that the burden is on the plaintiff to prove whether there is consciousness or not. Now, there is no proof in the case that there was unconsciousness.

The Court: Why is the burden upon them to prove unconsciousness if they do not claim it? They may not even claim that there was unconsciousness.

Mr. McGeehan: We do not claim that we have proven that there was unconsciousness. I asked Dr. Christian that and he said he did not remember one way or the other.

40 Mr. Kuebler: Is that question allowed to stand, your Honor?

W. S. Washington. Called by Defendant. Direct.

The Court: Read the question.

(Question read.)

The Court: No objection to your question, but I just asked the doctor a question. The question may be answered.

Q. (Read.) A. It meant that it was not a severe injury to the brain itself. 10

Q. Now, if there was no brain hemorrhage in this case, what would that mean to you? A. That would still mean that the injury was not very severe.

Q. Doctor, if there was no evidence of any eye condition except of prior origin, what would that mean to you in this case? A. It would mean that the parts of the brain which control vision were not affected.

Q. You say that you looked at the X-rays in this case? A. Yes. 20

Q. And you looked at the boy's head externally? A. Oh, yes.

Q. I understood you to say that there was no depressed fracture? A. There is no depression on his skull that can be determined now. There is an elevation.

Q. And how much of an elevation is there on the skull? A. Oh, it may be an eighth of an inch; round at the top. 30

Q. And what, in your opinion, would such an elevation be due to? A. It might have been due to the fracture.

Q. Could it be due to callus formation there? A. No, not to that extent.

Q. In your opinion, Doctor, is this boy suffering from any disability at the present time from the accident? A. Not that I can determine. 40

Q. And what tests have you made to determine whether he suffers from any disability at this time?

W. S. Washington. Called by Defendant. Cross.

10 A. I saw the boy, his physical condition; I talked with the boy; his ability to answer questions verbally, and also to write answers. There was no evidence of any abnormal pressure on any part of the brain; there was no trouble with the eyes; there was no trouble with the face and no trouble with the tongue; he had no nervous symptoms of any kind. There was no evidence that there was any injury that had produced a permanent trouble with any of the ordinary elements that enter into his life.

CROSS EXAMINATION BY MR. MCGEEHAN:

Q. Dr. Washington, you say you specialize in neurology? A. Yes.

20 Q. But you do many other kinds of medical work, do you not? I mean you examine and diagnose conditions from broken feet to broken skulls? A. Yes.

Q. And nervous conditions? A. Yes.

Q. All kinds of accident cases, mostly, are they not? A. Medical-legal work.

30 Q. And by "medical-legal work" you mean you specialize in being an expert for litigants for the purpose of examination, reporting the condition and testifying when necessary, is that right? A. Yes. I don't make any specialty of that. I have been driven into it a great deal, but I cannot say that I hold myself out as a specialist in court now.

Q. But for many years you have done a great deal of that? A. Yes, for thirty years.

Q. And you have not practiced medicine as much as you have practiced testifying and examining, have you? A. No.

Q. Have you conducted a practice recently? A. Well, I saw a patient on the day before yesterday.

40 Q. I mean do you conduct a practice? A. No, I do not have but very little practice; mostly some old

W. S. Washington. Called by Defendant. Cross.

patients come in to see me, but not general practice for the last four, five years.

Q. And during the last four or five years, and for some time preceding, you have done a lot of examinations for defendants, particularly in accident cases? A. Yes, very extensively.

Q. And that is your status in this case, you examined for the defendant as an expert? A. Yes. 10

Q. You did not treat the child? A. Oh, no.

Q. Now, Doctor, when you made the examination of this child about which you testify, you came to the conclusion that the boy had no brain injury and had had no brain injury, is that right? A. No.

Q. That is not right? A. No.

Q. How do you come to the conclusion that this boy had no brain injury?

Mr. Kuebler: I object to that. He said he did not come to that conclusion. 20

Q. I ask you now, did you come to the conclusion that this boy did not have any brain injury? A. No.

Q. You think he did have a brain injury? A. Undoubtedly he did have some brain injury as the result of the fracture.

Q. And, by the way, when you made the examination originally, was that examination entirely an objective one, or did you go into the history of the case, the hospital history, and so forth? A. I went into the history of the case as well as the examination proper. 30

Q. And the history of the case to some extent entered into your diagnosis of the condition, did it not? A. Yes.

Q. Did you have, as part of that history, a period of unconsciousness of several days, Doctor? A. No. 40

W. S. Washington. Called by Defendant. Cross.

Q. Did you go to the hospital, the Irvington General Hospital? A. No.

Q. Did you look at the records there at all? A. No; I talked to Dr. Christian.

Q. You talked to Dr. Christian? A. Yes.

Q. And when did you talk to Dr. Christian? A. That was after the examination; I couldn't tell you just how long.

Q. Did he tell you he did not remember whether there was unconsciousness or not? A. No, he said there was not any unconsciousness at all.

Q. Did he tell you that? A. Yes, he stated to me that there was no unconsciousness at any time.

Q. When did he tell you that, Doctor? A. When I talked to him. I cannot just tell you when it was, but sometime after I made my examination.

20 Q. Did you ask whether there was any vomiting? A. Did I?

Q. Yes, did you ask whether there was any vomiting? A. I don't remember whether I did or not, but I would be surprised if there wasn't some. I would expect there would be.

Q. You would expect there would be? A. Oh, yes; naturally.

30 Q. Now, this brain injury that in your opinion the boy had, what did that consist of, from your knowledge of the facts in the case and as far as your examination? A. There was a fracture of the skull on the right side, in the parietal region, that is, this side here (indicating). I couldn't tell from the X-rays, which were very uncertain and very obscured. It is quite impossible for me to read the X-rays unless they are very plain, anyway—and there was no history, as I say, of any bleeding so that there would be any pressure, but there would be some pressure temporarily, but it would be slight

40 from a fracture of this character.

W. S. Washington. Called by Defendant. Cross.

Q. This was a fracture, wasn't it, that went through both tables of the skull? A. Well, I couldn't tell that from the fracture itself.

Q. Did you see the boy soon enough after he was hurt to be able to palpate and feel whether there was loose bone in there? A. No. It was two years' absence. I saw him in 1927, and he was hurt in 1925. 10

Q. Now, Doctor, if there were a fracture so that a large piece of the skull, two or three inches in length and two and one-half inches wide, was entirely loosened from the skull, that could be felt right after the fracture so as to be palpated and moved, couldn't it? A. That piece of bone?

Q. Yes. A. Yes, I should think so.

Q. So that an attending doctor could tell if there were an entire loosening of that broken fragment, couldn't he? A. Yes, he ought to be able to. 20

Q. Now, Doctor, there is nothing in those X-rays that would contradict the probability that the boy had such a fracture as I have described, is there? A. I couldn't say that.

Q. You couldn't say one way or the other? A. No, the X-rays are too uncertain and the interpretation of them as well.

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

The Court: It will be, the last part of it.

Mr. McGeehan: Yes, the remark about the interpretation.

The Court: Yes.

Q. You are not an expert on reading X-rays, are you? A. No.

Q. If there were a fracture that extended through both tables of the skull, so as to cause a piece of 40

W. S. Washington. Called by Defendant. Cross.

bone, approximately three inches in length and approximately two and one-half inches wide, to be completely separated, throughout both tables of the skull, there would be a tearing of some of the blood vessels of the lining membranes of the skull?

10 Mr. Kuebler: I object to that. I do not think it is based upon the facts in the case.

The Court: I understood Dr. Lovell to say that the lower portion of that fragment was attached, but Dr. Christian distinctly said it was entirely detached.

Mr. McGeehan: That is true. There is a discrepancy as to the point of depression between the two doctors' testimony, but that was testified to very definitely by Dr. Christian.

20 The Court: He said a piece was broken right out of the skull. As I said to you, Mr. Kuebler, Mr. McGeehan now is assuming the correctness of Dr. Christian's testimony in his hypothetical question, and assuming that to be a fact, instead of Dr. Lovell's, and I think that is proper, and I will overrule the objection.

The Witness: What is the question?

Q. (Read.) A. Probably.

30 Q. Now, those blood vessels in the lining membrane of the skull run into and feed, and reciprocally are fed by the blood vessels of the brain, aren't they? A. Yes, they are connected.

Q. That is what I mean. A. They are connected with the general circulation.

Q. And connected by way of minute blood vessels with the blood-feeding of the brain, is that right?

A. Yes.

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W. S. Washington. Called by Defendant. Cross.

Q. And that lining membrane of the skull is also a protected surface for the brain surface itself, isn't it? A. It is.

Q. And when there is a destruction, or hemorrhage or breaking of that lining membrane, there is some little bleeding, at least, isn't there, inside of the skull? A. It depends upon the number of blood vessels that are broken; yes, there would be. 10

Q. And if you have such a breaking of the skull, and together with it, have the fact that that spicule or piece of bone sticks out on top and is depressed inward at the bottom, that renders the probable tearing of that inner surface greater than if it were not so tilted, or whatever you would call that, doesn't it? A. Now, are you stating this as a fact?

Q. I am asking you the question of whether, where there is a fracture of the size and location that I have described, that when, in addition to that fracture, the top sticks out and the bottom sticks in, in such cases there would be a greater probability of tearing than if there were not any misplacement inward of that lower portion, wouldn't there? A. The fragments? 20

Q. In other words, if the fragment was pushed in beyond the normal contour of the skull, three-eighths of an inch in. A. Well, this fragment was not— 30

The Court: One-third of an inch, Dr. Christian said. You are asked to assume it did because Dr. Christian said that it did.

Q. If that fragment was in one-third of an inch, that would be likely to result in a considerable damage to the lining membrane of the skull, wouldn't it? A. It would depend on how large the spicule was. 40

W. S. Washington. Called by Defendant. Cross.

10 Q. Well, it was three inches long and two and one-half inches wide, and pushed in one-third of an inch at the lower part, which was in the region of the ear. A. That wouldn't make very much hemorrhage necessarily; it might and might not. The hemorrhage is governed by the number of blood vessels that are torn and, when they empty themselves, then continue bleeding, otherwise they may stop bleeding; and you may have a good many vessels torn and very little bleeding.

20 Q. But when you have as large a spicule, we will call it, loose part of the skull, as that, pushed in a third of an inch, that would be likely to tear the blood vessels over an area of a couple of inches in width, might it not? A. I don't know how I can tell you. I would have to know tht site of the spicule.

30 Q. Well, the site of the spicule is the site beginning up on the right side of the head, somewhere near the top of the head on the right side, and extending in a circular or semi-circular shape to a point about the middle line of the ear, and the spicule was about three inches long, about two and one-half inches wide, and was depressed inward about one-third of an inch. Assuming that to be so, that would cause quite a disturbance in that delicate membrane, wouldn't it? A. I cannot tell you. It did not in this case.

Q. I say, in your judgment as an expert, it would, wouldn't it? A. No, not necessarily.

Q. Well, in your opinion, it would cause some hemorrhaging and breaking of those tissues, wouldn't it? A. Yes.

Q. You cannot say how much, can you? A. I can tell by the symptoms that develop later.

40 Q. We are coming to those afterward. But from a standpoint of the composition of a boy's head, and

W. S. Washington. Called by Defendant. Cross.

where the brain is, and where that lining membrane is, and where the tables of the skull are, you would say as a doctor, wouldn't you, that such an injury would probably cause some hemorrhaging inside?

Mr. Kuebler: I object to that. There isn't a thing in the case whatsoever of hemorrhage.

The Court: The objection will be overruled. 10

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

Exception noted as ground of appeal.

Q. That is a fact, Doctor? A. There would be some hemorrhage, of course.

Q. Now, when you said before that there was some injury in your opinion, to this boy's brain, what injury, in your opinion, was there to this boy's brain? A. What you have spoken of—laceration of the blood vessels of the inner membrane, the *dura mater*. 20

Q. That is part of the brain, isn't it? A. Well, it is the covering the brain; it is not part of it, it is the covering of it.

Q. Now, Doctor, for a blow to cause a fracture of that kind that I have described, a great deal of force would be exerted, would there not? 30

Mr. Kuebler: I object to that.

Mr. McGeehan: I withdraw it.

Q. If a person, as the result of a blow upon the head, sustains such a fracture and it was accompanied by medical shock, low blood pressure, high pulse rate, and the other elements of medical shock, Doctor, that would indicate a condition where there was probably a concussion, too, would it not? A. Yes, there probably would be some concussion. 40

W. S. Washington. Called by Defendant. Cross.

Q. You do not think that a boy could get a skull fracture by a blow and not have a concussion of the brain? A. I think he would have some concussion.

Q. And it is impossible to say, by X-ray or otherwise, when there is a concussion of the brain, an injury to the dura, how much bleeding takes place in there—an X-ray, at least, won't show that, will it? A. No.

Q. Now, you said that the symptoms that follow it later can give you some idea of the extent of a brain injury, is that right? A. Yes.

Q. Now, assuming that this boy sustained a concussion of the brain and an injury to the brain, as you have described, and a fracture of the skull to the extent as contained in my previous questions, and that that boy suffered from headaches ever since, and still suffers from them some four and one-half or five years, more than five years after the accident, it would be your opinion that those headaches are connected with the injury, wouldn't it?

Mr. Kuebler: I object to the question. It refers to the injury to the brain.

Mr. McGeehan: The doctor himself said in his opinion there was some injury to the brain.

The Court: The doctor said that if this spicule or piece of the skull was completely separated there would probably be some tearing of the blood vessels, the lining membranes of the brain, if these blood vessels were connected with the brain itself. I do not know that he said there would be any injury of the brain.

Mr. McGeehan: His words were—the doctor said he had some brain injury. Later he said that what he meant by that was what your

W. S. Washington. Called by Defendant. Cross.

Honor has stated and, in addition to that, he said there was a concussion of the brain.

The Witness: That does not cover all my answer.

The Court: I will sustain the objection to the question.

Mr. McGeehan: Will you read the question?
(Question read.)

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The Court: The question is not just as I thought it was. I will overrule the objection.

A. Well, before answering it, I want to know if that includes the statement which I testified to, that the spicule bone went down into the brain some distance as well.

Q. Yes, sir; you may include that. A. You will have to include that, otherwise it might be a different answer.

20

Q. Assuming that the lower part of that spicule was depressed one-third of an inch below the ordinary contour of the skull—now, assuming that, it would be your opinion that those headaches are connected with the injury, wouldn't it? A. Probably.

Q. I mean probably. A. Yes.

Q. How long after he was hurt did you see him first? A. About two years.

30

The Court: On May 10, 1925, he was injured, and he examined him June 6, 1927.

Q. Of course, at that time, so far as you could judge, union had taken place, hadn't it? A. What union?

Q. When you examined the boy. A. In the skull?

40

W. S. Washington. Called by Defendant. Redirect.

Q. Yes, or can't that be determined without an X-ray? A. Well, I think an X-ray would be more sure, but there is now, in the place of a depression, an elevation of the bone at that point.

Q. Whereabouts? A. Right over the seat of the injury.

10 Q. Just point that out on your own head, Doctor. A. (Witness indicates.)

Q. You are pointing to the upper part of your head? A. Yes.

Q. Is there an elevation there at that point? A. Yes.

Q. Is there a depression down below by the ear? A. No.

Q. You could not feel that, could you? A. No.

20 Q. Did you feel for any such? A. Yes, I felt all over his head.

Q. Would it be possible to feel if there is a depression at the skull inside of where the ear is, if it were under the solid region? A. The depression?

Q. Yes. A. Where the scar is?

Q. Well, around the ear. I don't know about the scar. A. No, I don't think it would, unless it were very marked.

30 Q. You mean it could not be there without your being able to feel it? A. The depression?

Q. Yes. A. I suppose it could.

REDIRECT EXAMINATION BY MR. KUEBLER:

Q. If there was a depression of one-third of an inch there at this time, Doctor, would there be a probability of your feeling it? A. Oh, yes, easily.

40 Q. If this boy had headaches at the present time, once a week or every two weeks, or probably at greater intervals, would there be a probability that

W. S. Washington. Called by Defendant. Redirect.

these headaches can be due to other causes than this fracture? A. Oh, yes.

Q. Would a bad condition of the boy's eyes be a probable cause of headaches? A. Yes, quite common.

BY THE COURT:

Q. I understood you to say that you found nothing the matter with the eyes. A. No, I did not; I made no eye examination except just the ocular one—the pupils, and so on.

Q. Oh, you made no eye examination? A. Oh, just the ordinary one, whether the pupils responded to light accommodation and whether they had any myastagnus, or anything of that character. He had none.

BY MR. KUEBLER:

Q. Doctor, if a person had hemorrhage of the brain as the result of a fracture of the skull, how would it be manifested? A. Well, it would depend on the amount of hemorrhage. If the hemorrhage was slight, it would not manifest itself at all. It would have to be severe enough to make pressure on some important parts, then that would be shown by the reaction to them. In the first place, there would have to be unconsciousness. Just an ordinary fracture or, at least, a hemorrhage, would not produce it sufficient for unconsciousness; that would mean that the hemorrhage had been slight; then there might be some paralysis of some part if it was in the motor region, if it was involved the muscles of the face, and the eyes, and the arms, or the hands or the legs or the other soft parts, those things would have to be—now, if the hemorrhage

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W. S. Washington. Called by Defendant. Recross.

was so slight and the pressure was taken off, either by being absorbed or being pressed on at the inside, why, then that would not last any long time and would not leave any symptoms of any character.

Q. Did you find any symptoms in this case, Doctor, which would indicate to you that there was any appreciable hemorrhage there? A. No.

10 Q. Doctor, in your opinion, is there any probability of this boy, Walter Kastner, having any future complications or troubles as the result of the fracture which he sustained almost five years ago? A. Not in my judgment.

Q. Can you show us what you mean by the elevation on the boy's head? A. Yes. Just have the boy come up here.

20 RECROSS EXAMINATION BY MR. MCGEEHAN:

Q. Doctor, you cannot be sure of that, though, can you? A. Well, you cannot swear to anything in the practice of medicine and surgery; but, judging from his condition now and at the time I saw him, and the symptoms that he complains of, I would.

30 Q. Now, Doctor, you have seen cases where there has been no symptoms for a number of months and years, except of headaches, after a skull fracture and a severe concussion, that have developed into very serious complications after the passage of years, haven't you? A. I am sorry to say I have yet to see—I have never seen any such patients in fifty-four years.

Q. You haven't? A. No, I have never seen a case. They have all gotten better.

40 Q. Epilepsy can develop from a brain injury, can it not?

W. S. Washington. Called by Defendant. Recross.

Mr. Kuebler: I object to the question, unless it is a probability.

The Court: It is cross examination.

Q. Epilepsy can develop from a brain injury, can it not? A. It is supposed to.

Q. Well, the medical writers state so, do they not? A. Some of them. 10

Q. And there is such a thing as scar tissue causing complications known as traumatic encephalitis many years after a brain injury, is there not? A. No, not encephalitis.

Q. Encephalitis can be caused by an injury to the brain, can it not? A. Yes, but this was acute, this is not a chronic case; it is not caused from a scar.

Q. Did you ever hear of prize-fighters getting what they call "punch drunk" after receiving many blows? A. I never treated prize-fighters. 20

Q. You have heard, in your medical experience, that there is such a thing as a brain condition causing what is commonly known as "sleeping sickness", in the case of men who have sustained numerous jogs to the brain, have you not? A. No.

Q. You never heard of that? A. No.

Q. Did you ever read Dr. Harrison Martin's treatise on that? A. No.

Q. He is a well-known penologist, is he not? A. Yes. I have read his paper on "Punch Drunk". 30

Q. That is encephalitis, isn't it? I mean, the medical name for punch drunkenness is encephalitis, or sleeping sickness? A. Oh, no.

Q. You do not think so? A. No.

Q. Doctor, insanity can come from an injured brain years after the blow has been received and cause it, can't it? A. Some form of insanity may develop but it is out of the ordinary, and it takes years and years for that to develop. 40

W. S. Washington. Called by Defendant. Recross.

Q. Yes, that is what I am getting at. A. It is in grown people, not in children.

Q. But it can come in grown people from injuries that they have received as children, can it not? A. No, I never heard of that.

10 Q. No matter what the brain injury, you think that there cannot come insanity in adult life from an injury received to the head of a child? A. No, I don't believe it.

Q. Well, if there is scar tissue in a brain, Doctor, there occurs, at times, without any paralysis present at the time it originally develops, there occurs a deterioration of the brain cells, isn't that so, in the surrounding area? A. There may in some cases, but it is very unusual.

Q. But it occurs, doesn't it, sometimes? A. No.

20 Q. Well, you just said it may in some cases. A. They are unusual, I said.

Q. Did you ever hear of the Parkinsonian Syndrome? A. Yes.

Q. What is that? A. That is a nervous, not a disease of insanity.

Q. Parkinsonian Syndrome is nervousness? A. Yes, nervous in character.

Q. What are the symptoms of it, Doctor? A. I couldn't tell you.

30 Q. Well, do you know what the clear signs of a Parkinsonian Syndrome are? A. No, I couldn't say that I do.

Q. Well, do you know that it is a thickness of speech and lack of control of the lower extremities? A. Yes.

Q. And it is a condition following usual encephalitis? A. No, I don't know that.

Q. You never heard of that? A. No.

40 Q. What does it come from? A. I don't know.

W. S. Washington. Called by Defendant. Recross.

Q. You don't know much about it, do you? A. No.

Q. You don't know whether or not an injury to the brain, with an intervening period of only headaches, sometimes can develop into a condition that leaves as its aftermath the Parkinsonian Syndrome so as to make a person helpless, do you? A. No; I don't read Parkinson.

10

Q. You haven't studied up much on that subject, have you? A. No, I haven't paid much attention to that.

The Witness: Now I was to examine this little boy.

(The plaintiff Walter Kastner steps up to the witness stand.)

The Witness: This is very marked here, this elevation (indicating).

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The Court: Just turn around so that the jury can see it.

The Witness: The jury would have to feel it. It is very marked here, this elevation (indicating). You cannot see it, Mr. McGeehan. You would have to feel it. It is very marked here (indicating); elevated instead of being depressed.

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BY THE COURT:

Q. Now, it is insisted that down near the ear there would be corresponding depression. A. Oh, no.

Q. That is, that the elevation at the top had a corresponding depression at the bottom of the fragment. A. No. This here (indicating) is a very marked elevation in the neighborhood of the upper

40

W. S. Washington. Called by Defendant. Recross.

part of the fracture and not—well, it shows that this separated piece of bone that you speak of, instead of being depressed, was elevated. Now, the X-rays show that the spicula stuck out instead of sticking in.

BY MR. MCGEEHAN:

10

Q. And the point where you feel an elevation is where the X-rays show a spicule sticking out, isn't that right? A. Yes, I should say about that neighborhood somewhere.

Q. But down at the bottom, around the region of the skull, inside the ear or back of the ear, is where we are questioning about a depression, not at the top. A. You are speaking of the seat of the fracture?

20

Q. The bottom part of the broken piece of bone, not the top part—that stuck out, didn't it? A. The top part, yes.

Q. Now, do you know whether or not right above the part that stuck out there was a depression at the other fragment or the upper fragment? A. The only fragment that stuck out—that did not stick out at all.

30

Q. That is the only one that was in the X-rays? A. Yes.

Q. But down at the bottom, around the region of did it? A. No.

Q. You don't know whether that stuck in or not, do you? A. No, I don't know, and I have not been able to find out from the X-ray.

BY MR. KUEBLER:

40 Q. If any complications are likely to arise, if there is any probability of complications arising

W. S. Washington. Called by Defendant. Recross.

from the fractured skull of a child approximately ten years of age, in what period of time after the accident are such complications likely to arise? A. The two marked symptoms—

The Court: No. Do you understand the question?

The Witness: Yes; I am going to answer it. 10

The Court: This relates just to time, Doctor. If you want to make any explanation afterward, it would be all right. Suppose you answer the question.

The Witness: Well, then, ask the question again.

Q. (Read.) A. They vary in time. They usually are, supposed at least, to show up inside of two years; it may be more than that, and it may be less. 20

By MR. MCGEEHAN:

Q. If the headaches are due to the accident, can you tell how long they are going to continue, Doctor? A. No, not absolutely.

Q. They may continue for a long time, may they not? A. They usually get less. They may last for quite a time but they may get less. You see, one of the prominent symptoms that accompany a fracture haven't been mentioned in this case at all. 30

Q. The question is whether the headaches in this case, if they are due to the accident, are likely to continue and, if you can tell, for how long? A. I cannot tell you how long they may exist, but they gradually get less, and they go away entirely. 40

Harry Weinstein. Called by Defendant. Direct.

HARRY WEINSTEIN, defendant, sworn in his own behalf.

DIRECT EXAMINATION BY MR. KUEBLER:

- Q. Mr. Weinstein, on May 10, 1925, where did you live? A. 291 Union Avenue.
- 10 Q. Irvington? A. Yes, sir.
- Q. Do you live there yet? A. Yes.
- Q. What business were you in at that time? A. Milk business.
- Q. And what kind of milk business did you have? A. I sold retail milk.
- Q. Delivered it from house to house? A. Yes.
- Q. What did you use to deliver it with, horses or automobiles? A. All the time with horses.
- 20 Q. And how many wagons did you have at that time? A. One wagon.
- Q. One horse? A. One horse.
- Q. Now, on May 10, 1925, were you leading a horse along Berkshire Place? A. Yes, sir.
- Q. And whose horse was that? A. It was Mr. Wolf's.
- Q. And what day of the week was that? A. That was Sunday.
- 30 Q. And what time of the day was it? A. From four or five o'clock.
- Q. Four or five o'clock? A. Yes, sir.
- Q. How far was Mr. Wolf's place from your place? A. It is about twenty-five blocks.
- Q. What business was Mr. Wolf in? A. Milk business.
- Q. And you got this horse then at Mr. Wolf's? A. Yes, sir.
- Q. Did you go over alone for it? A. Yes, sir.
- 40 Q. No one was with you? A. No.

Harry Weinstein. Called by Defendant. Direct.

Q. And were you coming back alone with it? A. Yes, sir.

Q. What were you getting this horse for, Mr. Weinstein? Why were you getting the horse? A. Where I get him?

Q. Why were you getting the horse? A. Because I need a horse for my wagon.

Q. Did you buy the horse from him or not? A. 10
No, I had him for a trial.

Q. You had him on trial? A. Yes.

Q. And you were just bringing him over for a trial? A. Yes, sir.

Q. What kind of a horse was it? A. Black.

Q. Black? A. Black horse.

Q. What type of a horse was it? A. A truck horse.

Q. Now, was Mr. Wolf there when you got the horse? Did he give you the horse? A. Yes, sir. 20

Q. What was on the horse? A. On the horse was a halter and a collar.

Q. A collar? A. A collar for a horse.

Q. A horse collar? A. Horse collar, yes.

Q. Who put that on? A. Mr. Wolf.

Q. Was it his horse's collar? A. Yes, sir.

Q. And a halter you said was on the horse? A. A halter.

Q. Was that yours or Mr. Wolf's? A. Mr. Wolf's. 30

Q. And was there anything attached to the halter? A. A rope.

Q. And how long was the rope? A. From four to five feet.

Q. And as you were coming along the street with the horse, how were you leading the horse? Just tell us how you led the horse? A. I had the righthand side, I lead him by the halter, hold him by the halter, and with the lefthand side I hold the rope. 40

Harry Weinstein. Called by Defendant. Direct.

Q. And as you were coming along Berkshire Place, just before this accident occurred, what part of Berkshire Place were you leading the horse on?

A. From Chancellor Avenue.

Q. And where were you about in that block when the accident occurred? A. Half a block from Union Avenue, in the middle of the street.

10 Q. You mean in the middle of Berkshire Place?

A. Yes, sir.

Q. Or do you mean in the middle of the block, which do you mean? A. I mean in the middle from the block, half of the block.

Q. What do you mean, from Chancellor Avenue to Union Avenue? A. No, just from Berkshire Place; from Berkshire Place, where I went with the horse, I was half a block.

20 Q. Half a block from where? A. From that accident.

Q. I do not understand your answer. You said you were leading him on Berkshire Place? A. I lead him from Chancellor Avenue and Berkshire Place.

Q. And what part of Berkshire Place were you leading him on, near the curb or where, the center of the street? A. No, near the curb.

30 Q. And which side of the street? A. On the righthand side.

Q. About how far from the curb? A. About three or four feet.

Q. And you say how far then from Union Avenue? A. Half a block. From Union Avenue?

The Court: You were going towards Union Avenue?

40 The Witness: Yes, I was going toward Union Avenue. I lead that horse in Berkshire Place.

Harry Weinstein. Called by Defendant. Direct.

Q. In Berkshire Place? A. Yes.

Q. Now, as you were going along there, did you light a cigarette at any time? A. No, sir.

Q. Did you have a cigarette in your mouth? A. No, sir.

Q. Do you smoke? A. Yes, sir.

Q. Now, will you tell us, in your own words, what happened? A. When I lead the horse in Berkshire Place I don't see anybody there and I lead him straight with the curb, righthand side. After that I heard a noise in the back from the horse, and the horse moved a little from me. I hold him tight and I heard somebody screaming. The horse gets scared a little and I turned him in the other side of the street; I took him away from there. 10

Q. What side of the street did you take him in? Do you mean the side of the street or a side of the street? A. Across the street. 20

Q. You took him across the street? A. Yes, sir.

Q. Well, prior to this time that you heard the noise, how had the horse acted as you were walking along the street before you heard the noise? A. He was walking with me slow.

Q. Now, do you know what prancing of a horse is? A. I don't know what "prancing" means.

Q. You don't know what it means? A. No.

Q. Do you know what skittish means? Do you know when a horse is skittish? A. Yes, sir. 30

Q. Was this horse skittish as you lead him along the road? A. No, sir.

Q. Was the horse at any time running as you walked along there prior to the time this happened? A. No, sir.

The Court: "Prancing" means jumping, jumping up and down. Was this horse jumping up and down? 40

The Witness: No.

Harry Weinstein. Called by Defendant. Direct.

Q. Was the horse making any disturbance at all prior to the time you heard this noise? A. No, sir.

Q. You said the horse did go forward then? A. Yes.

Q. What did you see after that, as you took the horse to the side of the road? A. I saw the boy laying with the bicycle together.

10 Q. And where was the boy? A. The boy was under the bicycle.

Q. And where was he, what part of the street, in the middle of the street or was he on the side of the street, or where? A. This was by the curb.

Q. And what curb was he by? You don't know the north from the south curb do you? A. No.

Q. Well, where was he, by the curb where you were driving the horse or on the other side of the street? A. The curb where I drove the horse.

20 Q. You say the bicycle was on top of him? A. Yes.

Q. Was the boy making any noise, was he yelling then? A. He was screaming.

Q. And did you stay with the horse? A. Yes, sir.

Q. Did someone come for the boy? A. His mother.

30 Q. And was the boy taken to the hospital soon? A. Yes, sir.

Q. Did he stay there very long in the street? A. Ten minutes.

Q. Had you ever had that horse before? A. No, sir.

Q. You had never used the horse before at all? A. No, sir.

Q. Did you have any knowledge of the horse before? A. No, sir.

40 Q. Now, when this occurred, just tell us how you were leading the horse at the time the accident oc-

Harry Weinstein. Called by Defendant. Cross.

curred. A. I held that horse by the halter in the right hand, and in the left hand I had the rope, and I lead him straight in the street.

Q. Did you at any time take your hand off the halter and put the rope under your arm? A. No, sir.

Q. You used this horse for awhile after that, didn't you? A. Four days. 10

Q. And did you use it on your milk route? A. Yes, sir.

Q. What kind of a horse was it? Was it a slow horse or a fast horse? A. It was a slow horse.

Q. What were the general characteristics of the horse while you had it? A. I don't get you.

Q. How did the horse act while you had him? Just tell us what type of horse it was. How did he act? What did he do? A. When? 20

Q. While you had it. A. When I had him?

Q. Yes. A. When I had him for a trial on the wagon, you mean? He is a slow trotter horse.

Q. Was he ever frisky? A. Never.

Q. You did not buy the horse, did you? A. No, sir.

Q. And did you take the horse back? A. Yes, sir.

Q. And why did you take the horse back? A. Because he don't suit me for work; he was too slow. 30

Q. Why didn't he suit you? A. He was too slow for my work.

Q. Do you know whether he was an old horse or a young horse? A. He was about twelve, thirteen years old.

CROSS EXAMINATION BY MR. MCGEEHAN:

Q. How do you know he was twelve or thirteen years old? A. Because Mr. Wolf, when he bought him— 40

Harry Weinstein. Called by Defendant. Cross.

Q. You mean somebody told you that, is that right? A. Right.

Mr. McGeehan: I ask that that be stricken out.

The Court: It will be.

Mr. Kuebler: **Strike it out.**

10

Q. Now, Mr. Weinstein, how long have you been in the milk business? A. I am twenty years in business.

Q. And you have dealt with horses all your life, have you? A. All the time. I have them now, too.

Q. You are familiar with horses, then, aren't you, you know something about horses? A. Sure I know horses.

20

Q. You didn't know this horse before you took him out that day, did you? A. No, sir.

Q. You never had seen him before? A. I used to meet him.

Q. What? A. I used to meet that horse.

Q. Where, over in Wolf's stables or yard? A. No, in the wagon.

Q. And Mr. Wolf you know for a good many years, do you? A. I know him for five, six years.

30

Q. A good friend of yours, is he? A. I never talked with him before.

Q. You knew that you were going to take that horse along Union Avenue, didn't you? You were going to walk him along Union Avenue that day, didn't you know that? A. No, not with Union Avenue.

Q. Well, you live on Union Avenue? A. Yes.

Q. And you were going to take it part of the way along Union Avenue before you got home that day, weren't you? A. **Yes.**

40

Harry Weinstein. Called by Defendant. Cross.

Q. And did you take it over Chancellor Avenue part of the way? A. I took that horse from Chancellor Avenue, yes.

Q. Now, this was on a Sunday, wasn't it? A. Sure.

Q. And in the month of May? A. Yes, sir.

Q. Those are busy roads, the main roads leading to the shore up that way, aren't they? A. It was late, after four. 10

Q. Well, those are busy traffic roads out there? A. Yes, it is busy traffic on Chancellor Avenue.

Q. And you knew that you were going to go through streets where there might be children, didn't you? A. Positive.

Q. Well, now, knowing that you had a strange horse and that you were going through those busy streets, including Berkshire Place, why didn't you put a bit in this horse's mouth? A. I bought horses maybe about fifteen or twenty years, and never used a bit by leading a horse. 20

Q. Well, you know that a horse can be controlled better and held down with a bit if he does get skittish, don't you? A. I know a bit is only for using when you are driving, when you drive a horse.

Q. Wait a minute. You know that you can put a bit in a horse's mouth without having to drive him, don't you? A. I never tried this. 30

Q. You know you can bit a horse without having to have a wagon tied to him. A. Yes, you can do that, I know it.

Q. And when you have a bit in a horse's mouth, by holding the reins underneath his chin, if they call it a chin, you can control that horse with one hand and hold him as well as if you were sitting on his back or in a wagon behind him, can't you? A. Yes, sir. 40

Harry Weinstein. Called by Defendant. Cross.

Q. And you can take those reins and you can apply the same effect on the horse, holding the two reins with one hand, as if you were sitting on him or driving from a wagon behind him, can't you? You can use it to check the horse, can't you, even if you are walking alongside of him? A. Yes, sir.

10 Q. Well, you can do it better with a bit in his mouth than with a halter around his head, can't you? A. Just by driving, not by leading.

Q. And if you are leading a horse and he starts to balk and pull— A. (Interposing) I can hold him all the time.

Q. You can always hold him? A. Yes.

Q. Did you hold him this day? A. This day? Yes, sir.

Q. He kicked this boy, didn't he? A. No, sir.

20 Q. Oh, he did not kick this boy? A. No.

Q. He did not step on this boy? A. I didn't see him kick him.

Q. You didn't see a thing about how the boy was hurt? A. I saw he was hurt.

Q. When you went across the street you saw the boy over there lying under his bicycle? A. Yes, sir.

Q. The first time you saw that boy was when you got across the street with your horse? A. Yes, sir.

30 Q. Why did you go over across the street with the horse? A. Because I heard screaming.

Q. Well, when you heard screaming, did that make you go across the street with your horse? A. And the horse was scared a little.

Q. The horse pulled you across the street, didn't he? A. No, sir.

Q. Did you lead him across the street? A. Yes.

40 Q. Why? A. Because the boy was screaming and that horse was a little excited, and I took him away.

Harry Weinstein. Called by Defendant. Cross.

Q. Well, the boy was screaming. You told us you did not even know the boy had been hurt until you got across the street. That is right, isn't it?

Mr. Kuebler: I object to that, your Honor. He said he heard a scream.

The Witness: I heard a scream and noise.

10

Q. You did not know a boy had been hurt or that your horse had touched a boy until you got across the street, did you? A. I say I heard that bicycle, that noise.

Q. You did not say that before, did you? A. I say this.

The Court: He did say that.

Mr. McGeehan: He heard a noise from the bicycle?

20

The Witness: I heard a noise.

The Court: No, he said he heard a noise.

The Witness: I heard the noise.

Q. You did not say before that you heard a noise from a bicycle? A. Not from a bicycle I heard noise.

Q. What was that noise like? A. Like from iron.

Q. When did you hear that? A. When?

30

Q. Yes. Where were you when you heard the noise like from iron? A. When that horse make a fast step forwards.

Q. The horse did make a fast step? A. Fast step forwards, yes.

Q. Do you know what made him make that step forward? A. That noise.

Q. The noise? A. Yes, sir.

Q. Where did the noise come from? A. From the back?

40

Harry Weinstein. Called by Defendant. Cross.

- Q. By your horse? A. By my horse.
- Q. What made you get across the street with your horse then? A. The horse was excited.
- Q. Did he pull you across the street? A. No.
- Q. Did you pull him across the street? A. Yes.
- Q. Why didn't you go straight along with him on the right side of the street? A. On the right side?
- 10 Q. Yes. You were going three or four feet from the curb? A. Yes.
- Q. And the horse just went forward. Why did you get over on the other side of the street? A. Why?
- Q. Why? A. I took him across the street. I want to see what is happening there.
- Q. Well, nothing happened across the street, did it? A. Not across the street. It is in the back
- 20 what has happened.
- Q. Well, why didn't you stop your horse then and look in back or alongside of him, or under him? A. It is better from across the street to look.
- Q. Why? A. Because I can see better.
- Q. Isn't it a fact that you could not control that horse with your halter that day? A. I controlled him all right.
- Q. Now, I am asking you—this is the last time I am going to ask you—as a man familiar with horses,
- 30 if a horse is skittish or acting up, you can hold him easier, and with less strength, and with more sureness with a bit and a pair of reins in your hand than you can with the halter over his head and nothing in his mouth, can't you?

Mr. Kuebler: I assume he means when he is being led.

- 40 A. I couldn't tell you that.

Harry Weinstein. Called by Defendant. Cross.

Q. You know that a bit will help you, don't you?

A. A bit helps me just for riding, that is all.

Q. You use one rein, too, do you, if you are leading?
A. When I am in the front it is better to steer a horse.

Q. Do you use a bit when you are driving a horse?

A. Yes, sir.

Q. Not only to steer him with but to hold him back, don't you?
A. Yes, sir. 10

Q. And you know that you can stop a horse with a bit in his mouth even if he tries to run away, don't you?
A. Yes, sir.

Q. Now, if you are walking alongside of a horse and you have a bit in his mouth and a pair of reins, if he pulls or balks or starts to kick, you can hold his head and hold him in check with the bit, can't you?
A. I never tried this. 20

Q. You never led a horse by the bit?
A. Never. 20

Q. Well, when you go from house to house on your milk route, if you haven't got a horse trained to follow you, you lead him by the bit, don't you?
A. I never lead him; I always get in the wagon and drive him.

Q. Well, you have led a horse by the bit?
A. Never.

Q. Never in your life?
A. No.

Q. And for thirty years or twenty years you are familiar with horses?
A. Twenty years. 30

Q. You never did that?
A. No.

Q. Did you ever see anybody in your life lead a horse by a bit?
A. Yes, sir.

Q. Who was it that you saw?
A. Oh, icemen, slow work.

Q. But you never have had hold of a horse's bit and led him along at all, have you?
A. Never.

At one o'clock the court takes a recess until two o'clock p. m. 40

Harry Weinstein. Called by Defendant. Cross.

AFTER RECESS.

HARRY WEINSTEIN, defendant, resumes the stand.

CROSS EXAMINATION (continued) BY MR. MCGEEHAN:

- 10 Q. Now, Mr. Weinstein, I understood you to say that as you came along that street you had hold of the halter by the right hand and the halter rope by the left hand, is that right? A. Yes, sir.

The Court: Did that put you on the righthand side or the lefthand side of the horse?

The Witness: The righthand side of the horse.

- 20 Q. Well, when you were on the righthand side of the horse, your left arm would be nearest to the horse? A. Not the left, the right hand.

Q. Now, here—suppose this desk is the horse—when you were on the right hand side of the horse your left arm would be nearest to the head, wouldn't it? A. The left?

- 30 Q. If you were on the righthand side of the horse, going forward, your left arm would be nearest to the head of the horse? A. I had him on the righthand side, with my right hand.

Q. I do not want you to be confused about it, but were you to the right of the horse toward the curb or to the left of the horse toward the center of the street? A. I was to the right of the horse.

Q. Nearer to the curb, or was the horse nearer than you were to the curb? A. The horse was nearer to the curb.

- 40 Q. Then you were on the lefthand side of the horse, weren't you? A. The righthand.

Harry Weinstein. Called by Defendant. Cross.

BY THE COURT:

Q. Were you on the nearer side or the off side of the horse? A. The off side. This is the horse (indicating) and I had him on my right hand.

Q. The horse was over here? A. Yes (indicating righthand side).

10

The Court: That would be the left side of the horse.

BY MR. MCGEEHAN:

Q. Now, as you went along there the horse was nearer to the curbstone than you were, wasn't he? A. Yes, sir.

Q. Now, as you walked, how far had you been going along with your hand on the halter and on the rope; how far were you holding the horse that way? A. I handled him the whole way from Chancellor Avenue.

20

Q. All the way? A. All the way, yes.

Q. You never let go of the halter and the rope? A. No.

Q. Well, if a horse is just walking along slowly, and not giving any trouble, you would not be holding the halter with one hand and the rope with the other all the way, would you? A. I was afraid. This was traffic; on Chancellor Avenue was too much traffic.

30

Q. You say you were afraid, there was traffic. What were you afraid of? A. For the horse.

Q. Afraid the horse might do what? A. Maybe—

Q. Maybe what? Tell us. A. Maybe run away from me.

40

Harry Weinstein. Called by Defendant. Cross.

Q. And what was there about the horse that morning that made you afraid that maybe that horse would run away from you? Why were you afraid that maybe the horse would run away from you? A. Because this is a horse I never handled him.

10 Q. Yes? A. And a strange horse, I must watch it.

Q. Yes. And do you know how long he had been in his stable before you took him out? A. No, sir.

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

Q. You did not know whether he had been in for a week or two weeks or three weeks, did you? A. No, sir.

Q. You did not ask either, did you? A. No, sir.

Q. Or did you ask? A. I don't ask it.

20 Q. Well, now, you knew, as an experienced horseman, that it makes some difference in how a horse will act, whether he has been locked up in a stable for a week or more, didn't you? A. Sure, I know it.

Q. Well, why didn't you ask when you got him and when you knew you were going to lead him through a public street on a Sunday, why didn't you ask whether the horse had been exercised or whether he had been cooped up? Didn't you care? A. Because I know he used to work with him every day.

30 Q. You knew he used to work with him, but you didn't know whether he worked with him in the week before you took him out, did you? A. No, sir.

Q. Now, Mr. Weinstein, you smoke, don't you? A. Yes, sir.

Q. And you had come all the way from Mr. Wolf's place. How far had you come before you had this accident? A. About ten or fifteen blocks.

Q. And did you smoke on the way? A. No, sir.

40 Q. Not at all? A. Not at all.

Harry Weinstein. Called by Defendant. Cross.

Q. You had smokes with you, didn't you, cigarettes? A. I don't remember this.

Q. You smoke cigarettes, don't you? A. I smoke cigarettes and sometimes I am out from cigarettes, too; I haven't got them with me.

Q. But you weren't out this day, were you? A. What?

Q. Were you out of cigarettes at the time you were going along with the horse, or did you have some in your pocket? A. I can't remember this. 10

Q. You don't remember that? A. No.

Q. Now, do you smoke a good deal, do you smoke a lot? A. About fifteen, twenty cigarettes a day.

Q. Now, walking from where you got the horse to where you were going to take it, to your place, how far is that? A. That is about twenty blocks.

The Court: I thought you said twenty-five. Which is it, twenty or twenty-five? 20

The Witness: Twenty.

Q. Now, going that distance, whatever it is, did you want to smoke, did you feel like smoking? A. I am always smoking at night, because I serve milk at night. In the daytime I never smoke very much.

Q. Well, you smoke sometimes in the daytime, don't you? A. When I am up I smoke sometimes. 30

Q. When you are up? A. Yes.

Q. Well, this day when you went along with the horse, did you try to smoke? A. No.

Q. Why, you didn't feel like it? A. I don't feel like it, because I lead a horse and I can't smoke in that time, leading a horse.

Q. Well, now, if you hold the horse carefully, when you light your cigarette, going along and smoking, that would not scare the horse, would it? A. I can't do this. 40

Harry Weinstein. Called by Defendant. Cross.

Q. You were careful not to smoke because you were leading a horse, were you? A. Because my hands were on the rope and the halter, and I can't smoke cigarettes at that time.

10 Q. Now, Mr. Weinstein, isn't it a fact that at sometime while you were going along Berkshire Place that horse was skittish as it went along, and balky? A. I had him before; I had him from Chancellor Avenue and traffic places.

Q. Now, when he was walking from the stable up to the time that the accident occurred, he was not just a plodding horse and making no move at all except walking, was he? A. That is all.

Q. That is all he did at all? A. That is all.

20 Q. And yet you held him with both hands, one by a halter by his head and the other on the rope? A. Not like you show me. I held him by the halter, and not like this. I held him by the halter and the rope.

Q. Well, the halter is up on his head? A. Yes, right here (indicating); there is a strap here, too (indicating).

Q. It is around the nose, up above the mouth, isn't it? A. Yes.

30 Q. It is a canvas strap, isn't it? A. Yes. There is a ring there, too. There is a piece of leather down from the halter there.

Q. But there is nothing through his mouth? A. No.

Q. And you held him up by his head, by the halter at the head? A. Underneath, by his mouth.

Q. And you also held the rope in the left hand? A. Yes.

40 Q. Tell us what the first thing is that you knew of the horse having kicked someone or stepped on someone or jumped on someone? A. I don't see this.

Harry Weinstein. Called by Defendant. Cross.

Q. You didn't know it at all? A. No.

Q. You didn't see the boy until after the whole thing was over, did you? A. I saw the boy after, when I took that horse across the street.

Q. Now, did you tell your attorney that the boy ran into the horse on his bicycle as he came out of a driveway and was thus knocked down? A. No, I don't tell those things. 10

Q. You didn't say anything like that to your lawyer before he opened the case to the jury, did you? A. No, sir.

Q. You never told him that, did you? A. No.

Q. You did not see the boy riding along on the street at all, did you? A. No, sir.

Q. Now, you heard a noise like iron, you say, is that right? A. Yes.

Q. Where were you when you heard that noise? A. I was by the head of the horse. 20

Q. On which side of the street? A. By the horse, on the right hand side.

Q. Going along there? A. Yes.

Q. Now, at the time you heard the noise of the iron, what was your horse doing? A. He made a move, a fast move.

Q. What did you do when he made the fast move? A. I took him away.

Q. Took him away from what? A. From this side (indicating). 30

Q. Took him away from the boy that he was kicking at the time, didn't you? A. No, sir; I don't see him kicking.

Q. Can you give us any reason why you took him away to the other side of the street? A. Because he was afraid.

Q. What was he doing to indicate that he was afraid? A. He is moving fast. 40

Harry Weinstein. Called by Defendant. Cross.

Q. And was his rear end moving up in the air and his hoofs moving up in the air? A. No, not in the air.

Q. How was he moving? A. He was moving fast; he wants to run.

Q. Wants to run? A. Yes.

10 Q. Well, he jumped and pulled at you, didn't he? He pulled at your hand, didn't he? A. No.

Q. Isn't it a fact that you lit a cigarette, or a match to light a cigarette, at the time that horse started to move, and that you did not have the halter in your hand or even the rein in your hand at that time? A. No, sir.

20 Q. Isn't it a fact that before you got a grip on him he had gotten across the street and you could not stop his getting across the street? A. I had him in my possession all the time.

Q. You don't know then whether your horse ever touched that boy, do you? A. I don't see it.

Q. And you did not see the boy at any time, or his bicycle, in contact with the hoofs of the horse or any part of the horse, did you? A. No, sir. I took him away right as possible.

Q. You used that horse for how many days? A. Four days.

30 Q. And did you pay for the hire of that horse? A. No, sir.

Q. You did not. You did not buy it, did you? A. No.

Q. You needed a horse for your milk route, didn't you? A. Yes, sir.

Q. This was not a great big, heavy horse, was it? A. It was a big, heavy horse.

Q. How much did it weigh? A. About one thousand four hundred.

40

Harry Weinstein. Called by Defendant. Cross.

Q. You are sure it was not about one thousand one hundred pounds? A. One thousand four hundred pounds.

Q. Well, it was a horse named "Nig", wasn't it? A. Yes.

Q. A black horse, wasn't it? A. Yes, sir.

Q. And you are sure that horse did not weigh about one thousand one hundred and fifty pounds? 10

A. I think that he was more than that.

Q. He was shod with iron hoofs, wasn't he?

The Court: Iron shoes?

The Witness: Shoes, yes.

Q. You said in your direct examination, "He moved a little from me and I held him tight. I heard screaming. I took him across the street". Now, is that the order in which the things happened: He moved a little from you, you held him tight and you heard screaming, and then you took him across the street? Is that right? A. Right. 20

Q. Now, when he was moving from you, where were you looking? A. In front.

Q. Did you look alongside the horse at all? A. No.

Q. Did you look at his legs? A. No, sir.

Q. And after he moved a little from you you heard the screaming, didn't you? A. Yes, sir. 30

Q. Did you go over to the boy that was injured? A. Yes, sir.

Q. Did you go over to him? A. No; no, sir.

Q. Where did you go then after you saw the boy?

A. I held the horse in my possession; I cannot leave the horse alone.

Q. You could not leave him alone, could you? A. No. 40

Harry Weinstein. Called by Defendant. Cross.

Q. The boy was over by the curb when you saw him, wasn't he? A. By the curb.

Q. You say you did not buy the horse because he was too slow for your work? A. Yes, sir.

Q. Well, you don't need a fast horse in a milk route, do you? A. Yes.

Q. You do? A. Fast.

10 Q. He has got to be fast? A. Fast, because we must deliver the milk in time.

Q. And do you do a retail or a wholesale business? A. Retail.

Q. Altogether retail? A. Retail.

Q. And when you say this was a slow horse you mean he was a slow trotting horse, he did not trot fast, is that right? A. Right.

20 Q. He was not a sluggish horse, was he, or a stupid-acting horse? He was an active horse, wasn't he? A. No, he was too slow, not active.

Q. He could not trot fast enough? A. No.

Q. How fast could he trot? A. I cannot tell you; I think about three, four miles an hour.

Q. Did you try trotting him before putting him on your wagon? Were you running with him the day you walked him from Wolf's over to your place? A. No, sir.

30 Q. Were you running him when you took him from Wolf's over to your place at all? A. No.

Q. Now, Mr. Weinstein, you remained around there a few minutes after this had occurred, did you? A. Yes.

Q. And were you nervous and excited, too? A. Where?

Q. After you saw the boy had been hurt? A. Yes, I was excited.

Q. Were you nervous? A. Yes.

40 Q. You knew your horse had hurt the boy then, didn't you? A. The horse hurt the boy?

Harry Weinstein. Called by Defendant. Redirect.

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

Q. You did not know? A. No; I don't see it.

Q. You did not know because you did not see it, is that right? A. Yes.

Q. You know right now that your horse hurt that boy, don't you? A. I cannot tell you.

Q. You cannot say? A. No.

10

The Court: You knew the boy was hurt, did you?

The Witness: Yes.

REDIRECT EXAMINATION BY MR. KUEBLER:

Q. Did you hear the noise before the horse moved forward or after the horse moved forward?

Mr. McGeehan: I object to that. He has testified what the time was.

20

Mr. Kuebler: Yes, you asked him a leading question and he said he heard the noise afterward, but he had previously testified that he heard the noise before, and that is why I am asking that.

The Court: The question may be answered.

A. I heard that noise before.

30

The Court: You said you heard a noise of iron. Was that before or after your horse moved forward?

The Witness: Before.

Q. Now, Mr. Weinstein, did you see this man by the name of O'Toole, who testified yesterday, did you see him there after the accident? A. No, sir.

40

Harry Weinstein. Called by Defendant. Recross.

Q. Did you say to anybody after the accident that the horse had not been exercised nor out of the barn for a week? A. No, sir.

RE-CROSS EXAMINATION BY MR. MCGEEHAN:

10 Q. You spoke to some people there, didn't you, after the accident? A. In the street?

Q. Yes, in the street? A. No, sir.

Q. Well, did you stand all alone over on the other side of the street? A. All alone with the horse, yes.

Q. Some people came and picked the child up, didn't they? A. Yes.

Q. You gave your name to those people, didn't you? A. No, sir; nobody asked me for the name.

20 Q. Nobody asked you for your name? A. No. After an hour the police come and take me to the police station.

Q. And when you went to the police station with the police, where did they get you, at your house? A. In the house.

Q. Now, you spoke to the police about how it happened, didn't you, or told them what you knew about it, didn't you? A. Sure.

30 Q. And did you tell the police about an hour after the accident, that the horse had not been exercised or out of the stable in a week, you understood? A. No, sir.

Q. What? A. No, sir.

Q. You did not say anything to that effect? A. Right.

Q. What did you say to them? A. I gave them the report of what happened, that is all.

40 Q. And when you were standing in the street, did you see the boy taken away to the hospital? A. Yes, sir.

Harry Weinstein. Called by Defendant. Recross.

Q. How many people were around at that time?

A. I couldn't tell you.

Q. People gathered around you and your horse standing there, didn't they? A. Not by the horse. It was a few people there I saw.

Q. Why did you stay there until the boy went to the hospital for? Why did you stay there with your horse? A. I stayed with the horse.

10

Q. Why did you remain in the vicinity? A. I know it is a rule that you cannot go away before it is taken away there when you made the accident.

Q. Yes, and you knew you made an accident, didn't you? A. I made?

Q. Yes. A. I don't made an accident.

Q. Didn't you just say, when I asked you why you stayed there, you said you know it is a rule when you made an accident you cannot go away? A. It was an accident. It was before an accident and I stand waiting there.

20

Q. But you said you know it is a rule when you made an accident, you cannot go away—did you mean that?

Mr. Kuebler: I object to that, your Honor. I don't think he said those words that he made an accident.

30

Q. You knew you made the accident and that is why you stayed there, Mr. Weinstein, isn't it? A. No, sir.

Q. Why did you stay there? A. I know it was an accident, the boy laying in the street and the mother crying, and I was waiting with the horse; they were going to take them away.

40

Harry Weinstein. Called by Defendant. Recross.

BY THE COURT:

Q. Did anybody tell you that your horse had kicked the boy? A. No, nobody told me.

10 Q. What was it that made you think that your horse had caused the accident? What made you think that your horse had caused the accident if nobody told you? Did you think that your horse had caused an accident? Is that the reason you stayed there? I say, did you think that your horse had caused an accident, had made an accident? A. No.

BY MR. MCGEEHAN:

20 Q. Then why did you say a few minutes ago, if you did not think your horse had caused an accident and if you did not know it had, and if, as you said on the stand, you don't know now that your horse caused an accident, because you did not see it—having said all those things, why, when I asked you why did you stay there, did you say that you stayed because you know it is a rule that you cannot go away when you cause an accident? Why did you give that as your reason for staying there? Did it slip out or did you mean it? A. I stand 30 with the horse and waiting, because the mother was crying and the boy was laying there, and I was waiting what would be happened afterward.

John A. Nicoll. Called by Defendant. Direct.

JOHN A. NICOLL, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. KUEBLER:

Q. Mr. Nicoll, where do you live? A. 90 Shepard Avenue.

Q. Irvington? A. No, Newark.

Q. What is your business? A. Horseshoer. 10

Q. How long have you been in that business? A. Well, I have been in business about twenty years.

Q. And how long have you been familiar with the handling of horses? A. Well, about twenty-eight years, altogether; working for a boss and having a business of my own.

Q. All that period of time you were in the horse-shoeing and blacksmithing business? A. Yes, sir.

Q. Have you handled a good many horses during that period of time? A. Quite a few. 20

Q. What type of horses do you handle? A. Mostly all kinds.

Q. Have you handled draft horses? A. Yes.

Q. Have you handled the type of horse that is used on milk wagons? A. Yes.

Q. What type of horse do they generally use on milk wagons? A. Why, a general-purpose horse mostly.

Q. Is that a heavy draft horse or not? 30

Mr. McGeehan: I object to what they generally use when we have got the horse in question being described here.

Mr. Kuebler: I will withdraw the question.

Q. Do you know Mr. Weinstein? A. Yes.

Q. Do you know Mr. Wolf? A. Well, for a period of four or five years, I believe. 40

John A. Nicoll. Called by Defendant. Direct.

The Court: You knew him at that time?

The Witness: Yes, sir.

Q. And did you know a horse he had by the name of "Nigger"? A. Yes.

Q. What kind of a horse was that? A. It is a black horse.

10 Q. About how heavy a horse was he? A. Well, as near as I can remember, in the neighborhood of thirteen or somewheres around there, I should judge.

The Court: Thirteen what?

The Witness: Thirteen hundred pounds.

20 Q. And can you describe the horse to us? What type of horse was this? A. Well, he was a slouchy-looking old horse, quiet. At the time in the shop he would stand there as long as you would want to without a move, very quiet.

Q. Would you say he is a gentle horse? A. I would say he is very gentle.

Q. Had you shod that horse very many times? A. Well, probably four times, I guess.

Q. And he has always been gentle every time you shod him? A. Always the same.

30 Q. Have you ever had any trouble with him? A. No.

Q. Now, are you familiar, Mr. Nicoll, with the method of leading horses? A. Well, quite a lot, yes. I deliver the horses and get them, and take them home.

Q. Do you deliver a good many horses? A. All we shoe, practically. We deliver them and take them home.

John A. Nicoll. Called by Defendant. Direct.

The Court: That is, you go to the stable and get them?

The Witness: Yes, and then we shoe them and bring them back.

Q. What is the usual method and practice in and about the city in leading a horse? A. With a halter. 10

Q. Why is the halter the proper way to lead a horse? A. It is the safest way.

Q. Why is it the safest? A. Why, the bit, when you are leading a horse and it backs up in his mouth when you are leading him, they won't lead with a bit in their mouth.

Q. And is there any other reason why that is a safer way or proper way to lead a horse? A. The halters are stronger and more secure. 20

Q. How many years have you led horses in that manner? A. Well, all the time I have been in the business. 20

BY THE COURT:

Q. I suppose the only way of leading a horse with a bit, or the general way, would be to put a bridle on him, wouldn't it? You would not bit a horse except to put a bridle on him, would you? A. Well, if you wanted to bit him you would have to put a bridle on him. 30

Q. Now, is a horse sometimes led with a bridle? A. Well, I never was allowed to lead him with a bridle.

BY MR. KUEBLER:

Q. Is there any other reason why a halter is the proper way of leading a horse through a city 40

John A. Nicoll. Called by Defendant. Cross.

street? A. Why, I find it is the safest way to lead them through. You will break the bridles when the bit begins to hit the roof of the mouth, and they break the bridle—you find it that way.

Q. Are you familiar with the way horses are led at sales stables?

10 Mr. McGeehan: I object to that. Inside a yard or in a stable would not be relevant.

The Court: That would be a different situation, wouldn't it, at the sales stable?

Mr. Kuebler: I presume it might be.

Q. When you are leading a horse with a halter, is it proper to hold the halter with one hand and the rope with another? A. Yes, as close up as you can, to be safe away from the horse, from stepping on you, you know.

20

Q. Is it proper to lead a horse close? A. The man that is leading the horse, you mean?

Q. Yes. A. Well, fairly close, you know.

CROSS EXAMINATION BY MR. MCGEEHAN:

Q. Mr. Nicoll, you still do horseshoeing for Mr. Weinstein and Mr. Wolf? A. Well, not Mr. Wolf now.

30

Q. For Mr. Weinstein you do? A. Yes.

Q. He is a customer of yours? A. Yes.

Q. A friend of yours? A. Well, I have known him for a few years.

Q. You want to help him, of course, in his case, don't you? A. Well, I do the best I can along the line.

Q. Now, this horse, "Nig" or "Nigger" was a strong horse, wasn't it? A. Well, he looked good and strong.

40

John A. Nicoll. Called by Defendant. Cross.

Q. And you only saw him four times in your life, didn't you? A. Yes, whatever they may be.

Q. When was that? A. I couldn't recollect.

Q. Well, do you know anything about it? What year was it? A. No, I don't remember.

Q. Was it recently? A. I couldn't say for sure.

Q. Well, was it in the last three or four months?

A. Oh, no, it was not in the last three or four months. 10

Q. Was it in the last year? A. Well, I believe it has been longer than that. I am not quite sure. I am not sure when it was.

Q. Was it two years ago? I mean, we want to get an idea of that, and you know and we don't know when you saw that horse. A. Well, maybe two or three years ago, I would imagine.

Q. Then you didn't see him until a year or two after he had this accident, did you? A. A year or two since he had the accident. 20

Q. After he had the accident. A. I don't believe I seen him after he had the accident.

Q. Do you know when the accident took place?

A. No, I don't remember.

Mr. McGeehan: I move that the testimony of the witness be stricken out as not showing the horse's habits or manner at a time prior to the occurrence of the accident. 30

The Court: The motion will be denied.

Q. Now, when you did see this horse, it was brought to your stable, was it, or to your blacksmithing place? A. No, we went and got him.

Q. Where did you go to get him? A. Chancellor Avenue.

Q. Where is your place? A. In Buffington Avenue, 24. 40

John A. Nicoll, Called by Defendant. Cross.

Q. How far is that from Chancellor Avenue? A. About five or six blocks.

Q. And did you know whether the horse had been locked up in the stable before you got him, or whether he had been working? A. I don't know.

10 Q. Of course, a horse that has been in a stable, any horse that has been in a stable for a week, not exercised, and let out, is likely to act a little differently than that same horse if he was working, isn't he? A. Well, some horses act differently.

Q. Well, as a rule, a horse that is not exercised, who has been cooped up in a stable, when he gets out, he is apt to be frisky and balky, when he ordinarily is not while he is working, isn't that so? A. Well, I never took much notice to that.

Q. You did not? A. No.

20 Q. Did you ever ride a saddle-horse after he has been locked up for about four or five days or a week?

Mr. Kuebler: I object to that. We are not dealing with a saddle-horse in this case.

The Court: I will sustain the objection.

Q. Have you had any experience with horses that have been locked up for a week? A. No, not as I can remember.

30 Q. You don't know anything about that, then, do you? A. I never take notice to that.

Q. Now, when a bridle is put on a horse and a bit is put in his mouth, did you ever have a horse with a bit in his mouth or a bridle on—did you ever have anything to do with a horse like that? A. When we drive them we put bits in their mouths, generally.

Q. Do you drive horses, sometimes? A. Yes, sir.

40 Q. Attached to a wagon? A. Yes.

John A. Nicoll. Called by Defendant. Cross.

Q. Now, a bit in a horse's mouth gives you better control over that horse, whether you are leading him or driving him, doesn't it? A. Not when you are leading him; when you are driving him.

Q. Well, a bridle is stronger than a halter, isn't it? A. No, it not as strong.

Q. It is not? A. No.

Q. A bridle is made of leather, usually, and goes around the head of the horse? A. Yes. 10

Q. And behind the ears, and is strapped on to his whole head and attached with a bit to his mouth, isn't it? A. Yes.

Q. And a halter is made of canvas, usually, isn't it? A. No, leather, generally. Good halters are made out of leather.

Q. Leather and canvas—you have seen them made out of canvas, haven't you? A. Yes. 20

Q. Now, that isn't any stronger than a bridle, is it? A. A great deal stronger, yes.

Q. But that has no effect on a horse if a horse balks, or kicks or pulls, if a man's strength is pitted against a horse's strength, without any aid by way of a check on the mouth of the horse with a halter, isn't that so? A. Which way do you mean?

Q. When a horse balks or pulls or tries to run away, if you have got a halter on him alone, it is the man's physical strength against the horse's physical strength, isn't it? A. Yes, sir. 30

Q. And when he has a bridle on and a bit in his mouth, the man's strength is assisted by checking the horse through the bit in his mouth; isn't that true? A. Oh, you can do that; but a halter is the—

Q. Well, how could you do it with a halter? How could you do anything with a halter except pull against the horse? A. Well, you have a better chance to hold him with a halter in leading him that way. 40

John A. Nicoll. Called by Defendant. Cross.

Q. Well, you have just got to pull against the horse, haven't you? You cannot add anything? A bit hurts a horse, doesn't it? A. Yes; sometimes it bothers him when you are leading him and makes him worse.

10 Q. A bit, when it is pulled on or held tight, hurts a horse's mouth, doesn't it? A. I don't know if it hurts him or not.

Q. Don't you know whether it hurts him or not? When you pull on the reins of a horse, to stop him, what effect has that on his mouth? A. Well, it will stop him. When you pull him with the reins you will stop him—that is, driving him.

Q. There is no danger of a bridle breaking any more than a halter, is there? A. In leading him it is very much.

20 Q. What would break, what part of it would break? A. The side pieces, on the side.

Q. You mean the leather side pieces that lead from the head down to the bit might break? A. Yes, sure.

Q. They would not be any more likely to break than pulling a saddle horse by the reins, would they? A. When you are driving a horse, I said; you are not pulling on the side-strap at all, you are just holding the bit.

30 Q. When you are holding the reins leading from a bit, underneath the horse's mouth, you don't have to pull on the side pieces, do you? A. Sure you have to pull on them.

William Wolf. Called by Defendant. Direct.

WILLIAM WOLF, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. KUEBLER:

Q. Where do you live, Mr. Wolf? A. 468 Chancellor avenue, Irvington.

Q. What business are you in? A. Dairy.

Q. And were you in that business in May of 1925?
A. Yes, sir. 10

Q. How long have you been in that business?

A. Oh, I have been in that all my life, and my father has been in that.

Q. Were you using horses in May, 1925? A. Yes, sir.

Q. Had you used horses up to that time? A. Yes, sir.

Q. How many horses did you have on May 10, 1925? A. Three. 20

Q. How long before that had you been working around horses? A. All my life.

Q. Now, did you have a horse at that time named "Nigger"? A. Yes, sir.

Q. What color was "Nigger"? A. Black.

Q. And how heavy a horse was "Nigger"? A. Well, I judge him to be between 1150 to 1200.

Q. Did you buy the horse or not? A. I bought the horse.

Q. How long had you had the horse? A. Four 30 years.

Q. Do you know about how old the horse was?

A. When I sold him or when I bought him?

Q. Well, how old was he in May, 1925? A. About eleven and one-half years.

BY THE COURT:

Q. How do you know that? A. I can tell the age of a horse.

Q. By the teeth? A. Yes. 40

William Wolf. Called by Defendant. Direct.

BY MR. KUEBLER:

Q. What type of horse was it? A. Well, a slow, nice working horse.

Q. What had you used him in? A. Milk wagon mostly; a little on the farm.

10 Q. Had you used him just prior to May 10, 1925?
A. Well, I was using him.

Q. Were you using him every day or not? A. Well, I had him in that Sunday. He stayed in Sunday. He was working Saturday.

Q. These pictures which you gave me are pictures of the horse? A. Yes, sir.

Q. And that is the horse "Nigger" (indicating)?
A. That is him.

20 Q. And that is the horse that Mr. Weinstein got on May 10, 1925 (indicating)? A. Yes, sir.

BY MR. MCGEEHAN:

Q. When were they taken? A. Just about a week or a couple of days before the accident.

Q. Before the accident? A. Yes, sir.

30 Mr. McGeehan: I have no objection to those that show the horse from the side, but there is a distortion when taken from the front. I object to this one but not to those (indicating).

Mr. Kuebler: I offer these two photographs in evidence.

(The photographs referred to are received in evidence and marked Exhibit D-1.)

40 Q. Now, Mr. Wolf, on that day in question, May 10, 1925, did Mr. Weinstein get the horse from you? he did not say he was going to take him or not, and
A. He came Saturday, the 9th, to see the horse, and

William Wolf. Called by Defendant. Direct.

he went away and came back Sunday and asked to try him out, so then he took him and he went away with him.

Q. About what time Sunday was that? A. Between four and five.

The Court: You mean in the afternoon, I suppose. 10

The Witness: Yes, sir.

Q. And did you deliver the horse to him? A. No, sir.

Q. When he left there what did he have on the horse? A. Just a halter and a collar.

The Court: What kind of a halter was that?

The Witness: a leather halter with a rope. 20

Q. An all-leather halter? A. Yes.

The Court: A rope lead, I suppose.

The Witness: Yes, sir.

Q. And did you see him leave with the horse?
A. I seen him out as far as the end of the lot.
After he got in the street I didn't bother.

Q. And how was he going when you saw him leave? A. Nicely, the same as any other horse would go behind. 30

Q. Was the horse walking or running? A. Walking.

Q. Was he prancing any? A. No, not that I noticed.

Q. Was he skittish at all? A. No, sir.

Q. Did you see the horse again that day? A. No, sir.

William Wolf. Called by Defendant. Direct.

Q. When did you see the horse again after that?

A. I believe it was between four or five days after; I don't know for sure.

Q. And where did you see the horse then? A. Back in my stable.

Q. He brought the horse back to you? A. Yes, sir.

10 Q. And did he tell you at that time why he brought the horse back? A. He said he was too slow for his business.

Q. During the period of time that you have owned horses, have you led horses around very much? A. No, sir.

Q. Have you seen horses led around very much? A. Yes.

20 Q. Do you know what the practice is of leading horses around? A. Well, all that I have seen has always been handled with halters.

Q. What types of horses have you seen led around by halters? A. Truck horses, and express horses, bakeries. I live near a stable where they had about forty horses.

30 Q. During the period of time that you had this horse, "Nigger", did you ever at any time find the horse to be spirited in any way? A. What do you mean, excited?

The Court: Excited, yes.

The Witness: No, sir.

Q. Did you ever find the horse to be mischievous in any way? A. No, sir. He was as gentle as a lamb.

Q. You never saw the horse kick anybody in that period of time? A. No, sir.

William Wolf. Called by Defendant. Cross.

CROSS EXAMINATION BY MR. MCGEEHAN:

Q. How many wagons did you use in your milk business? A. One I had.

Q. And how many horses did you have? A. Three.

Q. What did you use those horses for? A. I had a little farm besides.

Q. And did you use all the horses for your milk wagon? A. Well, there was one horse, the smallest one, we had him pensioned off; we used to swing him in once in awhile. 10

Q. What horse were you going to use on your milk wagon when you sold this horse to Mr. Weinstein? A. The one I pensioned off.

Q. And you were using that on your milk route, weren't you, from time to time? A. In between, once in awhile, when the other horse had about six or seven days, we used to put him in one day and leave the others stand. 20

Q. Now, in the picture that you have put in evidence, that horse is not attached to any vehicle in that picture, is it? A. No.

Q. That horse has a bridle and bit on him there and he is being held by a girl, isn't he? A. Of course.

Q. Now, you wouldn't let that child sit on the back of that horse if you had a halter on him and no bit in his mouth at all, would you? A. Oh, yes; we often done that. 30

Q. The young lady there, is that your wife? A. No, sir.

Q. She is holding on the horse by the reins underneath the bit, isn't she? A. Yes, just drawing on it.

Q. And a horse with a bit in his mouth and the bridle on, of course you can leave that bridle on and 40

William Wolf. Called by Defendant. Cross.

take all the collar and trappings off, couldn't you?

A. Yes.

Q. Your bridle is made in such a way that you can put that bridle on with a bit and reins the same as on a saddle horse, isn't it? A. Yes.

10 Q. That makes a horse pretty safe, doesn't it? A. Well, I don't know. I will tell you the reason why: Take notice to that bridle, how many little buckles it has up there top and bottom, where a halter is one ring and is stitched with thread on each side.

Q. Now, you are a friend of Mr. Weinstein, the defendant? A. No, not that—I am here to tell the truth.

20 Q. I know that. You are a friend of Mr. Weinstein, aren't you, the defendant in this case? A. No; just as I come here as a witness, that is all I come here for.

Q. I will ask you again, until you tell me. I want to know if you are not a friend— A. (Interposing.) I just merely know him, that is about—well, since the time he started to take the horse.

Q. Did you know him before that? A. No, sir; I knew he was around somewhere. I used to see him on the route, but I never knew him to speak to.

30 Q. When had he seen this horse that he planned to buy? A. Saturday.

Q. Had he ever seen him before that? A. I used to see him on the route.

Q. Had he ever talked to you about the horse? A. No.

Q. Had you been trying to sell that horse for some time? A. No. We intended to keep him; and then we was getting a machine.

40 Q. Now, you said he brought him back about four, five or six days after this accident? A. I don't

William Wolf. Called by Defendant. Cross.

know whether it was four, five or six days; around that time.

Q. I am not asking you the specific time—some few days, anyway? A. Yes, that is true.

Q. And you saw him, though, after he took the horse away, between the time he took the horse away and the time he brought it back to you—you saw him, didn't you? A. The horse? 10

Q. Saw Mr. Weinstein. A. Yes, I did see him.

Q. You saw him the night of the day that he took the horse away at your home, didn't you? A. Yes.

Q. He came there crying, didn't he? A. I don't know if he was crying or not.

Q. Well, he told you that he had had an accident with the horse, didn't he? Didn't he? A. He said he was in an accident.

Q. And you then saw a lawyer, didn't you, who advised you not to take any pay when he returned the horse, isn't that so? A. No, he never says that. 20

Q. You did not take any money for the time he had the horse? A. No.

Q. And the reason you did it was that some lawyer advised you not to, is that it? A. No, I didn't do it for that reason.

Q. But you were advised by an attorney not to take money, weren't you, for the hire of the horse? A. No, he didn't say I should not take it. 30

Q. Did you consult a lawyer about it after you had heard he had an accident? A. I went to find out—

The Court: Did you or didn't you?

The Witness: Yes.

Q. And the lawyer that you consulted advised you not to take pay for the time he had the horse, 40

William Wolf. Called by Defendant. Cross.

isn't that right? A. No, he didn't say I should not take it.

Q. Now, when Weinstein saw you that night and told you he had an accident with the horse, did he say to you at the same time that he did not know what caused the horse to jerk and kick? Did he tell you that? A. I can't really remember that.

10 Q. You don't remember that? A. No.

Q. He talked about the horse jerking and kicking, though, didn't he? A. No, he didn't say; he just said he had an accident.

Q. What kind of an accident did he say he had? A. He didn't tell me what kind; he just said he had an accident with the horse.

20 Q. Well, didn't you, as an individual talking to another individual about that, ask him what happened, and didn't he tell you what happened? A. He just says he had an accident.

Q. Yes, and did he tell you that the horse kicked a boy? A. He did not say that.

Q. You didn't know whether it went through a plate glass window or kicked a child, is that right? A. He just said he had an accident on the street, that is all he told me.

30 Q. He came all the way over to your house, didn't he, and saw you and your wife, didn't he? A. He saw me.

Q. Your wife was there, wasn't she? A. No, she wasn't home; no, she wasn't there.

Q. She was not there at that time? A. No, sir.

Q. Wasn't Weinstein crying when he came there? A. He wasn't crying when I seen him. He might have been crying before, but he was not crying when I seen him.

40 Q. And didn't he tell you that the horse jerked and kicked a boy? A. He didn't say that.

William Wolf. Called by Defendant. Cross.

Q. Didn't he tell you that a boy had been hurt?

A. He says a boy had been hurt.

Q. All right. Now, he told you that he had had an accident with the horse and a boy had been hurt, is that right? A. That is all I know.

Q. Well, now, did he tell you that the boy had been hurt by being kicked by the horse? A. He did not say that.

10

Q. Didn't you ask him what happened when he came to your house and went in there to talk about the accident? A. He didn't come into the house; he went right off again.

Q. Well, where did he talk to you, right on the front porch? A. Right out in the yard.

Q. He did not have the horse with him, did he? A. No.

Q. And when he spoke to you, didn't you ask him anything about what happened? A. He says he had an accident.

20

Q. Did he tell you—you were interested—it was your horse, wasn't it? You were interested in what had happened, weren't you? A. Well, just that he had an accident, that is all.

Q. But did you know whether anyone was killed or not? A. No.

Q. You knew a boy had been hurt? A. Been hurt, that is all.

30

Q. Well, now, didn't he tell you that the accident was that the horse jerked and kicked a boy? A. He just says that the boy got hurt with the horse; that is all he told me.

Q. What did he tell you about how the boy got hurt with the horse? A. He didn't say.

Q. Did he say to you he did not know what made the horse kick? A. He didn't say the horse kicked.

40

William Wolf. Called by Defendant. Cross.

Q. He didn't say the horse did not kick, did he?

A. He says he had an accident; that is all he told me.

Q. Now, isn't it a fact that he kept the horse about three weeks, and not four or five days? A. No.

10 Q. He did not have it that long? A. No, he had the horse only about eight days.

Q. About eight days? A. That is all; seven or eight days.

Q. And you sold that horse a few days later to the Fischer Baking Company? A. No, I did not; I sold him to Vogel & Schonfeld, I guess.

Q. Now, before this time this horse was laid up in the stable part of the time, wasn't he? A. No, he was not. He was the best one we had.

20 Q. You were not using that horse on the farm at the time this occurred, were you? A. Yes, on and off a little.

Q. Which horse? A. The gray one, and that other one, the one that was pensioned off.

Q. Well, you were also using the one that was pensioned off on the milk wagon? A. No; just when this other one was standing.

30 Q. You were going to revoke the pension and put him on the wagon? A. Yes, sir. He only died here a year ago, so I ain't got any.

Q. Now, weren't you using that pensioned horse on your milk wagon sometimes? A. Just when Weinstein had this one.

Q. But you used him then, didn't you? Now, you didn't take the horse off your milk wagon that you were using, and give him to someone else to use, did you? A. Well, I told you that I used to use that one five, six days, sometimes seven days.

William Wolf. Called by Defendant. Cross.

The Court: Which one is that?

The Witness: The other one; and then I would swing in the other one and left the black one standing for a day.

Q. And how many days would you run the other horse on the wagon when you left the other one standing still? A. Just one day a week. 10

Q. You would let the other little horse stand for a time, wouldn't you? A. He was too old.

Q. How old was that horse? A. Twenty-five years.

Q. Why did you want to get rid of "Nig" if the other horse was twenty-five years of age? A. Because we were getting a machine.

Q. You had not bought one, had you, at that time? A. We was getting it; it was coming in. 20

Q. This horse would sometimes lay up a long while in the stable, wouldn't he? A. He would never lay up long.

Q. Were you present on November 20th, at your home, when Mrs. Wolf, your wife, was interviewed by a man about what happened in connection with this? A. I can't remember.

Q. That horse did weigh about one thousand one hundred and fifty pounds, didn't he? A. That was his weight. 30

Q. About ten years old? A. At that time?

Q. Yes. A. No, he was about eleven-fifty.

The Court: You mean by that eleven and one-half?

The Witness: Yes.

Q. You say that it is not a fact that that horse was standing in your stable for at least a week prior 40

William Wolf. Called by Defendant. Redirect.

to the time that Mr. Weinstein called for that horse? A. No, sir.

Q. That is not true? A. No, sir.

Q. Did you tell Weinstein that he had been standing in the stable before he went out with it?

A. No, sir.

10 Q. Did he ask you anything about that? A. No, sir.

Q. That was a good strong horse, that horse "Nig", wasn't it? A. Well, you know his weight tells whether he was strong or not.

The Court: He was not windbroken, I suppose?

The Witness: No, sir.

20 REDIRECT EXAMINATION BY MR. KUEBLER:

Q. What effect would it have if the horse was in the stable for a week? A. Well, I will tell you: If you leave a horse stand for a week in a barn, he is apt to get the colic or either spinal meningitis; you are apt to give him some sickness.

30 Q. Would the horse act frisky or not after being in the barn for a week? A. Well, sometimes they do act frisky when they are in a week, according to what kind of a horse he is.

Q. Does it depend upon the kind of a horse? A. Yes.

Q. The age of the horse? A. Yes.

Q. And the condition of the horse? A. Yes, sir.

Q. And the food the horse had? A. Yes.

Q. And the care that the horse had? A. That is true.

40

*William Wolf. Called by Defendant. Recross.
Nathan Speizer. Called by Defendant. Direct.*

RECROSS EXAMINATION BY MR. MCGEEHAN:

Q. You have cows, haven't you? A. I did have; aint got no more cows.

Q. Even your cows, when they have been kept locked up, would act like a bull in a bull-ring, after being locked up for awhile, and break through the fences? You have had that experience yourself, haven't you? A. Cows don't get out. I didn't have any experience with them, because when we put the cows in the barn they stay there until they go to slaughter. 10

Q. Well, haven't you had fences broken, even by cows trying to get out after they had been kept in?

A. I am just telling you, we never let them out. They stay in before they go to the slaughter house. 20

The Court: You have no pasture?

The Witness: No, sir.

NATHAN SPEIZER, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. KUEBLER:

Q. Where do you live, Mr. Speizer? A. 126 30
Ridgewood Avenue.

Q. And on the 10th day of May, 1925, were you in the vicinity of Berkshire Place? A. Yes, sir.

Q. And did you see an accident happen? A. Yes, sir.

Q. What side of the street were you walking on? A. On the righthand side, on the same side the accident happened; the righthand side towards Union Avenue. 40

Nathan Speizer. Called by Defendant. Direct.

Q. Where were you going? A. I was going to Union Avenue to get the bus.

Q. Where were you going? A. Visiting a brother of mine.

Q. Had you been to see your brother or were you going to see him? A. Coming from my brother, leaving my brother's house.

10 The Court: Was he with you or were you alone?

The Witness: No, alone.

Q. At the time the accident occurred, where were you with relation to Union Avenue, how far from Union Avenue? A. Well, I should judge about 100 feet, 125 feet.

20 Q. Tell us what you saw. A. Why, Mr. Weinstein was leading a horse, and when he got in front of that particular house the boy nearly ran into the horse with the bicycle, and he fell over near the curb, with the bicycle on top of him.

Q. What side of the street was the horse on? A. The righthand side.

Q. Did you see the bicycle before? A. No, sir.

Q. You did not see where the bicycle came from? A. No, sir; it come out of the yard.

Q. Out of where? A. The yard, the driveway.

30 Q. Did he come out of the yard on the same side of the street that you were on? A. Yes, sir.

Q. And when he came out of the yard what direction did he come? A. Heading for the horse.

Q. Did the bicycle come in contact with the horse? A. I couldn't say.

Q. Did it come close to the horse? A. Close to the horse.

40 Q. How close would you say to the horse that he got in contact? A. Well, he was practically—less than a half a foot.

Nathan Speizer: Called by Defendant: Cross.

Q. What happened to the horse? A. The horse made a fast move forward.

Q. Prior to that time you had observed the horse? A. I saw him walking down the street.

Q. And how was he walking then? A. Walking like any ordinary horse would walk.

Q. Was the horse prancing any? A. No, sir.

Q. Was he skittish at all? A. No, sir.

Q. Did you observe anything unusual about the way the horse was walking at all? A. No, sir.

Q. Did you notice how the horse was being led? A. By the halter.

Q. How close to the curb was the horse? A. About two or three feet.

Q. After, where did the horse go? A. To the left of the road.

Q. Was Mr. Weinstein there with it? A. Yes, sir.

Q. Was Mr. Weinstein holding onto the horse then? A. Yes.

Mr. McGeehan: I object to these questions as all leading.

Q. Where was the boy? A. The boy was laying on the sidewalk.

Q. And on what side of the street? A. On the right.

Q. Where was the bicycle? A. On top of him.

Q. Did you notice whether Mr. Weinstein was smoking any cigarette? A. I didn't notice it.

Q. Just before the boy was hurt, did you notice the horse do anything unusual? A. No, sir.

CROSS EXAMINATION BY MR. MCGEEHAN:

Q. Where do you live, Mr. Speizer? A. 126 Ridgewood Avenue?

Nathan Speizer. Called by Defendant. Cross.

Q. Are you married? A. Yes, sir.

Q. And you live there with your family? A. Not yet, no; I only got married the 12th of February.

Q. And what is your business? A. Today, taxi business.

Q. That is, you drive a taxicab? A. Yes, sir.

10 Q. What was your business then? A. Produce peddler, fruit.

Q. Vegetables and such? A. Yes, sir.

Q. How long have you been a taxi driver? A. Well, it is going on two years now, it will be two years.

Q. Are you related to Mr. Weinstein? A. No, sir.

Q. How long do you know him? A. Since the accident.

20 Q. And when did you meet him? A. The day of the accident I saw him, and a couple of days afterwards.

Q. How did you come to see him a couple of days afterwards? A. I was going down to the market and I met Mr. Weinstein standing on Belmont Avenue.

Q. Just accidentally? A. Yes, sir.

Q. Belmont Avenue and where? A. Avon.

30 Q. And you never had met him before? A. No, sir.

Q. You did not know him at all? A. No, sir.

Q. Were you driving a taxi at the time or walking? A. I was walking down the market.

Q. And then you saw this man standing on the corner down in Newark, Belmont Avenue, is that right? A. Yes, sir.

Q. When was this, the daytime or night time? A. About seven in the morning.

40 Q. Seven in the morning? A. Around that time.

Nathan Speizer. Called by Defendant. Cross.

Q. Then you went up to him, is that right, you went up and spoke to him? A. Yes, and I asked him about the boy.

Q. And that is how you came to be a witness here, is that right? A. Yes, sir.

Q. Were you subpoenaed to come here today? A. A year ago, a year or two; this is the fourth or fifth time I am here now. 10

Q. Were you subpoenaed—you don't know what I asked you then—were you subpoenaed to come here today? A. Not today, no.

Q. You came without a subpoena? A. Yes, sir; today.

Q. And in the time intervening since that accidental meeting on Belmont Avenue, have you come to be a very good friend of Mr. Weinstein? A. Not exactly; no friend. 20

Q. You see him once in awhile, don't you? A. Yes.

Q. You visit him at his house? A. No, sir.

Q. You have been to his house, haven't you? A. No, sir.

Q. Has he been to yours? A. Yes, sir.

Q. Now, you say you happened to come along that street that day? A. Yes, sir.

Q. Where did your brother live? A. 63 Berkshire Place. 30

Q. What was his name? A. The same, Speizer.

Q. I mean, what is his first name? A. Herman Speizer.

Q. How long did he live there, do you know? A. He is living there since 1916, I believe, if I aint mistaken.

Q. Does he still live there? A. Yes, sir.

Q. And on this day you were walking along Berkshire Place? A. Yes, sir. 40

Nathan Speizer. Called by Defendant. Cross.

Q. In which direction were you walking? A. Towards Union Avenue.

Q. What direction is that, north or south? A. I believe it is west.

Q. Were you walking on the left or right side of the street? A. On the right side.

10 Q. As you went toward Union Avenue? A. Yes, sir.

Q. Now, did this horse come along the street on the side you were on? A. He was on the same side I was on.

Q. And was he going in the same direction as you? A. Yes, sir.

Q. Well, where was he when you first came onto that block? A. About fifty feet in front of me.

20 Q. Did you see what street he came from? A. Did I see?

Q. He was already on the block when you got on the block, is that right? A. That is it.

Q. And did you come out of your brother's place or did you come around a corner? A. I came out of my brothers' place.

Q. And how far is your brother's place from where the boy was hurt? A. About half a block or a block; about two blocks altogether.

Q. Two blocks away? A. Altogether, yes.

30 Q. So you had been walking for quite some distance along Berkshire Place—I mean for over a block anyway? A. Yes, sir.

Q. Now, when you were walking along the block that the accident happened on, how close did you get to the horse before you noticed it? A. Before I noticed it—I was in back of it all the time.

Q. Was it walking about as fast as you? A. About the same pace.

40 Q. And where were you bound for then? A. Union Avenue, for the bus line.

Nathan Speizer. Called by Defendant. Cross.

Q. And as you went along there, before the boy was hurt, were you paying any particular attention to that horse? A. Not **much**.

Q. When did you first pay attention to it? A. Well, I paid practically no attention and did pay attention. There was nothing much around there outside of the man walking a horse, and the boy's mother was sitting on the stoop—there was nothing to pay attention. 10

Q. You did not know the boy's mother at that time, did you? A. She was about the only woman sitting on the stoop there.

Q. You saw some woman sitting on the stoop? A. Yes, sir.

Q. Did you notice her before the accident or after? A. After.

Q. Now, when you saw this occur—you did not see that boy come out of any alley—you figured that out, didn't you? A. He ran right into the horse out of the alley. 20

Q. You figured out that he must have come out of the alley? A. No, sir.

Q. Did you see him come out of there? A. I seen him ride out.

Q. What kind of an alley did he come out of? A. A driveway.

Q. Leading to what house or property? A. It leads out to Kuna Terrace. 30

Q. Now, when he came out, as you say, of a driveway, did he cross the sidewalk in front of you then?

A. He was on the sidewalk in front of me, like.

Q. Where were you, how near to the horse were you when this boy was hurt? A. About fifty feet.

Q. Fifty feet? A. About that.

Q. Behind him or ahead of him? A. Behind him. 40

Nathan Speizer. Called by Defendant. Cross.

Q. And you say you saw this boy then come out on a bicycle and cross the sidewalk? A. A driveway, yes.

Q. And that was the sidewalk on the side of the street where the horse was, is that right? A. Yes, sir.

10 Q. Now, when the boy was crossing the sidewalk, where was the horse? A. About in front of him.

Q. Right in front of him? A. Yes, sir.

Q. Yet you say you did not see that bicycle come in contact with the horse at all, did you? A. Well, I said the bicycle come within a half a foot of touching the horse.

Q. The bicycle, as far as you know, didn't touch the horse at all, did it? A. I don't know if it did or not.

20 Q. Well, now, what part of the horse did the boy turn after he come out of there at any time? A. The rear of the horse.

Q. The rear of the horse? A. Yes, sir.

Q. And did the horse kick? A. No, sir.

Q. What? A. No, sir.

Q. Well, what hurt the boy, do you know? A. I don't know. I believe he got hurt from hitting the pavement—that is concrete over there—and the bicycle, with his head.

30 Q. Oh, you think that maybe neither the boy nor the bicycle nor anything, no part of him, ever touched that horse, is that right? A. I believe not.

Q. You did not see the horse kick at all? A. The horse did not kick.

Q. You did not see the horse come down on the boy? A. No, sir.

Q. You saw, you said, the horse made a fast move forward? A. Yes, sir.

40 Q. Of course, you heard Mr. Weinstein say that on the stand, didn't you? A. Possibly did.

Nathan Speizer. Called by Defendant. Cross.

Q. Possibly—you surely did, didn't you? A. Maybe yes and maybe no.

The Court: The question is, did you hear him say that?

The Witness: I don't recall.

Q. You were in the court room here when he was testifying? A. Yes, sir. 10

Q. And you have talked over this case with him from time to time, haven't you? A. Yes, sir.

Q. And you are not related to him? A. No, sir.

Q. Now, do you remember that the horse made a fast move forward? A. Yes, sir.

Q. Or do you say that because you heard Weinstein say that in court here? A. I seen the horse make a fast move forward. 20

Q. You and Mr. Weinstein and Mr. Wolf have been together and talked over this case, haven't you? A. Yes; today and yesterday.

Q. You had lunch together, the three of you, yesterday, didn't you? A. Yes, sir.

Q. And did you give your name to the police or anyone at that time? A. There was no police there.

Q. You had never seen Weinstein before in your life before that day? A. Not before that day. 30

Q. Why didn't you come up and talk to him at the time he stood there with the horse? A. I didn't care to be bothered.

Q. What? A. I didn't want to be bothered.

Q. You didn't want to be bothered? A. In other words, I wasn't going to give him my name for a witness.

Q. Well, why did you go and give him your name for a witness when you accidentally ran into him 40

Nathan Speizer. Called by Defendant. Cross.

on Belmont Avenue? A. I seen him with the same particular horse, so I walked over and asked him how that boy was, and he told me he was in the hospital.

Q. He told you that, did he? A. Yes.

10 Q. Did you give him your name then? A. He started to plead with me, and then I give him my name.

Q. He pleaded with you to give him your name? A. Yes.

Q. You didn't think that he had anything to do with the boy being hurt, did you? I mean, the horse had not kicked him, and he had not collided with the horse, is that right? A. Did I think what?

20 Q. When you gave your name, did you think that anybody was making any claim against Mr. Weinstein? A. When I gave him my name?

Q. Yes. A. Well, he told me he expected it, and that is why I give him my name.

Q. And did he say anything to you why he expected it? A. Did he say anything?

Q. Yes. A. No.

Q. Now, is this Kuna Terrace a street? A. It is supposed to be one.

30 Q. Do you know what number this happened in front of? A. 172, I believe.

Q. And how many doors away from Union Avenue? A. About two or three houses; I am not sure.

Q. And you say that Kuna Terrace comes in right there? A. The driveway runs toward Kuna Terrace.

The Court: Is that a building or a street, Kuna Terrace?

The Witness: A street.

Nathan Speizer. Called by Defendant. Cross.

Q. Now, did you give the name to the lady who sat on the porch and who later came to the boy that was hurt? A. No, sir.

Q. You did not give your name? A. No.

Q. Did you make yourself known to anybody or not there at all that day? A. No, sir.

Q. Did you know anybody who saw you there that day at all? A. Mr. Weinstein did. 10

Q. Mr. Weinstein? A. Yes.

Q. Well, he did not remember seeing you, did he, when you came up to see him? A. I don't know whether he did or not.

Q. Did you help the boy up? A. I was going to run over and help him, but his mother was there ahead of me.

Q. You did not go to the boy, did you? A. I made an attempt to get to the boy. 20

Q. But you did not get to him, did you? A. No, sir; his mother was ahead of me.

Q. And did you go over and talk to Weinstein by his horse that day? A. No, sir.

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

Q. Do you run your own taxi or work for somebody? A. Right now, my own.

Q. Your own? A. Yes.

Q. Newark, do you run? A. Yes, sir. 30

Mr. Kuebler: We rest, your Honor.

The Court: Any rebuttal?

Mr. McGeehan: No rebuttal, your Honor.

The Court: Is the case closed, then?

Mr. McGeehan: I have one witness, Mr. O'Toole. 40

Raymond O'Toole. Called in Rebuttal. Direct.
Evelyn Kastner. Called in Rebuttal. Direct.
Evelyn Kastner. Called in Rebuttal. Cross.
Evelyn Kastner. Called in Rebuttal. Redirect.

RAYMOND JOSEPH O'TOOLE, recalled in behalf of plaintiffs in rebuttal.

DIRECT EXAMINATION BY MR. MCGEEHAN.

- 10 Q. Did you see this man that just left the stand in the vicinity of that horse—the man that sits in the second row (indicating)? A. No. That is the first time I seen him was yesterday; he was talking to Mr. Weinstein here in the court room.

EVELYN KASTNER, one of the plaintiffs, recalled in her own behalf, in rebuttal.

20 DIRECT EXAMINATION BY MR. MCGEEHAN:

- Q. Mrs. Kastner, did you see this gentleman that just left the stand in the neighborhood or anywhere near the horse or the boy that day? A. No, sir.

CROSS EXAMINATION BY MR. KUEBLER:

Q. Mrs. Kastner, you were very much excited that day, were you not? A. No, I was not.

- 30 Q. You knew your boy was injured, didn't you? A. Yes, I did.

Q. And you thought he was quite badly injured, didn't you? A. I know he was badly injured.

Q. And yet you were not excited? A. No.

REDIRECT EXAMINATION BY MR. MCGEEHAN:

Q. What were you, how were you? A. I didn't know what I was at the present time. I had the boy in my lap and I fell over, and that is all I remember.

40

Lucy Lock. Called in Rebuttal. Direct.

LUCY LOCK, sworn in behalf of plaintiffs in rebuttal.

DIRECT EXAMINATION BY MR. MCGEEHAN:

Q. Mrs. Lock, you live on the block where this little boy lives, do you not? A. Yes.

Q. And do you remember seeing him after he was injured? A. I do. 10

Q. And did you see him hurt or not? A. I did not see him hurt, no.

Q. And I questioned you, did I not? A. Yes, sir.

Q. And you told me you had not seen the accident? A. I did not see the accident.

Q. But were you in the vicinity immediately after it occurred? A. I was.

Q. Mr. Speizer, who sits at the end of the second row, who just left the stand—did you see him there after this accident? A. I don't recall seeing him. 20

Q. And were you at the sidewalk near where the boy was in the street there? A. I was right beside his mother after the accident.

Q. Did you see that boy before he was hurt by the horse? A. Well, not—I can't say how soon before I saw him.

Mr. Kuebler: I object to that, your Honor. 30

Mr. McGeehan: There is no question before the Court.

Q. When did you last see this boy before you saw him after he was injured.

Mr. Kuebler: I object to it, your Honor.

The Court: The question may be answered.

A. Well, I can't just recall how soon before, but I did see him pass the door on his bicycle. 40

Lucy Lock. Called in Rebuttal. Direct.

Q. And what door was he passing then? A. Where I live.

Q. And where do you live? A. On Berkshire Place.

Q. What is the number? Do you still live there?

A. No, I do not.

Q. What was the number when you lived there?

10 A. 137, I believe.

The Court: That is on the other side of the street, then?

The Witness: No, it is on the same side. I believe it is 137, isn't it? I am all balled up about the number.

Q. You are not sure of the number? A. No.

20 Q. Well, now, think. Try to think what your address was. How long did you live at that place?

A. Two years.

Q. Well, now, when you got a letter, how was it addressed to you—Berkshire Place, what number?

A. It was right next door to Mrs. Kastner's; the number just slipped my mind.

Q. Well, now, try to think what your number was there. How long is it since you moved away from there? A. Going on four years.

30 Q. You lived next door to Mrs. Kastner, did you? A. Yes.

Q. And who was the landlord there? A. Mr. Block.

Q. Try to think what number, if you can. Do you remember seeing letters that have come addressed to you there? What number would they have on? A. It is the funniest thing. I can't recall that number.

40 Q. You saw the boy on the street, did you, Berkshire Place? A. Yes.

*Lucy Lock. Called in Rebuttal. Cross.
Defendant's Motion for Direction of Verdict.*

Q. What was the first you knew of his being hurt? Something you heard or saw? A. Screaming.

Q. Now, how long before the screaming did you see him pass, about how long. A. I should judge about, well, ten minutes.

Q. Now, by "ten minutes," do you mean ten minutes on the clock? A. Yes, I should judge that was the time. 10

Q. Then you did not see him just before he was hurt? A. No, I don't believe I did.

CROSS EXAMINATION BY MR. KUEBLER:

Q. Mrs. Lock, you do not remember anyone in particular there at that time except the mother, do you. A. That is all. 20

Mr. McGeehan: That is all we have, your Honor.

Mr. Kuebler: I move, your Honor, for the direction of a verdict on the grounds set forth in my motion for a nonsuit, and especially on the ground that, in view of all the testimony in the case at this time—I believe the evidence shows that the defendant was not guilty of any negligence which was the proximate cause of this accident; that, furthermore, the proximate cause of the accident was the negligence of the boy in riding this bicycle, either in close proximity to or by coming in contact with the horse. 30

The Court: I think the evidence in the case presents questions of fact which the jury ought to decide, and which it would be improper for the Court to decide. That naturally results in the denial of the motion, and that will be the order of the Court. 40

The Court's Charge.

Mr. Kuebler: May I have an exception.

The Court: An exception to that ruling will be noted.

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

Exception noted as ground of appeal.

10 The Court: We will come in at 9:30 tomorrow morning, and then you can begin the arguments, and the two arguments will come in together.

(Adjourned until tomorrow, Thursday, March 6, 1930, at 9:30 A. M.)

THIRD DAY.

20

Thursday, March 6, 1930.

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

30

Mr. Kuebler sums up for defendant.
Mr. McGeehan sums up for plaintiffs.
The Court charges the jury as follows:

The Court's Charge.

DUNGAN, J.:

40 Gentlemen, this is not a case which presents a situation where an animal has vicious and dangerous propensities and, because of such propensities, bites or kicks or otherwise injures a person near it, so that the owner or person in control of

The Court's Charge.

such animal must be shown to have previously had knowledge of such vicious or dangerous propensities before a person injured may recover damage for such injuries; but in this case it is a question of whether or not the person in control of the horse, in view of what he knew of the horse, or what, in the exercise of reasonable care, he ought to have known about it, before leading it in the public streets, was in the exercise of due care in his conduct and handling of it at the time of the accident to this boy. 10

The mere fact that the horse kicked the boy, if it did, is not sufficient to entitle the boy to your verdict. It must also appear that the management of the horse by Mr. Weinstein was negligent management and, not only that, but that such negligent management resulted in the boy being kicked by the horse and thus receiving the injuries to recover damages for which this suit is brought. 20

While a person has a right to lead a horse along the public highway, he is bound, in doing so, to use that degree of care and diligence which the nature of the horse and the circumstances require, and it is not necessary that the horse should have been vicious to make Mr. Weinstein negligent if the injury to this boy was because of his want of proper care and caution in the management of the animal. That is the first question you should consider and decide. 30

The testimony on the part of the plaintiff is to the effect that Mr. Weinstein was leading this horse on Berkshire Place, in Irvington, on Sunday afternoon, May 10, 1925, with a halter and rope lead; that the horse was prancing and shying along the street, and that Mr. Weinstein said later that it had not been out of the barn or exercised for about 40

The Court's Charge.

a week. The testimony on the part of the plaintiffs also shows that as the horse and Mr. Weinstein came to the place where the accident occurred, Mr. Weinstein loosened his hold on the rope lead and put it in the crook of his arm and lighted a cigarette near the head of the horse, which apparently frightened it, and it was then that it

10 kicked the boy and was seen almost immediately after about fifteen feet from where the boy was lying on the sidewalk, and that the man who had been leading him who, admittedly, was Mr. Weinstein, was on the otherside of the street and not with the horse, indicating, it is claimed, that it had broken loose from him.

Mr. Routh, a witness produced on the part of the plaintiffs, who said that he had several years in

20 handling horses with the artillery—four years, I think he said—in which period he had handled many thousands, said that a horse kept in the stable a week and not exercised would be liable to kick and to rear, and liable to run, and that if led with a halter it was likely to prance and shy and be skittish; and he gave it as his opinion, from long experience, that a horse taken out upon the street, in the exercise of care, should be bridled with a bit in his mouth and not led with a halter; and he

30 says that although it is usual to lead without a halter, he should think not in a public highway.

We have a statute in this State which says this: "No person shall cease to hold the reins in his hands while riding, driving or conducting a horse," and it says nothing about a lead or a halter. A violation of this statute is not negligence in itself, but because a violation of it is evidence which you may take in consideration on the subject of negligence,

40 I am calling it to your attention, if the person lead-

The Court's Charge.

ing this horse, Mr. Weinstein, conducted it as the witness O'Toole said he did, that is, by loosening his hold and putting it in the crook of his arm for the purpose of lighting a cigarette.

I have said to you that a violation of this statute does not constitute, in itself, negligence, but these statutes are adopted for the protection of the public. They constitute warnings to persons driving horses or leading horses that it is dangerous to act otherwise than in accordance with them; and danger reasonably to be foreseen and not foreseen and avoided, is a test of negligence. Therefore, you may take into consideration, as I have said, this statute if you decide that the horse was being conducted, at the time of the injury to this boy, as Mr. O'Toole said it was. 10

However, Mr. Weinstein denies that he made the statement attributed to him, that the horse had not been exercised for a week, and indeed the fact that it had not is also denied by Mr. Wolf, the owner of the horse, who testified that it had been used with the milk wagon the day before, and that it was used six days almost every week for delivering milk. He said that it was a quiet horse, about eleven and one-half years of age, a work horse weighing about 1150 to 1200 pounds. 20

The defendant Weinstein denies that the horse was skittish or that it was jumping up and down as it came along the street. He denies that he let loose his hold on the lead and says that he did not light a cigarette, that he had none in his mouth, and that the horse did not break loose from him. He testifies that in leading the horse he had two holds, his right hand holding the halter itself and his left hand holding the rope lead, and that while admitting that after the noise he heard he was on 30 40

The Court's Charge.

the other side of the street, he says the horse was there, too, and that he retained his holds on the halter and the lead. He did not see the boy or the accident. He says the first he knew he heard a noise like iron back of him, and that the horse made a quick move forward, and he heard a scream; but Mr. Speizer, who says he was on the same side of the street, going toward Union Avenue, first said that the boy ran into the horse with the bicycle and fell over and hit the curb; later he said that the boy came out of Kuna Terrace driveway and was on the sidewalk in front of him, and that he does not know whether the boy hit the horse or not, but that he was close to the horse, less than half a foot. He says that the horse did not kick, that the horse made a fast move forward, and that it was not prancing or skittish but was walking down the street, nothing unusual, and he said he had come some distance behind this horse, walking in the same direction, and had had the horse in view.

Of course, if this is the way the accident happened to the boy, by his running into the horse, or by coming out near to the back end of the horse, as Mr. Speizer says he did, within a half a foot from it, and that he fell as the result of that, then he is not entitled to your verdict, nor is his mother.

Mr. Weinstein, as I have already told you, testified to how he was leading this horse, and he says that a bit is only used for driving, that he controlled the horse this day with this halter. He says you can always hold a horse with a halter, and testifies, as I have already stated to you, that he did not lose his hold upon the halter and the lead at any time.

Mr. Nicoll, who is a horseshoer, says that the usual practice is to lead with a halter. He tells of

The Court's Charge.

his experience in horseshoeing, and that it is his practice to go to barns and get horses, shoe them and take them back, and to do that with a halter, because he says it is the safest way. He says that the bit backs up in the mouth and causes a horse to fuss around; that the halter is stronger and more secure than the bridle, and you have a better chance to hold a horse with the halter. He says that with the bridle there is the danger of the side-pieces, which are not so thick, breaking. 10

Mr. Wolf testifies that this horse was as quiet as a lamb, that he never saw him excited or mischievous; that on this day the horse had on a leather halter with a rope lead, and that is the way he has always seen horses handled when they are led, and that he has seen truck horses, express horses and bakery horses handled and always led with halters. 20

Now, gentlemen, I have not attempted to quote all the evidence, because you have heard two forty-minute arguments covering the proven facts in this case, in considerable detail; so from all the facts in this case, whether quoted by the Court or not, all of which you should take into consideration in your determination of this case, the question arises: Does it appear, by the preponderance of the evidence, that this boy was kicked by the horse, and that in the control and management of the horse Mr. Weinstein failed to exercise that degree of care which a reasonably careful person, with a familiarity of horses, for years, which Mr. Weinstein said he had, would and should exercise under the same or similar circumstances and conditions. If it does show that he so failed, then such a failure, if it resulted in injury to this boy, is negligence; and if you do so find, then you consider next the question of contributory negligence; that is, you consider whether or not this boy exercised such care for his own safety as he ought to have exercised. 30 40

The Court's Charge.

Again calling your attention to the testimony of Mr. O'Toole, he says that the horse as it went along was about three feet from the curb; that the boy started to pass to the left of him, and was about five feet from the horse when the horse kicked him. The boy says that he did not notice what the horse was doing but that he went in between the gutter and the horse; that he was about three feet from the gutter and five feet from the curb, which would bring him on the right side of the horse.

Mr. Speizer says, as I have already said, that the boy came out of Kuna Terrace driveway, and that while he does not know whether the bicycle hit the horse or not, he does know that, as the boy came out, he came less than a half a foot from the back end of the horse.

Now, we have another statute which is applicable to this situation, and that statute is this: "That a vehicle overtaking another shall pass to the left side of the overtaken vehicle." Now, we ordinarily would not call a horse a vehicle, but the statute has also something to say about that; and, in defining "vehicles," under the State Traffic Act from which I am reading, the legislature says this: "That the word 'vehicle' includes equestrians, led horses, and everything on wheels or runners, except street railway cars and baby carriages, unless otherwise specified." So, under the statute, both a led horse and a bicycle were vehicles and this act applies to both.

Now, if this boy went to the right of this horse, while that would not be negligence in itself, and while it may have had nothing to do with the kick of the horse, yet if you find that this statute was violated and that, as a result of that violation, this boy contributed to the kick which it is claimed he received, then he cannot recover; then you may con-

The Court's Charge.

sider, as I have already stated, this statute, and if you find that he did contribute by his own negligence to the happening of this accident, he cannot recover, even though you decide that Mr. Weinstein was negligent in his conduct and management of the horse. Of course, gentlemen, you do not expect a boy between ten and eleven years of age, which I understand this boy to have been at that time, to take the same degree of care for his own safety as a grownup man, and the law does not require him to do so. All the care which the law requires of a boy is that he shall take such care for his own safety as boys of his age, experience, intelligence and knowledge ordinarily and customarily take. That is all the care this boy was obliged to exercise for his own safety, and unless the evidence shows in the case, the preponderance, the greater weight of the evidence, shows, that he failed to exercise that degree of care, then there was no negligence upon his part; but if it does show that he failed to exercise the degree of care which boys of his age, intelligence, experience and knowledge usually possess and exercise, as a result of which this injury occurred to him, then he is not entitled to your verdict, and in that event, of course, your verdict will be in favor of Mr. Weinstein. If you decide that the negligence of Mr. Weinstein has not been shown by the greater weight of the evidence, your verdict should be in his favor; but if you decide both of these questions in favor of the plaintiff, that is, if you decide that the greater weight of the evidence shows that Mr. Weinstein was negligent in the control and management of this horse, as a result of which the horse kicked the boy, and that no contributory negligence on the part of the boy has been shown, then you come to the consideration of the question of damages.

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The Court's Charge.

This accident occurred on the 10th day of May, 1925, and resulted in severe injury to this boy's head. There seems to be some divergence on the part of the physicians as to the extent and character of the injury. As I understood Dr. Lovell, the X-rays showed that a spicule of the skull bone stuck out from the head, and that the lower part was attached to the rest of the skull. I am very sure that Dr. Christian testified that in his opinion a piece three inches long by two and one-half inches wide was entirely detached from the rest of the skull. Dr. Lovell testified that in his opinion there was a depression of the skull above the spicule. Dr. Christian testified that in his opinion there was a depression of the skull at the lower part of the detached piece, that is, that the detached piece had been pushed upward and inward about one-third of an inch. Dr. Washington, who examined the X-rays, and who examined the boy's head some two years after the accident, testified that in his opinion neither the X-rays nor his examination showed any depression of this fragment of the skull, but an elevation of it.

The mother testifies that this boy, although he was all right before, normal before, says that since the accident he has complained a lot of headaches, and the boy himself says he has had headaches; that he was home one day last week with headaches, and that every couple of months he complains of headaches for about a week, and says that he sits around the house and cries when you talk real harshly to him. She says that while she has no trouble in controlling him, he is very tempered at times, that he does not act as he should for a boy of his age, and that he is sulky at times. But Dr. Christian testifies that after the boy left the hos-

The Court's Charge.

pital there was no evidence of injury to the brain, that there was no symptomatic evidence of intracranial pressure, nor, from the eye tests which he made, was there any sign of intracranial pressure, pressure upon the brain. He testifies that there was no evidence of brain hemorrhage, that after June 17th this boy was continuously in good condition but was under observation, and he says that the headaches which he has now might be due to many things; that it is quite probable, if he had no headaches before, that those now are due to the injury, but that he has a defect in eyesight, in vision, which he thinks is not due to the injury, but thinks it is an old condition, which may cause it. 10

Dr. Washington testifies that in his examination which, however, was two years after the injury, there was no indication of injury to the brain or the nervous tissue which left any symptoms; that in his opinion the boy was suffering from no disability from the accident that he could determine. Of course, upon cross examination he gave other testimony, which you are to consider, which may bear upon that testimony. 20

These doctors, however, did not live with this boy. Dr. Christian simply, as he said, had this boy under observation, and the boy came to him I think three or four times for observation only. The mother, who is with the boy all the time, testifies, as I have said, that the boy had never complained of headaches before and that he has complained since. 30

Now, gentlemen, whatever you decide the greater weight of the evidence shows to have been the effect of this injury upon this boy, he should be compensated for in this case if you decide he is entitled to your verdict. Of course, a headache which comes from other causes, not produced by injury in this 40

The Court's Charge.

case, should not be the subject of damages, but only those results which came from injuries received in this case, up to the present time and, if he is not yet cured, for such as he may suffer in the future, as indicated by the evidence produced in this case.

10 If the boy is entitled to your verdict, then the mother is also entitled to your verdict for the doctor's bill: Dr. Christian, \$150, and the hospital bill, \$154. Of course, a parent is entitled to be compensated for the loss of services of a minor child, but I do not recall any testimony in this case from any-
 20 body that there is likely to be any loss of services to this mother because of the injuries which this boy has received. Of course, there is some testimony about his being backward at school, and that you have a right to take into consideration. So in determining the damages of the boy, even though there be no evidence in the case which would indicate that even his backward tendencies at school, if it is as a result of these injuries, is likely to result in damage to the mother, I think your verdict for the mother should be limited to the doctor's bill and the hospital bill—I recall no other.

30 Mr. McGeehan: There is no testimony unless the loss of the time due to the accident might impair his ability to work, for the five-month period, when he should become old enough to work.

The Court: If you find a verdict in favor of the plaintiffs, render separate verdicts in favor of the boy, Walter Kastner, and another for the mother, Evelyn Kastner, in indicating how much you find in favor of each. If your verdict should be for the defendant then you may render one verdict generally in favor of the defendant.

40 (Addressing counsel.) Have I covered your requests?

The Court's Charge.

Mr. Kuebler : The first and the sixth request, your Honor.

The Court : The first request is "The failure of the Court to grant the defendant's motion for a nonsuit and his motion for a direction of a verdict does not indicate in any way the Court's opinion on the facts of the case, but merely indicates that in the Court's opinion the case involves issues of fact which must be passed upon by the jury." I charge you that. 10

The sixth : "The mere happening of an accident, without negligence on the part of the defendant, does not justify a recovery by the plaintiffs." I have told you that.

(The jury retires.)

Mr. Kuebler : I have one exception which I would like to take to your Honor's charge : That is to that portion of your Honor's charge in which your Honor referred to the statute providing specifically as follows : That no person shall cease to hold the reins in his hands while riding, driving or conducting a horse—contained in the 1924 Cumulative Supplement Compiled Statutes, page 3061, paragraph 6, subdivision 1. I take exception to the Court's charge of this section, because I believe the section clearly shows that it does not refer to the leading of a horse on the highway, but merely the conducting of a horse when it is in harness or in bridle, with the rider upon it, and not under the circumstances governing in this case. In other words, my objection is that the section has no reference to the situation involved in this litigation. 20 30

Exception noted as ground of appeal.

Mr. McGeehan : I have no exceptions.

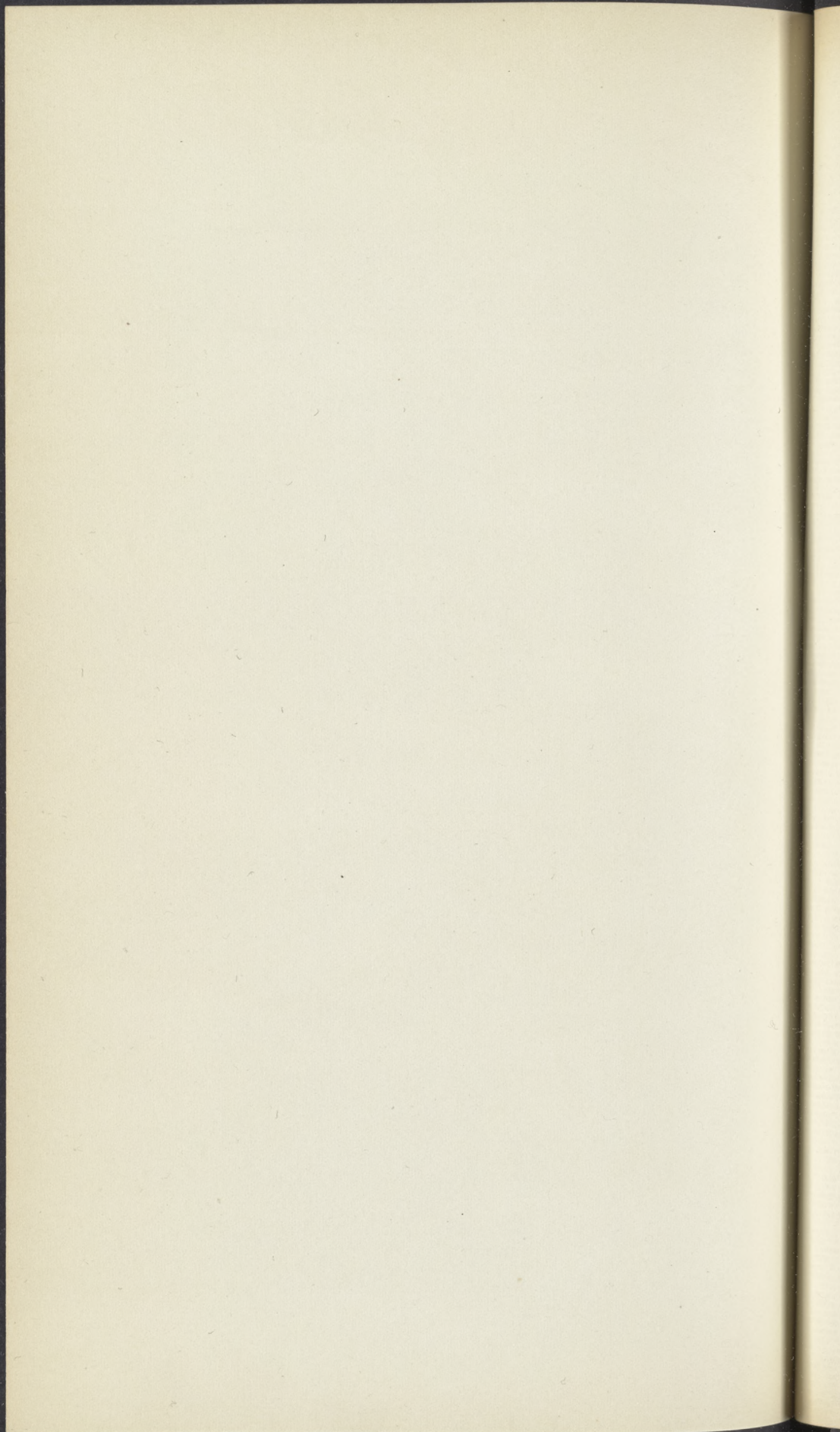
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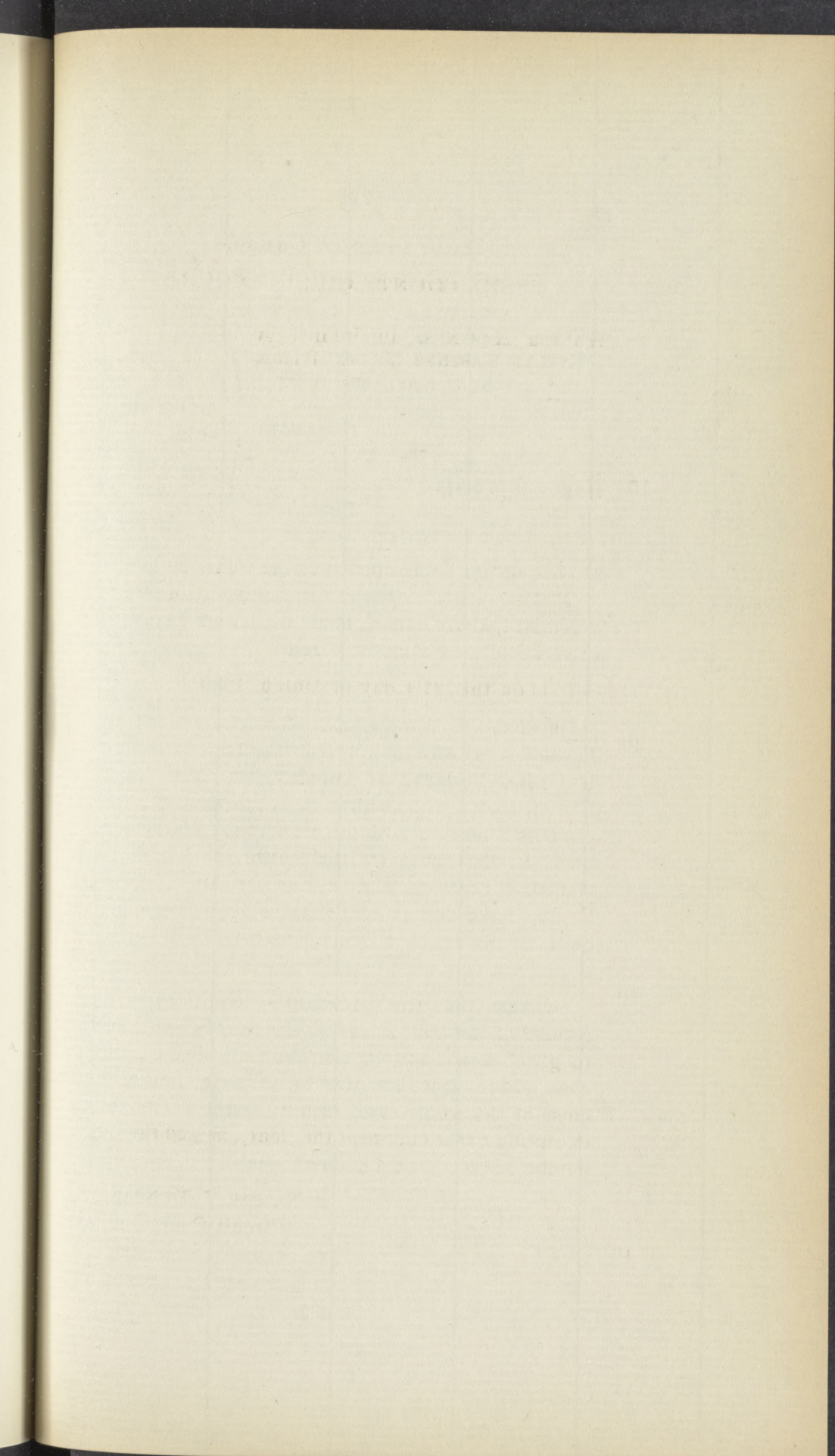
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Rule to Show Cause.**ESSEX COUNTY CIRCUIT COURT.**

	WALTER KASTNER, an infant, by EVELYN KASTNER, his next friend, and EVELYN KASTNER, individ- ually,	} Action at Law.
	Plaintiffs,	
	vs.	
10	HARRY WEINSTEIN,	} Defendant.
	Defendant.	

This matter being opened to the Court on motion of McDermott, Enright & Carpenter, attorneys of defendant, above named, made within six days after the trial of said cause at Circuit.

It is on this 21st day of March, 1930,

20 ORDERED that the plaintiffs show cause before the Essex County Circuit Court at the Hall of Records Building, Newark, on Tuesday, the 25th day of March, 1930, at nine-thirty A. M., or as soon thereafter as counsel can be heard, why the verdicts entered in the above entitled cause in the sum of \$5,000 in favor of Walter Kastner, an infant, by Evelyn Kastner as next friend, and in the sum of \$804 in favor of Evelyn Kastner, individually, should not be reduced; and it is further

30 ORDERED that the defendant's exceptions to the refusal of the trial Judge at the trial of said cause to grant a non-suit at the close of the plaintiff's case, and to direct a verdict for the defendant at the close of the whole case, as well as the defendant's exception to the charge of the Court, be and they are hereby reserved as grounds of appeal.

NELSON Y. DUNGAN,
Circuit Court Judge.

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Rule.**ESSEX COUNTY CIRCUIT COURT.**

WALTER KASTNER, an infant, by
EVELYN KASTNER, his next friend,
and EVELYN KASTNER, individ-
ually,

Plaintiffs,

vs.

HARRY WEINSTEIN,

Defendant.

Action at
Law. On
rule to show
cause.

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A Rule to Show Cause in the above stated Cause why the verdicts rendered therein should not be reduced or a new trial granted, having come on to be heard by the Court, and the Court having heard and considered the arguments of Counsel, and the only question argued being the question of damages, and the Court being of the opinion that the verdict in the sum of Five Thousand (\$5,000.00) Dollars in behalf of Walter Kastner, an infant, by Evelyn Kastner, his next friend, is not excessive and should not be disturbed, and being of the opinion that the verdict in favor of Evelyn Kastner, individually, is excessive.

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It is, on this 15th day of April, 1930, ORDERED that if the Plaintiff, Evelyn Kastner, will remit the sum of Five Hundred (\$500.00) Dollars from the verdict rendered in this cause in her favor, the Rule to Show Cause will be discharged and the motion to set aside the verdict will be denied; otherwise, the verdict in favor of Evelyn Kastner, individually,

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Rule.

will be set aside and a new trial granted as to such damages only, with costs to abide the event of suit.

We consent to the entry of the above Order.

JOHN W. MCGEEHAN, Jr.,
Attorney of Plaintiff.

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McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Defendant.

Let this Rule be entered in the Minutes of the Court.

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NELSON Y. DUNGAN,
Circuit Court Judge.

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Remittitur.

ESSEX COUNTY CIRCUIT COURT.

WALTER KASTNER, an infant, by EVELYN KASTNER, his next friend, and EVELYN KASTNER, individ- ually, Plaintiffs, vs. HARRY WEINSTEIN, Defendant.	}	Action at Law.	10
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The Plaintiff Evelyn Kastner, one of the Plaintiffs in the above entitled cause, hereby remits the sum of Five Hundred (\$500.00) Dollars from the verdict of Eight Hundred and Four (\$804.00) Dollars rendered in her favor against the Defendant in this cause. 20

JOHN W. MCGEEHAN,
 Attorney for Plaintiff.

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Rule Discharging Rule to Show Cause.

ESSEX COUNTY CIRCUIT COURT.

10	WALTER KASTNER, an infant, by EVELYN KASTNER, his next friend, and EVELYN KASTNER, individ- ually,	}	Plaintiffs,	}	Action at Law.
	vs.				
	HARRY WEINSTEIN,		Defendant.		

20 The plaintiff, Evelyn Kastner, having remitted Five Hundred (\$500.00) Dollars from the verdict of Eight Hundred and Four (\$804.00) Dollars rendered in this cause, and having filed a Remittitur to that effect;

It is, on the 15th day of April, 1930, ORDERED that the Rule to Show Cause allowed herein on the twenty-first day of March, 1930, be and the same is hereby DISCHARGED. On motion of:

JOHN W. MCGEEHAN,
 Attorney of Plaintiffs.

30 We consent to the making and entry of the foregoing Order

MCDERMOTT, ENRIGHT & CARPENTER,
 Attorneys for Defendant.

Rule allowed this 15th day of April, Nineteen Hundred and Thirty. Let it be entered in the Minutes of the Court.

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NELSON Y. DUNGAN,
 Circuit Court Judge.

Notice of Appeal and Grounds.

ESSEX COUNTY CIRCUIT COURT.

WALTER KASTNER, an infant, by EVELYN KASTNER, his next friend, and EVELYN KASTNER, individ- ually, <div style="text-align: right;">Plaintiffs,</div>	}	Action at Law.	10
vs.			
HARRY WEINSTEIN, <div style="text-align: right;">Defendant.</div>			

To:

JOHN W. MCGEEHAN, Esq.,
 Attorney for Plaintiffs.

Sir:

PLEASE TAKE NOTICE that the defendant in the
 above entitled cause appeals to the Court of Errors
 and Appeals in the last resort in all causes in New
 Jersey, from the whole of the judgments entered in
 said cause on the following grounds, to wit: 20

1. Because the Essex County Circuit Court erro-
 neously refused to grant the defendant's motion for
 a non-suit.

2. Because the Essex County Circuit Court erro-
 neously refused to grant the defendant's motion for
 a directed verdict on behalf of the defendant. 30

3. Because the Essex County Circuit Court im-
 properly charged the jury from Chapter 156 of the
 Laws of 1915, Paragraph 6, Subdiv. 1, as follows:

"No person shall cease to hold the reins in his
 hands while riding, driving or conducting a horse."

Respectfully yours,

MCDERMOTT, ENRIGHT & CARPENTER,
 Attorneys for Defendant. 40

New Jersey Court of Errors and Appeals.

Action at Law.

WALTER KASTNER, an infant, by EVELYN KASTNER,
his next friend, and EVELYN KASTNER, in-
dividually,

Plaintiffs-Appellees,

—vs—

HARRY WEINSTEIN,

Defendant-Appellant.

**BRIEF OF McDERMOTT, ENRIGHT &
CARPENTER, FOR APPELLANT.**

This case was tried before the Honorable Nelson Y. Dungan and a jury in the Essex County Circuit Court on March 4th, 5th and 6th, 1930. The jury returned a verdict in favor of the plaintiff Walter Kastner by his next friend Evelyn Kastner and against the defendant in the sum of \$5,000 and a verdict in favor of Evelyn Kastner, individually, against the defendant in the sum of \$804. Judgments were entered in accordance with the verdicts. The Court granted a rule to show cause why the verdicts should not be reduced, which rule reserved the defendant's exceptions to the Court's refusal to grant a non-suit, direct a verdict and the exception to the charge of the Court. The argument of the rule to show cause resulted in a reduction of the verdict in favor of Evelyn Kastner, individually, from \$804 to \$304 and a remittitur to that effect was filed.

The case is before this Court on an appeal and the grounds of appeal are:

That the trial Court erroneously refused,

1. To grant the defendant's motion for a non-suit.
2. To grant the defendant's motion for a directed verdict and,
3. Erroneously charged the jury (State of Case, 219).

Statement of Facts.

This is an action in which the plaintiffs seek to recover from the defendant for injuries caused to the plaintiff, Walter Kastner, on May 10, 1925. It is contended that the defendant was leading a horse along Berkshire Place in the Town of Irvington, N. J., on Sunday, May 10, 1925, in a negligent manner, as a result of which the horse kicked Walter Kastner who was riding on a bicycle and caused injuries from which he suffered and was still suffering. It is not contended that the horse was vicious or had malicious propensities. The plaintiffs' case is based solely upon allegations that the defendant was negligent in the manner in which he conducted the horse and the plaintiffs contended that he was negligent because;

1. He led the horse with a halter and lead rope instead of a bit and bridle.
2. Because he placed the lead rope in the crook of his arm.
3. Because he lighted a cigarette while the

lead rope was in the crook of his arm and while he was walking in front of the horse.

The defendant contended that he was not guilty of any negligence; that the horse was a gentle slow going horse which one, Wolfe, wanted to sell and which the defendant was leading from Mr. Wolfe's stable to his stable, a distance of approximately fifteen blocks. He was proceeding in a westerly direction on Berkshire Place and was about one block from his own stable; he was leading the horse by a halter and lead rope; he was walking on the left-hand side of the horse with his right hand on the halter and the rope in his left hand, when suddenly he heard a noise of iron, the horse moved forward, he went about fifteen feet across the street with the horse and looked around and saw a boy lying over the curb with the bicycle on top of him. The defendant denied that he was lighting a cigarette or that he put the rope in the crook of his arm.

POINT I.

The trial Court should have granted the defendant's motion for a directed verdict on behalf of the defendant.

A. *The horse was not vicious or malicious.* There was no allegation in the plaintiffs' complaint of that fact. No testimony was offered by the plaintiffs to show any viciousness or maliciousness of the horse.

The plaintiffs' witness, O'Toole, testified (State of Case, p. 29, ll. 20-35) that when he turned into Berkshire Place and first saw the horse about

200 feet from him, it was prancing, dancing and shying. This is the only evidence as to how the horse was acting, other than the testimony of Evelyn Kastner, who also testified that she saw the horse coming down the street and he was kind of frisky (State of Case, p. 73, l. 20).

As against this testimony, Harry Weinstein, who was leading the horse, testified "It was a slow horse" (State of Case, p. 147, l. 14). "He is a slow trotter horse" (l. 22). He returned the horse to Mr. Wolfe several days later.

"Q. Why didn't he suit you? A. He was too slow for my work" (State of Case, p. 147, l. 31).

The defendant operated a milk route. He testified that the horse was not prancing or shying.

"Q. Was this horse skittish as you lead him along the road? A. No, sir.

Q. Was the horse at any time running as you walked along there prior to the time this happened? A. No, sir" (State of Case, p. 145, ll. 32-36).

John A. Nicoll the blacksmith who shod the horse, testified

"He was a slouchy-looking old horse, quiet. At the time in the shop he would stand there as long as you would want to without a move, very quiet" (State of Case, p. 168, l. 20).

He also testified that "the horse was always gentle and he never had any trouble with him" (State of Case, p. 168, ll. 24, etc.).

William Wolfe the owner of the horse testified that he was a slow, nice working horse (Top of p. 176). He also testified as follows:

“Q. Did you ever find the horse to be mischievous in any way? A. No, sir, he was as gentle as a lamb.

Q. You never saw the horse kick anybody in that period of time? A. No, sir” (State of Case, p. 178, ll. 34, &c.).

The photographs of the horse, Exhibit D-I (State of Case, p. 213-a) also clearly show the type of horse dealt with in this case. A horse on whose back the owner was willing to trust his children.

We repeat that there is nothing in the evidence to indicate any vicious or malicious character of the horse. The character of the horse was undoubtedly without blemish.

(B). *The case did not present any evidence from which the Court could have inferred that there was a question of negligence to be passed upon by the jury.*

1. *The mere fact that the horse was led by a halter and lead rope is not evidence of any negligence.* The testimony is undenied that the horse did not have a bit and bridle, but was being led by a halter with a lead rope four or five feet long (State of Case, p. 143, ll. 20-35).

The plaintiffs contend that the defendant was negligent in not using a bit and bridle. Testimony was introduced of Mr. Routh, a sheet metal worker who testified that he had been in the artillery for four years where he was a veterinary

assistant and had handled a few thousand horses. He testified (State of Case, p. 96, l. 10)

“You cannot control a horse as good without something through its mouth at any time and the horse could be better controlled if it had a bit in its mouth.”

He admitted that his experience had been with all types of horses and he testified (State of Case, p. 97, l. 23)

“Q. And during that period of time you have led many a horse by a halter, haven't you? A. Yes, sir.”

No other testimony was offered by the plaintiffs on that issue.

For the defense John A. Nicoll testified (State of Case, p. 169, ll. 8, etc.) that the usual method of leading a horse about the city is with a halter; that it is the safest way, because if you are leading with a bit, it backs up in the horse's mouth and therefore the halter is stronger and more secure. He testified that he has been in the blacksmith business for twenty years and has been around horses for twenty-eight years and in leading horses to and from the blacksmith shop about the city streets, he always used a halter and lead rope.

The owner, William Wolfe, testified (State of Case, p. 178, l. 20) that he had always seen horses led with halters and referred especially to truck horses, express horses and bakery horses. He testified that he lived near a stable where they had about forty horses. On page 180, line 10, State of Case, he testified that the halter is safe for leading, because the bridle has a good many buckles, whereas the halter is stronger.

Why should the defendant be penalized for leading a *gentle* horse with a halter and lead rope? Is it not common knowledge that horses are led about the streets of the city day in and day out by a halter and lead rope? Who has not seen horses led to and from sales stables or from freight cars by halter and lead rope? And in this instance we are dealing with a *gentle* horse. The horse had come through heavy traffic along Chancellor Avenue that Sunday afternoon, being led by a halter and lead rope (State of Case, p. 149, l. 12).

This Court has decided that leaving a quiet, gentle horse standing untied on a public street does not raise an inference that the owner of the horse was negligent in so leaving it.

Belles v. Kellner, 67 N. J. L. 255.

In that case the Court held that to entitle the plaintiff to recover, he would be required to show by a preponderance of evidence that the defendants were guilty of some negligent act which was the proximate cause of the injury to the plaintiff.

The nearest case to the one at bar, which we have been able to discover, is *Kocha v. Union Transfer Company*, 205 Northwestern Rep. 923. A decision of the Supreme Court of Wisconsin.

In that case the defendant was driving a delivery wagon and at the end of its six foot wide platform were fastened three horses abreast, which were attached to the wagon by a halter of such length that the horses' heads were about a foot from the wagon. The plaintiff was riding a bicycle in the same direction and contended that he was

thrown to the pavement by reason of his bicycle being kicked by the horse which was on the north-erly side. The testimony was to the effect that the horses were skittish while being led about the street. A verdict was returned in favor of the plaintiff, but was reversed by the Supreme Court. The Court held:

“And so we do say, as a matter of common knowledge and as a matter of law, that the method here shown of tying and leading a horse was not dangerous *per se*. It may be further asserted that to have tied them more closely, thereby permitting no freedom of movement to prevent collision with the wagon, would have been a dangerous method.”

That Court in rendering its decision refers to *Lyman v. Dale*, 262 Mo. 353, 171 Southwestern 352.

In that case the defendant's driver while riding a mule was leading another one by a five or six foot halter, when the mule that was being led shied and kicked the plaintiff's buggy. A verdict was rendered in favor of the plaintiff which was affirmed by the Court of Appeals but reversed by the Supreme Court in the decision just referred to and in which the Court held that such method was no evidence of negligence even though experts testified that such animals should have been “necking”. The Court held that to hold as the trial and appeal Court had held, *would amount to overthrowing all common knowledge as to the handling of animals upon the public highway.*

We conclude as to this point that the mere leading of this gentle horse by a halter and lead rope did not raise any presumption of negligence which warranted the submission of the case to the jury.

2. *If the defendant placed the lead rope in the crook of his arm and lit a cigarette, it was not a negligent act on his part while conducting a gentle horse.*

The plaintiffs' witness, O'Toole, testified (State of Case, p. 30, ¶1. 27 &c.)

"That Weinstein put the rope in the crook of his elbow and made a cigarette and with the rope in that position lit a cigarette and that the horse then shied up and kicked out its hind feet."

This testimony was denied by Harry Weinstein (State of Case, p. 145, l. 3)

"Q. Now, as you were going along there, did you light a cigarette at any time? A. No, sir.

Q. Did you have a cigarette in your mouth? A. No, sir."

The defendant admitted that he smokes, but after leading a horse approximately fifteen blocks, why would he light a cigarette when one block from the stable?

Inasmuch as the weight of the evidence is not being argued, we assume that we are obliged to confine our discussion of this point to that portion of the testimony which would be most convincingly against the defendant. Assuming, therefore, for the purpose of argument, that the defendant did place the lead rope in the crook of his arm and light a cigarette, we urge that it would not be a negligent act. Again we state that he was dealing with a *gentle* horse. There is nothing in the evidence to indicate that the horse ever took fright at the lighting of a match or at

any act. If the horse had been standing in the street untied and a passerby had struck a match and caused the horse to take fright, this Court, in view of the case above cited, apparently would not have permitted a recovery against the owner, the party in charge of the horse or the party striking the match. It seems preposterous to believe that such an act would have caused this horse, the horse depicted in the Exhibit (p. 213-a, State of Case) to take fright and shy and kick at the mere striking of a match.

We submit that if the defendant did conduct himself, as this witness testified in this respect, it was not an act which would charge him with negligence in the handling of a gentle horse of the character we are dealing with in this case.

When a horse is not vicious or malicious the owner or person in charge cannot be required to anticipate every possible contingency that might happen in the handling of that animal.

C. The evidence is clear that Walter Kastner brought about his own injury.

1. Walter Kastner either struck the horse while riding his bicycle or rode so near to the horse as to cause it to run forward.

O'Toole testified that the horse was about three feet from the curb (State of Case, p. 31, l. 13). The boy riding his bicycle made a semicircle and came up in back of the horse (State of Case, pp. 41, 42). The horse, the witness states, was prancing and shying. As the boy came up on his bicycle at a point five feet behind the horse, he passed a bicycle length from the horse (State of Case, p. 43).

Nathan Speizer, a witness produced by the defendant, testified that the boy rode his bicycle out of a yard or driveway (State of Case, p. 188, l. 29). The horse was walking down the street. He was not shying or prancing. The horse was about two or three feet from the curb (State of Case, p. 189, l. 17). He testified as follows (State of Case, p. 188, l. 34):

“Q. Did the bicycle come in contact with the horse? A. I couldn’t say.

Q. Did it come close to the horse? A. Close to the horse.

Q. How close would you say to the horse that he got in contact? A. Well, he was practically—less than a half a foot.

Q. What happened to the horse? A. The horse made a fast move forward.”

These statements are repeated on cross examination on (pp. 194 and 195, State of Case).

The defendant, Harry Weinstein, testified as follows (State of Case, p. 145, l. 8):

“Q. Now, will you tell us, in your own words, what happened? A. When I lead the horse in Berkshire Place I don’t see anybody there and I lead him straight with the curb, righthand side. After that I heard a noise in the back from the horse, and the horse moved a little from me. I hold him tight and I heard somebody screaming. The horse gets scared a little and I turned him in the other side of the street; I took him away from there.”

On page 146, State of Case, he testified that after this happened the boy was lying under the bicycle by the curb.

The mother, Evelyn Kastner, testified (State of Case, p. 71, l. 18)

“He was lying—his body was on the sidewalk and his head was in the curb.”

There appears to be no dispute of the fact that he was lying in this position after the accident and the bicycle was on top of him.

From both the testimony of O'Toole and Speizer, it appears that the boy rode his bicycle close to the horse.

Did he frighten the horse? We submit that it is very likely that he could have done so. Did he, or some portion of his bicycle, such as the peddle, come in contact with the horse and frighten the horse and cause it to move forward, and at the same time cause him to fall? Dealing with a horse of this gentle character, we submit that the presumption would be that the accident happened in that manner rather than in the manner as described by O'Toole.

In any event, the boy could not have turned to the left of the horse, as described by O'Toole, for if he had done so, he and the bicycle would not have been on the sidewalk and over the curb. He must have passed between the horse and the curb, or endeavored to do so. If he did this, he violated the provision of the Traffic Act of this State, “That a vehicle overtaking another or passing to the left of the overtaken vehicle * * *.”

We contend that this accident is explained by the undenied close proximity of the bicycle to the horse. It will be recalled from the testimony of Mr. Weinstein that he first heard a noise of iron (apparently the bicycle falling over the curb) after which the horse moved forward (State of Case, p. 163, l. 30).

With all of these circumstances which could have caused the horse to move forward and considering the fact that the horse was gentle and slow moving, we submit that the plaintiffs did not show by a preponderance of the evidence, circumstances which were strong enough to warrant the submission of the case to the jury, but that the presumption was, that the accident was not the result of negligence of the defendant.

D. *The contributory negligence of the plaintiff, Walter Kastner, was so clear as to warrant a direction of a verdict.*

The argument in Point "C" is included under this point.

The boy continued to go closer and closer to the horse while riding his bicycle, according to the testimony of O'Toole. If he came to within five feet of the horse when it was prancing and shying, he placed himself in a position of danger. According to the testimony of Speizer, he came within six inches of the horse.

E. The accident could not have happened as the plaintiffs contend.

O'Toole, in describing the accident on page 30, line 36, State of Case, testified

"Why, it shied up and kicked out its hind feet, and this young lad was coming in the same direction that the horse was, and when he got approximately five feet away he swerved to his left to go around, and at the time the man leading the horse was lighting the cigarette, he shied up and kicked the boy."

The boy was on a bicycle. He was ten years old. The injury sustained was a fractured skull and it is contended that the horse kicked the boy in the head. The fracture was on the right side (State of Case, p. 12, l. 12). As the boy was found on the curb and sidewalk, he must have been passing to the left side of the horse and therefore if the horse kicked the boy, the fracture would be on the left side.

We submit that the fracture was caused by the boy's head striking the sidewalk or pavement.

The witness, O'Toole, testified (State of Case, p. 42, l. 18)

“Q. He didn't stand on his hind legs, did he? A. No, I don't think he would be capable of that. He was too heavy a horse to do a stunt like that.”

He certainly could not have kicked the head of a boy who was riding on a bicycle without lifting his hind legs a considerable distance in the air and we are confident that the Court will decide, upon examination of the exhibit on page 213a, State of Case, that this was not a stunt horse. There is no evidence of any damage to the bicycle.

We submit that the accident could not physically have happened as contended by the plaintiffs.

POINT II.

The trial Court improperly charged the jury from Chapter 156 of the Laws of 1915, paragraph 6, subdivision 1 as follows: "No person shall cease to hold the reins in his hands while riding, driving or conducting a horse."

The Court charged the jury as follows (State of Case, p. 204, ll. 32, &c.) :

"We have a statute in this State which says this: 'No person shall cease to hold the reins in his hands while riding, driving or conducting a horse,' and it says nothing about a lead or a halter. A violation of this statute is not negligence in itself, but because a violation of it is evidence which you may take in consideration on the subject of negligence, I am calling it to your attention, if the person leading this horse, Mr. Weinstein, conducted it as the witness O'Toole said he did, that is, by loosening his hold and putting it in the crook of his arm for the purpose of lighting a cigarette.

I have said to you that a violation of this statute does not constitute in itself, negligence, but these statutes are adopted for the protection of the public. They constitute warnings to persons driving horses or leading horses that it is dangerous to act otherwise than in accordance with them; and danger reasonably to be foreseen and not foreseen and avoided, is a test of negligence. Therefore, you may take into consideration, as I have said, this

statute if you decide that the horse was being conducted, at the time of the injury to this boy, as Mr. O'Toole said it was."

The Section referred to is a portion of the 1915 Traffic Act and is prefaced by the following words "On all public roads, streets, highways and turnpikes, the following regulations shall be in force." The Court having quoted Paragraph 6, Subdivision 1, added the words, "and it says nothing about a lead or a halter."

The fact of charging the jury in that respect, was to lead the jury to believe or to conclude that a person was not permitted to lead a horse on the highway by a halter and lead rope because the statute did not expressly include the words "lead" and "halter".

It seems clear from a reading of the statute that it is merely intended as a provision for guidance in conducting a horse on the highway, where a bit, bridle and reins are used. In the case at bar, the bit, bridle and reins (it being common knowledge that reins are only used with bit and bridle) were not used. All of the evidence clearly shows that a halter and lead rope were used. In view of this circumstance and the method of conducting this horse over a highway being entirely different from that referred to in the statute, the act is not applicable to the case before the Court.

As a lead rope was used and not reins, the statute is not applicable to the case at bar. The statute does not say that a person would be prohibited from conducting a horse on the highway, other than by reins, and yet from the charge of the Court, the jury might very easily conclude that the statute and charge inferred that the

defendant could only properly conduct or lead his horse on the highway by the use of reins.

The defendant was not riding the horse, he was not driving the horse and he was not conducting the horse in any manner which would bring it within the statute in question. The statute was not intended in any sense to cover the situation involved in this case. It was intended as a statute for governing horses to pull vehicles or horses to be driven on the highway.

We contend this feature of the Court's charge was erroneous and because of same the judgment should be reversed.

POINT III.

Appellant does not waive his reasons which are not specifically argued.

POINT IV.

For the foregoing reasons, we submit that the judgments entered in the above entitled cause in favor of Walter Kastner, by his next friend, Evelyn Kastner, and in favor of Evelyn Kastner, individually, and against the defendant, Harry Weinstein, should be reversed.

MCDERMOTT, ENRIGHT & CARPENTER,
Attorneys of Appellant.

CARL S. KUEBLER,
Of Counsel.

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Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

WALTER KASTNER, an infant, by
EVELYN KASTNER, his next
friend, and EVELYN KASTNER,
individually,

Plaintiffs-Appellees,

vs.

HARRY WEINSTEIN,

Defendant-Appellant.

*Action
at Law.*

*On Appeal
from Essex*

*County
Circuit
Court.*

BRIEF OF PLAINTIFFS-APPELLEES.

This appeal is taken by the defendant from the judgments entered in the Essex County Circuit Court in favor of the plaintiffs. The suit was instituted by Walter Kastner, an infant, by Evelyn Kastner, his mother, as his next friend, and by Mrs. Kastner, individually, to recover from the defendant damages for the injuries sustained by the infant plaintiff as the result of his being kicked in the head by a horse being led along a public street by the defendant. The complaint alleged and the plaintiffs undertook by their evidence to prove actual negligence on the part of the defendant in and while leading said horse as the direct cause of the injuries to the plaintiff. The plaintiffs contended and introduced evidence to the following effect: That the defendant at the time plaintiff was injured, was leading a horse upon a public street which he admitted had not been out of the barn or exercised for over a week, and which, according to expert testimony in the case, would make any horse fractious and likely to kick or act up; that the horse was secured only by a halter and rope and not by a bit and bridle, which the testimony

showed would have given better control over a fractious horse; that the horse was actually acting skittish and prancing for a distance of 150 feet or more as it approached the point where the boy was injured; that under these circumstances the defendant removed the halter rope from his hands and placed it in the crook of his arm, and under such circumstances that he suddenly lit a match and cigarette while alongside of the horse's head, whereupon the horse reared up with his hind legs and kicked the infant plaintiff, 10 years of age, who was passing upon his bicycle a distance of about five feet from where the horse was before he kicked. It was shown by expert testimony that a sudden action such as the lighting of the match would cause a horse to become unmanageable and kick under such circumstances. The plaintiff was kicked upon the head and knocked to the ground, sustaining a depressed fracture of the skull and an injury to his brain. The defendant denied that he lit a match or left the halter rope out of his hands or that the horse kicked the boy or that the horse had any contact with the boy whatever. The jury returned a verdict in favor of the infant plaintiff in the sum of five thousand (\$5,000) dollars, and in favor of his mother individually in the sum of eight hundred and four (\$804.00) dollars. Upon the argument of a rule to show cause, the rule was dismissed as to the judgment in favor of the infant, but the judgment in favor of his mother was reduced from eight hundred and four (\$804.00) dollars to three hundred and four (\$304.00) dollars. The defendant reserved his present grounds of appeal in the rule and has taken this appeal from the judgment.

The sole grounds of appeal are the refusal of the trial court to grant a motion for non-suit and for a direction of verdict, and an alleged error in the charge to the jury. It will be urged in this brief that the Court did not err in denying the motions of the defendant, because the evidence in the case presented disputed questions of fact for the determination of the jury as to the negligence in the case; and the Court did not err in its charge to the jury.

Statement of the Evidence.

The complaint instituting the present action was based upon allegations of actual and active negligence on the part of the defendant in and while leading a horse upon a public highway.

The evidence on the part of the plaintiffs and their witnesses substantiated these allegations in numerous respects from which a jury was warranted in finding that the defendant was guilty of negligence which was the proximate cause of the plaintiff's injury.

The first fact witness called in the case was one *Raymond J. O'Toole* (p. 27, S. C.). Mr. O'Toole was an entirely disinterested spectator of the event which was the basis of the action. He testified that he was a manufacturing optician employed as manager of a Newark branch of a New York optical company, and resided around the corner from where the accident took place. He was unacquainted with any of the parties to the action (p. 36, S. C.). A reading of his testimony indicates that he was a man of careful observation, whose testimony was intelligent and convincing as a witness. He testified that he saw the occurrence which took place on May 10, 1925, on Berkshire Place in Irvington, the time

being a Sunday morning (p. 28, S. C.) and that he was walking along the street in question when it happened. He first saw the horse "prancing" along Berkshire Place (p. 29, l. 20):

"Q Now, you said before that you saw this boy kicked by a horse. Where did you first see that horse? A When I turned the corner of Union avenue into Berkshire Place I noticed a horse prancing along Berkshire Place, almost in the middle of the street, about 200 feet from where I was standing or walking at the time.

Q Now, when you say he was 'prancing along,' just describe his actions? A Why, he was dancing and shying, which a horse will naturally do.

Q You cannot tell us what a horse will naturally do, but you can tell us what he was doing. You say he was shying and prancing? A Shying and prancing.

Q And did you see how that horse was secured, I mean what kind of harness, if anything, was about his head or body? A Well, he just had a halter-shank, and a lead rope onto the halter-shank.

Q Did he have any bit in his mouth? A No."

He further testified that the horse was being led by a man who was holding the rope (p. 30, S. C., l. 14). He was then asked:

"Q And as he went along, how far did you see that horse when he was prancing and shying? How long did he go along that way before something happened? A Why, I judge about between 100 feet and 150 feet."

He then said that the man who was leading the horse was walking along. He was then asked (p. 30, S. C., l. 24):

"Q Now, after you had seen it come 100 to 150 feet, prancing and shying, what did you see this man do with that rope? A He put it in the crook of his elbow, the crook

of his arm, and made a cigarette in this manner (indicating).

Q Now, what did he light that cigarette with? A A match.

Q And when he lit that cigarette with a match, did he have that rope in his hands or not? A No, he had it on the crook of his arm.

Q Now, what did that horse do when he lit that match? A Why, it shied up and kicked out its hind feet, and this young lad was coming in the same direction that the horse was, and when he got approximately five feet away he swerved to his left to go around, and at the time the man leading the horse was lighting the cigarette, he shied up and kicked the boy."

He also testified (p. 31, S. C., l. 8):

"Q And at that time which side did the boy pass that horse on, do you remember?
A He started to pass to the left of the horse."

The foregoing testimony of the witness, Mr. O'Toole, gives a pretty clear picture of how the boy was injured. It shows that the horse was prancing and shying for a distance of 100 to 150 feet, and in spite of this, which should have warned the defendant that the horse was fractious and needed careful attention, guidance and control, he left the rope out of his hands with which he was attempting to control the horse, put it in the crook of his arm and while walking alongside of the head of the horse (because the rope, according to his testimony, was only 2½ to 3 feet long), he lit a match and when he did so, the horse shied up and kicked the boy. This testimony, when considered in conjunction with later testimony in the case that such an action would naturally scare a horse and cause it to shy or kick, in itself shows direct and plain negligence on the part of the defendant, which

would warrant the jury in finding him liable in damages to the plaintiffs and preclude any right of non-suit under the facts and the law applying to them upon a motion of the defendant.

Another witness in the case later called testified that after the occurrence the horse was entirely out of the hold of the defendant, who apparently lost all hold on the horse when he lit the match and the horse shied and kicked, which was due to his negligence in failing to keep hold of the halter rope, particularly when lighting a match suddenly alongside of the horse's head.

The witness then identified a man in the court room as the person whom he saw leading the horse, and when this person was required to stand up, he was admitted by the counsel for the defendant to be the defendant, Mr. Weinstein (p. 32, S. C. middle).

This witness then testified (p. 32, S. C., l. 28) that from the time he saw the defendant light the match and the horse rear until after the boy had been kicked he did not see the rope in the man's hands at all. This witness had a perfect view of the occurrence, because he was on the sidewalk near which the horse was being walked, only about three feet from the horse at the time (p. 33, S. C. top). He testified further that the boy

“was kicked on the side of the head, and then when the horse came down he kicked him again with his hoof, on the return with his hoof.”

(p. 33, S. C., l. 25). He was then asked (p. 34, S. C., l. 9) as to a conversation that he had with the defendant after the occurrence, and he testified:

“Why, let me see now. I will have to stop and think to that effect. He said something

similar to the effect that the horse had not been exercised or out of the barn for about a week.”

This admission of the defendant is significant as bearing upon the measure of care required of the defendant under the circumstances in view of expert testimony in the case that under such conditions any horse would be skittish and fractious and liable to cause trouble. On cross examination, it was brought out that this witness (O'Toole), lived around the corner from where the accident occurred and that he did not know the Kastner family or even where they lived (p. 36, S. C., top). In his cross examination he repeated that the plaintiff came along on his bicycle and was riding in the same direction that the horse was going and passed the horse on the left side of the horse, and that when he turned to pass the horse he was a full bicycle length away from him and that as he turned to his left he passed about three to five feet or the length of a bicycle to the left of the horse. Under this testimony, both the question of negligence of the defendant, Weinstein, as well as the contributory negligence of the boy, were questions of fact for the jury, and under this testimony, the Court properly submitted the questions of the negligence of the defendant and the contributory negligence of the boy to the jury for its determination. The witness testified (p. 44, S. C., top):

“A Just about when the boy was to pass him, he lit a cigarette, and the reflection either scared the horse and he shied up—.”

He explained on cross examination that when he said the horse was shying and prancing for 150 feet that he meant

“he was shying at intervals.”

This witness testified that after the accident, the boy was lying in the street and the horse was away over on the other side of the street and Weinstein was over there trying to quiet the horse down (bottom p. 46, S. C.). He testified further that when the horse kicked the boy in the head with his hind hoofs, he knocked the boy off the bicycle with the force of the kick (p. 47, S. C., bottom). From Mr. O'Toole's testimony alone a jury question was presented and the jury would be justified in finding negligence on the part of the defendant and the absence of contributory negligence on the part of the boy plaintiff, and when the entire case is considered, including the contradictions of the defendant, Weinstein, both self-contradictions and contradictions by his own witnesses, it is not difficult to see why the jury found a verdict in favor of the plaintiffs on the facts.

The next fact witness was *Mrs. Kastner*, one of the plaintiffs and mother of the injured boy. She did not see the accident itself (p. 70, S. C.), but she was sitting on her porch when it occurred and heard the screaming and when she looked, she testified:

“I heard a screaming and, as I looked down, I seen the horse rearing and kicking, and he had his hind legs drawn up ready to kick again.”

She ran to the boy, and she says that his body was on the sidewalk and his head was on the curb. In this her recollection differs from that of the witness, O'Toole, who said the boy lay in the street, but of course the jury was the proper judge of the fact as to just where the boy lay, if that had any bearing upon the manner of happening of the injury. She did see the horse, however, before the accident occurred, as

it passed her house which was down the street, and she testified that the horse was rearing. She was asked:

“Q When you say he was ‘rearing,’ now, just describe what you mean by that. What did the horse do? Use some other word.

A Well, he was not like an ordinary horse on a walk and you would lead it; he was kind of frisky.”

She then testified that after she heard the scream and saw the boy lying injured, the horse was “opposite the boy” about 15 feet away from him, and that the man who had been leading the horse

“was standing across the street”

and that he was not with the horse at that time (p. 73, S. C., bottom). Combining the testimony of Mrs. Kastner with Mr. O’Toole, it appears and the jury could properly have found that not only did the defendant leave the rope out of his hands, and thus out of his control, and put it in the crook of his arm when he lit his match alongside the horse’s head so that the horse was caused to and enabled to rear up and kick, but that the horse got away from him entirely and was separated from him across the street right after the accident. She also testified as to the physical condition and injuries of the boy, which is a subject not involved in this appeal. She did testify that he was ten years of age at the time of the accident.

It is respectfully submitted that a boy only 10 years of age, riding a child’s bicycle could easily be kicked in the head by a horse as large as the one described in this case, and it is a significant fact that not only does the witness O’Toole testify that the boy passed to the left of the horse and that he was kicked on the head while so

passing, but the medical evidence also shows that the fracture of the skull was on the right side of the head of the boy, which would be the side that would be toward the horse if he were passing to the left of the horse. The nature of the fracture also indicates that it must have been caused by a violent blow such as a horse's shod hoof, because the fracture was described by the doctors as follows (p. 51, S. C.):

“A It developed later from the X-rays, well, from the original examination, too, but more definitely from the X-ray, that he had a large fracture on the right side of his skull, a piece broken, a quadrilateral piece broken out of the skull, about three inches high and two and one-half inches from front to back, and that piece was displaced about an inch upward and outward at the top, and some inward at the bottom edge of the piece.”

The doctor testified that the displacement inward created a condition known as a depressed fracture, and that a large piece of his skull was separated entirely from the rest of his skull, so as to form a movable fragment. It was this condition and the tearing of the dura or lining membrane of the skull, which is connected with the brain by blood vessels, that caused the injury to the brain of the boy, which was testified to in the case and admitted by the defendant's own doctor. The very nature of the injury corroborated the testimony of the plaintiffs' witnesses and belies the statement of the defendant that the horse did not kick the boy at all, so far as he knew.

The next witness of the plaintiffs was the infant plaintiff himself, who testified that he suffered constantly with headaches and other injuries resulting from the head injury, and

that he did not have a clear recollection of the accident. He testified:

“Q Now, do you remember being hurt?

A No, sir.

Q Well, were you hurt? A Yes, sir.

Q How were you hurt? Do you know what hurt you? A Yes, sir.

Q What? A A horse.”

He was then asked (p. 88, S. C., l. 10):

“Q Now, have you a clear recollection of this accident or not? A No, sir.

Q No? A No, sir.

Q Which side do you think you were passing that horse on, son? A On the right-hand side.”

On cross examination, he testified that he saw the horse and that he was about five feet from the horse and he can't remember that the horse was doing anything unusual at the time he went to pass him (p. 89, S. C.). The admitted lack of clear recollection on the part of this boy as to just what happened, particularly in view of the injury to his brain from which he was suffering and is still suffering, made it peculiarly a proper subject for the jury's decision as to which side he passed the horse on, and a jury was clearly entitled to find from the circumstantial evidence in the case, to wit, the side of the head that he was kicked on, as well as the direct testimony of the witness O'Toole that the boy actually was passing the horse on the left-hand side.

The next witness called was *Russell O. Routh*, presently a sheet metal worker, but who testified that he had a great deal of experience with horses. He was four years with the artillery in the army, and during that period he was veterinary assistant, which position entailed the duties of doctoring horses, and he testified that he handled a good many horses during that four-

year period (p. 92, S. C.). According to his testimony, he handled "a good many thousand" horses (p. 93, S. C., top), many of which were regular harness horses. He was then asked, in view of the admission of the defendant, Weinstein, which was testified to by the witness O'Toole, that the horse had not been exercised or out of the stable for a week:

"Q Now, I would like to ask you, first, what effect upon a horse, even though he be otherwise gentle, does a keeping of a horse in a stable and confined for about a week, and without exercise, have upon the disposition and actions of that horse? A (Bottom p. 93, S. C.). I would say that a horse that was kept in the stable at least a week, without exercise, would be only too glad to get a chance to run, act a whole lot different than he had ordinarily.

Q Well, in what way? What effect would it have on the horse? Would it be the same gentle horse? A No, sir; it would not.

Q Well, what would it be inclined to do? A It would be liable to kick and rear and try to run, and be a whole lot different than he ever was before he was kept in the stable for at least a week."

This witness testified as an expert, and his qualifications as such were not disputed by the defendant. He further testified (p. 94, S. C., bottom):

"Q Have you ever noticed the effect of any sudden action at or near a horse's head when a horse is acting skittish or shy? A I have."

Additional questions were asked him, which were objected to, and finally the question was put to him:

"Q What would be the effect of the striking of a match by a person walking just in front of or alongside of the head of a horse? A For one thing, the horse would

become frightened and try to pull away and, if it could not, it might start to rear or kick.

Q And is that something that is commonly known among men experienced with horses?

A I would say yes."

The foregoing is important because the defendant, Weinstein, admitted that he was familiar with horses over a period of over 20 years, and being familiar with this tendency of horses, which was not denied by any defense witness in the case, he certainly would be negligent in the case of a horse already acting skittish, *to have let the rope out of his hands and then have actually lit a match suddenly alongside the horse's head*, which he should have anticipated and known would have caused the horse to kick, and he should have known that if the horse did kick and rear that he could not hold him down with the rope out of his hands and in the crook of his arm. The expert further testified that the fact that a halter and rope with no bit or bridle was used would give less control over the horse than if a bit and bridle were used. He testified (p. 96, S. C., l. 11):

"A You cannot control a horse as good without something through its mouth at any time.

Q Not even for leading? A Not even for leading."

He further testified (p. 96, S. C., l. 20) that there would be a greater checking effect upon a horse if there were a bit in his mouth and a rein attached to it than if there were only a halter. On cross examination he said that any horse if placed in a barn and shut up for about a week is likely to prance around and be skittish (p. 97, S. C. top), and also that any horse is apt to be skittish when you strike a match alongside of him.

After the foregoing evidence, the plaintiff rested, and upon this State of the Case, the defendant applied for a non-suit upon the following grounds:

“First, that there is no evidence that the horse was vicious or mischievous or had any vicious or mischievous propensities.

Second, that there is no evidence that the defendant had knowledge of any vicious or mischievous propensities of the horse.

Third, that there is no evidence of any negligence on the part of the defendant.

Fourth, that the testimony shows contributory negligence of the plaintiff, Walter Kastner.

Fifth, because there is no evidence that the proximate cause of the accident was not negligence of the defendant.”

(Motion for non-suit, p. 99, S. C.).

This motion the Court denied, and it is respectfully submitted that the Court did not err in doing so.

The Law applying to Non-Suit (and Direction of Verdict).

It has repeatedly been held that it is not necessary that a horse should be vicious to make the owner responsible for injury done by him through the owner's negligence. The same rule applying to the owner would naturally apply to a person having charge of and custody of a horse. *Healey v. Ballantine & Sons* (66 N. J. Law 339) disposes of the contention that in all cases a vicious or mischievous propensity on the part of the animal must be shown and the scienter established. In the case of *Healey v. Ballantine & Sons*, the Court pointed out numerous English decisions wherein recovery was had by a plain-

tiff, although there was no proven vicious propensity on the part of the animal or any scienter shown. One case referred to therein is *Hammack v. White*, 11 C. B. (N. S.) 588, wherein for some *unexplained* reason defendant's horse became restive and ran upon the pavement and killed a man, and it was held that these facts disclosed no evidence of negligence which the judge was warranted in submitting to the jury, but as the opinion states:

“But the Court expressly rested that result on the fact that the defendant has used his utmost efforts to prevent the animal from getting on the pavement.”

In the present case, in spite of the warning given to the defendant by the exhibited restlessness and prancing of the horse just prior to the injury, he did not use his “utmost efforts” to restrain the animal, but on the contrary left the guide rope out of his hands and actually lit a match alongside the horse's head, which was the active cause of the shying and kicking of the horse. The Court in the opinion in *Healey v. Ballantine & Sons*, quotes with approval the statement contained in *Dickson v. McCoy* (39 N. Y. 400):

“It is not necessary that a horse should be vicious to make the owner responsible for injury done by him through the owner's negligence. The vice of the animal is an essential fact only when, but for it, the conduct of the owner would be free from fault. If the most gentle horse be driven so negligently as to do injury to persons or property, the owner or driver will be responsible.”

In the present case, the direct active negligence of the defendant in his conduct in connection with the horse was the direct cause of his kicking and injuring the plaintiff. Furthermore, his conduct

in letting go the halter rope of the horse was tantamount to letting him go loose, and this language of the Court applies:

“The fact that a horse was in the street unattended shows negligence, and the burden is on the person in charge of the horse to show that he used all proper means to prevent it from escaping, and that he was without fault.”

And while many of the cases apply to situations where the animal then in a place where it had no right to be, still the application of the doctrine is not limited to such circumstances. In the case of *Barnes v. Chapin* (4 Allen 444), which is cited in *Healey v. Ballantine & Sons*, *supra*, it was held to be negligence to permit a mare to go at large upon the highway without a keeper, so as to create liability for his kicking another animal. The opinion in *Healey v. Ballantine & Sons* also cites *Baldwin v. Ensign* (49 Conn. 113), in which a child was kicked while on the street by a colt which was not proven to be vicious or that if so, such viciousness was known to the defendant. Judgment for the plaintiff was sustained, however, the Court saying:

“It remains to inquire whether the fact that the accident happened in the limits of the highway would change the result? Why should it? The plaintiff had a lawful right to be there, as much so as to be on his own land, and the colt was unlawfully there. It is true that he was not trespassing on a private enclosure, but he was at large on a public highway contrary to law, and as such was a nuisance. * * * The ground of liability for injuries of this kind is negligence, and, ordinarily, where there is no negligence, there is no liability. * * *”

The Supreme Court in *Healey v. Ballantine*, in its opinion, approved the following referred to instruction of the trial court:

“The Court also instructed the jury that the plaintiffs could only recover by establishing by a preponderance of the testimony that the servant of the defendant was in some way careless and negligent at the time.”

The Court affirmed the verdict for the plaintiff, in spite of the fact that there was no proof of scienter in the case.

And the Court of Errors and Appeals, in the case of *Belles v. Kellner* (67 N. J. Law 255), although affirming the reversal of a plaintiff's judgment by the Supreme Court, applied the same rule in considering the evidence in the case which they held showed no facts or circumstances warranting a finding of negligence on the part of the defendant, the Court pointing out that in that case:

“The place where the horse was standing was free from the presence of a locomotive or music passing at the time, or any unusual thing which could be supposed to frighten a gentle horse accustomed to be left in that condition in the street.”

(And in the present case not only was there the happening of “an unusual thing which could be supposed to frighten a gentle horse,” but the unusual thing that happened was caused by the defendant's act himself.)

The Court of Errors and Appeals further stated in the same opinion:

“To entitle the plaintiff to recover he was required to show by a preponderance of evidence that the defendants were guilty of some negligent act which was the proximate cause of the injury to the plaintiff.”

The Court found that the mere fact of leaving the horse untied upon the conditions stated "did not constitute actionable negligence." The test to be applied was stated by the Court of Errors and Appeals (*Belles v. Kellner*, 67 N. J. L. at p. 257):

"The question is whether, under these circumstances, there is anything from which an inference can be drawn that a man of ordinary prudence could have reasonably believed that injury might result from his act."

The Court also stated:

"It has been frequently held that leaving a horse untied and unattended in the street—that is, with no one near enough to control him by voice or otherwise, or to leave him in that condition in proximity to a steam railroad or where the horse is not gentle, are circumstances from which negligence may be inferred."

Citing *Lynch v. Nurden*, 1 Ad. & E. (N. S.) 429; *Rumsey v. Nelson*, 58 Vt. 590; *Drake v. Mount*, 4 Vroom 441; *Hoboken Land and Improvement Co. v. Lally*, 19 *Id.* 604. An examination of the foregoing cases all show that the same tests of reasonable care on the part of the defendant are applicable alike to cases involving the handling, leading and attention to horses as apply to any other conditions where negligence is involved.

The rule is summarized in 3 C. J. p. 92, section 321, wherein it is stated:

"It is not true, in all cases, however, that scienter is necessary where the injury is inflicted by an animal in a place where it had a right to be. If the owner or keeper is guilty of negligence in handling the animal he is liable regardless of scienter."

And in section 323 at p. 93, 3 C. J., it is stated:

"It is not necessary that an animal should be vicious to make the owner responsible

for injury done by it through the owner's negligence. *The vice of the animal is an essential fact only when, but for it, the conduct of the owner would be free from fault.*

While a person has a right to drive domestic animals along public highways, he is bound to use that degree of diligence and care which the nature of the animal and the circumstances require; and if by reason of any negligence on his part the animal does any mischief, he and the owner of the animal are liable therefor without proof of scienter.'

The defendant-appellant argues (p. 9, Brief):

"If the defendant placed the lead rope in the crook of his arm and lit a cigarette, it was not a negligent act on his part while conducting a gentle horse."

It is respectfully submitted in answer to this that this proposition was a jury question, particularly as the evidence showed that the horse was actually prancing and acting skittish for a considerable distance before the point of accident, and that in spite of this the defendant placed the lead rope in the crook of his arm and lit a cigarette alongside the horse's head, whereupon the horse, as the result thereof, reared up and kicked the plaintiff, who was lawfully passing him upon a bicycle in the street. Although the horse may have been ordinarily gentle, it was proper for the jury to find from the evidence in the case and the defendant's admissions that the horse had not been exercised or out of the stable for over a week; that according to expert testimony this would make any horse skittish and liable to kick; that in spite of the warnings given to the defendant by the actual conduct of the horse, he let go of his hold on the lead rope and suddenly lit a match alongside the horse's head while going through a busy street with him, and while the horse was equipped with only a halter

and lead rope and not with a bit and bridle. Taking all these circumstances into consideration, there was ample evidence of actual negligence on the part of the defendant which was the proximate cause of the horse kicking the boy and inflicting the extremely serious injury which he suffered.

The defendant's brief argues as if the weight of the evidence were a proper subject of consideration by this court, and while we contend that the weight of the evidence was greatly in favor of the plaintiff, still even if this were not so, that matter has been disposed of by the jury's verdict and by the fact the rule to show cause before the trial court was the only proceeding in which the weight of the evidence could be considered.

As to the contrary negligence of the plaintiff, the testimony of the witness, O'Toole, was that the boy was passing on a bicycle about five feet to the left of the horse and was just about to pass him when the defendant let go of the lead rope, putting it in the crook of his arm and suddenly lit a match alongside the horse's head, whereupon the horse reared up and kicked the plaintiff, who was passing him, on the left hand or proper side of the horse, and under these circumstances it is respectfully submitted that the jury had the right to find, in testing the conduct of the plaintiff and applying to his conduct the proper consideration of his age, that his conduct was not negligent, and that he therefore was not guilty of contributory negligence.

As, therefore, the defendant's negligence and the plaintiff's contributory negligence were jury questions, it is respectfully submitted that the Court did not err in refusing to grant the motion

for non-suit made by the defendant at the end of the plaintiff's case.

The defendant adds a contention on page 13:

“The accident could not have happened as the plaintiffs contend.”

While this does not seem to be a legal argument on appeal, it is respectfully submitted that this statement is entirely contrary to the evidence in the case. The plaintiff was a boy 10 years of age, riding a boy's bicycle, which would place his head elevated only three or four feet from the ground, and the evidence of O'Toole shows that the horse kicked up in the air with his hind legs when the defendant lit the match, striking him on his head and again coming down upon him when the child hit the ground. This witness further testified that the boy was passing the horse to his left. This would place the right side of his head toward the horse. He further testified that the horse kicked just as the boy started to pass him, and the medical testimony shows that the fracture was on the right side of the boy's skull, and that it was a fracture that broke an oval piece away from the rest of the boy's skull about three inches long, so that the very nature of the injury is corroborative of the testimony of the witness, O'Toole, in describing how it occurred. In the face of this direct testimony, the speculation of defendant's brief that it could not happen that way seems to fall.

The same facts and law which made proper the refusal of the trial court to grant a non-suit also rendered his refusal to grant a direction of verdict at the end of the entire case proper. The only witnesses for the defense were the defendant himself and one Nathan Speizer. The defendant, Weinstein, told a very strange story. He ad-

mitted that he was familiar with horses and that he was leading the horse along the street when the occurrence took place. He denied on cross examination that the horse kicked the boy at all (p. 150, S. C., l. 18):

“Q He kicked this boy, didn’t he? A No, sir.

Q Oh, he did not kick this boy? A No.

Q He did not step on this boy? A I didn’t see him kick him.”

He further testified (p. 150, S. C., l. 28):

“Q The first time you saw that boy was when you got across the street with your horse? A Yes, sir.”

He admitted, however, that he heard a noise and that the horse made a fast step forward and that the noise came from the back of the horse (p. 151, S. C., bottom). He admitted that after the accident occurred he was across the street with his horse and said that his horse was excited (p. 152, S. C., top). Although he claimed he could control the horse, his only explanation why he wound up with him across the street was:

“It is better from across the street to look.”

(p. 152, S. C., l. 23). He admitted that he was afraid of the horse because

“Maybe run away from me” (p. 155, bottom).

and

“Because this is a horse I never handled him”

and

“And a strange horse, I must watch it,” although he denied that he admitted to Mr. O’Toole that the horse had not been out of the stable or exercised for a week. He did admit

that he made no inquiry and did not know whether the horse had been out for weeks before he led him, or not. On p. 158, S. C., bottom and 159 top, he testified that he did not know the horse had hurt anyone at all, but admitted that after the horse moved he heard a screaming (p. 161, S. C., l. 30). His denial was so complete that at the end of his cross examination he stated (p. 163, S. C.):

“You know right now that your horse hurt that boy, don’t you? A I cannot tell you.

Q You cannot say? A No.”

The prevarication of the defendant is evident if his witness, Wolf, is to be believed because Wolf testified (p. 182, S. C., l. 14) that Weinstein came to his house on the night of the accident and told him that he had an accident with the horse and Wolf also said that Weinstein said a boy had been hurt (p. 183, S. C., top). He said further, and Wolf repeated this (p. 183, l. 32) speaking of Weinstein’s statement to him:

“He just says that the boy got hurt with the horse; that is all he told me.”

The jury in comparing the testimony of Weinstein’s own witness, Wolf, to the effect that Weinstein told him that he had an accident with the horse and a boy was hurt, with the defendant’s testimony on the stand that he did not know at all that the horse had hurt the boy, was a proper circumstance for the jury to consider in finding the facts to be as the plaintiffs’ disinterested witnesses testified to, rather than as the defendant himself stated on the stand. The defendant’s witness, Wolf, who owned the horse, admitted that horses do act frisky when they are kept in a week, according to what kind of a horse he is (p. 186, S. C., l. 25).

The only other witness to the occurrence called by the defendant was Nathan Speizer, who told a story different from all the other witnesses. He claimed that the boy came out of an alleyway and not along the street, and that the boy never came in contact with the horse at all, but fell in the street near the horse. He could not explain how the boy came to fall or what made him fall, and told a weird story of how he came to be a witness through meeting Weinstein accidentally on the street some time after the accident, although he never knew him before. There was rebuttal evidence by several witnesses who were present that they did not see the witness, Speizer, there at any time before or after the accident occurred or at the time it occurred.

Upon the whole case, therefore, it is respectfully submitted that the Court did not err in refusing to grant a non-suit or a direction of verdict for the defendant, because the negligence of the parties was a jury question under the evidence and there was ample evidence from which the jury could find negligence on the part of the defendant which was the proximate cause of the infant plaintiff's injury, and from which the jury could likewise properly have found, as they did, that there was no contributory negligence on the plaintiff's part.

Answer to Point II.

The second point made by the defendant-appellant is:

“The trial court improperly charged the jury from Chapter 156 of the Laws of 1915, paragraph 6, subdivision 1, as follows: ‘No person shall cease to hold the reins in his hands while riding, driving or conducting a horse.’ ”

It is not contended by the defendant-appellant that the Court erred in his general charge to the jury as to the rules of law governing the liability in the case. No exception is taken to the charge on the basic rules governing the case. It is merely contended that the Court erred in referring to the statute in question. It is respectfully submitted that the Court did not err in its charge in this respect.

The statute in question (P. L. 1915, p. 285) in Part I under "*Definitions*" states:

"I. As used in this statute:

(1) The word 'Vehicle' includes equestrians, led horses, etc., etc."

The statute in its body provides at p. 290 under the heading:

"CONTROL OF HORSES.

6. On all public roads, streets, highways and turnpikes the following regulations shall be in force:

(1) No person shall cease to hold the reins in his hands while riding, driving or conducting a horse."

As the foregoing statute refers specifically to the circumstances existing in this case, it was, of course, proper for the Court to refer to it and in doing so the Court correctly read the quoted part of the statute and called to the attention of the jury that the statute said nothing about a lead or a halter. This is correct, for the statute does say nothing about a lead or a halter. It is argued by the defendant, however, that giving this information to the jury might have misled the jury. But a reading of the Court's whole charge and the particular portion complained of by the defendant does not warrant this complaint. The Court undoubtedly referred to the statute saying nothing about a lead or halter,

not for the purpose as counsel for defendant contended, to indicate the failure to use a lead or halter might be negligence, but rather to permit the jury to determine whether or not the direction of the statute against ceasing to hold the reins in his hands while riding, driving or conducting a horse would apply to the circumstances where a defendant was not using reins, but was using a halter and rope. At no point did the Court suggest to the jury that the statute prohibited the use of a halter and rope, and the Court specifically made clear his purpose in referring to the statute to be as follows:

“I am calling it to your attention, if the person leading this horse, Mr. Weinstein, conducted it as the witness O’Toole said he did, that is, by loosening his hold and putting it in the crook of his arm for the purpose of lighting a cigarette” (S. C., p. 204).

The Court then went on to properly charge that a violation of the statute, even if it occurred, does not in itself constitute negligence, but is merely a circumstance to be considered with all the other circumstances in the case upon the question of whether the defendant acted as a reasonably careful and prudent man would and should have acted under the circumstances. It is respectfully submitted that the excepted portion of the Court’s charge was not erroneous in any respect and that the entire charge of the Court properly submitted to the jury the law governing the facts and testimony in the case. The Court’s charge in its entirety was a fair and correct one, and a reading of it gives a good resume of the situation in the case on the evidence, from both the standpoint of the plaintiffs and defendant, and properly submitted to the jury the law to be applied by it in the considera-

tion of that testimony in arriving at their verdict as to liability.

On the entire case, it is respectfully submitted that the motions for non-suit and direction were properly denied and that the charge of the Court was without error, and that therefore the verdict in favor of the plaintiffs should be AFFIRMED.

JOHN W. MCGEEHAN, JR.,
Attorney for and of Counsel with
Plaintiffs-Appellees.

Journal of the Proceedings of the General Assembly of the Church of Scotland, 1844

At a General Assembly of the Church of Scotland, held at Glasgow, on the 10th of May, 1844.

Present, the Moderator, the Ministers, and the Elders of the Churches of the Synod of Glasgow and South Ayr.

Read the Minutes of the last Assembly, and they were approved.

Read the Report of the Synod of Glasgow and South Ayr, and it was approved.

Read the Report of the Synod of the Highlands and Islands, and it was approved.

Read the Report of the Synod of the North, and it was approved.

Read the Report of the Synod of the West, and it was approved.

Read the Report of the Synod of the South, and it was approved.

Read the Report of the Synod of the North-East, and it was approved.

Read the Report of the Synod of the South-East, and it was approved.

Read the Report of the Synod of the West of Scotland, and it was approved.

Read the Report of the Synod of the East of Scotland, and it was approved.

Read the Report of the Synod of the North-West, and it was approved.

Read the Report of the Synod of the South-West, and it was approved.

Read the Report of the Synod of the North-East, and it was approved.

Read the Report of the Synod of the South-East, and it was approved.

Read the Report of the Synod of the West of Scotland, and it was approved.

Read the Report of the Synod of the East of Scotland, and it was approved.

Read the Report of the Synod of the North-West, and it was approved.

Read the Report of the Synod of the South-West, and it was approved.

Read the Report of the Synod of the North-East, and it was approved.

Read the Report of the Synod of the South-East, and it was approved.

Read the Report of the Synod of the West of Scotland, and it was approved.

Read the Report of the Synod of the East of Scotland, and it was approved.

Read the Report of the Synod of the North-West, and it was approved.

Read the Report of the Synod of the South-West, and it was approved.

Read the Report of the Synod of the North-East, and it was approved.

Read the Report of the Synod of the South-East, and it was approved.

Read the Report of the Synod of the West of Scotland, and it was approved.

Read the Report of the Synod of the East of Scotland, and it was approved.

Read the Report of the Synod of the North-West, and it was approved.

Read the Report of the Synod of the South-West, and it was approved.



